



Mid-Atlantic Fishery Management Council

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: September 30, 2020
To: Council
From: Mary Sabo
Subject: Additional information regarding USFWS import/export rules for U.S. squid fisheries

The Executive Committee met on September 21 to develop recommendations regarding the Executive Order (EO) on Promoting American Seafood Competitiveness and Economic Growth. During this meeting, the Committee reviewed a request to consider recommending to the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to exempt squid from the inspection and user fee system established for monitoring the import and export of certain types of protected wildlife products (at 50 CFR 14). The Executive Committee directed staff to provide additional information on this topic for consideration at the October 2020 Council Meeting. Specifically, the Committee requested (1) information about the USFWS rationale for including squid in its import/export monitoring and user fee program and (2) documentation of NMFS' past opposition to the USFWS excluding squid from its definition of shellfish.

The following memo provides additional background information to support the Council's review of this issue. Several documents are also attached for Council consideration:

1. USFWS Fact Sheet: Importing & Exporting Shellfish & Fishery Products
2. Letter from Mr. Samuel D. Rauch, NMFS Deputy Assistant Administrator for Regulatory Programs, Regarding USFWS Import/Export License and Fee Proposals (4/24/2008)
3. Letter from Lund's Fisheries, Seafreeze, Ltd., and The Town Dock (7/28/20)
4. Relevant 50 CFR Excerpts: § 10.12, § 14.92(a)(1), and § 14.64(a)

Summary of the Issue

Under the authority of the Endangered Species Act (ESA), the USFWS regulates the import and export of wildlife. This is carried out through the licensing of importers and exporters, inspection of shipments, and charging and retaining fees for processing applications and performing inspections.

The ESA provides an exemption from these import/export requirements for "shellfish and fishery products." This exemption, which is reflected in the USFWS regulations found in [50 CFR Part 14](#), currently applies to the vast majority of domestic fisheries. However, because the USFWS has established a narrow definition of "shellfish," this exemption does not include invertebrates without external shells, such as squid, octopus, and cuttlefish (Attachment #1). NMFS has previously opposed the USFWS definition of shellfish as being inconsistent with that of NMFS and the United Nations Food and Agriculture Organization (Attachment #2).

Atlantic longfin squid, Atlantic *Illex* squid, and California market squid are among only a few commercially harvested domestic fisheries that are not exempt from the USFWS import/export regulations. USFWS has provided no specific rationale for its decision to classify squid as neither shellfish nor fishery products.

On July 28, 2020, the Council received a request from Lund’s Fisheries, Seafreeze, Ltd., and The Town Dock (Attachment #3), requesting that the Council consider including in its EO response a recommendation that the USFWS revise the import/export rules to include squid in the exemption for shellfish and fishery products. The current regulations require squid producers to ship U.S. squid only from designated ports and pay duplicative inspection fees, paperwork fees, and license fees, resulting in higher costs for the industry and making U.S. squid less competitive in international markets.

U.S. squid meet the criteria of being intended for human consumption and they are not listed as endangered or threatened, protected under CITES, or listed as injurious under the Lacey Act. These fisheries are sustainably managed under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. In 2018 the Atlantic longfin squid fishery became the first squid fishery in the world to secure certification by the Marine Stewardship Council (MSC), and the *Illex* squid fishery was subsequently certified as MSC-sustainable in 2019.

Exemption Definitions

Shellfish

The USFWS currently uses the following definition of *Shellfish* provided at [50 CFR § 10.12](#):

“*Shellfish* means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.”

The USFWS interprets the above definition of shellfish to exclude species in the class Cephalopoda, including squid, octopods, and cuttlefish.

On February 25, 2008, USFWS published a proposed rule proposing clarification regarding when an import/export license is required and modification to the license requirement exemptions. During the comment period, USFWS received a number of comments from NMFS and the industry questioning the USFWS definition of shellfish and the rationale for excluding certain mollusks. The following is an excerpt from NMFS’ letter (Attachment #2):

“Serious questions have arisen from seafood importers in the northeast as to whether this definition of *shellfish* should also include wildlife species in the class Cephalopoda (squids, octopods, and cuttlefish). NMFS understanding is that organisms in this class *are* shellfish. According to the definition listed in the NMFS 2006 Glossary, ‘Shellfish include both mollusks, such as clams and crustaceans, such as lobsters.’ This definition was sourced from the *United Nations Food and Agriculture Organization – Fisheries Glossary*. Shellfish are further defined in 50 CFR 10.12 as “*an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean...*”

Although the Magnuson-Stevens Act provisions (50 CFR 600.10) and the Northeast Region regulations (50 CFR 648.2) lack a clear definition of shellfish, both definitions above indicate that the phylum Mollusca classifies all species within as shellfish, which includes the class Cephalopoda.”

The [final rule](#), published on December 9, 2008, did not modify the definition of *shellfish*, and the USFWS continues to apply import/export requirements and fees to U.S. squid fisheries.

Fishery Product

The regulations found in 50 CFR § 10.12 and 50 CFR Part 14 do not include a definition for the term *Fishery Product*. The USFWS provides the following definition in its Fact Sheet on Importing & Exporting Shellfish & Fishery Products (Attachment #1):

A fishery product means a non-living fish of one of the following classes: Cyclostomata, Elasmobranchii and Pisces; and includes any part, product, egg or offspring whether or not included in a manufactured product or a processed product. Fishery product does not mean frogs, turtles, alligators, live fish, or other aquatic animals.

