



**Mid-Atlantic Fishery Management Council**

800 North State Street, Suite 201, Dover, DE 19901

Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org

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

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

**MEMORANDUM**

**Date:** December 4, 2020  
**To:** Council  
**From:** Chris Moore  
**Subject:** Executive Director's Report

The following materials are enclosed for Council review at the December 2020 Council Meeting during the Executive Director's Report:

1. Status of Council Actions Under Development
2. Status of Completed Council Actions and Specifications
3. 2021 Meeting Schedule
4. 2022 Meeting Schedule
5. 2021 Stock Assessment Schedule
6. NRCC Fall Meeting Agenda
7. Staff Memo: Update on research project entitled, "Surfclam species diagnostics and population connectivity estimates to inform management"
8. Staff Memo: SBRM 3-Year Review
9. Draft Letter to Secretary of Interior David Bernhardt Regarding USFWS Licensing and Inspection Requirements for U.S. Squid Fisheries



# Status of Council Actions Under Development

AS OF 12/1/20

FMP	Action	Description	Status	Staff Lead
Summer Flounder, Scup, Black Sea Bass	Commercial/Recreational Allocation Amendment	This joint MAFMC/ASMFC amendment will reevaluate and potentially revise the commercial and recreational sector allocations for summer flounder, scup, and black sea bass. This action was initiated in part to address the allocation-related impacts of the revised recreational data from MRIP. <a href="http://www.mafmc.org/actions/sfsbsb-allocation-amendment">http://www.mafmc.org/actions/sfsbsb-allocation-amendment</a>	The Council and Board are scheduled to approve a public hearing document at the joint December 2020 meeting.	Dancy/Coutre/Beaty
	Black Sea Bass Commercial State Allocation Amendment	This joint MAFMC/ASMFC action will consider adjusting the allocations of the black sea bass commercial quota among states and whether the allocations should be managed jointly by the Council and Commission. <a href="http://www.mafmc.org/actions/bsb-commercial-allocation">http://www.mafmc.org/actions/bsb-commercial-allocation</a>	The Council and Board expect to take final action at the December 2020 meeting.	Beaty
Bluefish	Bluefish Allocation and Rebuilding Amendment	This joint MAFMC/ASMFC amendment considers potential revisions to the allocation of Atlantic bluefish between the commercial and recreational fisheries and the commercial allocations to the states. This action will also review the goals and objectives of the bluefish FMP and the quota transfer processes and establish a rebuilding plan for bluefish. <a href="http://www.mafmc.org/actions/bluefish-allocation-amendment">http://www.mafmc.org/actions/bluefish-allocation-amendment</a>	The Council and Board expect to approve a public hearing document at the joint February meeting	Seeley
Summer Flounder, Scup, Black Sea Bass and Bluefish	Recreational Reform Framework and Technical Guidance Documents	The Council and Board initiated a framework/addendum to address the following topics for summer flounder, scup, black sea bass, and bluefish: (1) better incorporating MRIP uncertainty into the management process; (2) guidelines for maintaining status quo recreational management measures (i.e., bag, size, and season limits) from one year to the next; (3) a process for setting multi-year recreational management measures; (4) changes to the timing of the recommendation for federal waters recreational management measures; and (5) a proposal put forward by six recreational organizations called a harvest control rule. The Council and Board may	The Council and Board initiated this action at the joint October 2020 meeting. At the December meeting the Council and Board will receive an update and consider whether some topics can be addressed through technical guidance documents, rather than a framework/addendum.	Beaty

