



April 6, 2026

VIA ELECTRONIC SUBMISSION

Mr. Brian Nesvik
Director
U.S. Fish and Wildlife Service
Washington, DC 20460

Re: Definition of Shellfish; Inclusion of Cephalopods, Docket No. FWS-HQ-LE-2026-0628.

Dear Director Nesvik:

On March 6, 2026, the U.S. Fish and Wildlife Service (FWS) published a proposed rule entitled “Definition of Shellfish; Inclusion of Cephalopods.”¹ This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the agency’s proposal.

Advocacy broadly supports the FWS proposal. It will reduce unnecessary regulatory burdens, including removing redundant inspections, on small businesses in the fishing industry by aligning the FWS’s definition of “shellfish” with the definition already established by the National Marine Fisheries Service (NMFS) and clearly designating squid as a type of shellfish.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy in 1976 under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the Small Business Administration (SBA) or the Administration.

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that may have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small

¹ 91 Fed. Reg. 11019 (March 6, 2026).

² Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

entities and to consider less burdensome alternatives.³ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and must submit a statement of the factual basis for such a determination that adequately supports its certification.⁴

Advocacy’s comments are consistent with congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

B. The FWS’s Updates to the Definition of Shellfish.

Currently, FWS regulations define shellfish as “an aquatic invertebrate having a shell.”⁸ However, cephalopods, including squid, cuttlefish and octopus have internal shells, reduced shells or no shells at all. This has resulted in confusion over whether cephalopods qualify as shellfish for purposes of federal import/export, declaration, inspection and enforcement regulations.

The FWS acknowledges that this confusion has led to inconsistent treatment of cephalopods at ports of entry, “confusion among regulated entities,” and “unnecessary regulatory burden on importers, exporters, and enforcement personnel.”⁹ The NMFS, which also regulates commercial fishermen, has already stated that cephalopods are shellfish.¹⁰ By aligning with the NMFS definition, the FWS will prevent fishermen from having to undergo two different regulatory procedures for the same cephalopod.

The FWS’s proposed rule would remove the phrase “having a shell” from the definition of shellfish.¹¹ The goal of the proposal is to “reduce regulatory uncertainty and compliance costs for the seafood trade, improve consistency in inspection and enforcement decisions, [and] avoid unnecessary permitting or documentation requirements resulting from misclassification.”¹² The

³ 5 U.S.C. § 603.

⁴ *Id.* at § 605(b).

⁵ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ 50 C.F.R. § 10.12.

⁹ 91 Fed. Reg. 11020 (March 6, 2026).

¹⁰ Nat’l Marine Fisheries Serv., Comments on Import/Export License and Fee Proposals (April 25, 2008), https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5fc920b39a2acd2811eb140e/1607016631319/2_NMFS+comments+to+FWS+2008.pdf.

¹¹ *Id.*

¹² *Id.*

FWS further states that “[r]emoving the phrase ‘having a shell’ avoids disputes over anatomical characteristics that are irrelevant to regulatory intent and enforcement, thereby promoting efficient use of agency resources and reducing unnecessary compliance costs.”¹³

The FWS proposal comes after small businesses in the fishing industry raised concerns in 2025 to Advocacy over the regulatory confusion associated with the shellfish definition.

II. Updating the Definition of “Shellfish” to Include Cephalopods Will Reduce Regulatory Burdens for Fishermen and Other Seafood Industries

Executive Order (EO) 14276, *Restoring American Seafood Competitiveness*, issued by President Trump on April 17, 2025, calls for the government to “immediately consider suspending, revising, or rescinding regulations that overly burden America’s commercial fishing, aquaculture, and fish processing industries.”¹⁴ The National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) subsequently issued a request for comment on August 27, 2025, to obtain information on “fishery-related regulatory barriers, fisheries management, science, and other priority needs” to accomplish the EO’s goals.¹⁵

Small businesses represent 99.9 percent of all commercial fishing enterprises, generating nearly \$5 billion in annual revenue and comprise a substantial share of the recreational fishing sector.¹⁶ Advocacy held a roundtable with small businesses in the fishing industry on September 24, 2025, to discuss NOAA’s request for comments. Advocacy also held meetings on NOAA’s request for comments with fishing industry representatives in Washington, DC, New Bedford, MA and Boston, MA. At each of these meetings, small businesses discussed the inconsistency between the FWS definition of “shellfish” and NOAA regulations.

