

Congress of the United States
Washington, DC 20515

December 12, 2016

Admiral Paul F. Zukunft
Commandant
United States Coast Guard
2703 Martin Luther King Jr. Ave, SE
Washington, DC 20593

Dr. Kathryn Sullivan
Under Secretary for Oceans and Atmosphere and
Administrator, National Oceanic and Atmospheric Administration
1401 Constitution Ave, NW
Washington, DC 20230

Dear Admiral Zukunft and Dr. Sullivan:

We are writing today to express our grave concern over the recent allegations of significant labor and human rights abuses aboard U.S. flagged fishing vessels homeported in Hawaii. At a time when both Congress and the Administration have sought a leadership role in efforts to address global trafficking in persons and Illegal, Unreported and Unregulated (IUU) fishing practices in high seas fisheries, such poor oversight of our domestic fleet, if true, is unacceptable and undermines our credibility. In addition to responding to the questions below, we ask that you take immediate action to ensure that all vessels in the Hawaiian longline fleet are complying with all applicable laws, including those regarding manning requirements for U.S. flagged vessels.

Under Federal law, U.S. flagged vessels are required to be operated with crews comprised of at least 75 percent U.S. citizens. According to a recent investigation conducted by reporters from the Associated Press (AP),¹ however, U.S. flagged fishing vessels in the Hawaii longline fleet are allowed to operate with crews that are predominantly comprised of foreign nationals by claiming an exemption to federal manning requirements that is available to a narrow segment of the U.S. flag fishing fleet. Specifically, 46 U.S.C. 8103 exempts “a fishing vessel fishing **exclusively** for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802))” from the requirement that 75 percent of the vessel crew members be citizens of the United States. This code section also exempts from the same requirement “a fishing vessel fishing outside of the U.S. exclusive economic zone.”

¹ <http://bigstory.ap.org/article/39ae05f117c64a929f0f8fab091c4ee1/hawaiian-seafood-caught-foreign-crews-confined-boats>

The Magnuson-Stevens Act specifically defines highly migratory species (HMS) as “tuna species, marlin, oceanic sharks, sailfishes, and swordfish.” No federal agency has the authority to categorize any other species of fish as HMS for the purposes of fisheries management or law enforcement. Yet, while these are some of the more valuable species harvested by the Hawaiian longline vessels, it is clear from landings records² and marketing materials produced by the Hawaii Seafood Council³ that these vessels are fishing for, catching, and selling species other than those defined as HMS in the Magnuson-Stevens Act, including significant quantities of mahi mahi, wahoo, moonfish, and sickle pomfret. The Magnuson-Stevens Act is unambiguous on the point that these activities constitute fishing, as 16 U.S.C. 1802(16) defines fishing as:

- “(A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity that can be reasonably expected to result in the catching taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).”

The vessels in the Hawaiian longline fleet are also fishing within the U.S. exclusive economic zone. This violation was confirmed by an email response from NOAA to Natural Resources Committee staff last month.⁴

Based on this information, these vessels should not be eligible for either of the aforementioned statutory exemptions from the manning requirements in 46 U.S.C. §8103. Instead, they should be required to be manned by at least 75 percent U.S. citizens, and certify that U.S. labor is not available before allowing foreign workers with H2-B visas on board. The manning, certification, and visa requirements exist in part to prevent exactly the kind of labor abuses that have been reported in this fishery. We request that the Coast Guard take immediate enforcement action to ensure that these vessels comply with U.S. manning requirements, and that NOAA cooperate fully to provide all necessary data, information and assistance that the Coast Guard requires. Further, we request that NOAA use its authority under the Lacey Act to prevent interstate and international commerce in fishery products landed from these vessels until they come into compliance with the law. This illegal activity does not represent American values and has dealt a blow to U.S. credibility as a global leader in fighting IUU fishing and human trafficking.

In addition to our request that you begin enforcing immediately the statutory requirement that crews aboard U.S. flagged vessels in the Hawaii longline fleet be comprised of at least 75 percent U.S. citizens, we respectfully ask that you respond to the following questions:

1. Please provide the agencies’ legal interpretation of 46 U.S.C. 8103 and its applicability to the Hawaiian longline fleet. Given that boats in the Hawaiian longline fleet are not fishing exclusively for highly migratory species and that they are not fishing solely on the

² <https://pifsc-www.irc.noaa.gov/library/pubs/DR-15-007.pdf>

³ <http://www.hawaii-seafood.org/wild-hawaii-fish/>


⁴ Pers. Comm. NOAA Office of Legislative and Intergovernmental Affairs. 11/3/16.

high seas, is there some other reason or reasons to justify why these boats have qualified for an exemption from statutory manning requirements for U.S. flagged vessels?

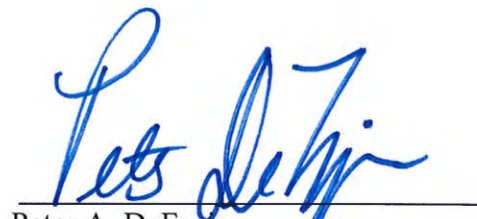
2. Are there any other U.S. fisheries that are currently exempt from the statutory manning requirements for U.S. flagged vessels under 46 U.S.C. 8103? To what extent do these exemptions conform to the agency's interpretation of 46 U.S.C. 8103?
3. Conditions on some vessels in the Hawaiian longline fleet have been described in the AP article and by crew members and fishery observers as unsafe and unsanitary. What responsibilities does the Coast Guard have to ensure that these vessels do not present a safety or health hazard to crew members regardless of their citizenship status? How do the galleys and habitation areas, berthing and sanitation facilities found on the vessels in the Hawaii long line fleet compare with such facilities found on vessels in in other U.S. flag fishing fleets? How does the Coast Guard enforce such requirements? What authority does NOAA have to require fishing vessels that carry fishery observers to provide safe and sanitary facilities?

Thank you for your attention to this matter. If you have any questions, please have your staff contact Mr. Matt Strickler on the Natural Resources Committee Democratic Staff at (202) 225-6065, or Mr. David Jansen on the Transportation and Infrastructure Committee Democratic Staff at (202) 226-3587. I look forward to your response.

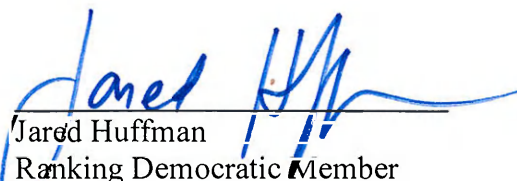
Sincerely,




Raúl M. Grijalva
Ranking Democratic Member
Committee on Natural Resources



Peter A. DeFazio
Ranking Democratic Member
Committee on Transportation and
Infrastructure



Jared Huffman
Ranking Democratic Member
Subcommittee on Water,
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John Garamendi
Ranking Democratic Member
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