FMP	Action	Description	Status	Staff Lead
		consider addressing some of these topics through a technical guidance document, rather than a framework/addendum.		
	Recreational Sector Separation and Catch Accounting Amendment	This joint MAFMC/ASMFC amendment considers (1) options for managing for-hire recreational fisheries separately from other recreational fishing modes and (2) options related to recreational catch accounting, such as private angler reporting and enhanced vessel trip report requirements for for-hire vessels. <a href="https://www.mafmc.org/actions/recreational-reform-initiative">https://www.mafmc.org/actions/recreational-reform-initiative</a>	The Council and Board initiated this action at the joint October 2020 meeting. Scoping hearings may take place in mid-2021.	Beaty
Surfclam and Ocean Quahog	Addressing Current Surfclam and Ocean Quahog Species Separation Requirements	As surfclams have shifted toward deeper water in recent years, catches including both surfclams and ocean quahogs have become more common. Current regulations do not allow surfclams and ocean quahogs to be landed on the same trip. The Council is exploring options to address this issue.	An FMAT has been established, and their first meeting was held 11/17/2020.	Coakley/ Montañez
Omnibus	Omnibus Amendment for Data Modernization	This amendment will address the regulatory changes needed to fully implement the Agency's Fishery-Dependent Data Initiative.	The Council last received an update at the October 2018 meeting.	GARFO/NEFSC



## Timeline and Status of Current and Upcoming Specifications for MAFMC Fisheries

As of 12/1/20

Current Specifications	Year(s)	Council Approval	Initial Submission	Final Submission	Proposed Rule	Final Rule	Regs Effective	Notes
Golden Tilefish	2021-2022	4/8/20	5/11/20	7/21/20	11/13/20			
Blueline Tilefish	2019-2021	4/11/18	8/17/18	10/24/18	11/19/18	2/12/19	2/12/19	
Surfclam and Ocean Quahog	2021-2026	8/12/20	9/2/20					
Surfclam and Ocean Quahog	2018-2020	6/6/17	8/14/17	9/22/17	12/8/17	2/6/18	3/8/18	2020 specs were reviewed in June 2019. No changes were recommended.
Longfin Squid	2021-2023	8/10/20	10/14/20					
Butterfish	2021-2022	8/10/20	10/14/20					
Illex Squid	2020-2021	6/17/20	10/14/20					NMFS already implemented 2020 via inseason action and SIR completed by staff - 2021 in same EA as MSB approved in Aug
Atlantic Mackerel (including RH/S cap)	2021-2022	8/10/20	10/14/20					
Chub mackerel	2020-2022	3/7/19	5/31/19	10/25/19	3/9/20	8/4/20	9/3/20	Reviewed October 2020. No changes recommended.
Bluefish	2020-2021	12/10/19	1/23/20	3/19/20	5/25/20	6/29/20	6/29/20	
Bluefish	2021 (revised)	8/11/20			11/4/20			
Summer Flounder, Scup, Black Sea Bass	2021 (revised)	8/11/20	9/30/20	11/20/20	11/17/20			
Spiny Dogfish	2021-2022	10/6/20						

### Recreational Management Measures

Current Management Measures	Year(s)	Council Approval	Initial Submission	Final Submission	Proposed Rule	Final Rule	Regs Effective	Notes
Summer flounder recreational measures	2020	12/10/19	1/22/20	1/22/20	4/6/20	6/18/20	6/18/20	Rulemaking required each year to continue use of conservation equivalency
Black sea bass recreational measures	2020	2/14/18	3/5/18	4/10/18	4/11/18	5/31/18	5/31/18	Reviewed in 2019. No changes from previous year's measures.
Scup recreational measures	2020	12/10/14	3/20/15		5/5/15	6/19/15	6/19/15	Reviewed in 2019. No changes from previous year's measures.
Bluefish recreational measures	2020	12/10/19	1/23/20	3/19/20	5/25/20	6/29/20	6/29/20	Recreational management measures were set through the 2020-2021 specifications process.

## **MAFMC 2021 COUNCIL MEETINGS**

February 9-11, 2021	WEBINAR
April 6-8, 2021	Seaview, a Dolce Hotel 401 South New York Rd. Galloway, NJ 08205 609-652-1800
June 8-10, 2021	Hilton Virginia Beach Oceanfront 3001 Atlantic Ave Virginia Beach, VA 757-213-3000
August 9-12, 2021	The Notary Hotel 21 N. Juniper St. Philadelphia, PA 215-496-3200
October 5-7, 2021	Yotel Hotel 570 10th Ave. New York, NY 10036 646-449-7700
December 13-16, 2021	Westin Annapolis 100 Westgate Circle Annapolis, MD 21401 410-972-4300

## **MAFMC 2022 Council Meeting Dates:**

February 8-10, 2022

April 12-14, 2022

June 7-9, 2022

August 8-11, 2022

October 4-6, 2022

December 12-15, 2022

# 2021 NRCC Stock Assessment Schedule

**2021**

	<b>Species/Topic</b>	<b>Stock Area</b>	<b>Management Organization(s)</b>
<b>July (usually March)</b> Research Track	Haddock	Gulf of Maine, Georges Bank, Eastern Georges Bank	NEFMC
<b>June</b> Management Track	Atlantic mackerel		MAFMC
	Black sea bass		MAFMC/ASMFC
	Bluefish		MAFMC/ASMFC
	Golden tilefish		MAFMC
	Scup		MAFMC/ASMFC
	Summer flounder		MAFMC/ASMFC
<b>July</b> Joint US/Canada Assessments Transboundary Resources Assessment Committee	Atlantic cod	Eastern Georges Bank	NEFMC
	Haddock	Eastern Georges Bank	NEFMC
	Yellowtail flounder	Georges Bank	NEFMC
<b>September</b> Management Track	Atlantic cod	Georges Bank	NEFMC
	Atlantic cod	Gulf of Maine	NEFMC
	Haddock	Georges Bank	NEFMC
	Haddock	Gulf of Maine	NEFMC
<b>November</b> Research Track	Butterfish and Northern shortfin squid		MAFMC

\* Stock assessments denoted with an asterisk are conducted by the Atlantic States Marine Fisheries Commission. All other assessments are conducted by the Northeast Fisheries Science Center.



# Appendix: Stock Assessment Type Definitions

## Management Track Assessments

Management track assessments provide routine, scheduled, and updated advice to directly inform management actions. These assessments are designed to be:

- Simple, quick, efficient, and flexible: and
- Able to incorporate new information on a regular cycle.

Management track assessments ensure that stock status is updated on a regular and predictable basis.

## Research Track Assessments

Research track assessments are complex scientific efforts that are designed to be carried out over several years. They can:

- Focus on research topics or on one or more individual stocks:
- Evaluate an issue or new model that could apply to many stocks: and/or
- Consider extensive changes in data, model, or stock structure.

Research assessments can provide the basis for future management assessments.

## 2020 FALL NRCC MEETING AGENDA

via Google Meet

*All times are approximate*

### Monday, November 9

9:00 a.m. – 9:15 a.m.

1. Welcome, Introductions, Announcements  
(Moore, Sullivan)

9:15 a.m. – 10:45 a.m.

2. Aquaculture  
Discussion leader: Madley/Sciallaci
  - Staff and reorganization of the Habitat and Ecosystem Services Division (HESD)
  - Plans for aquaculture opportunity areas
  - Implications of Gulf of Mexico litigation
  - Council/Commission involvement in site screening process

10:45 a.m. – 11:00 a.m. *Break*

11:00 a.m. – 12:00 p.m.

3. SAFE Reports  
Discussion leader: Gilbert
  - GARFO hosts the SAFE Reports online. This has become problematic with website redesign and 508 compliance.

12:00 p.m. – 1:00 p.m. *Lunch*

1:00 p.m. – 1:30 p.m.

4. Ropeless Technology  
Discussion leader: Anderson/Asaro
  - What is ropeless gear and how is it being used by the industry.

1:30 p.m. – 2:00 p.m.

5. Offshore Wind Updates  
Discussion leader: Pentony/Hare

2:00 p.m. – 2:15 p.m. *Break*

2:15 p.m. – 2:30 p.m.

6. FDDI Update  
Discussion leader: Gouveia/McCarthy

2:30 p.m. – 3:00 p.m.

7. Scenario Planning

Discussion leader: Moore

- Update on role of TNC
- Update on SAFMC interest
- Appointment of core team

3:00 p.m. – 3:30 p.m.

