



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

October 30, 2020

Mr. Chris Oliver
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Oliver:

The Pacific Fishery Management Council met by webinar September 11-18 during which it addressed requirements placed on Councils by Section 4 of Executive Order 13921 on Promoting American Seafood Competitiveness and Economic Growth, signed by the President on May 7, 2020.

As you identified in your May 18, 2020 letter, the Executive Order requires that “each Council submit a prioritized list of recommended actions to reduce burdens on domestic fishing and to increase production within sustainable fisheries.” In response to the Executive Order, the Pacific Council briefed each of its constituent and technical advisory bodies on the requirement and requested their input on actions and priorities. After considering the reports of these advisory bodies and public testimony, the Council identified priorities for regulatory action by the Department of Commerce and United States Fish and Wildlife Service (USFWS). The Council also identified several important funding priorities that directly relate to achievement of the purpose of the executive order. Because governing resources are limited, only top priority items are included in these recommendations. Finally, this letter includes a number of requests related to aquaculture policies and directives contained in the executive order.

Priorities for the Department of Commerce Regulatory Action

The Council identified two actions to be implemented by the Secretary of Commerce under its Magnuson-Stevens Act authority:

1. Mothership Sector Utilization: Increase mothership sector utilization of whiting allocation.
2. Non-trawl Area Management: Modify non-trawl area management to reduce the restricted area, provide incidental groundfish landing limits for troll vessels, and allow the use of midwater jig fishing within the areas.

These items have been placed on Council agenda planners for further action by April 2021, thereby meeting the Executive Order requirement to initiate action prior to one year after its issuance. Since the proposals are already agendaized and resources identified for moving forward with action,

the Council did not attempt to prioritize their relative importance. Additional information on the proposals and rationale is provided in the attached list.

Priorities for the USFWS Regulatory Action

The Council recommends that the Secretary of Commerce work with the Secretary of the Interior to reclassify squid and sea urchins, removing them from the categories of wildlife products subject to the U.S. Fish and Wildlife Service's (USFWS) inspection and user fee system for monitoring the import/export (at 50 CFR 14). Foreign countries and other customers require National Oceanic and Atmospheric Administration (NOAA) Fisheries Inspection Division to perform seafood inspections and issue certification of inspection. In addition, the USFWS policy and associated regulations, created to protect rare and endangered wildlife, also include squid and sea urchins. Under the USFWS regime, U.S. squid and sea urchin producers are required to ship squid and sea urchins only from designated ports, and to pay onerous inspection fees, paperwork fees, and license fees, etc., for a redundant and unnecessary inspection that is not required by any other country. The USFWS regulations in question were 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 U.S. seafood, including squid and sea urchins. Virtually all other U.S. commercial fishery products are exempt from this program and these rules.

This issue has been raised previously with the USFWS with respect to squid. In 2008, National Marine Fisheries Service (NMFS) provided comment on USFWS 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). These rules did not change existing USFWS classifications but provided an opening for agency and constituent comments pointing out the inefficient and burdensome redundancies of the USFWS rules pertaining to squid. In its comments, NMFS specifically recommended that §14.92(a)(1) be revised to 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." The USFWS responded by making the NMFS-recommended change, however, in doing so it noted that it "accepted these comments and changed the language accordingly" but doing so would not change USFWS implementation of the fishery products exemption (73 FR 74618), and therefore not achieve the effect intended by NMFS. The current E.O. provides an opportunity to revisit this issue that, according to the USFWS, was outside of the scope of its 2008 rule.

The USFWS's current policy and associated regulations negatively impact small U.S.-owned businesses, render U.S. squid and seafood exports less competitive, and exacerbate the annual \$16B seafood trade deficit, while providing zero environmental benefit to the U.S. Not only do the dual inspection requirements impose unnecessary costs but constraining procedures for achieving USFWS inspections can cause substantial logistical delays, escalating costs to levels substantially above those directly related to the inspection itself and dampening exports. Despite imposition of these substantial costs there does not appear to be a basis for redundant and excessively burdensome inspection rules. The USFWS export inspection requirements for squid and sea urchins are both redundant to and more constraining and costly than comparable U.S. Department of Commerce inspection requirements. Therefore, both squid and sea urchin should be reclassified as fishery

products or otherwise exempted from the USFWS inspection requirements. This issue of duplicative squid and sea urchin inspections within the jurisdiction of the USFWS is an example of how this executive order can be effective in making regulatory improvements that benefit the industry and the national economy.

Funding and Coordination Needs

Efficiency of the Electronic Monitoring Program

Support is needed to improve the efficiency and fund the review of electronic monitoring (EM) video used to verify fishermen logbooks in the West Coast groundfish catch shares fishery. Economic competitiveness in a global market is crucial for maintaining the domestic seafood industry. This competitiveness is increased through reduced regulatory burden and innovation. A combination of these has led to the development of EM technologies that are potentially more efficient than the use of fishery observers. These efficiencies can benefit not only the seafood industry but the efficiency of the overall U.S. economy. One element of electronic monitoring is verifying logbooks through review of video recordings. NMFS has determined that, as a matter of self-responsibility, industry should pay for the government to verify its logs.

The video review process can be handled most efficiently by Pacific States Marine Fisheries Commission (PSMFC). PSMFC is a major center for warehousing, processing, and providing centralized access to West Coast data. PSMFC has been conducting video review during the West Coast groundfish catch shares fishery EM development phase utilizing exempted fishing permits, so their performance and costs are well-established. If PSMFC conducted the review, not only would the review be more efficient but there would also be cost savings because NMFS would not need to audit PSMFC, since they are a trusted party. PSMFC is concerned that accepting industry payments to conduct video review would undermine perception of its impartiality, potentially even leading to threats to future government funding of its key roles in the West Coast fishery management and data systems. Its ability to serve in these roles has substantial benefit to the Federal government. However, given PSMFC's concern and the NMFS position the industry pay for verifying industry logs, the most efficient resolution of the EM video review issue (PSMFC video review) is ruled out. Given the need for industry efficiency and competitiveness, along with Federal interest in long-term preservation of the PSMFC role on the West Coast, the Federal government should either pay for PSMFC video review or provide a financial offset for the higher cost of video review that is not conducted by PSMFC.

This request recognizes the NMFS determination that the industry should be responsible for the costs of verifying its logbooks. However, the Council believes the NMFS determination is based on an incorrect interpretation of the design of the West Coast program and that video review costs should be a NMFS responsibility. Under the human observer coverage program, observers capture the data and NMFS pays for observer debriefing to verify the data. Under EM, logbooks are used to capture data and video is used to verify the data through a review process. By analogy, the video review that is used to verify logbooks should be considered equivalent to the Federal observer debriefing and data verification responsibility, and therefore covered with Federal funds.

Groundfish Trawl Surveys

Even prior to the cancellation of the Northwest Fishery Science Center (NWFSC) West Coast Groundfish Bottom Trawl and Hook and Line surveys in 2020, the NMFS budget to fund surveys had not kept pace with rising costs (see Council briefing book: [Agenda Item I.1.b Supplemental NMFS NWFSC Presentation 1 \(Hastie\) June 2019](#)). There is broad agreement of the importance of ongoing groundfish surveys to inform management and provide stability to domestic groundfish fisheries (a point emphasized at the September 2020 Council meeting in briefing book [Agenda Item C.1.a, Supplemental GAP Report 1](#)). Survey-collected data not only provides important length and age observations that inform the population length- and age-structure, but also provides critical information on incoming year-class strength (often a year or more prior to being caught by commercial fisheries). Additionally, data collected coastwide using a standardized sampling approach allows for the creation of indices of abundance that are an essential component in stock assessments to derive current trends in stock abundance. The surveys used in stock assessment are:

1. the NWFSC bottom trawl survey (full coverage requires four contract vessels and two passes coastwide);
2. the NWFSC hook-and-line survey (full coverage requires three contract vessels and two legs sampling 201 sites in the Southern California Bight);
3. the Southwest Fishery Science Center Rockfish Recruitment and Ecosystem Analysis Survey (full coverage of this midwater trawl survey requires ship time every year off central California);
4. California Cooperative Oceanic Fisheries Investigations (CalCOFI) (full coverage requires ship time and four quarterly cruises off southern and central California to complete this ichthyoplankton survey);
5. the hake hydroacoustic/trawl survey (full coverage requires ship time every other year to survey from central California to the Queen Charlotte Islands (36° 30' N. lat. - 54° 30' N. lat.); and
6. coastal pelagic species hydroacoustic surveys including the collaborative nearshore survey efforts (full coverage requires ship time annually to survey coastwide coupled with a collaborative effort by commercial vessels to extend the survey to nearshore waters where the NOAA vessel cannot safely operate).

