

Amid Global Supply Concerns, Trump EO Seeks to Increase Domestic Fishing and Aquaculture Production

On May 7, 2020, President Trump signed an Executive Order on Promoting American Seafood Competitiveness and Economic Growth (the EO) with the goal of reducing regulatory burdens and developing a more robust domestic seafood trade. Namely, the EO seeks to reduce the need for imported seafood, which makes up roughly 85 percent of consumption in the United States, by streamlining regulations and engaging in more strenuous efforts to reduce illegal, unreported, and unregulated (IUU) fishing. A brief summary of pertinent items is set forth below.

Removing Regulatory Barriers

The EO requires the Commerce Secretary to request from each of the eight Regional Fishery Management (RFM) Councils a list of recommended actions to both reduce burdens on domestic fishing while increasing production within sustainable fisheries. The Commerce Secretary must make this request within 180 days of the EO, with a proposal for implementing each action within one year of the EO. The EO notes that any such actions must be consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, and the Marine Mammal Protection Act.

It is unclear at this time as to how the RFM Councils or the Commerce Secretary will address this request as any increase in production within sustainable fisheries may result in a violation of the above cited laws and regulations. Generally speaking, sustainable fishing operates on an allocation basis using formulas to assign total weight for “optimal yields” within each specific fishing habitat, sometimes broken down by species. As such, fishing activities strive to meet the optimal yield figures in order to maximize production while promoting long-term sustainability. The EO appears to suggest that such activities could be further bolstered, but does not address how any regulatory changes may impact the calculations for yields in fisheries and the resulting sustainability of various species.

Aquaculture Permitting and Opportunity Zones

The EO specifically aims to reduce the expected approval and authorization time for aquaculture projects that would require environmental review by multiple agencies. The EO broadly defines these aquaculture projects as any “project to develop the physical assets designed to provide or support services to activities in the aquaculture sector, including projects for the development or construction of an aquaculture facility.” In an effort to expedite approval, the EO requires completion of environmental reviews and authorization decisions to occur within two years after notice of an environmental impact statement has been issued. Further, the EO specifies that NOAA shall be the lead agency for those projects located outside of the waters of any state or territory, but within the exclusive economic zone of the United States.

In another effort to streamline the overall permitting process, the EO requires the Secretary of the Army to engage the U.S. Army Corps of Engineers in the following permit activities:

- Developing and proposing a nationwide permitting process for finfish and seaweed aquaculture activities in marine and coastal waters out to the limit of the territorial sea and in ocean waters beyond the territorial sea within the Exclusive Economic Zone of the United States.
- Assessing whether to develop a nationwide permit process for finfish and seaweed aquaculture activities in other waters of the United States.

Relatedly, the EO tasks the Commerce Secretary with identifying, within one year of the EO, at least



Jeff R. Vogel

**Co-Chair,
Government
Contracts**

jvogel@cozen.com
Phone: (202) 304-1453
Fax: (202) 861-1905



Matthew J. Howell

Associate

mhowell@cozen.com
Phone: (202) 912-4879
Fax: (202) 499-2451

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two geographic areas suitable for commercial aquaculture, and further specifies that a programmatic environmental impact statement be complete for each area within two years of identification. The Commerce Secretary must follow this process for a subsequent four years, identifying two potential aquaculture opportunity zones in each year with programmatic environmental impact statements for all.

Combatting IUU

IUU fishing necessarily undermines both sustainability efforts and fair competition prospects within the fishing industry. The EO instructs the Commerce Secretary vis a vis the administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue a notice of proposed rulemaking, within 90 days of the EO, implementing the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing. The UN agreement became effective on June 5, 2016, with the goal of closing port access to IUU vessels, thereby preventing IUU catch from affecting the global fisheries market. The United States has implemented certain measures related to the UN agreement, but the EO requires a more complete adoption and implementation to reduce IUU's impact within the domestic and global marketplaces.

Interagency Task Force

The order creates a new Interagency Seafood Trade Task Force, with members such as the Secretaries of State, Interior, Agriculture, Homeland Security, and a number of other executive branch offices. The task force must provide recommendations within 90 days of the EO to the U.S. trade representative in furtherance of a comprehensive seafood trade strategy designed to capitalize on foreign market opportunities while resolving technical barriers to U.S. seafood exports. Within 90 days of these recommendations, the U.S. trade representative must submit such trade strategy to the president for review.

It is likely that many of the goals outlined in the EO will require significant time and technical review prior to implementation. However, the EO provides fairly expeditious timeframes for certain actions by executive officials. We encourage clients to review the EO in its entirety to determine any potential concerns or opportunities going forward. As always, we review these matters constantly to ensure that our clients position themselves in an optimal position in the marketplace.