7. BSIA Framework

Discussion leader: Kelly/Simpkins

- Update on SSC point(s) of contact

3:30 p.m. *Adjourn Day 1*

**Tuesday, November 10**

9:00 p.m. – 2:00 p.m. (*Break as needed, lunch at noon*)

8. Stock Assessments

Discussion leader: Simpkins

- 2020 assessment process: Challenges, adaptations, future suggestions
- 2021 preparations: COVID data gaps and management track plans
- Future planning: Research track, communications, plan for more detailed process review.

2:00 p.m. – 2:30 p.m.

9. Gear Conflicts

Discussion leader: Nies/Reid

- Gear conflicts between fishermen

2:30 p.m. – 3:00 p.m.

10. Joint FMP Management

Discussion leader: Nies

- Convening committees of the whole

3:00 p.m. – 3:00 p.m.

11. Meeting wrap-up and Other Business

- Complete any unfinished discussions or unresolved new business
- Review action items and assignments
- Identify Spring 2021 meeting date (NEFSC chair)
- Adjourn meeting

3:30 p.m. *Meeting adjourns*

## MEMORANDUM

**Date:** November 30, 2020

**To:** Chris Moore, Executive Director

**From:** Jessica Coakley, Staff

**Subject:** Update on research project entitled, "Surfclam species diagnostics and population connectivity estimates to inform management"

The Council contracted Dr. Matthew Hare (Cornell University) to examine species connectivity among the commercially important Atlantic surfclam, *Spisula solidissima solidissima*, and its sister-taxon the Southern surfclam, *Spisula solidissima similis*. Surfclam genetic samples were obtained from Georges Bank in 2019 during the Northeast Fisheries Science Center (NEFSC) clam survey. However, no federal or state clam surveys were conducted in 2020. As a result, additional samples south of Georges Bank were needed to enable completion of this project by March 2021. While the study had existing samples from about 25 locations, the Council staff, Dr. Daniel Hennen (NEFSC), and Dr. Hare considered options to address those sampling gaps with commercially harvested clams.

Samuel Martin at Atlantic Capes Fisheries, Inc. provided Nicole Charriere (NEFSC) with surfclams from the Nantucket Shoals area for the genetics sampling kits. In addition, Thomas Dameron at Surfside Foods provided Dr. Daphne Munroe from Rutgers University with surfclams from New Jersey to complete those kits (see "Shucking Party" picture below).

We greatly appreciated the support and cooperation between the NEFSC, Atlantic Capes Inc., Surfside Foods, and Rutgers, to ensure those samples were made available to complete this project.





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# MEMORANDUM

**Date:** November 24, 2020  
**To:** Council  
**From:** J. Didden  
**Subject:** SBRM 3-Year Review

First, hearty thanks and acknowledgement to chair Susan Wigley and other Standardized Bycatch Reporting Methodology (SBRM) 3-Year Review team members for all the work that went into this review. The Standardized Bycatch Reporting Methodology 3-year Review Report covering the 2018-2020 SBRM years will soon be published to the NEFSC's website as a NOAA Technical Memorandum (<https://www.fisheries.noaa.gov/resource/document/northeast-technical-memorandum-series>). Upon official publication, a link will be distributed to the Council. A variety of recommendations are made in the report, excerpted below. If the Council would like additional details, a future presentation can be arranged.

