



April 12, 2016

Mr. Mark Wildman  
Office of International Affairs and Seafood Inspection  
NOAA Fisheries  
1315 East-West Highway  
Silver Spring, MD 20910

Submitted electronically at [www.regulations.gov](http://www.regulations.gov)

RE: Docket No. 150507434-5999-01 (NOAA-NMFS-2015-0122); Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program; 81 *Federal Register* 6210, February 5, 2016

Dear Mr. Wildman,

The National Fisheries Institute (NFI) has reviewed the proposed rulemaking for the Seafood Import Monitoring Program developed by NOAA Fisheries. On behalf of the members of NFI, we have enclosed our comments for your review.

Sincerely,

A handwritten signature in black ink, appearing to read "John Connelly".

John Connelly  
President  
National Fisheries Institute



**National Marine Fisheries Service  
Notice Of Proposed Rulemaking  
Seafood Import Monitoring Program  
81 *Federal Register* 6210  
(February 5, 2016)  
Docket No. 150507434-5999  
RIN 0648–BF09  
NOAA-NMFS-2015-0122**

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**Comments Of  
The National Fisheries Institute  
April 12, 2016**

## **Introduction**

The National Fisheries Institute offers these comments on the Notice of Proposed Rulemaking issued by the National Marine Fisheries Service on February 5, 2016. This proposal emerges from the 2015 proposal of the Presidential Task Force on Combatting IUU Fishing and Seafood Fraud (the “Task Force”). These comments build upon multiple comments provided in response to the Task Force proposal as described in several Task Force notices issued in 2015.

NFI has a long and consistent record of support for responsible Federal regulation of commercial seafood businesses. Whether on food safety, economic integrity and labeling, sustainability, or deterring and punishing IUU fishing, NFI and its member companies have been in the vanguard of commercial seafood businesses in supporting legislative and regulatory action – and in acting directly – to address genuine problems affecting consumers, ocean life, U.S. trading partners, and others impacted by industry practices. As detailed below, NFI was an early supporter of the Port State Measures Agreement. Indeed, an NFI employee was detailed for portions of time over a three-year period to assist the United States Department of State team negotiating the accord. In 2007, NFI established the Better Seafood Board to help ensure that NFI member companies and other industry stakeholders conduct business in strict adherence to Food and Drug Administration regulations concerning economic integrity. There can be no question of NFI’s *bona fides* when it comes to advocating for responsible regulation and oversight of the commercial seafood supply chain.

But NFI cannot support the poorly conceived seafood import monitoring program proposed by the National Marine Fisheries Service (“NMFS” or “NOAA Fisheries”) in this rulemaking. The Notice of Proposed Rulemaking (“NPRM”), which has been rushed into print in an artificial race against an artificial deadline, ignores nearly every single industry comment provided to the Task Force over the past 17 months. If implemented as proposed, the proposed rule will impose on NFI members reporting and compliance obligations ranging from costly to impossible. That will make the U.S. market less attractive to non-U.S. producers, and may cost some NFI importers their businesses, as overseas suppliers balk at the prohibitive costs of doing business with U.S. customers. The NPRM repeats and even exacerbates the worst features of the Task Force’s traceability proposal, proposing as a solution to IUU fishing the indiscriminate collection of trillions of bytes of data from lawful businesses, and a solution to economic integrity violations that will do nothing to reduce the seafood fraud that overwhelmingly takes place on U.S. shores – and that is already proscribed by current law.

In the process, the NMFS proposal risks international trade retaliation against the 1/3 of American seafood destined for an export market and contributes to a worrisome Federal trend of enforcing criminal law not by making a case against lawbreakers but rather through permanent, across-the-board regulatory mandates.

NFI opposes the entire proposal. NMFS should devote the agency’s energies to combating IUU fishing through aggressive, targeted enforcement, and to multilateral collaboration with the many seafood nations that are as equally committed to addressing this

serious problem as is the United States. Similarly, the Administration should commit itself to vigorous enforcement of existing Food and Drug Administration economic integrity requirements. Such efforts would go a long way towards addressing in the United States the legitimate problem that is IUU fishing and instances of fraud.

## **Facts**

### **I. The National Fisheries Institute.**

The National Fisheries Institute, a non-profit organization, is the oldest and largest organization exclusively focused on public policy issues affecting the American commercial seafood industry. Founded in 1947, NFI today represents hundreds of businesses across the country that are collectively involved in every facet of the industry.

NFI members range from boat owners, harvesters, and aquaculturists, to processors, importers, exporters, and distributors, to wholesalers, retailers, and restaurants, along with the transportation, financial, insurance, and consulting firms that aid and facilitate the seafood business. Many NFI members are small businesses, making NFI keenly aware of the impacts on small business of government regulatory policy in this and other issue areas. Those issues include food safety, economic integrity, nutrition policy, sustainability, and international trade. This last issue area is of particular importance to NFI and its members, as the modern seafood supply chain is both globalized and highly complex.

NFI recognizes that both IUU fishing and seafood mislabeling are legitimate challenges that governments around the world must address. For its part, NFI and its member companies have a long and consistent record of support for numerous public and private sector efforts to combat IUU fishing and initiatives to address seafood mislabeling and other economic integrity violations.

NFI supports the sustainable use of marine resources, to ensure consumers now and in the future have access to seafood. NFI in recent years:

- Has supported the United Nations Food and Agriculture Organization (“FAO”) Code of Conduct for Responsible Fisheries, and served as an industry advisor to ten of the past 11 U.S. delegations to the FAO Committee of Fisheries meetings.
- Has supported passage of the 2006 changes to the Magnuson-Stevens Act, including the requirement for NMFS designation of countries suspected of IUU.

- Provided initial organizational support for, and serves as a founding Board member of, the International Seafood Sustainability Foundation.<sup>1</sup>
- Served seven years on the Board of Trustees of the Marine Stewardship Council, the world's best-known private sector fisheries sustainability certification organization.
- Served for four years on the Department of Commerce Marine Fisheries Advisory Committee, the principal advisory group to the Secretary of Commerce with respect to all living marine resource matters within the Department's jurisdiction.
- Testified in support of the sustainability and health of U.S. wild-caught fish stocks and praised the central role played by NMFS in that success, before a 2013 hearing of the Senate Commerce Oceans Subcommittee.<sup>2</sup>

NFI commitments in many cases have been targeted directly at addressing IUU fishing. For example, NFI:

- Detailed, from 2006 to 2009, a senior staff member for portions of the next three years to serve as a technical advisor to the Department of State delegation representing the United States in the negotiations that led to the Port State Measures Agreement later signed by the President and ratified by the United States Senate.
- Consistently supported ratification of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, which implements the Port State Measures Agreement.<sup>3</sup>

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<sup>1</sup> The ISSF is comprised of environmental NGOs, 24 major U.S. and European tuna harvesters and processors, and select retailers, all of which came together in 2009 to develop sustainability actions aimed at assuring the health of highly migratory yellowfin, skipjack, albacore, and other tuna stocks. These companies' ISSF commitments apply to about 70 percent of the global tuna harvest. The World Wildlife Fund – like NFI a founding member of ISSF – has characterized the group's work as “an unprecedented breakthrough” in seafood sustainability. Drew Cherry, “WWF: Tuna sector making huge strides toward sustainability,” *IntraFish* (Feb. 3, 2015) (quoting Mr. William Fox of WWF).

<sup>2</sup> Statement of John Connelly, “The Role of Certification in Rewarding Sustainable Fishing,” Senate Committee on Commerce, Science, and Transportation Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard (Sept. 23, 2013) (stating that “because this peer-reviewed system of U.S. management is so robust, NFI believes that any fish managed under MSA's 10 National Standards are sustainable”) (<https://www.commerce.senate.gov/public/cache/files/6f42b8fd-8b18-45ab-a8b0-5457ae018759/8869EBCF77A871D28E9C2C768CFBE809.connelly-testimony.pdf>).

<sup>3</sup> Public Law No. 114-81 (Nov. 5, 2015).

- Has encouraged NFI members to ensure purchases are solely from vessels with an International Maritime Organization (“IMO”) number, and, to that end, is developing model specification language for inclusion in seafood purchasing contracts, to ensure IMO numbers are an essential part of any supply agreement.

Specific to traceability, NFI:

- Was an early supporter of the most significant food safety legislation in recent decades – the Food Safety Modernization Act (“FSMA”) – including its food safety traceability requirements.<sup>4</sup>
- Engaged with GS1, prior to FSMA enactment, to ensure the seafood industry had a food safety traceability program that mirrors accepted programs in the meat, poultry and fruit and vegetable industries.<sup>5</sup>
- Supported financially, and served as an advisor to, the Institute of Food Technologists’ Global Food Traceability Center.

With respect to seafood fraud and the broader category of economic integrity requirements, NFI has been a leader over the last decade, both as to public policy and as to entirely private sector initiatives. NFI’s many actions in this area have included:

- Creating, in 2007, the Better Seafood Board (the “BSB”), a unique food industry initiative through which NFI member CEOs commit to economic integrity by selling seafood in the proper weight and count; assuring it has the proper name; making certain it has not been transhipped to circumvent duties and tariffs; and utilizing proper labels for any additives.

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<sup>4</sup> Public Law No. 111-353 (Jan. 4, 2011). *See* Statement of Senator Richard J. Durbin, 155 Cong. Rec. S2693 (Mar. 3, 2009) (“I also want to thank the consumer, public health, and industry groups who have helped us craft a strong bill for their support: Consumer Federation of America, Center for Science in the Public Interest, Consumers Union, Trust for America’s Health, Grocery Manufacturers of America, American Feed Industry Association, American Frozen Food Institute, National Fisheries Institute, and the American Spice Trade Association.”).

<sup>5</sup> GS1 is a nonprofit firm focused on sector-specific information related to network or supply chain-driven industries. For seafood in particular, NFI has partnered with GS1 to develop protocols that will enable product and location accuracy, enable data-sharing among different links in the value chain, and help ensure accurate and rapid food safety recalls when necessary.

- Encouraging institutional seafood buyers with unresolved complaints about potential fraud concerns to contact the BSB hotline.
- Assisting the U.S. Department of Justice (“DOJ”) in securing an expert witness in a major species substitution prosecution under the Lacey Act.
- Repeatedly urging FDA to enforce existing economic fraud laws, emphasizing the “broken window” theory that a company willing to cheat on fraud areas is probably willing to take short cuts in other areas, such as food safety.
- Seeking directive appropriations language from Congress, instructing FDA to vigorously enforce its economic integrity requirements against seafood industry scofflaws.
- Sponsoring academic research on the economic cost to buyers of short-weighted seafood nationwide.
- Suggesting and then sponsoring a forum of states’ weights and measures departments, NOAA, FDA, U.S. Customs and Border Protection (“CBP”), the National Institute of Standards and Technology, DOJ and other federal agencies to discuss means to combat economic fraud.
- Supporting a 2012-2013 investigation in 17 states of potential short-weighting of seafood.
- Reporting any offers of short weight or mislabeled products (involving imported seafood) to a country’s embassy and exporting association, urging them to address the issue in-country.
- Highlighting the importance of adherence to U.S. labeling laws in speeches at major global seafood conferences outside the U.S., numerous domestic seafood and food safety conferences, and in informal conversations with seafood CEOs in the US, Europe and Asia.
- Proposing changes to FDA’s model Food Code to specifically define misidentification of seafood species as a violation.
- Concluding a Memorandum of Understanding with the National Restaurant Association to assist national and local restaurants to ensure seafood is labeled properly on their menus.

This list of commitments and actions demonstrates a genuine and long-term commitment to support initiatives aimed at combating IUU fishing and detecting and deterring seafood fraud and other unfair business practices.



## **II. The Presidential Task Force On Combating IUU Fishing And Seafood Fraud.**

### **A. Establishment Of The Task Force.**

The Task Force was established on June 17, 2014 via a “Presidential Memorandum – Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” The Presidential Memorandum formed the Task Force as a subcommittee reporting to the National Ocean Council, pursuant to the Executive Order that created the National Ocean Council.<sup>6</sup> This Memorandum named the Departments of State and Commerce as co-chairs of the group and listed 11 other Executive agencies as participants. The Memorandum emphasized that the United States “is a global leader in sustainable seafood” and that “the U.S. management scheme is recognized internationally as a model for other countries as they work to end overfishing.”

The Memorandum further stated:

It is in the national interest of the United States to promote a framework that supports sustainable fishing practices and combats seafood fraud and the sale of IUU fishing products. To achieve these objectives, the United States will need to enhance the tools it has available to combat IUU fishing and seafood fraud, including by implementing the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; strengthening coordination and implementation of existing authorities to combat IUU fishing and seafood fraud; working with the Congress to strengthen and harmonize the enforcement provisions of U.S. statutes for implementing international fisheries agreements; and working with industry and foreign partners to develop and implement new and existing measures, such as voluntary, or other, traceability programs, that can combat IUU fishing and seafood fraud, and ensure accurate labeling for consumers.

