

COASTAL PELAGIC SPECIES ADVISORY SUBPANEL REPORT ON EXECUTIVE
ORDER 13921: PROMOTING AMERICAN SEAFOOD COMPETITIVENESS AND
ECONOMIC GROWTH – FINAL RECOMMENDATIONS

The Coastal Pelagic Species Advisory Subpanel (CPSAS) reviewed Executive Order (EO) 13921 Promoting American Seafood Competitiveness and Economic Growth and the briefing materials and appreciates the guidance and presentations by Pacific Fishery Management Council (Council) staff. The CPSAS offers the following comments for Council consideration.

Market Squid

The CPSAS is asking the Council to please support a recommendation to reform a squid fishery regulatory issue involving market squid (*D. opalescens*) on the West Coast that is causing serious negative economic and competitive impacts on squid businesses. The issue is directly related to the inclusion of squid fishery products in the U.S. Fish and Wildlife Service's (USFWS) inspection and user fee system for monitoring the import/export of certain types of wildlife products (at 50 CFR 14). The CPSAS has also completed the requested table template on this matter as shown on page 5.

Foreign countries and other customers require National Oceanic and Atmospheric Administration (NOAA) Fisheries Inspection Division to perform seafood inspections and issue certification of inspection. The USFWS policy and associated regulations, created to protect rare and endangered wildlife, require squid producers to ship U.S. squid 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 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. Virtually all other U.S. commercial fishery products are exempt from this program and these rules.

NOAA officials have been clear that the EO gives 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, negatively impact small U.S.-owned businesses, render U.S. squid exports less competitive, and exacerbate the annual \$16B seafood trade deficit, while providing zero environmental benefit to the U.S.

The USFWS has never given a justifiable reason for its 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 USFWS has likewise ignored comments from the National Marine

Fisheries Service (NMFS) in the past, when NMFS attempted to correct the USFWS's false assumption that squid does not meet the definition of 'shellfish' or 'fishery product'.

We ask the Council recommend to NOAA and 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. harvested squid species pursuant to the EO.

Pacific Sardine

A CPSAS recommends the following proposal to meet the goals and intent of the EO, Optimum Yield under National Standard 1, and the economic and conservation goals and objectives under the CPS Fishery Management Plan (FMP).

Purpose and Need: At present, the U.S. Pacific sardine fishery is managed incongruously with the U.S. stock assessment's division of subpopulations. Pacific Sardine stock assessments in the U.S. now assume that two sardine subpopulations exist along the U.S. West Coast, divided by a temperature boundary of 16.7°C as defined in a habitat model. However, only the northern subpopulation is included in stock assessments. As ocean temperatures change, Pacific Sardine from the northern and southern subpopulations move freely north and south of the U.S./Mexico border.

All sardines caught in U.S. waters are assumed to be from the northern subpopulation for management purposes, hence subtracted from the harvest quota, regardless of sea temperature. However, all sardines observed and estimated in water temperatures above 16.7°C are assumed to be from the southern subpopulation and not included in U.S. stock assessment of the northern subpopulation.

These recent U.S. stock assessments that only quantify the Northern subpopulation provided biomass estimates that resulted in the closure of directed Sardine fishing in U.S. waters and precipitated the declaration of an overfished status for Pacific Sardine in the U.S. This not only curtails opportunity to directly harvest U.S. West Coast sardines for the commercial sardine fleet, but incidental take restrictions limit and restrict fishing behavior in other fisheries where sardines are taken as incidental catch. Some of these fisheries are for other CPS stocks such as squid, anchovy, and mackerel, but this could also restrict fishing for Pacific whiting, Pacific ocean (pink) shrimp, and the sardine live bait fishery, which supports the recreational fishery valued at more than one billion dollars.

As the 2020, NOAA spring and summer acoustic surveys have been cancelled and there is no winter survey when the water temperatures are colder, there is no way to validate that the sardine biomass in central and particularly in Southern California meets the temperature limit for northern stock sardines. Southern California live bait caught in the summer and perhaps most of the year under these metrics would be defined as southern stock, and yet these landings count against the U.S. Pacific sardine catch limit.

