



Department of Justice

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FLORIDA BASED SEAFOOD COMPANY SETTLES WITH THE UNITED STATES

*Pescanova, Inc. Failed to Comply with National and International Regulations Governing the
Importation and Exportation of Chilean Sea Bass*

[Albany, New York] United States Attorney Richard S. Hartunian announced today that his office has settled a civil action it brought against Pescanova, Inc. (d/b/a Pescanova USA), an international seafood company with offices in Coral Gables, Florida, based upon the company's exportation, and subsequent re-importation, of 9,600 pounds of Patagonian toothfish (also known as Chilean Sea Bass or *Dissostichus eleginoides*) on October 24 and December 15, 2010. As part of the settlement, Senior United States District Court Judge Lawrence E. Kahn issued a Consent Decree which authorized civil penalties, forfeiture and permanent injunctive relief against Pescanova. As part of the settlement, Pescanova will pay civil penalties totaling \$35,000.00, forfeit \$96,013.76, (the proceeds from the sale of the toothfish which were exported and re-imported) and the company is enjoined from committing similar violations in the future.

The Patagonian toothfish, an Antarctic Marine Living Resource ("AMLR"), is found in deep waters around Antarctica and the sub-Antarctic islands, as well as off the coast of Patagonia, a region in the southern part of Argentina and Chile. The United States is one of the largest and most lucrative markets for toothfish in the world. This fish is particularly susceptible

to the threats of illegal fishing because it is commercially valuable and, as a slow-growing species, reaches marketable size before reaching sexual maturity. There is concern that these characteristics make toothfish particularly vulnerable to serious population declines if its harvest and trade are not monitored and controlled. The United States is a party to the international Convention on the Conservation of Antarctic Marine Living Resources and a member of the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). CCAMLR has adopted binding conservation measures to address the conservation of Antarctic marine living resources, including the harvest and trade of toothfish. Members of CCAMLR are required to implement these binding measures with respect to their vessels and nationals. CCAMLR has implemented a Catch Documentation Scheme (“CDS”) designed to prevent and discourage the unlawful harvest and trade of toothfish by tracking toothfish from the point of harvest to the point of import for consumption. As part of the CDS, those authorized to harvest, import or export toothfish, must complete a Dissostichus Catch Document (“DCD”), a form which seeks specific information concerning the harvesting, importation and exportation of toothfish. In order to carry out its obligations with CCAMLR, including those related to the conservation of toothfish, the United States enacted the Antarctic Marine Living Resource Convention Act (“AMLRCA”). To implement the AMLRCA, the National Marine Fisheries Service (“NMFS”) promulgated regulations imposing various requirements on those who engage in the harvest and trade of toothfish and which are designed to help prevent illegal, unregulated, and unreported catches of toothfish. The Complaint, which was filed today in U.S. District Court in Albany, alleges that Pescanova did not comply with CCAMLR’s CDS, or with the United States’ implementing laws and regulations, when it failed to complete DCDs prior to exporting and re-importing toothfish in October and December of 2010.

Richard S. Hartunian, United States Attorney for the Northern District of New York, stated that “The United States has entered into a treaty with a number of nations and my office will enforce its provisions in this district. The treaty is designed to protect and preserve an Antarctic Marine Living Resource for which there is a concern that it will become extinct if its harvesting and trade are not monitored and controlled. It is important that we aggressively protect such species so that future generations are able to enjoy them.”

"NOAA continues to work cooperatively with the Department of Homeland Security Investigations, Customs and Border Protection, the Food and Drug Administration, and with other Nations," said Logan Gregory, special agent in charge of NOAA's Office of Law Enforcement's Northeast Division. "We do this to help ensure a level playing field in all sectors of the seafood industry."

The government’s Complaint alleges in part the following: Pescanova is a corporation with its principle place of business in Coral Gables, Florida that engages in the business of, among other things, importing and exporting seafood, including Patagonian toothfish. Sometime in July of 2010, Pescanova employees were trained by an employee of the National Oceanic and Atmospheric Administration (NOAA) concerning the trade requirements pertaining to Patagonian toothfish. Later that year, in October of 2010, Pescanova sold and transported 9,600 pounds of frozen Patagonian toothfish to a Canadian company from the United States through the Champlain, New York Port of Entry. The fish in question had been legally caught, and Pescanova had previously imported it into the United States from Argentina after filing the appropriate DCD with NOAA. Pescanova transported this toothfish to Canada without first completing an application for, and obtaining, the required validated export or re-export document (“Approval Action of Catch Documentation for Toothfish” form) issued by a NMFS designee.

When the toothfish were subsequently tested by officials from the Canadian Food Inspection Agency (“CFIA”), it was determined that they did not comply with CFIA’s standards for mercury. As a result, the fish could not be sold for consumption in Canada. On December 15, 2010, Pescanova arranged to have these fish transported from Canada to the United States through the Champlain Port of Entry. Once again, Pescanova did not first submit an application and obtain the required preapproval from the NMFS prior to importing these fish. The toothfish were seized by United States Customs and Border Protection officers on January 14, 2011, and eventually auctioned for \$96,013.76.

Under the terms of the settlement, Pescanova will pay a civil administrative penalty of \$22,000.00 to NOAA, a civil penalty of \$13,000.00 to the United States Department of Justice, and consents to the administrative forfeiture of the \$96,013.76 obtained from the sale of the 9,600 pounds of fish. In addition, Pescanova and its employees are permanently enjoined from importing, re-importing, exporting, or re-exporting Patagonian toothfish, or any other Antarctic marine living resources, unless they comply with the procedures promulgated by the CCAMLR and with the United States’ implementing laws and regulations. Pescanova agreed that in the event it imports, re-imports, exports or re-exports toothfish, or any other Antarctic marine living resources in violation of law or regulation, it will pay to the United States, upon the first violation, a civil contempt penalty of one hundred dollars (\$100.00) for each pound, or portion thereof, of toothfish, or any other Antarctic marine living resources it so imports or exports. For each successive violation, Pescanova will pay a contempt penalty of five hundred dollars (\$500.00) for each pound, or portion thereof, of toothfish or any other Antarctic marine living resources.

This matter is assigned to Assistant U.S. Attorney Thomas Spina Jr. News inquiries should be directed to Executive Assistant United States Attorney John Duncan [(315) 448-0672]. The investigation was conducted by agents with the United States Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), and officers with the United States Department of Homeland Security Investigations, Customs and Border Protection.