The Memorandum declared the Task Force’s twin objectives to be “ensur[ing] that seafood sold in the United States is legally and sustainably caught and [combating] the negative impacts of seafood fraud on the United States.” Section 4(a) defined the Task Force’s priorities in developing recommendations to meet these objectives:

The Task Force should consider a broad range of strategies, including implementation of existing programs, and, if appropriate, development of new, voluntary or other, programs for seafood tracking and traceability. In providing these recommendations, the Task Force shall identify:

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<sup>6</sup> Executive Order 13547, “Stewardship of the Ocean, Our Coasts, and the Great Lakes.”

- (i) existing regulatory authorities and make recommendations regarding further authorities that may be warranted;
- (ii) enforcement best practices and challenges;
- (iii) benefits provided by such a framework, as well as potential impacts on the U.S. fishing industry;
- (iv) opportunities to address these issues at the international level through the regional fisheries management organizations as well as bilateral efforts, such as technical assistance and capacity building;
- (v) priority actions that will be taken by agencies, including strengthening coordination between Federal, State, local, and foreign agencies; and
- (vi) industry approaches that contribute to efforts to combat IUU fishing and seafood fraud, including with respect to seafood traceability and ways to minimize any costs and reporting burdens on small businesses.

The Memorandum directed the Task Force to develop by December 17, 2014 recommendations in furtherance of these goals.<sup>7</sup>

## **B. The Task Force's Proposals.**

The Task Force on July 31, 2014 issued a *Federal Register* Notice reprinting the Presidential Memorandum, soliciting comments in response to 11 questions concerning the challenges of IUU fishing and seafood fraud in general, and establishing a schedule of public meetings. The questions included the following: “What existing authorities and tools should be enhanced to combat IUU fishing and seafood fraud?” “What existing authorities should be better coordinated or streamlined to strengthen and harmonize enforcement provisions of U.S. statutes for implementing international fisheries agreements?” “What opportunities are there, whether existing or new, to work with industry and other partners, including foreign partners, to develop and implement measures such as traceability programs?”<sup>8</sup>

Four public meetings took place in August 2014.<sup>9</sup> NFI participated in the August 28, 2014 public meeting.

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<sup>7</sup> Id., at Section 4(a).

<sup>8</sup> 79 Federal Register at 44404.

<sup>9</sup> Id., at 44405.

On September 2, 2014, NFI submitted comments to the Task Force. NFI's comments attempted to answer the Task Force's questions, and argued that:

- Only about 11 percent of U.S. consumption is even *possibly* illegally fished, once well-managed U.S. wild-caught fish, similarly sustainable wild-caught tuna imports (with emphasis on the work of ISSF), and imported *farmed* fish – which by definition cannot be illegally *caught* – are excluded. Thus, the Task Force “should carefully analyze data on what Americans eat, from where Americans source their seafood, and what the likely scale of IUU fish in the U.S. market might be before developing recommendations that will impact the full U.S. seafood sector. Defining the scope of the IUU challenge *in the U.S. market* is an essential first step for the Task Force.”<sup>10</sup>
- The U.S. government already has numerous laws, regulations, and policy tools available to combat IUU fishing, and to detect and punish seafood mislabeling and other economic integrity violations, including: the Lacey Act; IUU-specific provisions of the Magnuson-Stevens Act (the “MSA”); the Port State Measures Agreement, as implemented; two different Federal country of origin labeling schemes; the Federal Food, Drug, and Cosmetic Act (“FFDCA”), the FDA Seafood List; ongoing FDA sampling for species substitution; new food safety traceability requirements under the Food Safety Modernization Act (“FSMA”), and additional FSMA authorities, among others – in addition to several non-U.S. requirements and initiatives.<sup>11</sup>
- So-called “bait to plate” traceability requirements will be difficult for industry to implement in numerous fisheries, particularly if the information collected must be traced back to individual vessels in fisheries where hundreds or even thousands of boats are involved and where fish is mingled together almost immediately following landing. Rather than intricate traceability requirements, what matters for sustainability is that the applicable *system of fisheries management* be effective, workable, and enforced. Helping maintain and improve those systems around the world should be a central Task Force recommendation.<sup>12</sup>

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<sup>10</sup> NFI Comments, at 8-9 (Sept. 2, 2014) (attached as Attachment A).

<sup>11</sup> *Id.*, at 11-18 and 24-28.

<sup>12</sup> *Id.*, at 18-21.

On December 18, 2014, the Task Force announced 15 recommendations. These recommendations fell into four categories: “Enhance International Collaboration,” “Strengthen Enforcement,” “Build Global Partnership,” and “Establish Risk Based Traceability.”<sup>13</sup>

Recommendations 14 and 15 form the basis of the NOAA Fisheries NPRM:

[Recommendation 14:] Direct the Task Force, with input from U.S. industry and other stakeholders, to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce.

[Recommendation 15:] Direct the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into U.S. commerce.<sup>14</sup>

NFI’s January 20, 2015 comments in response to the Task Force recommendations repeatedly noted that the Task Force had not quantified or analyzed the scope of the IUU challenge in the U.S. market. NFI argued that moving forward with Task Force recommendations related to IUU fishing – in particular any traceability requirement – without first accurately diagnosing the nature and extent of IUU fishing as it pertains to fish consumed in the U.S., would burden legitimate business without reducing illegal harvesting.<sup>15</sup>

On March 15, 2015, the Task Force issued an “Action Plan for Implementing the Task Force Recommendations.” In its Action Plan, the Task Force established a series of implementing steps for each recommendation, and identified a lead Task Force agency to carry out those steps, often by a specific date. There was no opportunity to comment on the Action Plan.<sup>16</sup>

Following release of the March Action Plan, the Task Force issued a series of proposals concerning recommendations 14 and 15. These proposals took the form of four *Federal Register* Notices from April 30 through October 30, 2015. In them, the Task Force: listed seven Principles by which seafood items would be determined to be “at risk” for IUU fishing and seafood fraud (and thus subject to the traceability mandate); deemed a group of 16 seafood species at risk for IUU fishing, seafood fraud, or both (selected from a list of 54 items); finalized

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<sup>13</sup> The December 2014 Recommendations are attached as Attachment B.

<sup>14</sup> *Id.*, at 36-37.

<sup>15</sup> NFI’s January 20, 2015 comments are attached as Attachment C.

<sup>16</sup> The Task Force Action Plan is attached as Attachment D.

the at risk list; identified specific data elements to be reported; proposed requiring such information to be provided to the Federal Government as a condition of entry into the United States; defined the program to apply solely to imported seafood; and identified the CBP International Trade Data System as the repository to which collected data must be uploaded.

The at-risk process and results and proposed data elements are of particular interest here. With respect to the at-risk designations, the Task Force identified seven Principles to provide a basis for its choosing seafood vulnerable to IUU fishing or mislabeling:

1. Enforcement capability;
2. Catch document scheme;
3. Complexity of the chain of custody and processing;
4. Species substitution;
5. Mislabeling;
6. History of violations; and
7. Human health risks, i.e., whether species substitution or other economic integrity violation creates a food safety risk for consumers.<sup>17</sup>

The Task Force then applied these Principles to a total of 54 seafood items – 46 initially and then eight more subsequently.

The initial 46 items considered for at risk status were: “Abalone; Billfish (Marlins, Spearfishes, and Sailfishes); Catfish (Ictaluridae); Cod, Atlantic; Cod, Pacific; Crab, Blue; Crab, Dungeness; Crab, King; Crab, Snow; Dolphinfish (Mahi Mahi); Oyster; Grouper; Haddock; Halibut, Atlantic; Halibut, Pacific; Lake or Yellow Perch; Lobster; Mackerel; Menhaden; Opah; Orange Roughy; Red Drum; Red Snapper; Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallop; Sea bass; Sea cucumber; Shrimp; Sharks; Sole; Squid; Sturgeon caviar; Swordfish; Tilapia; Toothfish; Tunas (Albacore, Bigeye, Bluefin, Skipjack, Yellowfin); Wahoo; Walleye (Alaskan) Pollock; and Pacific Whiting.” Then, “based on public comments received on the draft list of at-risk species, the following eight additional species/species groups were also analyzed according to the Principles described above: Anchovies; Eels; Flounder (Southern and Summer); Octopus; Queen Conch; Weakfish; Skates and Rays.”<sup>18</sup>

From this group of fish – its “base list” – the Task Force deemed 15 to be at risk of IUU fishing and seafood fraud: abalone; Atlantic cod; Pacific cod; grouper; King crab; mahi-mahi;

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<sup>17</sup> 80 Federal Register at 45956.

<sup>18</sup> 80 Federal Register at 66869.

red snapper; sea cucumber; shrimp; sharks; swordfish; albacore tuna; bigeye tuna; skipjack tuna; and yellowfin tuna. Blue crab was deemed at risk for seafood fraud only.<sup>19</sup>

The Task Force refused to publish or otherwise provide access to the data allegedly utilized to make the at-risk determinations and stated: “Detailed presentation of the data considered by the Working Group and its deliberations is protected from disclosure because of data confidentiality and enforcement implications.”<sup>20</sup> The Task Force cited to no law or regulation authorizing this decision.

The data elements to be required from reporting companies, as proposed in the July 1 Task Force Notice, were as follows:<sup>21</sup>

#### Wild-Capture Products

1. Name of harvesting vessel
2. Flag state of harvesting vessel
3. Name of processor
4. Name of gear types
5. Information about primary and secondary processors who maintain custody of the shipment prior to entering the U.S.
6. Species of fish
7. Product of description
8. 3 different names of product (FDA market name, “common” name, and scientific name)
9. Form of the product
10. Quantity and/or weight of the product
11. Area of wild-capture harvest
12. Country of Origin
13. Harvest date(s)
14. Point of first landing
15. Date of first landing
16. Transshipment of product
17. Processing, re-processing or comingling of product

#### Farm-Raised Products

1. Name of farm or aquaculture facility
2. Name of processor
3. Area of aquaculture harvest
4. Information about primary and secondary processors who maintain custody of the shipment prior to entering the U.S.
5. Species of fish
6. Product of description
7. 3 different names of product
8. Form of the product
9. Quantity and/or weight of the product
10. Date of aquaculture harvest
11. Country of Origin
12. Transshipment of product
13. Processing, re-processing or comingling of product

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<sup>19</sup> 80 Federal Register at 66870-66871.

<sup>20</sup> 80 Federal Register at 66870.

<sup>21</sup> 80 Federal Register at 37601-37602.

The Task Force applied this reporting obligation solely to imports, including imports harvested domestically, exported for reprocessing, and then shipped back to the U.S.<sup>22</sup>

By the end of October 2015, the Task Force had confined the scope of the traceability program to imports only; used a finalized set of criteria for “at risk” fish to select the 16 at-risk seafood imports to which the program would apply; finalized the data elements to be collected and reported as a condition of entry of the at-risk items into the United States; and proposed a data reporting process using the International Trade Database System (“ITDS”) operated by U.S. Customs and Border Protection.

NFI’s April, July, and September 2015 comments in response to these Notices focused on several major themes. NFI urged the Task Force to provide full access to the data underlying the at-risk process and determinations. NFI argued that, because many at-risk fish are produced in substantial amounts by only a handful of countries, deeming a particular fish “at-risk” for illegal fishing or seafood fraud is no different than alleging that those countries are complicit in widespread illegality. Such allegations should be substantiated and not made without supporting evidence.

With respect to operational and cost impacts, NFI contended that obtaining and collecting the required data from many fisheries will impose severe costs on many fisheries dependent on aggregation of product and related supply chain efficiencies. Specific to fraud, NFI pointed out that because seafood mislabeling occurs in the United States *post-importation*, collecting traceability data from overseas producers at the U.S. port of entry will do nothing to address seafood fraud. Instead, Federal agencies and in particular the FDA should aggressively enforce the economic integrity requirements for which FDA is the lead agency. More generally, NFI argued that the Task Force had made no showing of how sweeping up voluminous information about legitimate seafood trade will improve anti-IUU and economic integrity outcomes currently achieved by U.S. agencies under existing law. Lastly, NFI urged the Task Force to be mindful of international trade rules and the potential for trade retaliation against U.S. seafood exports, in response to what trading partners will view as a discriminatory regulatory mandate that threatens their access to the U.S. market.<sup>23</sup>

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<sup>22</sup> Id., at 37601.

<sup>23</sup> NFI’s June 8, 2015, July 31, 2015, and September 11, 2015 comments submitted to the Task Force are attached as Attachments E, F, and G.

