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[EXTERNAL] RE: OMB Control Number 1018-0012

Rick E. Marks <rem@hsgblaw-dc.com>
To: Info_Coll@fws.gov

Fri, Mar 29, 2019 at 2:54 PM

Ms. Baucum:

Please accept the attached comment submission on the USFWS notice at 84 FR 1197; OMB Control Number 1018-0012..

Respectfully submitted,

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Squid Comment to Interior for USFWS Regulatory Reform Review (FINAL).docx

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March 29, 2019

Madonna Baucum
Service Collection Clearance Officer
USFWS
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803
Via email to Info_Coll@fws.gov

RE: Agency Information Collection Activities: Declaration for Importation or Exportation of Fish or Wildlife (84 FR 1197, 2/1/19)

Dear Ms. Baucum:

We provide the following comments related to the USFWS regarding information collection activities for importation or exportation of fish or wildlife (See 84 FR 1197). More specifically, our comments are directly related to the development, implementation and reconsideration of the 2009 user fee system as it applies to U.S. commercial squid fisheries via the Agency's monitoring the trade of certain shellfish and fishery products.

This comment is being filed on behalf of numerous U.S.-owned and operated commercial squid fishing companies on both the East and West coasts. Our clients are working commercial fishermen and shore-based seafood processors who harvest, process, export, and import edible squid products. These small U.S. businesses provide jobs and investment in our coastal communities, help to reduce our overall seafood trade deficit, and provide sustainable, safe seafood products for consumers.

Our request for review and relief is wholly consistent with the requirements of Executive Order 13771 – “Reducing Regulation and Controlling Regulator Costs” and the associated implementing order “Enforcing the Regulatory Reform Agenda”. We respectfully request that your Agency re-examine its policy justification and consider the economic impacts of duplicative inspection regulations administered by the Agency that restrict U.S. trade of certain shellfish and fishery products (i.e. squid species).

We request the Agency exempt squid as both mollusks and (or) fishery products and provide relief to our U.S. domestic squid fisheries -- or at a minimum, exempt squid exports from the user fee system.

The Agency's current policy negatively impacts small U.S.-owned businesses, renders U.S. squid exports less competitive in the international market thereby exacerbating the annual \$16B seafood trade deficit (much of it with China and other Asian countries), and provides zero environmental benefit to the U.S. Furthermore, the USFWS's role in seafood inspection is redundant and provides no benefit to fishing companies or consumers.

Status of Squid Products in the USFWS Chronology

Prior to the Final Rule of December 2008, squid seafood products were exempt from the USFWS requirements and inspection fees. During the 2008 rulemaking process the USFWS received comments from the commercial fishing industry, and the National Marine Fisheries Service (NMFS; the federal agency responsible for directly managing these fisheries) who both 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 and federal agencies responsible for managing fisheries and seafood resources, in fact by pretty much everyone except the USFWS.

At that time the NMFS requested unsuccessfully that the USFWS revise its definition of shellfish to be consistent with that of the lead federal agency; which could also have provided some potential relief to industry in terms of an exemption from the USFWS inspection fee system (i.e. for shellfish and(or) fishery products). However, the USFWS did not alter its anomalous definition of shellfish nor consider squid a fishery product. The industry comments focused on the financial burden from the proposed revisions, as well as the completely unnecessary nature of the regulations.

U.S. Squid Fisheries

The domestic fisheries being harmed by the Agency's policies and associated regulations are these –

Atlantic Longfin squid

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

2018 Harvest level: 24,247,312 lbs

2019 Available quota level: 50,555,887 lbs (22,932 mt)

Atlantic Shortfin squid

Harvest season: May through October

2018 Harvest level: 53,125,291 lbs

2019 Available quota: 50,518,927 lbs (26,000 mt)

California 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)

2018 Preliminary landings: 68,169.46 mt

Monitoring/Inspections of Squid Fisheries, Processing and Trade

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 the Secretary of Commerce pursuant to his authorities over NOAA and the National Marine Fisheries Service (NMFS). In addition to monitoring by the federal government, California's squid fishery is actively managed by the California Department of Fish and Wildlife.

The fisheries are sustainably managed, they are not being overfished and overfishing is currently not occurring. In fact, the Atlantic Longfin squid fishery was the first squid fishery to secure Marine Stewardship Council (MSC) certification on May 22, 2018, recognized for its responsible fisheries management regime. This certification by a nongovernmental third-party is further evidence the fishery is well-managed and not a threat to the marine ecosystem or U.S. commerce and thus, should not require redundant USFWS oversight. The U.S. Shortfin squid fishery is currently undergoing MSC review and certification is expected by May 1, 2019.

Squid are harvested by trawl and purse seine 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 officials, and consistency with the NOAA/NMFS Office of Law Enforcement (OLE).

Product quality is 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, is product is subject to further processing under additional laws.

Once the fresh squid are delivered to shore-side plants, the product is processed/cleaned/packed/frozen for human consumption in both the 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 squid being processed today (approximately 65%) is destined for export markets.

In addition to the vessel monitoring requirements; squid processing plants are subject to site inspections by the Department of Commerce, 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.

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

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, 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 noted below must be added to the bottom line for U.S. squid producers to export their products overseas and to successfully compete in international markets.

Furthermore, we understand there is growing interest among some U.S. companies to export fresh squid products 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 real sense, the USFWS is also harming the development of new U.S. products for overseas 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 prices 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 some 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 Agency 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.

Finally, it is critical to consider these squid species and associated U.S. products 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 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.

Request for Policy and Regulatory Reconsideration

We believe our request for a review of the user fee system is warranted to eliminate the significant negative impacts of the overregulation of harmless edible shellfish and fishery products and redundant seafood inspection requirements of 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. A review of the import and export requirements and inspection fee system (at 50 CFR 14) falls entirely within the bounds of the Administration’s executive orders designed to protect and promote U.S. business interests.

There is additional history here 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 the import/export licenses 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 sequestration.

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 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 shell fish 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 to rescind the current fee system regime. To date, we have not seen any helpful signs from the Agency.

We continue to believe the Trump Administration's EO 13771 provides a legitimate and consistent opportunity for the Agency to reexamine this situation, and we appreciate the Agency providing us with this comment opportunity pursuant to 84 FR 1197.

Fishing Industry Recommendations

- (1) We believe the USFWS import/export rules at 73 FR 74615 should be reviewed in the context of applicable Trump Administration Executive Orders and be rescinded to help U.S. companies and promote trade of domestic squid products by correctly defining and exempting these harmless food products as "shellfish" and exempting them at 50 CFR Part 10.12;
- (2) U.S. squid *fisheries* are managed by the 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 USFWS could also amend its policy and properly define squid as a "*fishery* product" and provide an exemption from the user fee system;
- (3) If the USFWS is not willing to adopt a widely-accepted science-based definition of shellfish, consistent with the lead federal U.S. marine resource management agency (i.e. NOAA/NMFS) or consider squid as a fishery product and provide for an exemption of all squid imports/exports; then we recommend the USFWS exempt squid EXPORTS from the user fee system. If the point of the USFWS regulatory and inspection system is to protect the U.S. environment and U.S. commerce, then it seems reasonable to monitor IMPORTS coming into U.S. commerce rather than those products exiting the country.

We thank you for this opportunity to comment and appreciate your consideration of our recommendations. We stand ready to work with the Department's Regulatory Reform Officer, its Regulatory Reform Task Force, and the U.S. Fish and Wildlife Service as part of this process.

Respectfully submitted,

Rick E. Marks
Principal