- The SBRM FMAT/PDT endorses the refinements described within the 2018-2020 annual reports and supports applying refinements when needed and documenting the change in the annual reports. The refinements and their description ensures transparency and improvement to the regional SBRM. The SBRM FMAT/PDT also recommends accounting for differences in taxon strata, when possible. Accounting for differences in taxon strata may be useful when additional species are included in the SBRM and could be an operational consideration when evaluating a species to be included in the SBRM. Adding new species groups with different stratification adds more complexity when combining the sea days required to monitor all species within the SBRM.
- The SBRM FMAT/PDT recommends that rarity filters be developed and implemented, as appropriate, for other ESA-listed species such as Atlantic salmon and sturgeon. The SBRM FMAT/PDT also recommends NEFSC and GARFO staff finalize a draft guidance document for adding new species to SBRM. This document describes a process of adding new species, including the considerations that may depend on several factors such as: operational factors (e.g., data availability, stratification, estimation methods, filters, frequency of analyses), policy factors, spatial management factors (e.g., distinct population segments), and legal factors. Consideration of non-federally managed species would be beyond the scope of the draft guidance document. The draft guidance document would be considered by NEFSC, GARFO, and NOAA General Council (Northeast Section) when determining if a new species can be added. Supporting information on the species encountered on observed trips could be obtained from this report and incorporated into the draft guidance document as part of the data availability for a given FMP or ESA-listed species.

- SBRM FMAT/PDT recommends expanding existing VTR audits to reduce and/or prevent “erroneous” fleets. Expanded VTR audits could focus primarily on gear type and mesh size (stratification variables) and could include data leveraging between databases, cross-checking regulations, and use of vessel profiles. One example of data leveraging to improve accurate master VTR data would be to use the observer data to cross-check the number of gear-mesh combinations used during a trip. Additionally, gear code consistency is needed between the fishery dependent data collection systems.
- The SBRM FMAT/PDT recommends the following planned changes (some of which are planned to be implemented in 2021 SBRM annual analysis)
  - The inclusion of chub mackerel in the squid-butterfish-mackerel species group in 2021 SBRM analyses;
  - The consideration of ESA-list species such as sturgeon (Atlantic sturgeon and shortnose sturgeon) as species groups;
  - Expanding the sampling frame for New England and Mid-Atlantic lobster pot fleets to include all vessels using lobster pot gear in future SBRM analyses; and
  - Utilize a PTNS-like system for all fleets as identified in the regional fishery dependent data initiative (implementation date to be determined).
- The SBRM FMAT/PDT recommends continued exclusion of the individual FMP compliance monitoring program trips from future SBRM annual analysis of discard estimation, precision and sample size analyses for fish.
- The SBRM FMAT/PDT recommends continued use of importance filters for fish/invertebrates and rarity filters for sea turtles. The SBRM Omnibus Amendment requires 30% CV or less to be attained for each species group within that fleet. Some fleet/species combinations contribute very little to the total mortality or discard of the species, but may require significant resources to characterize the precision of the estimate. Thus, the use of the importance filter is a key feature to the SBRM in that it focuses the sampling to fleets where it is needed most and not wasted on small imprecisely estimated discards.
- The SBRM FMAT/PDT recommends continued use of the formulaic prioritization process for transparent determination of how limited funds are allocated. The use of the formulaic prioritization process since SBRM 2014 results in more fleets with allocated sea days. However, there were instances in which some fleets did not receive the number of sea days needed or initially estimated. A funding shortfall triggered the prioritization process in which 1 fleet in SBRM 2019 and 4 fleets in SBRM 2020 did not receive sufficient sea days. Because of allocation decisions made prior to the prioritization process, 2 fleets in SBRM 2018 did not receive the full number of needed sea days.
- The SBRM FMAT/PDT recommends continued use of the most recent data available to track changes in discarding because of changes in management or fleet behavior when allocating future observer coverage. While an analysis of variance stability was not undertaken in this review, indirect evidence from this review as well as direct evidence from past reviews suggests the assumption that discard variances are stable over time is valid, particularly for a one-year lag. If fishing behavior changes because of a regulatory change or other reasons, then the relationship between years may weaken in the year following the regulatory change. A similar weakening in the relationship may occur when fish populations change – for example, if a strong year class is moving through the

fishery. These types of analyses should be conducted on a periodic basis. Conducting sample size analyses annually minimizes the time to a one-year lag.