**C. The February 5, 2016 NMFS Proposed Rulemaking.**

With only very minor modifications, the NPRM published on February 5 *is* the Task Force traceability proposal as presented in October 2015. In the proposed rule, NMFS:

- Establishes a Seafood Import Monitoring Program encompassing virtually the same data elements as those contained in the July 31 Task Force Notice;
- Applies the program to 17 seafood items deemed at risk for IUU fishing and/or seafood fraud (adding bluefin tuna to the 16 items from the October 30 Task Force Notice);<sup>24</sup>
- Limits the program to imported seafood, including U.S.-harvested seafood sent overseas for processing and re-shipment to the United States;
- Requires reporting companies to enter the required data to the ITDS; and
- Again omits all data allegedly utilized by the Task Force in 2015 to select the at-risk seafood subject to the NPRM's requirements.

Because the at-risk list is with one exception unchanged from the October 30 Task Force list, and because the NPRM does not articulate its own at-risk criteria, it is safe to assume that NOAA Fisheries relied on the Task Force's seven Principles in making the at-risk designations.<sup>25</sup>

The rule does add requirements beyond the Task Force proposal. The rule creates a new permitting requirement – the International Fisheries Trade Permit (“IFTP”) – through which the agency plans to enforce the reporting obligations the rule creates. This obligation would subject reporting companies to criminal prosecution and civil liability for incomplete or incorrect information, or for importing at-risk product without a valid IFTP. The rule also requires reporting companies to retain for five years chain of custody documentation that is associated with at-risk imports but is not included in the reportable data elements. The rule adds a data element in the form of an FAO-generated Aquatic Sciences and Fisheries Information System

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<sup>24</sup> The Task Force added bluefin tuna to the list of species subject to reporting, because “[w]hile NMFS continues to view the bluefin tuna to be at considerably lower risk of IUU fishing and seafood fraud than other tuna species and has made no modification to the list of at-risk species published on October 30, it proposes to cover bluefin tuna in this proposed rule (and has therefore included the HTS codes for bluefin tuna in the above list) in order to establish consistent treatment of tuna species, and avoid possible concerns that one species of tuna may be treated less favorably than others.” 81 Federal Register at 6213.

<sup>25</sup> 81 Federal Register at 6213.



(“AFSIS”) number. No explanation is offered as to how this number will assist NOAA Fisheries in detecting either IUU fishing or seafood mislabeling at the ports of entry.<sup>26</sup>

Three “model” forms accompanied the February 5 rule which NMFS urge importers to use in their ITDS reporting.<sup>27</sup> These forms respectively relate to harvest and landing; primary and secondary processing; and transshipment and storage. They purport to capture the required data elements for reporting and chain of custody records for retention, as outlined by the NPRM. Each “harvest event,” such as a fishing boat going out to fish for a day and landing its catch, corresponds to an individual, completed harvest and landing form.

A Draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis (“Draft Regulatory Review”) also accompanied the February 5 rule. The document describes the options considered by NMFS in addition to the Seafood Import Monitoring Program as proposed. It estimates the costs of obtaining an IFTP. It also examines current reporting requirements for non-U.S. seafood exports to European Union nations. The Draft Regulatory Review concludes that “impacts of the proposed action on trade (import volume) and prices for the affected seafood products are expected to be [sic] minor,” especially considering that many seafood exporters are “already compliant with the E.U. program.”<sup>28</sup> Beyond consideration of the cost to importers of an annual IFTP, the Draft Regulatory Review contains no benefit-cost financial data or estimates.<sup>29</sup>

On February 19, 2016, NMFS filed in the docket for this rulemaking a document entitled, “NMFS ITDS Implementation Guidelines for proposed Seafood Traceability Program Only PGA Message Set and Document Imaging System Submissions to ACE.”<sup>30</sup> According to NMFS, the document “is provided as part of the publication of the proposed rule for the purpose of providing the public with information on what the implementation guides may likely or may potentially include upon implementation of the final rule. This document is the draft guideline for only the proposed Seafood Traceability Program.”<sup>31</sup>

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<sup>26</sup> Id., at 6217.

<sup>27</sup> Id., at 6213.

<sup>28</sup> Draft Regulatory Review, at 6. The NPRM states that the “EU’s IUU regulations do not include a traceability scheme equivalent to that as contemplated by the IUU Task Force and as proposed in this rule.” 81 Federal Register at 6218.

<sup>29</sup> Id., at 5.

<sup>30</sup> Docket No. NOAA-NMFS-2015-0122-0006 (the “Draft Implementation Guidelines”).

<sup>31</sup> Id., at 1.

The NPRM states that the final rule will be issued in September 2016.<sup>32</sup> NMFS proposes a phase-in period, following effectiveness of the final rule, of between 90 days and 12 months. In the rule's preamble, NMFS emphasizes that the Administration will assess the worth of applying the new monitoring program to all imported seafood, and by December 2016 will provide a recommendation on such an expansion.<sup>33</sup> Because, according to the NPRM itself, the final rule in this rulemaking will not be issued until September 2016, and because the rule's requirements will not be legally binding until at least 90 days after that, this means that the Administration will decide whether to dramatically expand the monitoring program prior to, and perhaps months before, full implementation of the monitoring program envisioned in the February 5 proposal.

NMFS held four public sessions regarding the proposed rule, on February 18, February 24, March 7, and March 18, 2016.<sup>34</sup>

On March 31, 2016, NMFS extended the comment period for the NPRM for seven days, to April 12, 2016.<sup>35</sup>

### **Argument**

#### **I. THE NMFS PROPOSAL WILL IMPOSE SUBSTANTIAL COSTS ON THE INTERNATIONAL SEAFOOD SUPPLY CHAIN, WITH NO SHOWING THAT THE REPORTED DATA WILL LEAD EITHER TO REDUCED IUU FISHING OR SEAFOOD MISLABELING.**

The above discussion makes plain that NFI registered opposition to the Task Force traceability proposal at every opportunity between September 2014 and October 2015. That proposal did not include analysis of costs and other compliance burdens. As formal rulemaking, by contrast, the NMFS proposal here is subject to multiple statutory burdens, including an

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<sup>32</sup> 81 Federal Register at 6218.

<sup>33</sup> 81 Federal Register at 6211.

<sup>34</sup> Note that the February 18, 24 and March 7 public sessions were announced in the Federal Register; the March 18 session was added at a later date without public announcement.

<sup>35</sup> 81 Federal Register at 18558.

obligation to measure the costs that the proposal will create for the seafood industry and in particular to assess how the Import Monitoring Program will impact small seafood businesses. Thus the discussion below: (i) explains the flaws in the estimates offered by NMFS; and (ii) provides several detailed examples of the magnitude of the costs the Program in fact will compel affected businesses to bear.

#### **A. The Cost Estimates Developed By NOAA Fisheries.**

Regrettably, NMFS woefully underestimates the burdens the Program will impose on the seafood supply chain. The agency estimates that the annual information collection burden for the proposed recordkeeping and reporting requirements to be an additional 18,542 hours and \$278,130.<sup>36</sup> As detailed in the document, *Supporting Statement; NMFS Implementation of Seafood Traceability Program*,<sup>37</sup> these costs are the collected estimates for obtaining the IFTP, electronically submitting the required datasets to CBP to determine admissibility (for the 175,000 shipments of seafood annually imported to the United States), submitting admissibility documents (for the 175,000 shipments of seafood annually imported to the United States), and providing chain of custody documentation upon request for an audit.

NMFS estimates that the new regulatory requirements will have the following impact:

- 2,000 respondents at 5 minutes to fill out the online IFTP form for a total annual burden of 167 hours at a labor cost of \$2,500@ \$15/hour.
- 175,000 responses at 1 minute per response for the data set submission requirement for a total burden of 2,917 hours at a labor costs of \$43,750@ \$15/hour.
- 175,000 responses at 5 minutes per response for submitting admissibility documents for a total annual burden of 14,583 hours at a labor cost of \$218,750@ \$15/hour.<sup>38</sup>
- 1,750 responses at 30 minutes per response to locate and scan/fax records requested for a chain of custody audit for a total annual burden of 875 hours at a labor cost of \$13,125@ \$15/hour.

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<sup>36</sup> 81 Federal Register at 6221.

<sup>37</sup> ICR Reference No: 201602-0648-003. See the link:  
[http://reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201602-0648-003](http://reginfo.gov/public/do/PRAViewDocument?ref_nbr=201602-0648-003).

<sup>38</sup> The description for this activity – submitting admissibility documents – implies that importers will be required to submit documentation such as “catch documents” through the Document Image System of ACE. This is not apparent in the regulatory language in proposed 50 CFR 300.324.

*These estimates, in particular the time necessary to gather and provide the data set submission requirements, are grossly inaccurate and empirically unsupported.*

NMFS estimates that number of elements to be entered electronically in the data set is few (between 5-10 items).<sup>39</sup> This is inconsistent with NFI's understanding of the proposed reporting elements, the Model Catch Certificate provided by the agency, or with statements made by NMFS officials during the outreach webinars.

Proposed 50 CFR 300.324 would require the following data elements be reported for each entry of an at-risk species:

Wild Harvest – at least 16 data elements

- Name of harvesting vessel(s)
- Flag state of harvesting vessel(s)
- Evidence of authorization of harvesting vessel(s)
- Unique vessel identifier(s) (if available)
- Type(s) of fishing gear
- Species of fish - scientific name
- Species of fish - acceptable market name
- Species of fish - ASFIS number
- Product description(s)
- Name of product(s)
- Quantity and/or weight of the product(s)
- Area(s) of wild-capture
- Date(s) of harvest or trip(s)
- Point(s) of first landing
- Date(s) of first landing
- Name of entity(ies) (processor, dealer, vessel) to which fish was landed.

Farm Raised – at least 13 data elements

- Name(s) of farm or aquaculture facility.
- Species of fish - scientific name
- Species of fish - acceptable market name
- Species of fish - ASFIS number
- Product description(s)
- Name of product(s)

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<sup>39</sup> NMFS Implementation of Seafood Traceability Program at 5:  
[http://reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201602-0648-003](http://reginfo.gov/public/do/PRAViewDocument?ref_nbr=201602-0648-003).

- Quantity and/or weight of the product(s)
- Area(s) of aquaculture location
- Date(s) of harvest
- Location of aquaculture facility
- Point(s) of first landing
- Date(s) of first landing
- Name of entity(ies) (processor, dealer, vessel) to which fish was landed.

Further, the NMFS NPRM states that “[s]ome entries may comprise products from more than one harvest event and each event relevant to the shipment must be documented.”<sup>40</sup> This correlates with the convention of using “(s)” in certain data element descriptors to signify that more than a single entry could be required. For example, an entry would need to include the name of a single vessel if only one harvesting vessel provided the fish for that entry or the name of the harvesting vessels if more than one vessel provided the fish for that entry. This understanding was confirmed during the Task Force’s February 18, 2016 webinar. When asked if the agency would be prepared to accept data sets for one entry line that may have data from many different harvesters, NMFS leadership responded thusly:

You're absolutely correct that in the case of batch processing of Tuna, a particularly entry line may have associated catch documents from several different harvest events -- in fact I think the record of a particular import is 70 different harvest events were included in Form 370 -- so for a single shipment. So we do anticipate that and just to be clear -- we're not asking that each individual -- let's say [can] -- has to be traced back to an individual harvest event. ***But the shipment should contain all of the descriptors for the harvest events that contribute to that shipment.***<sup>41</sup>

This response, along with the regulatory convention of using “(s)” to designate that more than one element could be entered, contradicts the statement that only a few (5-10) data elements will be required. NFI also notes the more mundane fact that, although NMFS suggests in its *Supporting Statement* that reporting companies will only report 5-10 data elements, the proposed rule itself mandates 13-16 data elements.

Further contradiction of the agency’s estimate is demonstrated in the Model Catch Certificate provided as an example form that importers are encouraged to use to collect the

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<sup>40</sup> Id., at 6222.

<sup>41</sup> See the transcript of NMFS Webinar: Proposed Rule on a U.S. Seafood Traceability Program at 22-23, February 18, 2016: [http://www.iuufishing.noaa.gov/Portals/33/transcript\\_traceability%20webinar%202-18-16.pdf](http://www.iuufishing.noaa.gov/Portals/33/transcript_traceability%20webinar%202-18-16.pdf). (emphasis supplied).

required data elements. This form includes 19 distinct data elements, including several – address, telephone and email address of the company receiving the fish from the harvester; trip number; unique vessel identifier; and two additional product weight fields – that are not even formally proposed as required data elements.

The unrealistic nature of these cost estimates appears to be driven by an assumption that in many fisheries the supply chain is streamlined, with a trawler or other vessel harvesting fish, all of which is sent to one processor, and all of that which is processed is then sent solely to the U.S. market. Though such assumptions may make a cost justification for the proposed rule seem reasonable, they demonstrate little understanding of the global nature of seafood harvests, processing, and markets.

## **B. Three Illustrations Of Actual Costs Associated With Harvest, Processing And Shipment Of “At-Risk” Fish.**

NFI has calculated cost burdens for certain at-risk species, arriving at numbers exponentially higher than the cost burdens published by NMFS. These calculations more accurately reflect how commercial seafood is actually caught, processed, and then shipped to the United States; and realistically capture costs associated with each shipment. The examples of these three fish could be replicated for other at-risk species, and are provided as a demonstration of the lack of NMFS recognition of the complexities of seafood trade.

### **1. Mahi-Mahi From Ecuador.**

Tens of thousands of small fiberglass boats, called pangas, make up the fishing fleet in Ecuador.<sup>42</sup> The holding capacity of the pangas is approximately 1,200 pounds of fish. Harvest volumes range from 200-1,200 pounds total weight of all species caught on a given day.

These boats not only catch mahi-mahi but also tuna, swordfish, wahoo, shark, and snapper, often during the same harvest day. The boats are “day boats,” as each trip is one day long. The pangas either: (i) land at remote beaches and sell their fish to consolidators (who then sell the fish to processing facilities); or (ii) consolidate their daily catch at “mother vessels” that bring the fish back to port and sell to processing facilities. The fish from 2-4 harvest days from multiple harvest boats may be collected, for instance by consolidators, and held until there is sufficient product to be transported to processing facilities. This results in the aggregation of fish from multiple boats from multiple harvest days. Each day of harvest by each boat would constitute a harvest event, in the context of the NPRM.

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<sup>42</sup> Nicaragua, Guatemala, Panama and Peru have similar small fishing vessel fleets.

When mahi-mahi is processed for export to the U.S., multiple product forms are generated from a single fish. The whole fish is filleted, then cut into “fletches,” which in turn are cut into different sized portions based on customer specifications, such as 8 ounce, 6 ounce, 4 ounce, and by-product and off-cuts of 2-4 ounce and under 2 ounce pieces. As a result, a single fish may provide portions for multiple different customers/shipments to the U.S. Processing whole mahi-mahi into portions yields about 35 percent useable portioned product, i.e., 35 percent of a whole fish is converted into useable fish. The remaining 65 percent of the whole fish is bones or other parts unusable for human consumption.

A full container of mahi-mahi shipped to the U.S. is 44,000 pounds. Even if each panga were assumed to land only mahi-mahi, and even if all the mahi-mahi were to go in a single container to a single customer with an open specification that includes all portion sizes, the ITDS entry must include the required 16 data elements for each of 105-628 harvest events, depending on the size of each harvest:

200 pounds per harvest event	1,200 pounds per harvest event
70 pounds of useable mahi-mahi portions per harvest event (35 percent yield x 200 pounds = 70 pounds)	420 pounds of useable mahi-mahi portions per harvest event (35 percent yield x 1,200 pounds = 420 pounds)
44,000 pounds per shipping container	44,000 pounds per shipping container
628 harvest events per container (44,000 pounds ÷ 70 pounds = 628 harvest events)	105 harvest events per container (44,000 pounds ÷ 420 pounds = 105 harvest events)

But that is a highly unlikely scenario. More realistically, a customer would purchase only a specific size portion in a retail bag. A full container of 6 ounce mahi-mahi portions requires an entry with the 16 data elements from each of 279-1,676 harvest events, depending on the size of each harvest:

200 pounds per harvest event	1,200 pounds per harvest event
26.25 pounds of useable mahi-mahi portions per harvest event (35 percent yield x 200 pounds x 37.5 percent yield of 6 ounce portions in fletch = 26.25 pounds)	157.5 pounds of useable mahi-mahi portions per harvest event (35 percent yield x 1200 pounds x 37.5 percent yield of 6 ounce portions in fletch = 157.5 pounds)

44,000 pounds per container	44,000 pounds per container
1,676 harvest events per container (44,000 pounds ÷ 26.25 pounds = 1,676 harvest events)	279 harvest events per container (44,000 pounds ÷ 157.5 pounds = 279 harvest events)

Thus, it will require from 105 to 1,676 harvest events to fill a single container of mahi-mahi. Each one of these harvest events requires full documentation of all required data elements. If the pangas are harvesting multiple species of fish, thus lessening the mahi-mahi harvest amount per harvest day, additional harvest days will necessitate more data elements, complicating matters further.

## 2. Blue Crab from Mexico.

A similar scenario can be described for blue crab harvested from Mexico.

Small day boats harvest approximately 60 kilograms of blue crabs per trip. The crabs are sold to receiving stations, where they are cooked, the meat is removed, and different product forms are separated. The meat from an individual crab can end up in four different product forms: lump, backfin, special, or claw. Lump meat is further sorted by size. A single 60 kilogram harvest therefore can provide meat for seven or more different product forms. Cooking and removing meat from the crabs yields 25 percent useable crabmeat. The remaining 75 percent is inedible shell and offal. A single processing facility, which packs the crabmeat into cans and then pasteurizes the packaged product, will collect and aggregate crabmeat from multiple cooking/picking stations in order to obtain sufficient crabmeat for efficient processing.

A full container of pasteurized crabmeat shipped to the U.S. is 15,880 kilograms. Even in the simplest possible – and again, completely unlikely – scenario, if each container contains only one style of crabmeat, and the meat from an entire harvest is used to prepare that product, the entry would need to include the required 16 data elements for each of 1,059 harvest events:

60 kilograms per harvest
15 kilograms of crabmeat per harvest event (25 percent yield x 60 kilograms = 15 kilograms)
15,880 kilograms per shipping container



1,059 harvest events per container (15,880 kilograms ÷ 15 kilograms = 1,059 harvest events)

Realistically, however, crabs from each harvest event will be used to produce at least seven different product styles. If all seven product styles were imported into the U.S. in a shipment, then the 1,058 harvest events would be associated with each of the seven different products, resulting in the required data elements being entered for 7,413 harvest events (1,059 harvest events x 7 items = 7,413 harvest events).

Even these scenarios pale in comparison with examples from the related blue swimming crab industry, which uses even smaller boats that harvest fewer crabs per harvest event. Those boats harvest 10 kilograms per day trip – six times fewer crabs than described above. Fewer crabs per trip means it would take six times the harvest events to fill a 15,880 kilogram container. For the simplest scenario, there would be a total of 6,354 harvest events (6 x 1,059) and for the more realistic scenario, a total of 44,478 harvest events (6 x 7,413)! Though not deemed at-risk and therefore not within the scope of the NPRM, blue swimming crab will certainly be included when – as seems likely – NOAA Fisheries in the near future expands these reporting and recordkeeping requirements to all species.

### **3. Atlantic Cod.**

Norway, Iceland, and Russia are the globe's major harvesters of Atlantic cod, representing 85 percent of global quotas. Each country operates a fisheries management system for harvest within its Exclusive Economic Zone ("EEZ") and cooperates with each other and other Atlantic cod harvesting nations through a Regional Fisheries Management Organization for cod caught outside the 200 nautical-mile zone.

American processors use minced Atlantic cod to produce the ubiquitous fish stick found in the freezer aisle and in restaurants. Mince is one of many product forms of cod. A portion of mince cod is derived from small "in shore" boats that each harvest about 400 pounds per day. Fifty percent of this cod catch is immediately sent to the profitable salted cod market (bacalao) for Spain and Portugal. The remaining fleet catch is processed into multiple forms, such as portions, loins, fillets, and mince. Because mince takes only about 2.5 percent of the catch, the harvest of each in-shore boat results in five pounds (2.5 percent of 200 pounds) of minced Atlantic cod.

A container of minced Atlantic cod is 52,000 pounds. It would therefore take the equivalent of 10,400 in-shore Atlantic cod harvest events to fill a container.

Since 2009, Congress has directed NMFS to report every two years those countries the agency alleges to be engaged in IUU fishing.<sup>43</sup> In these reports, NMFS has never reported to Congress that any country harvesting Atlantic cod is engaged in IUU fishing. NFI is unaware of *any* United States government allegation of illegal fishing against Iceland, Norway, or Russia. It is difficult to understand how NOAA Fisheries can determine that Atlantic cod is at risk for IUU fishing though the agency has never documented or even alleged such risks to Congress in a statutorily-mandated report.

To repeat, NMFS appears to provide cost estimates on the assumption that an ITDS import entry is associated with only one harvest event. This could theoretically – but not realistically – be the case for large trawler fishing vessels that are at sea for weeks, then land sufficient product that is then processed and used to completely fill a U.S.-bound shipping container. It is far more realistic for trawlers to distribute harvested product among various processors, who in turn distribute the product of multiple trawlers among various markets, depending on pricing, currency fluctuation, and other market conditions.

As demonstrated above, with many fishing industries around the globe, the boats are not large enough to harvest the tens of thousands of pounds of product necessary to fill a container. Rather, literally thousands of harvest events are needed to fill a container. This increases the time burden to industry by magnitudes of order, from a few minutes to hours, days, weeks or months to enter the required data elements into ITDS. Thus, this comparative summary:

	Harvest Events	Minutes per Container <sup>44</sup>	Hours per Container
NMFS Estimate	1	6	0.1
Mahi-Mahi (simple)	105 - 628	630 - 3,768	11 - 63
Mahi-Mahi (complex)	279 - 1,676	1,674 - 10,056	28 - 168
Blue Crab (simple)	1,059	6,354	106
Blue Crab (more complex)	7,413	44,496	742
Blue Swimming Crab (simple)	6,354	38,124	635
Blue Swimming Crab (more complex)	44,478	266,868	4,448
Atlantic Cod In Shore Mince	10,400	62,400	1,040

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<sup>43</sup> See the link to the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006: [http://www.nmfs.noaa.gov/ia/iuu/msra\\_page/msra.html](http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html).

<sup>44</sup> This is based on the NMFS estimate of 6 minutes total time for electronically submitting the required data sets and submitting admissibility documents for a single harvest event.

### **C. Analysis of Costs Associated With Documenting Each Harvest Event.**

The next step is to apply the costs for collecting and entering the required data to each harvest event in these fisheries. Here, too, NMFS uses numbers that significantly understate the burden on affected seafood businesses. Most importantly, the agency's labor cost estimate of \$15 per hour is highly unrealistic and unsupported by widely available Federal data.

Employers' costs per employee are composed of salaries plus benefits, such as leave, health care, life insurance, and retirement. According to the U.S. Department of Labor Bureau of Labor Statistics, in 2015, salary was 68.7 percent and benefits 31.3 percent of civilian American workers' compensation.<sup>45</sup> Thus, a worker costing an employer \$15 per hour on average would be paid only \$10.31 per hour (\$15 x 68.7 percent). But employee costs to employers also include overhead and general and administrative expenses, such as office space, computers, and software licensing. A *conservative* estimate for these costs would be 25 percent.<sup>46</sup> Incorporating these costs, the employee cost of \$15 would further erode the employee's salary to \$9.60 per hour – \$3.00 in fringe benefits and \$2.40 in overhead and general and administrative expense.

In light of this, it is clear that the wage rate used by NMFS to calculate the cost burden of the proposed rule would result in hourly rates below the current and future legal minimum wage in several states (*e.g.*, California). Surely NMFS does not intend to suggest that seafood companies break state or other laws related to employee compensation.

A more realistic hourly cost per employee for this responsibility is \$31.25. Because, as noted above, seafood importers or brokers entering the required data into the ITDS have civil and criminal liability for erroneous entries, and because errors in processing the required data could significantly disrupt their businesses, companies will require a certain level of expertise for this function. *Companies will not assign this responsibility to a data-entry clerk.*

According to a survey by a group of Certified Compensation Professionals, the average annual salary of an administrative assistant in Los Angeles – a center for seafood imports – is

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<sup>45</sup> "Employer Costs for Employee Compensation News Release Text." *U.S. Bureau of Labor Statistics*, March 10, 2016. See the text at: <http://www.bls.gov/news.release/ecec.nr0.htm>.

<sup>46</sup> By way of comparison, a survey designed to assist contractors in complying with U.S. Department of Defense procurement requirements suggests that contractors to DOD average 77 percent for overhead and 13 percent for G&A. See <https://www.grantthornton.com/~media/content-page-files/public-sector/pdfs/surveys/2015/Gov-Contractor-Survey.ashx>. NFI's estimate of 25 percent for these costs is thus extraordinarily low.

\$41,722.<sup>47</sup> Using the BLS rate for fringe benefits of 31.3 percent and the NFI conservative estimate of 25 percent for company overhead and general and administrative costs, the annual cost of a person responsible for entering thousands of essential data element would amount to near \$65,000 (\$41,722 in salary plus \$19,008 in benefits plus \$10,431 in administrative costs). With average annual work of 2,080 hours, this equates to about \$31.25 per hour. This annual rate is more than double the unrealistic estimate of \$15 per hour utilized by NMFS in defense of the proposed rule's cost burden.

The NFMS wage estimate is also belied by the agency's own labor cost estimates used in prior reporting requirements. For instance, OMB No. 0648-0401, a NMFS form supporting recordkeeping and reporting requirements of the American Fisheries Act, used \$25 per hour as an estimate for labor costs *in 2003*. At an average annual increase of 2.8 percent, the revised NOAA cost per hour would be \$35.79 in 2016, considerably higher than artificially low \$15 hour suggested by NMFS in this rulemaking.

Using such a low figure permits NMFS to radically understate the real labor costs associated with the ITDS entry process on at-risk seafood imported into U.S. ports-of-entry:

	Hours per Container	Cost per Container (\$15/hour)	Cost per Container (\$31.25/hour)
NMFS Estimate	0.1	\$1.50	\$3
Mahi-Mahi (simple)	11 - 63	\$158 - \$942	\$328 - \$1,963
Mahi-Mahi (complex)	28 - 168	\$419 - \$2,514	\$872 - \$5,238
Blue Crab (simple)	106	\$1,589	\$3,309
Blue Crab (more complex)	742	\$11,124	\$23,175
Blue Swimming Crab (simple)	635	\$9,531	\$19,856
Blue Swimming Crab (more complex)	4,448	\$66,717	\$138,994
Atlantic Cod In Shore Mince	1,040	\$15,600	\$32,500

A comparison of the agency's cost estimate of \$1.50 per container versus industry estimates ranging from \$328 to \$138,994 per container is a substantial disparity that should raise red flags on the overall cost burden of the Seafood Import Monitoring Program.

NMFS has estimated that the annual cost burden for electronically submitting the required data sets and submitting admissibility documents to be \$262,500. This accounts for 6 minutes of total time for 175,000 entries associated with the at-risk species. Using the more realistic cost estimates described above for mahi-mahi (\$328 - \$5,238 per container), the annual

<sup>47</sup> Search results from: <http://swz.salary.com>.

cost burden for mahi-mahi alone would range from \$429,379 to \$6,856,980. It must be emphasized that this single at-risk species represents only 2.99 percent of the total volume of at-risk species imports.<sup>48</sup> The costs of tracking and entering data for this *single*, relatively low volume species far exceeds (by a factor of up to 26 times) the cost NMFS suggests for the *whole* import program.

#### **D. Additional Costs Of Compliance With The NMFS Proposal.**

The cost implications of the NMFS proposal go well beyond the direct cost for entering the required data through ITDS. For starters, affected seafood businesses will have to pay a premium to obtain the required information from their suppliers, who will in turn have to pay harvesters or farmers to provide *them* the required information in the first place. Seafood companies will have to pay for audits of those suppliers to ensure that the reported information is accurate and complete, and will have to train their employees as to the Program's requirements. The companies will have to purchase additional insurance to insure against the risk that Monitoring Program information is erroneous and the related risk that entry of at-risk imports will be delayed at the U.S. port of entry because of scrutiny from NMFS.<sup>49</sup>

With respect to the many importers that utilize the services of customs brokers, the importer or foreign supplier will have to prepare and provide the applicable data elements in a consolidated fashion for the broker to submit to ITDS. Contrary to the impression that the NPRM and Draft Regulatory Impact Review convey, the entered data will not be automatically loaded into the ITDS but instead will be *manually* keyed into the ACE portal by the customs broker. That is not NFI's view; it is the opinion of the National Customs Brokers and Forwarders Association of America.<sup>50</sup>

NFI cannot locate any acknowledgement of these legitimate costs in the NPRM or associated materials. And yet they are sufficiently onerous that there is a real chance, in some

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<sup>48</sup> According to U.S. Department of Commerce, Bureau of the Census data, total 2015 volume of imports of the 17 at risk species was 1,926,721,473 pounds. Import volume for 2015 of mahi-mahi was 57,599,683 pounds, or 2.99 percent of the total volume.

<sup>49</sup> The NPRM states "if verification of the data cannot be completed by NMFS pre-release, NMFS may request that CBP place a hold on a shipment pending verification by NMFS or allow conditional release, contingent upon timely provision of records by the importer of record to allow data verification." 81 Fed. Reg. at 6217.

<sup>50</sup> See the comments of the National Customs Brokers and Forwarders Association of America at 4 (Docket Number: NOAA-NMFS-2015-0122-0026).

fisheries, that harvesters and exporters will simply stop doing business in the U.S. market. That is, again, not NFI's opinion; it is the prediction of at least one group of seafood exporters with deep experience in both sustainable seafood production and the U.S. market. The Norwegian Seafood Federation states in its comments on the NPRM:

We ask the US Government to consider the reality of fisheries, [to] make sure [of] the practicability of the proposed traceability program, and to provide specific plans for collecting this range of complex data elements. Otherwise, given an effective, globally recognized fishery management scheme in Norway, *we are afraid that our harvesters may begin selling their Atlantic cod to other markets.*<sup>51</sup>

Finally, NMFS suggests that the seafood importing community is already voluntarily collecting for commercial reasons data similar to the data proposed to be legally reported and maintained in recordkeeping for five years, and for that reason the costs of the NPRM are even lower.<sup>52</sup> This rationale is problematic for at least two reasons. First, customers regularly require suppliers to meet specifications that are outside the scope of legal mandates. Customers may require certain additional safeguards be put in place against spoilage, may require delivery at certain times of day, or may require support for marketing efforts. All of these are decisions made between a customer and supplier, with the supplier ultimately deciding whether the cost burden of meeting the customer demands is worth the potential increased revenue. The NMFS proposal takes what is a voluntary requirement among some customers and suppliers and suggests it will not be costly "because the seafood supply chain is already doing it."

Second, NMFS contends that, through discussions with some technology providers and chain of custody scheme operators, the collection of various data elements along the seafood supply chain is commonplace.<sup>53</sup> That is not the case. Many institutional buyers rely on their seafood supplier to ensure that products they sell are free of illegally harvested fish. The seafood companies are not required to generate, report and maintain for record-keeping purposes the data elements proposed by the agency. It is simply incorrect for NMFS to argue this is a widespread practice and to conclude that, as a result, few additional costs will be borne by the supply chain.

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<sup>51</sup> See the comments of the Norwegian Seafood Federation at 4 (Docket Number: NOAA-NMFS-2015-0122-0044).

<sup>52</sup> 81 Federal Register at 6220.

<sup>53</sup> Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis at 7 (Docket Number: NOAA-NMFS-2015-0122-0002).

## **II. THE FAILURE OF NOAA FISHERIES TO SHARE THE DATA ON WHICH THE “AT RISK” DESIGNATIONS ARE BASED, ALONG WITH SEVERAL OTHER PROCEDURAL DEFECTS, DEPRIVES NFI AND OTHER INTERESTED PARTIES OF A FAIR OPPORTUNITY TO COMMENT.**

To repeat, the proposed seafood import monitoring program is confined to at-risk seafood products. The Task Force determined that 16 seafood items are at risk for IUU fishing and seafood fraud, or – in the case of blue crab – seafood fraud alone. With the exception of bluefin tuna, the products to which the NPRM applies are derived from the October 30, 2015 Task Force Notice.<sup>54</sup> The NPRM contains no defense of the at-risk criteria, nor does it explain how the agency applied those criteria to seafood products, in order to arrive at the version of the at-risk list proposed February 5. NMFS itself specifically declines to consider comments on the at-risk approach because such comments relate to an issue already settled by the Task Force:

Because NOAA responded on October 30, 2015 (80 FR 66867) to comments received on the proposed list that was published on August 3, 2015 (80 FR 45955), NOAA requests that comments not be submitted on this proposal that are duplicative of those submitted on the list of species and contain no new information.<sup>55</sup>

All of this makes the Task Force’s at risk determinations directly relevant here.

Nowhere in its April, July, and October Notices did the Task Force publish the data allegedly utilized to make the at-risk determinations. In its October 30 Notice, the Task Force stated: “Detailed presentation of the data considered by the Working Group and its deliberations is protected from disclosure because of data confidentiality and enforcement implications.” NFI is aware of no other Administration explanation as to why commenters have been denied the opportunity to review the data that defines the scope of the monitoring program proposed in the draft rule. The Task Force cited to no law or regulation authorizing or supporting this decision.

Further, the Task Force relied on the views of unnamed “experts” to develop the at-risk criteria and then to apply those criteria to the Task Force base list of seafood items. These

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<sup>54</sup> 81 Federal Register at 6213. NMFS added bluefin tuna to the at-risk list in the proposed rule even though “NMFS continues to view the bluefin tuna to be at considerably lower risk of IUU fishing and seafood fraud than other tuna species and has made no modification to the list of at risk species published on October 30.”

<sup>55</sup> 81 Federal Register at 6213.

experts and how they performed this function remains unknown.<sup>56</sup> NFI attempted to persuade the Task Force to provide more information about the experts who were consulted, to no avail.<sup>57</sup>

NFI and other parties cannot meaningfully comment on a critical feature of the NMFS proposal – its scope as defined by the at-risk approach – without access to the underlying data supposedly used to make the determinations and without even the barest understanding of the views of the experts who supposedly made them.

In addition to these problems, this rulemaking itself is not transparent. On February 19, NMFS filed the Draft Implementation Guidelines in the docket for this rule. These Guidelines, dated “February 18th, 2016,” purport to provide guidance to IFTP holders as to how to convert each data element proposed in the NPRM to a message set for ITDS reporting. For instance, the rule requires the name of the harvesting vessel(s), and the Guidelines define vessel name to mean the “term or numeral commonly used when referring to the distinguishing feature or property of the vessel used for harvesting the commodity. This includes the harvesting vessel name.”<sup>58</sup>

But the document imposes on companies filing with the ITDS new requirements not mentioned in the NPRM. For instance, the NPRM requires the “name of entity(ies) (processor, dealer, vessel) to which fish was landed.”<sup>59</sup> The Guidelines somehow use this data element to mandate collection of an entirely new and separate set of information about that entity(ies):

1. “Entity Identification Code”
2. “Entity number”
3. “The identifying number for the party”
4. “Entity address”
5. “Address line 1 for the Entity”
6. “Entity Address 2  
Address line 2 for the Entity”
7. “Entity Apartment  
Number/Suite Number”
8. “Entity City”
9. “Entity State/Province”
10. “Entity Country”

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<sup>56</sup> 79 Federal Register at 75541.

<sup>57</sup> See NFI January 20, 2015 comments, at 8 (Docket Number: NOAA-NMFS-2014-0090-0101).

<sup>58</sup> Docket No. NOAA-NMFS-2015-0122-0006 (the “Guidelines”).

<sup>59</sup> 81 Federal Register at 6222.



11. “Entity Zip/Postal Code”
12. “Individual Qualifier”
13. “Individual Name”
14. “Telephone Number”
15. “Email address or Fax Number for the Individual”<sup>60</sup>

Similarly, the Guidelines direct companies filing with the ITDS to provide a “Compliance Description” by “enter[ing] the unique number that appears on each document if the document is serialized or uniquely identified.”<sup>61</sup> Even were this requirement intelligible – and it is not – it does not correspond to a data element found in the NPRM.

NFI is aware of no *Federal Register* Notice applying the Draft Implementation Guidelines to the Import Monitoring Program, nor does the NOAA Fisheries website include any alert.<sup>62</sup> Nevertheless, these new requirements in the Guidelines “are *under consideration and may potentially* be included in the message set pursuant to the proposed rule and the Seafood Traceability Program.”<sup>63</sup> But they were excluded from the proposed revisions to NMFS regulations in the NPRM, unmentioned in the Draft Regulatory Impact Review, and only made available to the public on February 19, according to the docket. The Guidelines may contain other, similar new requirements NFI has not yet detected since learning of the document.

Lastly, NMFS has yet to provide transcripts of the March 7 public meeting or audio recording of the March 18 webinars that represented two of the four on-the-record discussions with the agency during the 67-day comment period. The absence of these transcripts from the public record deprives commenters of the ability to fully understand the agency’s views on the numerous questions the proposed rule raises. That in turn makes it more difficult to fully comment on the rule’s impacts and especially the costs to NFI member companies.<sup>64</sup>

Rulemaking is not intended to be a moving target, but that is what has occurred here. The issues discussed above not only violate the rights of NFI and other commenters. These shortcomings also diminish the quality of comments the agency will receive in response to the

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<sup>60</sup> Draft Implementation Guidelines, at 7 (Docket No. NOAA-NMFS-2015-0122-0006).

<sup>61</sup> *Id.*, at 4.

<sup>62</sup> <https://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0122> (viewed on April 12, 2016).

<sup>63</sup> Draft Implementation Guidelines, at 3 (emphasis in original).

<sup>64</sup> In addition to these points, NFI objects to expansion of the Import Monitoring Program beyond the species listed in the February 5, 2016 NPRM, without separate prior notice and comment rulemaking.