Meanwhile Mexico continues to fish both the northern and southern subpopulation of sardines. Mexico harvests the northern subpopulation, but Mexican scientists have attributed a different temperature range to the northern and southern subpopulations, with the limit for the northern

subpopulation below 17°C, and the southern subpopulation ranging from 17-22°C. Mexico developed a stock assessment for the southern subpopulation with a total biomass estimate of 872,000 mt in 2018 and set their 2019 total allowable catch (TAC) at 140,590 mt.¹ Mexican scientists estimated the 1989-2018 average U.S. catch of the southern subpopulation at 12 percent of the Mexican TAC. Twelve percent of Mexican 2019 TAC is 16,871 mt. However, the U.S. does not recognize the Mexican stock assessment of the southern subpopulation and the U.S. does not have a stock assessment for the southern subpopulation.

This makes for an incongruent U.S. management program for Pacific sardines and places U.S. fishermen and processors at a competitive disadvantage. In addition, the northern subpopulation of sardine is declared overfished in the U.S., but Mexico has not made this declaration for the northern subpopulation. The U.S. has curtailed its catch by closing the directed fishery and imposing incidental catch limits, while Mexico has not implemented parallel conservation measures to rebuild the northern subpopulation.

EO proposal: To make our fisheries competitive, provide employment, achieve optimum yield, conserve fish stocks, and prevent the elimination of markets and important infrastructure, the CPSAS offers the following proposal:

1. Management Priorities: Revise U.S. management of Pacific sardine subpopulations to use the same temperature parameters that are used to differentiate the two stocks.
 - a. If it is determined that there are two stocks, then fish caught in warmer waters preferred by the southern stock should be attributed to the southern stock. This can be determined on a daily or weekly basis by satellite sea surface temperatures. Directed fishing opportunities could be based on the same parameters. The southern stock should have its own harvest limits and landings of southern stock should not be subtracted from harvest limits ascribed to the northern stock.
 - b. If it is determined there is only one stock of Pacific Sardine, manage the fishery as we have in the past as a single transboundary stock.
2. Scientific Priorities: Improve the science underlying the differentiation between the southern and northern stock, and their respective biomass estimates.
 - a. (Near-term) Conduct a methodology review of the sardine habitat model and temperature thresholds used to apportion northern and southern stock of sardines, as requested by the Scientific and Statistical Committee CPS Subcommittee² and CPSAS in 2019 with respect to the 2020 assessment.
 - b. (Ongoing) Expedite research to genetically determine whether west coast Pacific Sardine is one or two stocks.

¹ Enciso-Enciso et al. 2019. Stock assessment and management of the tempered stock of Pacific sardine *Sardinops sagax* on the West Coast off the Baja California Peninsula (1989-2018). Presentation at the 20th Annual Trinational Sardine & Small Pelagics Forum. December 5-6, 2019.

² Excerpt: *An additional 35,000 mt of sardine was observed by the AT survey in the Southern California Bight and attributed to the Southern Subpopulation (SSP). This highlights the need for the 2020 assessment to review the basis for the habitat model and perhaps refine estimates of both the catch and biomass attributable to the NSP and SSP. (SSC CPS Subcommittee Notes, SSC Summary Minutes (p.7), April 2019)*

- c. (Ongoing) Continue to develop near-shore acoustic surveillance methodology and sampling with the charter of commercial vessels that can be outfitted to survey and sample in shallow waters. Surveys should be conducted in periods when water temperatures are near minimum and maximum annual levels.
- d. (Ongoing) Continue aerial surveys conducted by the California Department of Fish and Wildlife concurrently and in coordination with the acoustic survey.
- e. (Near-term) Initiate further discussions with Mexican sardine scientists and fishery managers through the U.S. Department of State to improve and coordinate CPS surveys, align scientific understanding of Pacific sardine stock differentiation and biomass, and coordinate management measures and rebuilding.

This proposal can easily be written up as a conceptual project by November 2, 2020 and details for implementation worked out following that date. Requisite study and scoping could be initiated prior to the one-year deadline of the EO anniversary date.

Seafood Imports and Illegal, Unreported, and Unregulated (IUU) Seafood

In implementing the Executive Order, NMFS should prioritize measures to hold imported seafood to the same health and environmental standards as required for U.S. seafood, including the use of import provisions under the Magnuson-Stevens Act and Marine Mammal Protection Act that compel NMFS to restrict imports of seafood that does not achieve U.S. bycatch standards. NMFS should also prioritize addressing IUU seafood to prevent fraudulent and/or unsustainable seafood from entering U.S. markets.

Offshore Aquaculture

The CPSAS is concerned with offshore aquaculture development and the selection of Southern California by NMFS as an Aquaculture Opportunity Area. The Southern California Bight is an exceptional marine ecosystem supporting sustainable commercial and recreational fishing, seafloor habitats, and migratory wildlife. Offshore aquaculture may impact and put at risk US wild capture fisheries, associated fishing communities, vulnerable wildlife populations, and marine ecosystems by:

- reducing available fishing grounds,
- spreading disease to wild stocks,
- escaped farmed fish,
- impeding fish and wildlife migration,
- generating acoustic impacts and disturbance,
- outputs from uneaten feed,
- increasing demand for feeds,
- releasing antibiotics, and
- killing or harming predators that are attracted to fish farms.

To date, there has been little to no communication with or consideration of fishermen's recommendations from the region regarding the selection of Southern California as an Aquaculture Opportunity Area. The CPSAS recommends that NOAA conduct a marine spatial planning exercise including fishing representatives from the beginning to avoid conflicts. We further recommend that the Council be involved in the planning and development process.

Council(s)	Priority Number	Action type (e.g. Changes to Regulations, Orders, Guidance Documents, Other Similar Agency Actions)	Relevant CFR Citation under Title 50 (if applicable)	Description of recommended action(s)	Rationale of how the recommended action(s) reduces burdens on domestic fishing and increases production within sustainable fisheries	Proposal for initiating each recommended action(s) within 1 year of the date of this order (i.e., by May 7, 2021)
PFMC	1	Guidance: NMFS/Secretary of Commerce request USFWS revision to Regulation	50 CFR Part 14 - IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE. (See 73 FR 74615 and 50 CFR Parts 10-14)	Recommend regulatory change to US Fish & Wildlife Service to exempt U.S. harvested squid species from 50 CFR Part 10- 14 requirements, as most other fishery products are already exempt. This request is consistent with E.O. 13921: Sec.2(a), identify and remove unnecessary regulatory barriers restricting fishing. Sec. 4, Removing barriers to American fishing: reduce burdens on domestic fishing. Sec.11 (c) Resolve technical barriers to U.S. exports	USFWS now requires a redundant and unnecessary inspection process for U.S. harvested squid to be exported, even though these fishery products are already inspected by the US Department of Commerce (USDOC). Further, most other fishery products are exempt from USFWS inspection. The USFWS inspection and user fee system was established for monitoring the import and export of certain types of protected wildlife products. In the past, NMFS has taken a position in opposition to the USFWS' justification for including U.S. - produced squid species as part of this program. Despite objection from NMFS, the USFWS declines to classify squid as a fishery product or shellfish, defying best available science. This added burden of USFWS duplicative oversight, in addition to USDOC inspection, costs U.S. squid harvesters and processors collectively multiple tens of thousands of dollars annually in additional fees, requires export from only designated ports, at times disrupts exporting schedules, and makes US squid products less competitive in international markets. This undermines US trade policy and increases the US trade deficit, especially with China and Japan.	We ask the Council to include this request to NMFS as high priority on the list of EO recommended actions, to alert the US Department of Commerce of this burdensome and unnecessary duplication of oversight by USFWS that costs squid fishermen and processors on both west and east coasts many extra tens of thousands of dollars every year, making US squid uncompetitive in international markets. If the USFWS continues to decline to define squid as a shellfish and fishery product, and to exempt squid along with other fishery products from relevant CFR regulations, then we suggest such exemption be made by Congressional finding or Executive Order within the timeline of EO 13921.