USFWS Justification for Excluding Squid from Import/Export Exemptions

Staff has reviewed current regulations and supporting documents from USFWS and has not identified a rationale for excluding squid or other non-exempt invertebrates from the exemption for shellfish and fishery products. USFWS leadership has stated that the exemption “is purposefully narrow to discourage smuggling and illegal trade in protected species, invasive species and other wildlife, and to protect the legal trade community.”¹ However, staff can find no evidence that squid fisheries are any more vulnerable to illegal import/export activities than other fisheries that are covered by the exemption.

In 2016, the topic was raised during a [Legislative: Hearing on H.R. 3070 and H.R. 4245](#) before the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources U.S. House Of Representatives. The following exchange between Representative John Fleming, Mr. William Woody (Assistant Director of USFWS Office of Law Enforcement at the time), and Mr. Dan Morris (Deputy Regional Administrator of NMFS Greater Atlantic Region at the time) can be viewed [here](#) (beginning at 1:41:30). A full transcript can be found [here](#).

Dr. FLEMING. The gentlelady yields back. I believe we have finished the first round. Therefore, I now recognize myself for 5 minutes for the second round. This question is for Mr. Woody. I understand the U.S. squid industry is currently subject to these same inspection requirements by the Service, even though these products are also destined for human consumption. Can you please explain to the subcommittee why a U.S. company that processes squid caught by U.S. fishermen off our own coast, and then exports that same cleaned, frozen product for human consumption, is subject to the same excessive fees and aggressive inspection requirements as products that are actually dangerous to the environment, or highly protected, such as those listed under the Lacey Act, CITES, and the Endangered Species Act?

Mr. WOODY. OK. Under our service regulations, under shellfish and fishery products, they do not fall under our regulations. What we have is the exemption does not apply to aquatic invertebrates and other animals that may be imported or exported for human or animal consumption. Essentially, the definition of shellfish or fisheries product such as squid, octopus, cuttlefish, land snails, sea urchins, sea cucumbers, they don't apply. They do not fall under that exemption, under our regulations.

Dr. FLEMING. But your regulations could be changed, right? You don't require an Act of Congress to do that?

Mr. WOODY. Our regulations could be changed, correct.

Dr. FLEMING. All right. Why not change them?

Mr. WOODY. Because we think they are sufficient right now.

¹ Mr. William Woody, Assistant Director of Law Enforcement for the U.S. Fish and Wildlife Service, testimony before the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources, February 2, 2016, https://naturalresources.house.gov/download/testimony_woody

Dr. FLEMING. But why? I know you think that, but why?

Mr. WOODY. Because we think what we have right now, under shellfish and fisheries product, under the exemptions that we give those particular things, we think that covers a broad base. Adding on these other exemptions can add on to other issues as well. In other words, anything possibly from wildlife trafficking to other invasive species coming in. We have not added anything on to that, under the exemptions.

Dr. FLEMING. So, you are concerned that it opens the floodgates to other types of critters that might be involved with the Endangered Species Act or——

Mr. WOODY. Potentially it opens up other smuggling avenues. Correct, sir.

Dr. FLEMING. OK. Why is domestic calamari from our own waters defined the same way as these other dangerous or protected products?

Mr. WOODY. It does not fall under the exemption, sir.

Dr. FLEMING. So it is the same answer, basically.

Mr. WOODY. That is correct.

Dr. FLEMING. OK. Mr. Morris, NOAA and the regional councils managed the domestic harvest of hundreds of metric tons of squid. To your knowledge, is U.S.-caught squid a dangerous threat to our environment, or is it protected under the ESA?

Mr. MORRIS. Thank you for the question, sir. Yes, the domestic caught fish and squid are sustainably harvested. They are under proper management and catches are set and managed at appropriate levels. They are not listed under the Endangered Species Act.

Dr. FLEMING. And they are not a danger to the environment? They are not invasive species or anything of that sort?

Mr. MORRIS. No.

Dr. FLEMING. So, would it—and I will open this to the panel. Does anyone else have any comment about this? It does not get the same protections as shellfish, the same waiver. But yet in many ways, it is similar to the shellfish, in that it is not under the Lacey Act, it is not an endangered species, it is not an invasive species. Any thoughts from anyone else on the panel about that?

[No response.]

Dr. FLEMING. OK, all right. Well, that is all the questions I have. I yield to Mr. Huffman.

Industry Impacts

The economic impacts and regulatory burden of these USFWS import/export regulations are described in detail in the joint letter submitted by Lund’s Fisheries, Seafreeze Ltd., and The Town Dock (Attachment 3). The letter states: “Squid are generally considered to be a higher volume, lower value product so any fees associated with USFWS policies and regulations add layers of costs that make U.S. products more expensive to produce and thus less competitive in the international market. This undermines U.S. trade policy and our trade deficit, especially with China and Japan.”

The letter provides the following example of how these regulations affect the operations and bottom line of U.S. squid fisheries:

The Agency requires at least a 48-hour notice prior to an export shipment but will not clear a shipment until it gets close to the export date. Companies that have provided the Agency with as much as a 10-

day advance notice do not see their export clearances until after the “port cut” – the last day a company can deliver a full container to the terminal in order to load the vessel that has been booked for the delivery.

If a company misses a port cut they are paying \$500-600 per day until the container boards the next vessel (about 9 days). Terminals are typically open for receiving just 2-3 days prior to the port cut and there is just a 3-4 day window to deliver loaded containers. If a company must wait for Agency clearance to begin the loading process they will miss every shipment because the Agency cannot provide timely approvals until after the port cut.