Advocacy submitted a comment letter to NOAA on October 14, 2025, outlining more than 20 different regulatory reform issues, including harmonizing the definition of “shellfish” to include cephalopods.¹⁷ Advocacy held a second roundtable to discuss the FWS’s proposed rule on March 19, 2026. There was universal support amongst the small business attendees at each event for the proposed expanded definition of “shellfish.”

Small businesses have explained to Advocacy that the current FWS definition of “shellfish” is subjecting them to unnecessary regulatory and financial burdens. Specific fees attributable to the current FWS definition of shellfish include:

¹³ *Id.*

¹⁴ 90 Fed. Reg. 16993 (Apr. 22, 2025).

¹⁵ 90 Fed. Reg. 41818 (Aug. 27, 2025).

¹⁶ U.S. Census Bureau, *Statistics of U.S. Businesses*, <https://www.census.gov/programs-surveys/susb.html> (last revised Mar. 11, 2025); U.S. Census Bureau, *Nonemployer Statistics*, <https://www.census.gov/programs-surveys/nonemployer-statistics.html> (last revised Apr. 29, 2025).

¹⁷ U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Recommendations for Restoring American Seafood Competitiveness (Oct. 14, 2025), <https://advocacy.sba.gov/2025/10/15/advocacy-provides-recommendations-for-restoring-american-seafood-competitiveness/>.

- A \$100 FWS license requirement for every U.S. company exporting or importing squid.
- A \$93 base inspection rate for each squid shipment leaving or entering the U.S.
- A \$53 per hour overtime fee that companies may be required to pay the FWS. This is particularly impactful on some West coast companies where approximately 90 percent of shipments are loaded on Thursday or Friday and sail on the following Sunday or Monday.
- A \$146 “non-designated port inspection fee” for any shipment going through a U.S. port not designated by the FWS.
- Pay for staff time and freight firms to manage the FWS paperwork requirements.¹⁸

Small businesses are much less able to shoulder these unnecessary costs than their larger counterparts. Many of the smallest fishing businesses consist of a single boat and the fees listed above can constitute a sizeable portion of their profits. For example, the restrictions on which ports can currently be used for squid exporting may prevent companies from getting the best freight rates as well as add additional transport and fuel expenses.

Additionally, the Mid-Atlantic Seafood Council states that these extra fees “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.”¹⁹ The FWS’s proposal would eliminate these unnecessary regulatory costs related to the inconsistent agency definitions of shellfish for small businesses in the seafood industry.

Advocacy supports the FWS’s proposed change to the definition of “shellfish.” It will reduce unnecessary regulatory burdens for small businesses in the fishing industry. Additionally, the FWS proposal specifically enacts one of the regulatory reforms raised by fishermen to Advocacy in 2025 and also echoes a change Advocacy has called for in response to EO 14276 which will benefit the entire seafood industry.²⁰

III. Conclusion

Advocacy strongly supports the FWS broadening the definition of “shellfish” to include cephalopods. The FWS’s proposed rule reflects a commitment to good governance by resolving a long-standing regulatory discrepancy which has subjected small businesses in the American seafood industry to unnecessary regulatory costs. Ending this regulatory confusion will help

¹⁸ Lund’s Fisheries, Seafreeze Ltd. & The Town Dock, Request for Inclusion of a Squid Species Exemption from Duplicative and Burdensome USFWS Regulations, in the Council’s Identification of Important Regulatory Reforms Pursuant to Executive Order (EO) 13921 Promoting American Seafood Competitiveness and Economic Growth, 7 (July 28, 2020), <https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5fc913a3eda81c62039346bb/1607013283581/Lunds-Seafreeze-TownDock-USFWS-Comments.pdf>.

¹⁹ Letter from Mid-Atlantic Fishery Mgmt. Council to David Bernhardt, Secretary of the Interior, 7 (Dec. 21, 2020), https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/661fe4aaa9a52556373e5c4a/1713366186992/2020-12_MAFMC-Letter-DOI-USFWS-Squid-Export-Regs.pdf.

²⁰ U.S. Small Bus. Admin, Off. of Advocacy, *supra* note 17, at 12-13.

accomplish the goals of EO 14276 and provide regulatory relief to small businesses in America's seafood industry.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or nick.goldstein@sba.gov.

Sincerely,

/s/

Chip Bishop
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Mark Paoletta, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget