



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

December 21, 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 USFWS¹:

“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 sheet²:

“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.

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

² 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.³

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.”⁴

³ 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>

⁴ 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

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.⁵ 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.⁶

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.

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

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

Proposed Action

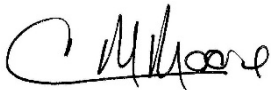
We believe the USFWS already has the authority within the existing regulations to exempt domestic squid fisheries from licensing and inspection requirements. Although squid lack external shells, they do have internal shells known as “pens” and therefore could potentially be classified as shellfish under 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 Members
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. Timothy Williams, Department of Interior, Office of Intergovernmental and External Affairs, Principal Deputy Director
Mr. Chuck Tracy, Pacific Fishery Management Council, Executive Director