In addition, if the Agency rejects a container on the basis they want to inspect the contents they require a company to deliver the loaded container to a bonded warehouse at the company’s expense. Timing is critical when we are delivering refrigerated cargo due to its perishable nature. The Agency process is last minute and structured in a way that makes it impossible to load the vessel as customers require which can also result in added costs per container. Here are a few of the costs enumerated below --

Carrier detention: \$300/day for 9 days. \$2700

Chassis use: \$35/day for 9 days. \$315

Storage at trucker’s yard: \$150/day for 9 days. \$1350

Rolled booking charge: \$500

Trucking to Bonded Cold Storage: \$1200

Last Minute Appointment at Bonded Cold Storage: \$1000

Proposed Action

USFWS likely already has the authority under existing regulations to exempt domestic squid fisheries from import/export requirements and fees. Council staff notes that while squid lack external shells, they do have internal shells known as “pens” and therefore could potentially be classified as shellfish under the current definition. Additionally, in the absence of a definition of “fishery product” in the relevant CFR sections, USFWS could broaden the definition to exempt squid and other invertebrates from import/export requirements without requiring a regulatory change. However, in order to ensure a permanent exemption for these sustainably managed domestic squid fisheries, staff recommends that the Council include either or both of the following recommendations in its response to EO 13921.

1. **Revise the “Shellfish” definition at [50 CFR § 10.12](#) to include squid.** Below are two acceptable options:
 - a. Modified NMFS Definition (based on the [2006 NMFS glossary](#) definition): Shellfish include both mollusks, such as clams and squid, and crustaceans, such as lobsters and shrimp.
 - b. Modified USFWS Definition: Shellfish means an aquatic mollusk or crustacean or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.
2. **Add a definition for “Fishery Products” which includes squid or all mollusks not otherwise covered under the shellfish definition.** This definition could be added to [50 CFR § 10.12](#) or [§ 14.4](#). This change would broaden the scope of a number of relevant sections which provide exemptions for “Shellfish and nonliving fishery products...”

The Council’s final recommendations will be included in the Council’s EO response to NMFS and transmitted via formal request to the applicable agencies (Dept. of Commerce/NMFS, Dept. of Interior/USFWS).

Importing & Exporting Shellfish & Fishery Products

Does the U.S. Fish and Wildlife Service (Service) regulate the import and export of shellfish and fishery products?

Yes. We regulate the trade of shellfish and fishery products under the wildlife laws we enforce. However, we exempt some shellfish and certain non-living fishery products from our basic import/export requirements. We also have exemptions for pearls and certain sport-caught fish.

How does the Service define shellfish?

Under Service regulations, shellfish means an aquatic invertebrate having a shell within either the phylum Mollusca or subphylum Crustacea, and includes any part, product, egg, or offspring whether or not included in a manufactured product or in a processed food product. The definition for shellfish does not include mollusks or crustaceans without a shell or any other aquatic invertebrate. Common edible shellfish include oyster, clam, mussel, scallop, cockle, abalone, conch, whelk, marine snail, lobster, crayfish and prawn.

How does the Service define fishery product?

A fishery product means a non-living fish of one of the following classes: Cyclostomata, Elasmobranchii and Pisces; and includes any part, product, egg or offspring whether or not included in a manufactured product or a processed product. Fishery product does not mean frogs, turtles, alligators, live fish, or other aquatic animals.

When are shellfish and fishery products exempt from Service import/export requirements?

Imports and exports of certain shellfish and non-living fish products are exempt from Service requirements if they are for human or animal consumption and the species is not listed as injurious ([50 CFR Part 16](#)) and does not require a permit under [50 CFR Part 17](#) (endangered or threatened species), or [50 CFR 23](#) (Convention on International Trade in Endangered Species (CITES)). Live shellfish imported or exported for grow out or rearing facilities are not considered to be an import or export for human or animal consumption.

Are pearls exempt from Service import/export requirements?

Yes. Pearls are exempt from Service requirements unless they come from or are cultivated using any piece or part of a shellfish protected under CITES or listed as endangered or threatened.

Are there any exemptions for sport-caught fish or shellfish?

Yes. Recreationally caught fish or shellfish taken in U.S. waters or on the high seas are exempt from Service import/export requirements, unless the species involved is injurious, or requires a permit under [50 CFR Part 17](#) or [50 CFR 23](#). In addition, fish taken for recreational purposes in Canada or Mexico are exempt from import declaration requirements unless the species involved is injurious, or requires a permit under [50 CFR Part 17](#), or [50 CFR 23](#).

Are there any other exemptions for shellfish?

Yes. Live aquatic invertebrates of the class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and their eggs, larvae, or juvenile forms, are exempt from Service requirements if they are exported for purposes of propagation or research related to propagation and they do not require a permit under [50 CFR Part 17](#) or [50 CFR 23](#).

Are there any exemptions for exports of farm-raised fish and fish eggs?

Yes. Live farm-raised fish and farm-raised fish eggs that meet our definition of “bred in captivity” (50 CFR 17.3) and that do not require a permit under our regulations as endangered or threatened (50 CFR 17) or under CITES (50 CFR 23) may be exported from any [Customs and Border Protection port](#) and are exempt from export declaration and licensing requirements.

What are some examples of shellfish that are not exempt?