- The SBRM FMAT/PDT recommends continued exploration of potential biases in the data collection process and examination of how these might impact sea day allocations. The SBRM FMAT/PDT acknowledges that a comprehensive examination of potential bias in all SBRM fleets is a large task and has been too large to completely accomplish within the annual reporting and 3 year review reporting cycles. Hence, the SBRM FMAT/PDT recommends a dedicated group be formed to examine this topic in detail, such as a Research Track special topic assessment. No evidence of systematic vessel selection bias and no strong evidence of observer bias was detected in the analyses conducted for this report. Recent studies examining observer data for potential bias have mostly focused on groundfish fleets (sub-components of selected fleets within SBRM). Future work examining all fleets could consider additional trip outcome metrics such as mean number of species reported, number of areas fished, and an evaluation of minimum observer sample size (e.g., could fleets with less than 30 observed trips be considered).

The SBRM provides a general structure for defining fisheries into homogeneous groups and objectively allocating observer coverage based on prior information to achieve a preselected precision criterion (30% CV), while following a predetermined set of rules to eliminate fleets with highly imprecise estimates of small amounts of discards. This allows for changes in sea day allocation from year to year as new information is obtained. The general structure helps identify gaps in existing coverage and the tradeoffs associated with coverage levels for different species. Additionally, the incorporation of annual refinements supports continual improvements. These refinements address new issues as they arise because of changes in fleet behavior, regulatory changes, and/or advances in statistical techniques. This 3 year review allows examination of the successes and challenges remaining.

The required observer coverage by fleet over the 3 years are generally similar, with some exceptions. The sea day requirements for a particular fleet to achieve the desired 30% CV can vary from year-to-year as the result of sampling, fishing practices, fish population demographics, and other factors that vary from year to year. The number of observer sea days required might change when the total landings, total discards, and/or the relative amount of discards within a fleet change for a species group, because this information is used in determining the relative importance of the discards for the species group and fleet. Past analyses have revealed that one of the methodology's main assumptions, variance stability from year to year, is met. However, the effectiveness of the SBRM does not hinge solely on the methodology's assumptions. The amount of funding to support the required sea days is equally important, as well as the ability to accomplish the funded sea days.

Overall, the SBRM continues to represent one of the most comprehensive programs for planning and executing observer monitoring coverage of federally managed fisheries. NMFS made a formal determination on May 7, 2020 that the SBRM is consistent and sufficient with the national guidelines for an SBRM as codified in the Code of Federal Regulations, Title 50 Part 600.1610(a). Following the implementation of the 2015 SBRM Omnibus Amendment, the second 3 years of the program, summarized in this report, illustrate the utility of the approach for monitoring discards in these fisheries and the real-world limitations of implementing a "perfect" system. The SBRM process provides a consistent formulaic approach to allocate sea days among fleets to stay within the available funds while achieving the precision standard for almost all species groups/fleet combinations.



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-- DRAFT --

December X, 2020

The Honorable David L. Bernhardt  
Secretary of the Interior  
United States Department of the Interior  
1849 C. Street, N.W.  
Washington, DC 20230

Subject: USFWS Licensing and Inspection Requirements for U.S. Squid Fisheries

Dear Secretary Bernhardt:

I am writing to you on behalf of the Mid-Atlantic Fishery Management Council (“Council”), one of eight regional fishery management councils responsible for managing fisheries in the federal Exclusive Economic Zone in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Pursuant to President Trump’s Executive Order 13921 on Promoting American Seafood Competitiveness and Economic Growth, the Council recently developed a prioritized list of recommendations to reduce burdens on domestic fishing and to increase production within sustainable fisheries. This list was transmitted on November 2, 2020 to Mr. Chris Oliver, Assistant Administrator for NOAA Fisheries.

One of the highest priority issues identified in our recommendations concerns the inclusion of U.S. squid fishery products in the U.S. Fish and Wildlife Service (USFWS) inspection and user fee system for monitoring wildlife imports and exports. Under current USFWS regulations outlined in 50 CFR Parts 10-14, U.S. squid producers are subject to redundant, time-consuming, and costly licensing and inspection requirements. Virtually all other U.S. commercial fishery products are exempt from these regulations, which are intended to prevent the unauthorized trade of endangered and protected wildlife. We recommend that squid be reclassified as either “shellfish” or “fishery products” and therefore exempt from the USFWS inspection and user fee system.