NPRM, and ultimately will make compliance with whatever program the agency finalizes more difficult to achieve.

### **III. NMFS HAS NO AUTHORITY TO REGULATE EITHER SEAFOOD FRAUD, OR “UNREPORTED” AND “UNREGULATED” FISHING TAKING PLACE OUTSIDE THE UNITED STATES.**

According to the NPRM, NMFS has rulemaking authority for the Import Monitoring Program under Section 307 of the Magnuson-Stevens Act, which states that it is unlawful “to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation[.]”<sup>65</sup> This provision does not give NMFS the authority to regulate either seafood fraud, or unreported and unregulated fishing.

First, though it is the primary Federal agency in managing fisheries stocks, NMFS has no independent regulatory authority over economic integrity regulations concerning seafood. There FDA has exclusive regulatory authority. That means FDA, under the FFDCA, determines how seafood products are to be named; how unfair commercial practices such as short-weighting, species substitution, and mislabeling of seafood are defined and punished; and when to prevent the entry of imported products for violations of the FFDCA.<sup>66</sup>

The Task Force in 2015 stated that one of the reasons to deem tuna at risk for seafood fraud is a history of species substitution involving escolar, a different fish that can cause gastrointestinal pain among consumers unaware that what they are eating is in fact not tuna.<sup>67</sup> If seafood fraud presents a food safety risk for vulnerable American consumers, as the Task Force insists, then the nation’s seafood food safety regulator – FDA – should use its wide authority to detect and punish such misconduct. NFI has repeatedly urged FDA to do so. Lack of FDA action to date is not sufficient justification for NMFS to stretch its mandate to include FFDCA regulation or enforcement.

This lack of NMFS authority is especially important given the agency’s designation of at risk species. The Task Force used certain Principles to designate the at risk species<sup>68</sup> and

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<sup>65</sup> 16 U.S.C. Section 1857(1)(Q).

<sup>66</sup> 21 U.S.C. Chapter 9 Sections 342, 343 and 381.

<sup>67</sup> See 80 Federal Register at 66870.

<sup>68</sup> See 81 Federal Register at 6213.

referred to them as the basis of their designation of the species.<sup>69</sup> Two of the Principles are specific to fraud issues: Known Species Substitution and History of Mislabeling (Other Than Misidentification of Species). A third Principle, Complexity of the Supply Chain, is also used in the fraud context.

NMFS references 56 reasons across the 16 at-risk species as rationales for the designations. In 19 of these 56 instances, fraud is cited as the reason the species should be designated at risk; complexity in the supply chain is referenced another ten times. For example, among the 19 fraud-related references are:

- Atlantic cod is deemed at risk because it supposedly violates the Principle of Known Species Substitution and “has been the subject of species substitution with other white fish.”<sup>70</sup> But when the FDA conducted DNA testing of cod at the import and wholesale level, “100% (15 out of 15) of the cod samples were labeled properly.”<sup>71</sup>
- Atlantic cod is deemed at risk because it supposedly violates the Principle of History of Mislabeling (Other Than Misidentification of Species) and “has been the subject of ... mislabeling due to over-glazing (ice coating), and short-weighting.”<sup>72</sup> NMFS apparently uses secret data to make this claim, in reaching beyond its legal mandate to regulate.
- Shrimp is deemed at risk because it supposedly violates the Principle of Known Species Substitution, and there is “a history of substitution of one species of shrimp for another when imports cross the border into the United States.”<sup>73</sup> NMFS apparently uses secret data to make this claim, reaches beyond its legal mandate to regulate, and ignores the fact that the FDA Seafood List Acceptable Market Name for shrimp is “shrimp.”<sup>74</sup> NMFS

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<sup>69</sup> Id. at 6213.

<sup>70</sup> 80 Federal Register at 66870.

<sup>71</sup> FDA DNA Testing at Wholesale Level to Evaluation Proper Labeling of Seafood Species in FY 12-13 (<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/ucm419982.htm>).

<sup>72</sup> 80 Federal Register at 66870.

<sup>73</sup> 80 Federal Register at 66871.

<sup>74</sup> FDA Seafood List, updated in January 2016 (<http://www.accessdata.fda.gov/scripts/fdcc/?set=seafoodlist>).

implies that importers must track shrimp by species when importing, when FDA does not requires such specificity.

- Shrimp is also deemed at risk because it supposedly violates the Principle of History of Mislabeling (Other Than Misidentification of Species), and there is “a significant amount of mislabeling and/or misrepresentation of shrimp, tied to largely to misrepresentation of weight, including where product has been treated with Sodium Tripolyphosphate to increase water retention.”<sup>75</sup> Here, NMFS seeks to reach beyond its legal mandate to regulate fisheries by referencing alleged mislabeling of Sodium Tripolyphosphate. Labeling is the sole responsibility of the Food and Drug Administration. NMFS has no legal mandate to require collection of gigabytes of data to correct any improper labeling.

Similarly, the Task Force proposal includes ten references to Complexity of the Supply Chain. Blue Crab is deemed at risk because it supposedly violates the Principle of Complexity of the Supply Chain, and “Atlantic Blue crab is sold in a number of different forms from live animals to significantly processed crab meat.”<sup>76</sup> Here NMFS apparently uses its undisclosed data to establish that crab is sold in different product types, and somehow equates that unremarkable fact to seafood fraud. But regulation of the processing of crab is the responsibility of FDA, as is ensuring proper labeling of product type.

Second, to be subject to Section 307, the conduct at issue must violate a specific foreign law or regulation. Unregulated fishing, by definition, is not a violation of any foreign law, and unreported fishing may or may not be in violation of foreign law. Section 307 does not authorize NMFS to impose data collection requirements – and civil and criminal punishments for not meeting such requirements – on any U.S. seafood business for fishing that the agency concludes *may* have been “unregulated” or “unreported.” The Import Monitoring Program on its own establishes no sustainability standards; instead it relies on a demonstration that the imported seafood in question was not harvested in violation of the home country’s fishery management requirements. Punishing U.S. industry for at-risk imports that, though unregulated, do not affirmatively violate the laws of the country of harvest raises serious questions of fairness and is unlikely to detect and deter the illegal fishing that does occur.

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<sup>75</sup> 80 Federal Register at 66871.

<sup>76</sup> 80 Federal Register at 66870.

\* \* \*

A final comment: By excluding all domestic seafood (except fish shipped overseas and then back to the U.S.) and by ignoring variations in fisheries management from country to country and treating all nations farming and harvesting at-risk species the same, the NMFS proposal likely violates basic obligations the United States owes as a Member of the World Trade Organization. NFI raised this issue in its July 31, 2015 comments in the hopes that the Task Force’s approach would be modified to meet these obligations.<sup>77</sup> Unfortunately, like the Task Force proposal, it appears that the NPRM violates both the General Agreement on Tariffs and Trade (“GATT”), the Technical Barriers to Trade (“TBT”) Agreement, and/or the Sanitary and Phytosanitary (“SPS”) Agreement. Specifically, U.S. trading partners may be able to demonstrate that the NMFS proposal violates both GATT Articles III:4 and/or Article XI:1. A complaint could also include claims under Article 2.1 and Article 2.2 of the TBT or Articles 2.1, 2.2, and 5.1 of the SPS Agreement. Should the Import Monitoring Program be found inconsistent with any of these obligations, the U.S. would either have to modify the Import Monitoring Program to comply, or submit to lawfully-imposed economic sanctions by the complaining WTO Members, in the form of the withdrawal of previously granted concessions in other areas of trade.

### **Conclusion**

IUU fishing is a legitimate challenge, and one that governments on every continent should address. As NFI has emphasized in previous comments to the Task Force, enhanced collaboration among those governments, targeted enforcement against IUU fishing vessels and nations, and full utilization of existing U.S. laws to deter illegal fishing should all be NOAA Fisheries priorities. Imposing yet more administrative and financial burdens on lawful seafood businesses in the United States, to establish a complex regulatory program that has no prospect of reducing illegal fishing around the world, should not. NFI respectfully suggests that the NPRM should be withdrawn, thus permitting NMFS to focus on policy alternatives more likely to improve IUU-related outcomes around the world.

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<sup>77</sup> See Attachment F, at 12.





September 2, 2014

The Honorable Catherine A. Novelli  
Under Secretary for Economic Growth, Energy, and the Environment  
United States Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

The Honorable Kathryn D. Sullivan  
NOAA Administrator & Under Secretary of Commerce for Oceans and Atmosphere  
National Oceanic and Atmospheric Administration  
United States Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

**RE: Comments of the National Fisheries Institute Regarding the  
Presidential Task Force on Combating Illegal, Unreported and  
Unregulated Fishing and Seafood Fraud (Docket No. NOAA-  
NMFS-2014-0090; 79 *Federal Register* 44404 (July 31, 2014)).**

***SUBMITTED VIA REGULATIONS.GOV***

Dear Under Secretary Novelli & Dr. Sullivan:

On behalf of the members of the National Fisheries Institute (NFI), I am pleased to submit the enclosed comments to the Presidential Task Force on Combating Illegal, Unreported and Unregulated (IUU) Fishing and Seafood Fraud.

For more than 65 years, NFI has been the nation's leading advocacy organization for the seafood industry. From responsible aquaculture, to a marketplace supporting free trade, to ensuring consumers have the facts on the sustainability and health benefits of fish and shellfish, NFI and its members support and promote sound, science-based public policy, as well as engaging in every step of bringing fish from the boat or farm to dining room tables.

NFI member companies believe that IUU fishing erodes seafood resources, punishes legitimate seafood businesses, and undermines fishery management systems. We agree with President Obama's statement that "the United States scheme of science-based fisheries management is recognized internationally as a model for other countries." Other countries have systems based on the same principles – strong and independent science, adherence to catch limits, awareness of fishing impacts on the ecosystem, and enforcement. Still other nations provide fish from aquaculture, a method of production unconnected to IUU. In light of this, we urge the Task Force to carefully assess the true extent of IUU fish in the U.S. market before proposing new mandates to be put in place on top of the many tools available today to deter and punish IUU fishing.

Similarly, NFI members have been at the forefront of fighting fraud – whether it be short weights or menu mislabeling. Our comments suggest several actions the federal government might take, the most important being having FDA enforce existing laws.

We appreciate your work as Co-Chairs of the Task Force, and we value the opportunity to share, on this important topic, the views of the member companies we represent. As noted, NFI looks forward to answering other questions you may have and providing additional details you may seek.

Sincerely,

A handwritten signature in black ink, appearing to read "John Connelly".

John Connelly  
President  
National Fisheries Institute

cc: Members of the IUU Task Force



***Request For Comments Regarding  
The Presidential Task Force On Combating  
Illegal, Unreported And Unregulated  
Fishing And Seafood Fraud  
79 Federal Register 44404 (July 31, 2014)  
NOAA-NMFS-2014-0090***

***Comments of The National Fisheries Institute  
September 2, 2014***

**I. Executive Summary**

The National Fisheries Institute has been the nation's leading advocacy organization for the seafood industry for over 65 years. NFI member companies represent every sector of the seafood community, from fishing vessels at sea to importers, from processors to retailers and national seafood restaurant chains. From responsible aquaculture, to a marketplace supporting free trade, to ensuring consumers have the facts on the sustainability and health benefits of fish and shellfish, NFI and its members support and promote sound, science-based public policy, as well as engaging in every step of bringing fish from the boat or farm to dining room tables.

NFI and its companies have been deeply involved in sustainability and economic integrity issues for several decades. As industry leaders – and as businesses that operate from the Bering Sea to south Florida – NFI members are among the few commenters that will be responsible for meeting the requirements of any Task Force recommendations that become law. It is in that context that NFI offers these comments for the Presidential Task Force on Combating Illegal, Unreported and Unregulated and Fishing and Seafood Fraud.

To begin, it is important to offer several general principles concerning seafood sustainability, IUU fishing, and economic integrity. First, any IUU fishing is problematic and should be addressed. However, and as the President noted in establishing the Task Force, the “United States scheme of science-based fisheries management is recognized internationally as a model for other countries as they work to end overfishing and implement sustainable practices.”<sup>1</sup> Second, and as the President's June 17 Memorandum suggests, the United States has already developed and implemented a

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<sup>1</sup> 79 Fed. Reg. 44404.

range of options for combating IUU, including: the Magnuson-Stevens Act (federal fisheries law); Magnuson designations (requires NOAA to designate countries as complying or failing to comply with IUU laws); Lacey Act (prohibits trade in goods caught illegally in another country); Country of Origin Labeling (requires seafood to identify its country of origin and method of production); Bioterrorism Act (requires further tracing of food); Food Safety Modernization Act (requires food to be traced to its source); and Port State Measures Agreement (recently ratified FAO agreement on requirements of ports to eliminate IUU opportunities).