Species such as queen conch (*Strombus gigas*) and giant clams (Family Tridacnidae) that require a permit under [50 CFR 23](#) do not qualify for the exemption for shellfish. Other examples include certain mussels originating in U.S. rivers that are listed under the Endangered Species Act and two types of shellfish – mitten crabs (genus *Eriocheir*) and zebra mussels (*Dreissena polymorpha*) – that are listed as injurious ([50 CFR Part 16](#)). All of these shellfish require permits and are subject to Service import/export requirements.

What are some examples of fishery products that are not exempt?

Imports or exports of any sturgeon or paddlefish product, including meat, caviar, and cosmetics made from sturgeon eggs, do not qualify for the exemption for fishery products since they require a permit under [50 CFR 23](#). Other examples of non-exempt fishery products include dead unviscerated salmon, trout and char and live fertilized eggs from these salmonid fish – imports for which special requirements exist under our injurious species regulations.

What are some examples of other animals that are not exempt?

Aquatic invertebrates and other animals that are imported or exported for human or animal consumption but that do not meet the definition of shellfish or fishery product are not exempt. Examples include squid, octopus, cuttlefish, land snails (escargot), sea urchins, sea cucumbers, frogs, or alligator.

Can a Service officer still look at my shipment even if it is exempt?

Yes. The Service has the legal authority to detain and inspect any wildlife imported or exported into the United States, even if we have exempted the shipment from Service port, declaration, and clearance requirements.

Contact:

U.S. Fish and Wildlife Service
Office of Law Enforcement
Phone: 703-358-1949
Fax: 703-358-2271
E-mail: lawenforcement@fws.gov

July 7, 2008



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

April 25, 2008

Public Comments Processing
Attn: RIN 1018-AV31
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, Virginia 22203

Re: Docket No. FWS-R9-LE-2008-0024
Import/Export License and Fee Proposals

Dear Sirs:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) offers the following comments on the proposed amendments to the rules governing import/export licenses and fees that were published in the Federal Register on February 25, 2008 (73 FR 9972-9983).

The proposed change to 50 CFR 14.92 would redefine the import/export license exemption category from its current language of "*Shellfish and fishery products*" to "*Shellfish and nonliving fish products*". Based on the factsheet given in a public notice to the wildlife import/export community by the FWS on March 6, 2006, the FWS definition of "shellfish" was narrowed to the following:

"Shellfish are all species of oyster, clam, mussel, or scallop (Class Pelecypoda) or shrimp, crab, or lobster (Class Crustacea) that are live, shucked, or in the shell, fresh or frozen, whole or in part."

Serious questions have arisen from seafood importers in the northeast as to whether this definition of *shellfish* should also include wildlife species in the class Cephalopoda (squids, octopods, and cuttlefish). NMFS understanding is that organisms in this class *are* shellfish. According to the definition listed in the NMFS 2006 Glossary,



“Shellfish include both mollusks, such as clams, and crustaceans, such as lobsters.” This definition was sourced from the *United Nations Food and Agriculture Organization – Fisheries Glossary*. Shellfish are also further defined in 50 CFR 10.12 as “*an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean...*”

Although the Magnuson-Stevens Act provisions (50 CFR 600.10) and the Northeast Region regulations (50 CFR 648.2) lack a clear definition of shellfish, both definitions above indicate that the phylum Mollusca classifies all species within as *shellfish*, which includes the class Cephalopoda.

Based on the concerns we have identified, NMFS strongly recommends FWS provide clarification in this rule on the definition of *shellfish* to help those importing and exporting seafood better understand the import/export requirements of the FWS. Therefore, NMFS believes §14.92(a)(1) should read: “*Shellfish, as defined by 50 CFR 10.12, and nonliving fish products that do not require a permit under parts 16, 17, or 23 of this subchapter, and are imported or exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes;*”. NMFS encourages FWS to pursue further interagency and industry dialogue, and looks forward to working with FWS in advancing environmentally-sound import/export regulations.

Sincerely,



Samuel D. Rauch III
Deputy Assistant Administrator for
Regulatory Programs, NMFS

July 28, 2020
Dr. Chris Moore
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201, Dover, DE 19901

RE: Request for Inclusion of a Squid Species Exemption from Duplicative and Burdensome USFWS Regulations, in the Council's Identification of Important Regulatory Reforms Pursuant to Executive Order (EO) 13921 Promoting American Seafood Competitiveness and Economic Growth

Dear Dr. Moore:

We learned during the May 27-28 meeting of the Regional Fishery Management Councils' Council Coordinating Committee we first heard that the National Marine Fisheries Service (NMFS) will be surveying the Councils to gather ideas to reduce regulatory barriers negatively affecting American seafood competitiveness, consistent with EO 13921.

After listening to your report on the EO to the Council last month, and receiving your recent EO Comment Form announcement, we understand that the Council is now actively soliciting ideas. We were pleased to hear your response to Council Member Dewey Hemilright's question about the possibility of HMS ideas being solicited, even though those regulatory constraints lie outside the Council's immediate jurisdiction.

With this in mind, we are asking the Council to support recommending to NMFS the reform of a U.S. Fish & Wildlife Service (USFWS) Loligo and Illex squid fishery regulatory issue, which is having serious negative economic and competitive effects on our businesses. The issue is directly related to the inclusion of squid fishery products in a USFWS inspection and user fee system established for monitoring the import and export of certain types of protected wildlife products (at 50 CFR 14).

NMFS has taken a position in opposition to the USFWS' justification for including U.S.-produced squid species as part of these program in the past, including most recently in Congressional testimony in 2016. Encouraging NMFS and USFWS to reform this program will not require any changes to the Council's Mackerel, Squid, Butterfish Fishery Management Plan (MSB FMP).

These USFWS policies and regulations require squid producers to ship U.S. squid only from designated ports, and pay duplicative inspection fees, paperwork fees, and license fees; all leading to higher costs for our goods and delays in the shipment of our perishable seafood products year-round.

The USFWS regulations in question are intended to apply to small shipments of wildlife species of concern, to prevent abuse through the unauthorized trade in protected animals. This program should have nothing to do with the legitimate commercial production and distribution of US seafood, including squid. Virtually all other US commercial fishery products are exempt from this program and these rules.

We fully recognize this issue has joint agency ramifications and that NOAA/NMFS may not have the direct authority to force a sister agency to adjust their regulations. However, NOAA officials have been clear that the new EO does give the Agency the authority to make recommendations on cross-cutting issues that impact NOAA's commercial fishing industry stakeholders. This issue of duplicative squid inspections, within the exclusive jurisdiction of the USFWS, is an example of where we need Council and NOAA assistance in making this recommendation for reform to the Administration.

The USFWS's current policy and associated regulations, which include squid products in an import/export monitoring program created to protect rare and endangered wildlife, negatively impacts small U.S.-owned businesses, and renders U.S.-produced squid less competitive in international markets, thereby exacerbating the annual \$16B seafood trade deficit (much of it with China and other Asian countries). These requirements provide zero environmental conservation benefit for U.S. interests. Furthermore, the USFWS's role in seafood inspection is redundant and provides no benefit to our fishing companies or U.S. consumers.

Our repeated requests to the USFWS to exempt squid as either a shellfish (i.e. mollusk) or a fishery product, and to provide relief to all our U.S. domestic squid fisheries, have long been ignored. The USFWS has clear authority to grant exemptions for shellfish and fishery products, and has done so for virtually all other seafood, but has refused to do so in the case of squid.

The Agency has never given a justifiable reason for their position other than to say they can interpret the statute and form policy decisions in any manner they so choose (and require fees to be paid to support those decisions). The FWS has likewise ignored comments from NMFS in the past, as described above, attempting to correct the USFWS's false assumption that squid does not meet their definition of 'shellfish' or 'fishery product'.

Now, the MAFMC working with NOAA/NMFS and the Administration has an excellent opportunity to make a substantial difference for our industry, consistent with the intent of EO 13931, by pressing the USFWS to make a logical and reasonable change to their inspection and user fee system by exempting U.S. squid products from it.

We believe our request for an exemption from this system, through an EO 13921 lens, is warranted in order to eliminate the significant negative impacts of the overregulation of harmless edible shellfish and fishery products and redundant seafood inspection requirements imposed by the USFWS. In our opinion, the USFWS has placed an unnecessary economic and regulatory burden on numerous small U.S. businesses for no justifiable benefit, environmental or otherwise.

Fishing Industry Request to the MAFMC

We believe the MAFMC should recommend to NOAA/NMFS and to the Administration that the USFWS revise its wildlife import/export rules (See 73 FR 74615 and 50 CFR Parts 10-14), to exempt U.S. squid species pursuant to the President's Executive Order.

Clearly, these harmless food products should be defined correctly either as "shellfish" or "fishery products" (or both) and thus exempted from the system at 50 CFR Parts 10-14. U.S. east coast

squid *fisheries* are managed by the MAFMC/NMFS under the MSA, our nation's premier *fisheries* management law, as components of federal *fisheries* management plans. California's squid *fishery* is also actively managed, by the CA Dept. of *Fish* and Wildlife. Thus, the Administration should amend this FWS policy and properly define squid as a "*fishery* product" and require the USFWS provide an exemption from the wildlife inspection user fee system.

A Brief Chronology of the Issue

Prior to the Final Rule of December 2008, U.S. squid seafood products were exempt from these USFWS requirements and inspection fees. During the 2008 rulemaking process the USFWS received comments from the commercial fishing industry and NMFS, both of whom opposed the USFWS' definition of "shellfish" as inconsistent with that of NMFS and the United Nations Food and Agriculture Organization (FAO). Frankly, all the evidence we have indicates that squid are considered to be *both* mollusks and fishery products by scientists including the lead federal agency responsible for managing fisheries and seafood resources, in fact by pretty much everyone except the USFWS.

At that time the NMFS requested the USFWS revise its definition of shellfish to include squid to be consistent with that of NMFS, the lead federal fisheries management agency; which could have provided relief to our industry in terms of an exemption from the USFWS inspection fee system (e.g. permissible for certain shellfish & fishery products). In the end, the USFWS did not agree with NMFS; did not alter its erroneous definition of shellfish; nor did it choose to consider squid products to be fishery products.

There is additional history here for the MAFMC to consider. In 2008 Congressman Henry Brown (R-SC), at that time the Ranking Member on the House Natural Resources Committee, Subcommittee on Fisheries, Wildlife and Oceans, submitted comments to the USFWS calling into question the lack of justification for the Agency to engage in seafood inspection by revising their import/export license requirements at 50 CFR 14.

It was not until 2012-13 that the Obama Administration began to aggressively enforce these regulations, due in part to what appears to be an effort by the USFWS to offset the fiscal impacts of budget sequestration at that time.

In October 2014, the House Natural Resources Chairman Doc Hastings (R-WA) raised similar issues in a letter to then Interior Secretary Sally Jewel, to which he received a rather lukewarm response (on December 22, 2014), essentially indicating the USFWS was entirely comfortable with their interpretation of the definition of shellfish and their enforcement of the 2008 Final Rule.

On January 22, 2016, the House Natural Resources Subcommittee on Water, Power and Oceans held a hearing on the USFWS licensing requirements. The Subcommittee heard testimony from NOAA/NMFS officials that our domestic squid fisheries were healthy, sustainably-managed seafood products that were not a threat to the environment; while the USFWS representative, Mr. William Woody, stated the agency has broad authority to interpret the definition of shellfish and fishery products in any manner they choose.

On June 22, 2017, three coastal Republican Members of Congress sent a joint letter to then Secretary Zinke requesting a review of the USFWS regulations and an exemption from the current user fee system regime. To date, we have not seen any helpful signs from the Agency. We believe both the President's EO 13771 and EO 13921 provide a legitimate and consistent opportunity for the Federal Government to reexamine this situation. We appreciate the possibility that the Council could now provide us with an opportunity to regain momentum on this issue by including it in your response to the NMFS' solicitation of issues negatively affecting American seafood competitiveness.

It is also important to recognize the Council's long-term efforts to develop measures to sustain the east coast squid fisheries, as part of the MSB FMP. Along with those efforts, our companies have been able to partner in the Marine Stewardship Council's (MSC) certification of our Atlantic Loligo and Illex squid products, which are in demand here, in Canada, Europe, and Asia.

The mission of the MSC is to use their ecolabel and fishery certification program to contribute to the health of the world's oceans by recognizing and rewarding sustainable fishing practices. By working with them, we can influence the choices people make when buying seafood and transform the world's seafood market to a sustainable future by offering top quality U.S. seafood products.

Clearly, MSC-certified squid products pose no threat to the environment despite the fact that the USFWS user fee and monitoring system treats them in a manner similar to a CITES, ESA, or Lacey Act-listed species of concern. These squid species (and products made thereof) are not listed as injurious under 50 CFR part 16; they are not ESA-listed or candidates for listing (part 17); nor are they a CITES species (part 23). These species are not considered to be aquatic invasive species nor are they a threat to the U.S. environment in any way -- so the justification for inclusion in the USFWS declaration process for fish and wildlife defies common sense.

The specific domestic fisheries being directly harmed by the USFWS' policy and associated regulations are these:

Atlantic Longfin/Loligo squid

Harvest season: Offshore September through mid-April; Inshore May through August

Available quota level: 50,555,887 lbs. (22,932 mt)

2017 Harvest level: 17,993,000 lbs. (8,162 mt); Value: \$23.4 million ex vessel

2018 Harvest level: 25,588,130 lbs. (11,588 mt); Value: \$38 million ex vessel

2019 Harvest level: 27,213,341 lbs. (12,242 mt); Value: \$39 million ex vessel

Atlantic Shortfin/Illex squid

Harvest season: May through October

Available quota: 50,518,927 lbs. (26,000 mt)

2017 Harvest level: 49,612,500 lbs. (22,500 mt); Value: \$22.5 million ex vessel

2018 Harvest level: 53,177,989 lbs. (24,117 mt); Value: \$23.6 million ex vessel

2019 Harvest level: 54,729,757 lbs. (24,825 mt); Value: \$28 million ex vessel

California Market / Loligo squid

Harvest season: April 1 through March 31, or attainment of 118,000 short ton harvest limit

2017 Harvest level: 137,671,129 lbs. (62,446.57 mt); Value \$68,726,265 ex vessel

2018 Harvest level: 73,145,367 lbs. (33,178.5 mt); Value: \$35,767,673 ex vessel

2019 Landings: 27,198,474 lbs. (12,337.14 mt); Value: \$13,434,163 ex vessel

Monitoring/Inspections of Squid Fisheries, Processing and Trade

As referenced above, U.S. squid fisheries are carefully managed and closely monitored in their respective regions by the federal government via the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and through the Secretary of Commerce pursuant to his authorities over NOAA and NMFS. In addition to monitoring by the federal government, California's squid fishery is actively managed by the California Department of Fish and Wildlife.

These fisheries are sustainably managed, they are not being overfished and overfishing is not occurring. In fact, the Atlantic Longfin squid fishery was the first squid fishery in the world to secure MSC certification, on May 22, 2018, and the Atlantic Shortfin (Illex) squid fishery was subsequently certified as MSC-sustainable on May 2, 2019. These certifications by a nongovernmental third-party is further evidence these fisheries are well-managed and not a threat to the marine ecosystem or U.S. commerce and thus should not require redundant USFWS oversight.

Squid are harvested by trawl (Atlantic) and purse seine (Pacific) gear on U.S.-owned/operated commercial fishing vessels on trips of short duration (e.g. typically 1 to 4 days; all within the U.S. EEZ). The vessels are subject to U.S. Coast Guard inspection and on-the-water federal observer coverage requirements by NOAA staff and contractors, in addition to compliance with the NOAA/NMFS Office of Law Enforcement (OLE).

Product quality is commonly maintained at-sea through the use of refrigerated sea water systems. The harvest is offloaded at shore-side plants in any number of coastal States (including but not limited to Massachusetts, Rhode Island, New Jersey, Virginia and California). There, product is subject to further processing under additional laws and chain of custody protocols.

Once the fresh squid are delivered to shore-side plants, for product not destined for the fresh market, it is processed/cleaned/packed/frozen for human consumption in both domestic and export markets. Market conditions vary by year and squid products are regularly imported and exported by U.S. companies, but the majority of U.S squid being harvested and processed today (approximately 65%) is destined for export markets.

In addition to vessel monitoring requirements; squid processing plants are subject to site inspections by the Department of Commerce and the Food & Drug Administration (FDA) as well as the CA Department of Fish and Wildlife, State Sanitation Departments, Bureau of Weights and Measures (scales) and even the local Fire Department. Squid processing plants are also required to meet comprehensive Hazard Analysis Critical Control Point ("HACCP") food safety requirements.

In sum, the fishery production process for squid is already monitored by federal and state governments and the products are of high quality, therefore seafood inspection by the USFWS is costly overkill and frequently threatens the timely and safe delivery of a highly-perishable product to our customers.

On the trade monitoring side, squid export shipments are tracked by the U.S. Department of Commerce (USDOC). Frozen squid are lot inspected by the USDOC. This also enables USDOC to issue health certificates required by non-EU Countries. Import documentation is checked by the FDA and U.S. Customs Service. Shipments are periodically flagged and inspected by the FDA. There is no need for additional USFWS oversight.

Added Cost of USFWS Oversight and the U.S. Seafood Trade Deficit

Squid are generally considered to be a higher volume, lower value product so any fees associated with USFWS policies and regulations add layers of costs that make U.S. products more expensive to produce and thus less competitive in the international market. This undermines U.S. trade policy and increases our trade deficit, especially with China and Japan.

Further, the FWS's limiting of the ports which can be used for squid exporting (to conduct duplicative inspections of shipments already inspected by USDOC) prevents companies from getting the best freight rates, further negatively impacting US product competitiveness abroad.

There are hundreds of import/export shipments, consisting of thousands of containers in the aggregate, of U.S. squid products each year, originating on both the East and West coasts. Collectively, the U.S. companies moving these shipments are subject to many tens of thousands of dollars of additive fees courtesy of the USFWS and for no environmental or economic benefit to the U.S. All the costs noted below must be added to the costs that U.S. squid producers must pay to export their products overseas while they attempt to successfully compete in international markets.

Furthermore, we understand there is growing interest among some U.S. companies to export fresh squid products, particularly to Canada, but they are unable to develop these additional business opportunities due to the overly burdensome USFWS regulations and cost of the fee system. In a very real sense, the USFWS is also harming the development of new U.S. products for export markets.

These fees should also be considered in the context of squid container shipments which range in the size of 35,000 pounds to 55,000 pounds (per container) with values ranging from \$25,000 to \$150,000 (depending on the species and market grade). As such, the size of these shipments far exceeds the Agency's current exemption for "trade in small volumes of low-value non-federally protected wildlife parts and products" which requires wildlife shipments where the quantity in each shipment of wildlife parts or products is 25 or fewer and the total value of each wildlife shipment is \$5,000 or less.

- Every U.S. company exporting/importing squid must secure a USFWS license at a cost of \$100.

- There is a \$93 USFWS base inspection rate for EACH squid shipment leaving/entering the U.S.
- In addition, there is a \$53 per hour overtime (OT) fee that companies may be required to pay the USFWS. This is particularly impactful on some West coast companies where approximately 90% of shipments are loaded on a Thursday/Friday and sail on the following Sunday/Monday. This may lead to thousands of dollars in OT payments to the federal government for a redundant layer of seafood inspection.
- The USFWS allows U.S. companies to only ship squid through designated ports. Any shipments not going through a port on the official list are subject to an added “non-designated port inspection fee” of \$146 per shipment. There are also FWS time requirements for advance notice and any inspection delays may also negatively impact the buyer process under rapidly changing market conditions.
- These U.S. companies must also pay staff time and hire freight firms to manage the USFWS paperwork requirements.

We thank you for this opportunity to seek the Council’s support for including a recommendation to the Administration to exempt squid species from the USFWS wildlife import/export requirements, in response to the opportunities provided to U.S. seafood producers by EO 13921. We truly appreciate your consideration of our request. Please do not hesitate to contact any of us for additional information.

Respectfully submitted,

Jeff Reichle

Jeffrey B. Reichle
Chairman
Lund’s Fisheries, Inc.

Meghan Lapp

Meghan Lapp
Fisheries Liaison, Gen Mgr.
Seafreeze, Ltd, Seafreeze Shoreside

Ryan Clark

Ryan G. Clark
President & CEO
The Town Dock

Attachment: *The following memo summarizing this issue, and a copy of this letter, were provided to Interior Secretary Bernhardt at a Roundtable Discussion in Boston, July 21, 2020.*

USFWS IMPORT/EXPORT REGULATIONS FOR SHELLFISH & FISHERY PRODUCTS ARE HARMING U.S. SEAFOOD COMPANIES

The USFWS regulates the trade of shellfish and fishery products under the wildlife laws enforced by the Agency at 50 CFR 14. The Agency provides exemptions from these import/export regulations for certain shellfish and non-living fishery products if they are for human or animal consumption and the species is not listed as injurious under the Lacey Act (50 CFR Part 16), does not require a permit under the Endangered Species Act (50 CRF Part 17), or is not listed under CITES (50 CFR 23).

The USFWS has the authority to determine whether a species meets the definition of “shellfish or fishery product” in the context of these regulations and provide exemptions for such products. Despite these possible exemptions -- the Agency continues to apply costly and unworkable import/export requirements on U.S. edible squid products. The products are not ESA/CITES-listed, are not considered injurious, and pose no threat to the environment. They are fishery products intended for human consumption, plain and simple.

