

# House Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

March 14, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff  
Subcommittee on Water, Power and Oceans (x58331)

Mark-up: H.R. 4245 (Rep. Chellie Pingree), To exempt importation and exportation of sea urchins and sea cucumbers from licensing requirements under the Endangered Species Act of 1973.  
**March 15-16, 2016; 1324 Longworth HOB**

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## **H.R. 4245 (Rep. Chellie Pingree, D-ME), To exempt importation and exportation of sea urchins and sea cucumbers from licensing requirements under the Endangered Species Act of 1973**

### **Bill Summary:**

H.R. 4245 adds sea urchins and sea cucumbers that are designated for human consumption to a list of exempted shellfish and fishery products from licensing requirements under the Endangered Species Act (ESA). Prior to a 2008 USFWS rule,<sup>1</sup> these species were exempt from such import and export inspection and licensing fees.

### **Cosponsors:**

Representative Bruce Poliquin (R-ME)

### **Background:**

In Maine, green sea urchins inhabit the shallow waters off the Atlantic coast.<sup>2</sup> Sea urchins are generally harvested for their roe, more commonly known as “uni,” which is a delicacy food item in Japan, Europe, and more recently in the U.S.<sup>3</sup> Maine sea urchin landings in 2014 were almost 2 million pounds valued at \$5.4 million.<sup>4</sup> Sea urchins are typically harvested by hand by divers but can also be harvested by fishing vessels outfitted with dragging nets. In Maine, diving is the primary technique used to harvest the species, with roughly 115 divers harvesting 60 percent of the State’s landings.<sup>5</sup> While targeting different types of sea urchins, harvesting is also a significant fishery off parts of California’s coast. This fishery, with

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<sup>1</sup> [73 FR 74615, December 9, 2008](#)

<sup>2</sup> [http://www.maine.gov/dmr/rm/seaurchin/green\\_sea\\_urchin\\_general\\_summary.htm](http://www.maine.gov/dmr/rm/seaurchin/green_sea_urchin_general_summary.htm)

<sup>3</sup> [Id](#)

<sup>4</sup> [Maine Department of Marine Resources: 2010-2014 Commercial Maine Landings, February 25, 2015.](#)

<sup>5</sup> [Maine Department of Marine Resources: Monitoring and Assessment of Maine’s Sea Urchin Resource, Margaret Hunter, Lessie White, Robert Russell, March 2015.](#)

just over 200 active divers, harvested almost 13 million pounds of urchins in 2013 valued at \$9.8 million.<sup>6</sup>

The sea cucumber industry in Maine is much smaller than the sea urchin industry, mostly due to a new foreign market that developed in 1994.<sup>7</sup> According to Maine Department of Marine Resources (DMR), the sea cucumber fishery is a closed access fishery, with only ten active licenses in 2012.<sup>8</sup> While this is a relatively small fishery in Maine, valued at just over \$700,000 in 2008,<sup>9</sup> the species belongs to the same group as sea urchins.

Under the authority of the ESA, the U.S. Fish and Wildlife Service (USFWS) has the authority to inspect and regulate fish and fishery products that are to be imported or exported.<sup>10</sup> This authority, however, is not limited to ESA-listed species or species listed under the Convention on International Trade in Endangered Species (CITES).<sup>11</sup> According to USFWS, this broad authority allows the agency to regulate and inspect many “wildlife species used for food” that are not protected under either ESA or CITES, and allows it to charge licensing and inspection fees to importers and exporters of all fish, fish products, and wildlife.<sup>12</sup>

In an effort to help preserve domestic and international trade of U.S. seafood and seafood products, USFWS established criteria to exempt shellfish and other non-living fishery products if used for consumption from these regulations. To qualify for this exemption, the species must not be listed as injurious under the Lacey Act and not listed under the ESA or CITES.<sup>13</sup> This exemption is essential to the trade of shellfish as many species, such as oysters, clams, lobster and others are often traded live and/or have a very short timeframe for safe consumption. USFWS has a current exemption list that includes many of these species.

Until 2008, other key species, such as sea urchins, sea cucumbers, squid, octopus and cuttlefish were also exempt from the import and export licensing and requirements. On December 8, 2008, USFWS published a final rule revising its authority to regulate the import and export of certain species to clarify requirements and update license and inspection exemptions.<sup>14</sup> USFWS received multiple comments on this proposed change to the exemption requirements from members of the fishing industry and the National Marine Fisheries Service (NMFS), which is a partnering agency with USFWS for oversight of these species. NMFS specifically commented on the proposed changes and how USFWS’ definition of “shellfish” for the sake of inspections and exemptions was not consistent with NMFS’ or that of the United Nations Food and Agriculture Organization.<sup>15</sup> NMFS requested that USFWS revise its definition

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<sup>6</sup> [California Department of Fish and Wildlife: 2013 California Sea Urchin Catch by Diver and Region.](#)

<sup>7</sup> <http://www.maine.gov/dmr/cukes/index.htm>

<sup>8</sup> [Id](#)

<sup>9</sup> [Id](#)

<sup>10</sup> [50 CFR 14](#)

<sup>11</sup> Mr. William Woody, Assistant Director of Law Enforcement for the U.S. Fish and Wildlife Service, letter to Committee on Natural Resources Chairman Doc Hastings, December 22, 2014.

<sup>12</sup> [Id](#)

<sup>13</sup> [50 CFR 14](#)

<sup>14</sup> [73 FR 74615, December 9, 2008](#)

<sup>15</sup> [Id](#)

to be consistent with NMFS'.<sup>16</sup> Industry comments echoed those of NMFS, stating that the revisions “would create a financial burden” on the industry, including importers and exporters down to divers.<sup>17</sup> H.R. 4245 corrects this inconsistent view between the two agencies by exempting sea urchins and sea cucumbers from USFWS inspection requirements.

During the February 2, 2016 Water, Power and Oceans Subcommittee’s hearing on H.R. 4245, there was bipartisan concern over the USFWS’ policy on domestically harvested exports.<sup>18</sup> Further, according to USFWS, the new seafood traceability rule recently released by the National Oceanic and Atmospheric Administration may eliminate the need for USFWS to continue to conduct such inspections on imported seafood.<sup>19</sup> As such, an amendment may be offered in markup to prohibit USFWS inspections for domestically harvested sea urchin and sea cucumber exports.

**Major Provisions / Analysis of H.R. 4245 (as introduced):**

Section 1 exempts sea urchins and sea cucumbers from requirements under section 9(d)(1) of the Endangered Species Act and section 14.91 of title 50 of the Code of Federal Regulations.

**Cost:**

The Congressional Budget Office has not completed a cost estimate of the bill.

**Administration Position:**

The USFWS testified that sea urchins and sea cucumbers should not be exempt from the agency’s import and export inspections and licensing requirements.<sup>20</sup>

**Expected Amendments:**

An amendment may be offered to limit the scope of the bill to exempt only sea urchins and sea cucumber exports.

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<sup>16</sup> [Id](#)

<sup>17</sup> [Id](#)

<sup>18</sup> Exchange between Congressman Jared Huffman and Mr. William Woody, Assistant Director of Law Enforcement for the U.S. Fish and Wildlife Service, during the House Water, Power and Oceans Subcommittee hearing on H.R. 3070 and H.R. 4245, 114th Cong., February 2, 2016.

<sup>19</sup> [Submitted testimony of Mr. William Woody, Assistant Director of Law Enforcement for the U.S. Fish and Wildlife Service, to the House Committee on Natural Resources, 114<sup>th</sup> Cong., February 2, 2016.](#)

<sup>20</sup> [Id](#)