All of these surveys were cancelled this year due to the pandemic. Funding for the bottom trawl survey has been reduced the past two years and there has been discussion about defunding the hook-and-line survey. Funding for surveys should be a top agency priority.

These surveys are essential for ensuring the stable and sustainable fishery production on which the security of seafood supply chains rely. Without them, stocks could either be inadvertently depleted, resulting in the need to reduce fishing in the future in order to recover the stock, or current opportunities could be foregone through an under-assessment of the amount of surplus available for harvest.

Salmon Fishery Creel Surveys and Biological Sampling

As identified with respect to the groundfish trawl survey, good fishery data is essential for the stable and sustainable fishery production that industry and consumers rely on. Without it there

can be severe consequences either in terms of lost opportunity in the present (if current abundances are underestimated) or future (if current abundances are overestimated and overfishing occurs). For surveys to be useful and valid, adequate and unbiased data must be available for analysis and interpretation to support conclusions based on the data. Funding for creel surveys and biological sampling of ocean salmon fisheries need to be increased to ensure estimates of fishing effort and catch rate are precise enough to achieve at least a 90 percent confidence that the true values are within 10 percent of the point estimates. NMFS should work with other responsible agencies and governments to coordinate development of a plan and, as needed, provide or supplement current funding to ensure that the following have, and dedicate funds toward, salmon creel surveys and biological sampling: Washington Department of Fish and wildlife, Oregon Department of Fish and Wildlife, California Department of Fish and Wildlife, Washington Coastal Treaty tribes, Columbia River treaty tribes, and California's Klamath Basin tribes.

Aquaculture Policy

The Council has several concerns and requests with respect to the aquaculture policies of the executive order. First, with respect to the process for a nationwide permit that is to be initiated by the Corp of Engineers under E.O. 13291 Section 6(b) and the aquaculture opportunity areas of the E.O. 13291 Section 7, the Council requests the following:

1. The Secretary of Commerce request that the responsible agencies initiate essential fish habitat (EFH) consultation processes as appropriate under Section 305(b)(2) of the Magnuson-Stevens Act;
2. Information on proposed Federal aquaculture actions that may affect the habitat, including EFH, of a fishery resource under its authority be provided to the Council to inform its deliberations on EFH under Section 305(b)(3);
3. The Secretary of Commerce consider this letter a notice that proposed Federal actions related to aquaculture may affect habitat, including EFH, as defined under the Magnuson-Stevens Act and specified by the Council, and that as these projects are developed additional information may be forthcoming from the Council requiring Secretary of Commerce action and implementing agency response under Section 305(b)(4);
4. The public comment periods on these actions overlap a meeting of the Pacific Council and that the Council be advised of the comment period sufficiently in advance of the Council meeting so the topic can be added to the Council agenda as an action item;
5. Data sets of historic fishing regulations be developed to appropriately interpret fishery data and potential conflicts between interests of the fishing industry and those of aquaculture enterprises, and
6. In order to pursue the intent of this executive order most efficiently and expeditiously, there should be good communication and coordination between Federal, state, and tribal processes. In this regard, the Council notes the ambitious timelines planned for the southern California aquaculture opportunity areas (AOA) and that the State of California is currently working on its own aquaculture plan. Proceeding thoughtfully and with state consultations will likely reduce the chance of unexpected delays due to conflicts between Federal and state processes.

The Council appreciates this opportunity to provide input on matters related national seafood policy. If you have any questions, please contact the Council's executive director, Chuck Tracy.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Gorelnik". The signature is fluid and cursive, with the first name "Mark" and last name "Gorelnik" clearly distinguishable.

Mark Gorelnik
Pacific Council Chair

JLS:kma

Enclosure

Cc:

Council members
Council staff officers
Advisory Subpanels and Teams
Enforcement Consultants
NOAA GCEL
Mr. Stephen Guertin, USFWS Deputy Director for Program Management and Policy
Mr. Drew Lawler, NOAA Deputy Assistant Secretary for International Fisheries
Mr. Sam Rauch III
Ms. Kelly Denit