On December 9, 2008 the USFWS published a final rule (73 FR 74615) to revise subpart I – Import/Export Licenses of 50 CFR14 to clarify license and fee requirements and revise statutory exemptions. The U.S. commercial fishing industry and NOAA/NMFS had commented on the proposed changes with respect to the inclusion of shipments of squid products. Both the fishing industry and NOAA/NMFS questioned the USFWS interpretation of the definition of “shellfish” (i.e. aquatic invertebrates with a shell) and noted the USFWS inconsistencies with FAO’s inclusion of squid species in the class Cephalopoda as shellfish. In the final rule the USFWS agreed the organisms were indeed mollusks but chose not to consider them to be aquatic invertebrates with a shell as per the existing USFWS definition of shellfish.

Furthermore, the Agency has refused to consider (and exempt) squid products as “fishery products”, a policy decision that defies logic. Thus, the USFWS is treating edible domestic frozen squid for human consumption exactly as they treat Lacey Act-listed injurious and invasive zebra mussels and Chinese mitten crabs, CITES-listed paddlefish and queen conch, ESA-listed fresh water mussels, and fertilized salmonid & trout eggs.

Based on questionable interpretations of “shellfish and fishery products” the USFWS continues to charge individual U.S. seafood companies tens of thousands of dollars each year in license fees, employee paperwork time, fines, storage, delays and travel/overtime for Agency employees to overregulate a harmless U.S. seafood product.

Here is just one example of the USFWS flawed and burdensome system, there are many. The Agency requires at least a 48-hour notice prior to an export shipment but will not clear a shipment until it gets close to the export date. Companies that have provided the Agency with as much as a 10-day advance notice do not see their export clearances until after the “port cut” – the last day a company can deliver a full container to the terminal in order to load the vessel that has been booked for the delivery. If a company misses a port cut they are paying \$500-600 per day until the container boards the next vessel (about 9 days). Terminals are typically open for receiving just 2-3 days prior to the port cut and there is just a 3-4 day window to deliver loaded containers. If a company must wait for Agency clearance to begin the loading process they will miss every shipment because the Agency cannot provide timely approvals until after the port cut.

In addition, if the Agency rejects a container on the basis they want to inspect the contents they require a company to deliver the loaded container to a bonded warehouse at the company’s expense. Timing is critical when we are delivering refrigerated cargo due to its perishable nature. The Agency process is last minute and structured in a way that makes it impossible to load the vessel as customers require which can also result in added costs per container. Here are a few of the costs enumerated below --

Carrier detention: \$300/day for 9 days. \$2700
Chassis use: \$35/day for 9 days. \$315
Storage at trucker’s yard: \$150/day for 9 days. \$1350
Rolled booking charge: \$500

Trucking to Bonded Cold Storage: \$1200

Last Minute Appointment at Bonded Cold Storage: \$1000

Squid are generally considered to be a higher volume, lower value product so any fees associated with USFWS policies and regulations add layers of costs that make U.S. products more expensive to produce and thus less competitive in the international market. This undermines U.S. trade policy and our trade deficit, especially with China and Japan.

Further, the Agency's limiting of the ports which can be used for squid exporting (to conduct duplicative inspections of shipments already inspected by USDOC) may prevent companies from getting the best freight rates, further negatively impacting US product competitiveness abroad.

There are hundreds of import/export shipments, consisting of thousands of containers in the aggregate, of U.S. squid products every year, originating on both the East and West coasts. Collectively, the U.S. companies moving these shipments are subject to many tens of thousands of dollars of additive fees courtesy of the USFWS and for no environmental or economic benefit to the U.S. All the costs of USFWS compliance must be added to the bottom line for U.S. squid producers to export their products overseas and to successfully compete in international markets.

In conclusion, we believe President Trump's recent Executive Order 13921 designed to remove unnecessary regulatory burden on the U.S. seafood industry and promote trade opportunities should be the tool by which the USFWS exempts domestic squid products from costly and unworkable inspections, licenses and user fees.

We also believe Congress did not intend for the USFWS to interject unscientific policy decisions into our national seafood inspection system, especially for shellfish and fishery products that are not a protected species and pose no threat to the environment.

The USFWS has no justifiable reason to treat U.S. squid products differently than other edible fishery products and should include squid products in the regulatory definition of "shellfish & fishery products" at 50 CFR-Chapter1-Subchapter B-Part 14.21(a)(1) and exempt these products from the inspections, licenses and user fees.

Prepared by: Rick Marks, ROMEA; rem@hsgblaw-dc.com (July 21, 2020)

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50 CFR § 10.12 Definitions.

Shellfish means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

50 CFR § 14.92 What are the exemptions to the import/export license requirement?

(a) *Certain wildlife.* Any person may engage in business as an importer or exporter of the following types of wildlife without obtaining an import/export license:

- (1)** Shellfish (see § 10.12 of this chapter) and nonliving fishery products that do not require a permit under parts 16, 17, or 23 of this subchapter, and are imported or exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes;

§ 14.64 Exceptions to export declaration requirements.

(a) Except for wildlife requiring a permit pursuant to part 17 or 23 of this subchapter B, an exporter or his/her agent does not have to file a Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) for the exportation of shellfish and fishery products exported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes, and does not have to file for the exportation of live aquatic invertebrates of the Class Pelecypoda (commonly known as oysters, clams, mussels, and scallops) and the eggs, larvae, or juvenile forms thereof exported for purposes of propagation, or research related to propagation.