The Mid-Atlantic and Pacific Fishery Management Councils have both identified this issue in our responses to President Trump’s Executive Order. The purpose of this letter is to provide additional information to support the Mid-Atlantic Council’s recommendation on the matter.

### **USFWS Shellfish and Fishery Product Exemption – Background and Terminology**

The Endangered Species Act of 1973 (ESA) provides an exemption from import/export licensing and inspection requirements for certain “shellfish and fishery products” if they are intended for human or animal consumption, not listed as injurious under the Lacey Act, and not listed under the ESA or the Convention on International Trade in Endangered Species (CITES). This exemption currently applies to the vast majority of domestic fisheries, but it does *not* apply to the three commercially harvested U.S. squid fisheries. While squid meet all of the criteria described above, the USFWS has concluded that squid are neither shellfish nor fishery products. This determination appears to be based on narrow



definitions of “shellfish” and “fishery product” that are inconsistent with the common use of these terms in most other contexts.

The USFWS currently uses the following definition of *Shellfish* (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 to exclude species in the molluscan class Cephalopoda, including squid, octopods, and cuttlefish. This interpretation is inconsistent with the definitions of “shellfish” used by the National Marine Fisheries Service (NMFS) and the United Nations Food and Agriculture Organization, both of which broadly define the term to include all aquatic mollusks and crustaceans. In 2008, NMFS noted this inconsistency in a comment letter submitted to USFWS<sup>1</sup>:

“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 term “Fishery Product” is not defined in any of the relevant regulations. However, the USFWS provides the following definition in its “Importing & Exporting Shellfish & Fishery Products” fact sheet<sup>2</sup>:

“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.”

This definition is inconsistent with our understanding of the term “fishery,” which encompasses finfish as well as mollusks and crustaceans.

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<sup>1</sup> NMFS comments on 73 FR 9972-9983 (April 28, 2008). [https://www.mafmc.org/s/2\\_NMFS-comments-to-FWS-2008.pdf](https://www.mafmc.org/s/2_NMFS-comments-to-FWS-2008.pdf)

<sup>2</sup> U.S. Fish and Wildlife Service. “Importing & Exporting Shellfish & Fishery Products” (July 7, 2008). <https://www.fws.gov/le/pdf/import-export-shellfish-fishery-products-fact-sheet.pdf>

## **Is There a Need for USFWS Oversight of Domestic Squid Fisheries?**

Of the three squid species commercially harvested in the U.S. (Atlantic longfin squid, Atlantic *Illex* squid, and California market squid), none are listed as endangered or threatened, protected under CITES, or listed as injurious under the Lacey Act. These fisheries are sustainably managed via the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and through the Secretary of Commerce pursuant to his authorities over NOAA and NMFS. In 2018 the Atlantic longfin squid fishery became the first squid fishery in the world to secure certification by the Marine Stewardship Council (MSC). The *Illex* squid fishery was subsequently certified as MSC-sustainable in 2019.

Furthermore, U.S. squid fisheries are already subject to monitoring and inspection by the Department of Commerce (USDOC). Squid processing plants are subject to site inspections by the USDOC and the Food and Drug Administration (FDA) and are also required to meet comprehensive Hazard Analysis Critical Control Point (“HACCP”) food safety requirements. The USDOC tracks squid exports and inspects frozen squid shipments. Import documentation is checked by the FDA and U.S. Customs Service. Shipments are periodically flagged and inspected by the FDA. Given this rigorous system of management and oversight already in place, we believe that additional inspection by the USFWS is unnecessary and yields no environmental or economic benefit.

### **Industry Impacts**

The USFWS licensing and inspection requirements and fees impose a substantial, unnecessary, and unfair burden on U.S. squid producers. Squid are generally considered to be a high volume, lower value product, and the majority of U.S. squid being harvested and processed today (approximately 65%) is destined for export markets. Any fees associated with USFWS policies and regulations add a layer of costs that make U.S. products more expensive to produce and less competitive in the international market, thus exacerbating the annual \$16B seafood trade deficit. Additionally, the procedural requirements associated with achieving USFWS inspections can cause substantial logistical delays and add costs to the bottom line for U.S. squid producers. For example, the restrictions on which ports which can be used for squid exporting may prevent companies from getting the best freight rates, further negatively impacting US product competitiveness abroad.

For additional details on the economic impacts and regulatory burden of these USFWS import/export regulations, please see the joint letter submitted to the Council by Lund’s Fisheries, Seafreeze Ltd., and The Town Dock.<sup>3</sup>

### **USFWS Justification for Excluding Squid from Import/Export Exemptions**

We have reviewed current regulations and supporting documents from USFWS and have not found a rationale for excluding squid 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.”<sup>4</sup>

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<sup>3</sup> Letter to the Council from Lund’s Fisheries, Seafreeze Ltd., and The Town Dock (July 28, 2020).  
<https://www.mafmc.org/s/Lunds-Seafreeze-TownDock-USFWS-Comments.pdf>

<sup>4</sup> Testimony of Mr. William Woody, Assistant Director of Law Enforcement for the U.S. Fish and Wildlife Service, before the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources (February 2, 2016).  
[https://naturalresources.house.gov/download/testimony\\_woody](https://naturalresources.house.gov/download/testimony_woody)

However, we are not aware of any evidence that squid fisheries are any more vulnerable to illegal trade 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 U.S. House Of Representatives Committee on Natural Resources Subcommittee on Water, Power and Oceans.<sup>5</sup> As illustrated in the transcript excerpt below, when questioned by Representative John Fleming, Mr. William Woody (Assistant Director of USFWS Office of Law Enforcement at the time) was unable to provide a rationale for specifically excluding squid from the exemption.<sup>6</sup>

**Dr. FLEMING.** 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.

**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.

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<sup>5</sup> See <https://naturalresources.house.gov/hearings/hearing-on-hr-3070-and-hr-4245> for additional hearing details.

<sup>6</sup> Hearing transcript: <https://www.govinfo.gov/content/pkg/CHRG-114hhrg98457/html/CHRG-114hhrg98457.htm>.

## **Proposed Action**

We believe the USFWS already has the authority within the existing regulations to exempt domestic squid fisheries from licensing and inspection requirements. Although squid lack external shells, they do have internal shells known as “pens” and therefore could potentially be classified as shellfish under the current definition. However, in order to ensure a permanent exemption for these sustainably managed domestic squid fisheries, we recommend modifying the definition of “shellfish” at 50 CFR 10.12 to explicitly include all mollusks, including all cephalopods (squid, octopods, cuttlefish). The following is a potential revised definition:

*Shellfish* means an aquatic mollusk or crustacean, including, but not limited to clams, oysters, squid, octopods, and lobsters; 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.

As an alternative, the USFWS may also consider broadening the definition of “Fishery Products” to include all mollusks not otherwise covered under the existing definition of shellfish. Because this term is not defined in the relevant regulations, USFWS could broaden the definition to exempt squid and other invertebrates without requiring a regulatory change.

At a time when many commercial fishermen are experiencing severe economic consequences from the COVID-19 pandemic, we encourage you to remove this unnecessary burden on U.S. fishermen. Thank you for your consideration of these comments. Please feel free to contact me if you have any questions.

Sincerely,

Christopher M. Moore

Executive Director, Mid-Atlantic Fishery Management Council

Cc: Mid-Atlantic Fishery Management Council  
Mr. Chris Oliver, NOAA Fisheries Assistant Administrator for Fisheries  
Mr. Sam Rauch, NOAA Fisheries Deputy Assistant Administrator for Regulatory Programs  
Ms. Aurelia Skipwith, U.S. Fish and Wildlife Service Director  
Mr. Chuck Tracy, Pacific Fishery Management Council Executive Director