Recommendations for changes to the nation's approach to IUU fishing should first be measured against the array of tools already at the Administration's disposal.

NFI fully supports the sustainable use of marine resources, to ensure consumers now and in the future have access to seafood. Specifically, NFI:

- Supports the United Nations Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries.
- Supported passage of the most recent changes to the Magnuson-Stevens Act and urges its full implementation, including the requirement for designation countries suspected of IUU.
- Provided initial organizational support and serves as a founding Board member of the International Seafood Sustainability Foundation.
- Served seven years on the Marine Stewardship Council Board of Trustees.
- Served four years on the Department of Commerce Marine Fisheries Advisory Committee.
- Served as an industry advisor to 10 of the past 11 U.S. delegations to the FAO Committee of Fisheries meetings.

Specific to Illegal, Unreported or Unregulated fishing, NFI has:

- Seconded senior staff to serve as a technical advisor to the U.S. delegation during the intergovernmental discussions leading to the FAO Port States Measure Agreement.
- Supported ratification of the Port State Measures Agreement and implementing legislation.
- Encouraged NFI members to ensure purchases are solely from vessels with an International Maritime Organization (IMO) number.

In addition, NFI is developing model specification language for inclusion in seafood purchasing contracts, to ensure IMO numbers are an essential part of any supply agreement.

Specific to traceability, NFI:

- Was an initial industry supporter of the Food Safety Modernization Act (FSMA), including its traceability requirements.
- Engaged with GS1<sup>2</sup>, prior to FSMA enactment, to ensure the seafood industry has a traceability program that mirrored accepted programs in the meat, poultry and fruit and vegetable industries.
- Supports financially and serves as an advisor to the Institute of Food Technologists' Global Food Traceability Center.

Specific to seafood fraud, leadership steps NFI has taken on this issue include:

- Creating the Better Seafood Board (BSB) in 2007, through which NFI member CEOs commit to economic integrity by selling seafood in the proper weight and count, assuring it has the proper name, has not been transshipped to circumvent duties and tariffs, and is properly labeled for any additives.
- Encouraging institutional seafood buyers with unresolved complaints about potential fraud concerns to contact the BSB hotline.
- Assisting the U.S. Department of Justice (DOJ) in securing an expert witness in a major species substitution prosecution under the Lacey Act.
- Strongly urging the U.S. Food and Drug Administration (FDA) to enforce existing economic fraud laws, emphasizing the "broken window" theory that a company willing to cheat on fraud areas is probably willing to take short cuts in other areas such as food safety.
- Urging Congress to adopt directive appropriations language for FDA to act on fraud issues.
- Sponsoring academic research on the economic cost to buyers of short weighted seafood.
- Suggesting and sponsored a forum of states weights and measures departments, FDA, National Oceanic and Atmospheric Administration (NOAA), Customs and Border Protection (CBP), National Institute of Standards and Technology (NIST), DOJ and other federal agencies to discuss means to combat economic fraud.
- Supporting an investigation in 17 states of potential short weighting of seafood.
- Reporting any offers of short weight or mislabeled products to a country's embassy and exporting association, urging them to address the issue in-country.
- Highlighting the importance of adherence to US labeling laws in speeches at major global seafood conferences outside the U.S., numerous domestic seafood

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<sup>2</sup> GS1 is often referred to as the "Bar Code" organization, although their efforts extend much beyond the ubiquitous coding system with which most people are familiar.  
<<http://www.gs1.org/about/overview>>.

and food safety conferences, and in informal conversations with seafood CEOs in the US, Europe and Asia.

- Proposing changes to the U.S. Food Code to define misidentification of seafood species as a violation.
- Entering into a Memorandum of Understanding (MOU) with the National Restaurant Association to assist national and local restaurants to ensure seafood is labeled properly on their menus.

## **II. Economic Impact of the Seafood Community in the United States**

The U.S. seafood community encompasses a full supply chain of economic partners. From harvesters on the water to importers arranging for global trade through secondary processors adding value and putting fish in a product we recognize to retailers and restaurant groups, the industry represents a variety of related businesses.

According to Department of Commerce economic analysis, the seafood industry generates 1,270,141 jobs in the U.S. and has a sales impact of \$140,660,993,000.<sup>3</sup> U.S. harvested seafood creates 744,850 jobs, and imported seafood creates another 525,291 American jobs.<sup>4</sup> Imported seafood also generates about 64% of the sales of the seafood industry and creates about 56% of the value addition to fish in the United States.

Much of the media reports and other comments on IUU and fraud have noted that the U.S. imports more than 85% of its seafood. The implication is that imported seafood must be more rigorously regulated.

**Recommendation:** It is essential that the Task Force fully appreciate the economic impact its recommendations will have on both the domestic fishing fleet and the American processing and distribution jobs that depend on imported and domestic seafood.

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<sup>3</sup> *National Overview U.S. Summary Management Context*. NOAA Fisheries, 2012. Web. 29 Aug. 2014.  
<[http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012\\_NationalOverview.pdf](http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012_NationalOverview.pdf)>.

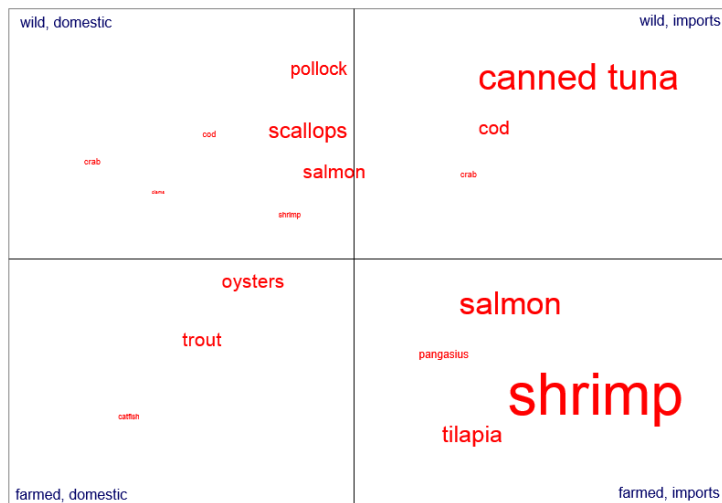
<sup>4</sup> *Understanding the Commercial Fisheries and Recreational Fisheries Economic Impact Estimates*. NOAA Fisheries, 2012. Web. 29 Aug. 2014.  
<[http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/Understanding\\_fisheries\\_economic\\_impact\\_estimates.pdf](http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/Understanding_fisheries_economic_impact_estimates.pdf)>.

### III. Sourcing of Seafood for American Consumption

U.S. consumers focus their seafood purchases on 10 species.<sup>5</sup> More than 92% (13.5 of 14.6 pounds per capita consumption) of what Americans ate in 2012 was concentrated in the following fish:

<u>Rank</u>	<u>Species</u>	<u>Pounds per capita</u>
1	Shrimp	3.80
2	Canned Tuna	2.40
3	Salmon	2.02
4	Tilapia	1.48
5	Pollock	1.17
6	Pangasius	0.73
7	Crab	0.52
8	Cod	0.52
9	Catfish	0.50
10	Clam	0.35
Total Top 10 Species		13.48
Total All Species		14.60

According to NOAA statements, more than 85% of seafood consumed in the U.S. is imported. More than half of seafood sold in the U.S. is from farmed sources. A graphic of the U.S. supply mix is shown to the right. The relative size of the seafood sold is displayed in the size of the lettering. Note that the major imported species



are farmed (shrimp, salmon, tilapia and pangasius) and that as a percentage of consumption imported, wild caught seafood lags other sources. Any definition of IUU excludes farmed or aquacultured fish, as that seafood is not wild caught but raised in pens, cages or ponds. By definition, a farmed fish cannot be illegally caught.

<sup>5</sup> "Top 10 Consumed Seafoods." *About Seafood*. National Fisheries Institute. Web. 29 Aug. 2014. <<http://www.aboutseafood.com/about/about-seafood/top-10-consumed-seafoods>>.

Given that all domestic seafood is managed by NOAA under the Magnuson-Stevens Act, domestic seafood is considered sustainable. Mrs. Damanaki, outgoing European Commission Director General for Fisheries, acknowledged the effectiveness of American fisheries management in May 2012 when she stated, “I want to pay tribute to the U.S. for their great achievements in managing fisheries in accordance with the best available science and ending overfishing, based on the Magnuson-Stevens Act. The U.S. has shown us the way on sustainability.”<sup>6</sup> NOAA leadership (acting Administrator Sam Rauch, September 2013) has testified before the Senate that fish caught under a Magnuson-Stevens derived fishery management plan should be considered sustainable.<sup>7</sup>

Thus, the one quadrant of seafood supply that is even capable of being accused of IUU is wild, imported product. Preliminary review of research conducted by a leading university fisheries economist indicates that non-tuna imports of wild capture seafood is about 33% of all imports. Of that, much of it comes from Canada (e.g., snow crab, lobster, and mussels). Such products represent about eleven percent of U.S. consumption annually, raising the question of how the IUU problem can be meaningfully addressed with a focus on traceability requirements directed at a U.S. market supplied by well-regulated domestic wild-caught and international aquaculture products.

Recommendation: Not even the most irresponsible claims suggest that all imported seafood is IUU.<sup>8</sup> The Task Force should carefully consider what problem in the U.S.

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<sup>6</sup> European Commissioner for Maritime Affairs and Fisheries. *Oceans and Seas: Our Common Future*. European Commission. European Commission, 30 May 2012. Web. 29 Aug. 2014. <[http://europa.eu/rapid/press-release\\_SPEECH-12-398\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-12-398_en.htm?locale=en)>.

<sup>7</sup> Samuel D, Rauch. "Seafood Certification Hearing." *NOAA Fisheries*. 24 Sept. 2013. Web. 29 Aug. 2014. <[http://www.nmfs.noaa.gov/stories/2013/09/9\\_23\\_13seafood\\_certification\\_rauch.html](http://www.nmfs.noaa.gov/stories/2013/09/9_23_13seafood_certification_rauch.html)>.

<sup>8</sup> We are compelled to note the many flaws in the April 2014 paper in *Marine Policy*. The authors of this paper conclude that IUU fishing “represented 20-32% by weight of wild-caught seafood imported to the USA in 2011,” and offer estimates of similar magnitude for specific wild-capture seafood from numerous countries. The study relies heavily on “confidential interviews” and “unnamed sources” to formulate its IUU estimates. According to the paper, “a total of 41 interviews were conducted, of which 32 were confidential.” This heavy reliance on anonymous sources and interviews with people the authors refuse to identify is hardly the rigorous approach expected of reliable scholarship – and this flaw, without more, calls into question virtually every conclusion the paper makes about IUU fishing. What is more, the authors rely on the assertions of their interview subjects to then extrapolate the percentages of wild-capture seafood deemed to be illegal. It is simply not credible, for instance, to argue that 40% of Thailand’s tuna exports to the U.S. are laundered, illegal fish. This paper is flawed and should be discounted in the Task Force’s work. Ganapathiraju, Pramod, Katrina Nakamura, Tony J. Pitcher, and Leslie Delagran. "Estimates of Illegal and Unreported fish in Seafood Imports to

seafood market it seeks to address. The Task Force should carefully analyze data on what Americans eat, from where Americans source their seafood, and what the likely scale of IUU fish in the U.S. market might be before developing recommendations that will impact the full U.S. seafood sector. Defining the scope of the IUU challenge in the U.S. market is an essential first step for the Task Force.

#### **IV. Consumer Attitudes Toward IUU**

NFI agrees that any IUU fishing is a problem that should be eliminated. In general, seafood consumers expect the seafood supply chain to ensure that fish they eat at home or at a restaurant is from sustainable sources. Except for a small part of the populace, they do not want to assume the responsibility to ensure fish is legally caught when enjoying a night away from home. They expect the food, retailer and restaurant brands to have done this work for them.

For packaged food companies messages on labels are essential to the story they are trying to convey to consumers. Retail packages are already mandated to prominently display product identity, net weight, ingredient listing, nutrition facts labeling, allergen declarations and company contact information. Similarly, restaurants' menus are constantly shifting to reflect changes in market pricing and availability of seafood. Requiring additional data on already crowded labels and changing menus is very costly.

Finally, recently completed Nielsen research classified 10 factors consumers consider when purchasing seafood and found information about IUU fishing ranked next to last, 9<sup>th</sup> out of 10. Americans found taste, quality, price, health benefits, previous experience with seafood, ease of preparation, country where it was caught or raised and omega-3 fatty acid content to be more important than IUU fishing information in purchasing decisions. Nearly a quarter of those surveyed said information about IUU fishing was "not at all important" to their purchasing decisions.

The more than 2,000 respondents rated the following factors as "Extremely or very important" in their buying decisions:

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the USA." *Science Direct*. Elsevier Ltd., 5 Apr. 2014. Web. 29 Aug. 2014. <[http://ac.els-cdn.com/S0308597X14000918/1-s2.0-S0308597X14000918-main.pdf?\\_tid=255416a4-2fac-11e4-adb2-00000aabb0f02&acdnat=1409337893\\_add77c73418c5e0484872f58fd08a317](http://ac.els-cdn.com/S0308597X14000918/1-s2.0-S0308597X14000918-main.pdf?_tid=255416a4-2fac-11e4-adb2-00000aabb0f02&acdnat=1409337893_add77c73418c5e0484872f58fd08a317)>.

Taste	91%
Quality	90%
Price	76%
Previous Experience with Seafood	64%
Health Benefits	62%

About half of those surveyed ate seafood at least once a month.

Recommendation: The Task Force is encouraged to look carefully at what consumers seek on packages and what value consumers will find in additional information on labels.

*The fact that consumers report IUU information is not important in their purchasing decisions does not absolve the seafood supply chain from responsibility to address the issue. However, public policy decisions should not be developed based on assumptions about consumer interest in the issue, but rather on finding the most efficient solution to the problem.*

#### **V. U.S. Government Policy Regarding the Effectiveness of NOAA Implementation of MSA and Related Laws**

It should also be noted that the General Services Administration, in response to bipartisan inquiries from the Senate regarding the agency's *Health and Sustainability Guidelines for Federal Concessions and Vending Operations*, stated what its procurement policy and guidance to vendors is regarding seafood:

The NOAA FishWatch Program defines sustainable seafood as “catching or farming seafood responsibly, with consideration for the long-term health of the environment and the livelihoods of the people that depend upon the environment.” Verifying the health and sustainability of U.S. and international fisheries is not always simple. Domestic fisheries are managed by State and Federal agencies under legally established fisheries management plans. International fisheries are managed under sovereign laws and international treaties. Guidance on how to make sustainable seafood choices is found on the NOAA FishWatch site at [www.fishwatch.gov/buying\\_seafood/choosing\\_sustainable.htm](http://www.fishwatch.gov/buying_seafood/choosing_sustainable.htm).<sup>9</sup>

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<sup>9</sup> Centers for Disease Control and Prevention: Division of Nutrition. *Health and Sustainability Guidelines for Federal Concessions and Vending Operations*. Center for Disease Control and Prevention. Web. 29 Aug. 2014.  
<[http://www.cdc.gov/chronicdisease/pdf/guidelines\\_for\\_federal\\_concessions\\_and\\_vending\\_operations.pdf](http://www.cdc.gov/chronicdisease/pdf/guidelines_for_federal_concessions_and_vending_operations.pdf)>.



*GSA and the National Park Service explicitly backed away from the concept of requiring third party certification of seafood sold at federal buildings or through federal food vendors (which would have excluded many sustainably managed species caught in the U.S.), recognizing that the efforts of NOAA and other agencies ensure sustainably caught U.S. seafood.*

## **VI. Efforts to Combat IUU**

Given that some IUU fish can be accurately labeled, and that some legally caught fish can be mislabeled, NFI offers separate comments to discuss IUU fishing and seafood fraud. We urge the Task Force to consider solutions to these two problems separately.

The following section of NFI's comments addresses the IUU issue.

## **VII. Existing Legislation and Regulations Available to Address IUU**

The U.S. government already has a variety of laws, regulations, and policy tools to combat IUU fishing and ensure fish are traceable, including:

Magnuson-Steven Act Requirement to Designate Countries as Enabling IUU: The High Seas Driftnet Fishing Moratorium Protection Act of the Magnuson-Stevens Act requires NOAA to issue a report on which fish-exporting countries violate international IUU standards. Once identified, the country and U.S. discuss means to eliminate the illegal activity and to ensure responsible seafood trade.

The countries that NOAA has listed as IUU countries in the past few reports are *not* significant seafood exporters to the U.S.<sup>10</sup> In 2013, there were ten nations classified by NOAA as IUU countries: Colombia, Ecuador, Ghana, Italy, Mexico, Panama, the Republic of Korea, Spain, Tanzania, and Venezuela. The ten IUU-designated countries and volume/value of US imports are:

**Colombia:** \$99,654,185 – 14,791,233 kilos (0.61% of U.S. imports)  
Top 5 products: Tuna, tilapia, trout, lobster, crabmeat

**Ghana:** \$212,218 – 21,839 kilos (0.001% of U.S. imports)

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<sup>10</sup> "Commercial Fisheries Statistics." *Annual Product by Country/Association*. NOAA Fisheries. Web. 29 Aug. 2014. <<http://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/applications/annual-product-by-countryassociation>>.

Top 5 products: Fish, snail, carp, herring, tilapia

**Italy:** \$11,178,378 – 1,308,820 kilos (0.05% of U.S. imports)

Top 5 products: Anchovy, caviar, tuna, mollusks, marine fish

**Panama:** \$102,558,253 – 12,546,577 kilos (0.52% of U.S. imports)

Top 5 products: Shrimp, tuna, snapper, dolphinfish, tilapia

**Republic of Korea:** \$147,442,273 – 23,711,619 kilos (0.98% of U.S. imports)

Top 5 products: Toothfish, marine fish, oysters, seaweed, squid

**Spain:** \$87,821,101 – 11,375,568 kilos (0.47% of U.S. imports)

Top 5 products: Octopus, tuna, crustaceans, crawfish, squid

**Tanzania:** \$3,809,467 – 5,546,585 kilos (0.23% of U.S. imports)

Top 4 products: Seaweed, perch, octopus, Nile perch

**Portugal:** \$16,629,041 – 2,802,113 kilos (0.12% of U.S. imports)

Top 5 products: Octopus, tuna, sardine, groundfish, marine fish

**Venezuela:** \$48,852,202 – 4,839,014 kilos (0.20% of U.S. imports)

Top 5 products: Crabmeat, tuna, shrimp, marine fish, sardine

Imports from these 10 nations in 2013 represented only 2.8% of all imports and some of those import numbers include the exporting countries' farmed products (e.g., Columbia and tilapia).

Lacey Act Addressing Illegally Caught Fish in the U.S. Market: The Lacey Act states that it is illegal to "import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law."<sup>11</sup>

The Lacey Act requires U.S. seafood imports caught in foreign countries be harvested in accordance with "foreign law." In other words, the Lacey Act can ensure that the U.S. only imports seafood products that were caught legally under the country of origin's system.

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<sup>11</sup> "Lacey Act." *U.S. Fish & Wild Service International Affairs*. Web. 29 Aug. 2014.  
<<http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>>.

Recent examples of seafood-related Lacey Act convictions include:

- A large seafood wholesaler that knowingly purchased illegally caught striped bass. In that matter, a jury convicted the company, its vice-president, and one of its fish buyers. The court sentenced the company to three years of probation, a fine of \$575,000, and restitution of \$300,000. Moreover, the president received a prison term of 21 months, the buyer received 15 months of incarceration, and the court ordered both to pay fines and restitution.<sup>12</sup>
- Two caviar companies and their owners pleaded guilty to exporting caviar made from paddlefish eggs. The defendants admitted that they should have known that the paddlefish were harvested in violation of Ohio law.<sup>13</sup>
- A seafood importer was convicted of illegally importing South African lobster tails. In 2012, a U.S. magistrate judge ruled the defendants must an additional \$54.9 million in restitution, the *largest single award ever made under the Lacey Act*.<sup>14</sup>

Port State Measures Agreement: The Port State Measures Agreement (PSMA), adopted by the United Nations in 2009 and ratified by the US Senate on April 3, 2014, is recognized within the international community as a landmark effort to prevent, deter, and eliminate IUU Fishing. Under this agreement, information-sharing networks to track offenders and a compliance structure are established.

The PSMA will allow the United States and other countries to bar vessels determined to have been involved in illegal acts from entering ports and bringing their goods to their markets. Once a suspected illegal fishing vessel is identified, countries will coordinate enforcement efforts to ensure that the suspected vessel is refused entry at other ports until the vessel agrees to be inspected or is prosecuted.

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<sup>12</sup> Stephen R. Spivack, Kyle C. Hankey, and Gregory G. Marshall. "United States: Lacey Act Compliance: Recent Developments." *Lacey Act Compliance: Recent Developments*. Mondaq, 15 May 2012. Web. 29 Aug. 2014.  
<<http://www.mondaq.com/unitedstates/x/177446/Fraud%2BWhite%2BCollar%2BCrime/Lacey%2BAct%2BCompliance%2BRecent%2BDevelopments>>.

<sup>13</sup> Ibid.

<sup>14</sup> "SavingSeaFood - Largest Lacey Act Restitution Ever - \$55.9 Million - Recommended in South African Lobster Case." *SavingSeaFood - Largest Lacey Act Restitution Ever - \$55.9 Million - Recommended in South African Lobster Case*. 20 Aug. 2012. Web. 29 Aug. 2014.  
<<http://www.savingseafood.org/international-trade/largest-lacey-act-restitution-ever-55.9-million-recommended-in-south-african-lobster-2.html>>.

The PSMA will also make it extremely difficult for IUU fish to be offloaded in a port. This agreement includes requirements related to prior notification of port entry, use of designated ports, restrictions on port entry and landing/transshipment of fish, restrictions on supplies and services, documentation requirements and port inspections, as well as related measures, such as IUU vessel listing, trade-related measures and sanctions.

Through enhanced accountability, monitoring, communication, and enforcement of suspect fishing vessels, the PSMA provides the U.S. government another tool to ensure only legally caught fish enter the U.S. market.

Bioterrorism Act Traceability Requirement: The Bioterrorism Act requires manufacturers, distributors, receivers, importers, warehouses in the U.S. to keep records of:

- Name, location, contact information of immediate previous source of food; date received; code or other identifier if available; quantity and how packed; name and contact information on transporter.
- Name, location, contact information of immediate subsequent recipient of food; date released; code or other identifier if available; quantity and how packed; name and contact information on transporter; specific source of each ingredient used to make food.
- Requires transporters to maintain “one up” and “one back” records for food carried,

Food Safety Modernization Act Traceability Requirement: FSMA required FDA to develop an enhanced traceability system, compatible with domestic and international commerce, which is based on the results of one or more pilot projects to be conducted using foods that were subject to outbreaks in the last five years. The pilot exercises were required to develop and demonstrate effective traceability of foods produced in a variety of facilities while evaluating costs and benefits as well as feasibility of technological tools for tracing. FDA contracted with the non-profit Institute of Food Technologists (IFT) to conduct the pilot.

From the results of the pilot, IFT recommended that FDA establish a uniform set of recordkeeping requirements for all FDA-regulated foods that include Critical Tracking Events (CTEs) and Key Data Elements (KDEs) as determined by FDA. The results of the pilot will also guide FDA’s new recordkeeping requirement for enhanced tracking and tracing of food products by identifying key data elements that are needed to trace a product back through the distribution system.

FSMA stipulated that records on the immediate recipient are required to be available within 24 hours. Fishing vessels, other than processing vessels, will be exempt.

Customs and Border Protection Country of Origin Rules: CBP regulations stipulate that any article (including seafood) of foreign origin entering the U.S. must be marked with the country of origin. The purpose is to inform the ultimate purchaser of the country of origin of the article. The ultimate purchaser is the last person who will use the product in the form that it is imported. For example, if the item is substantially transformed in the U.S., the ultimate purchaser of the imported product is the manufacturer, not the final consumer. An exception is that individual fish do not need to be marked (unlike something like an article of clothing) but rather the packaging must be marked. If the product will be repackaged in the U.S., the importer is required to certify to CBP that the new package will be properly marked and is required to notify the repacker of this requirement. Products that are simply repacked (not substantially transformed) in the U.S. must still be marked with the country of origin..

U.S. Department of Agriculture Country of Origin (COOL) Rules: USDA Agricultural Marketing Service COOL requires retailers to notify consumers of country of origin and method of production (wild-caught or farm-raised) for fish and shellfish. This is accomplished by label, sign or placard. The regulations require suppliers to retail operations to provide the information that will be needed by the retailer to properly label products with the country of origin and method of production. This information is provided on the package, the master shipping container, or in documentation. There are specific recordkeeping requirements for both the retailer and suppliers to provide for a verifiable recordkeeping trail throughout the supply chain. Any supplier that provides product that may eventually end up in a retail operation must maintain records of the immediate previous source (if applicable) and immediate subsequent recipient of the product. The records must be able to be linked to the product through some type of lot number or other identifier and maintained for 1 year from date of transaction. The initial supplier of the product must keep the records that support the country of origin and method of production claims.

USDA COOL also defines what can be labeled with “Product of the United States” label.

USDA COOL does not apply to processed products; it only applies to raw (chilled or frozen) products with minimal added ingredients such as salt or phosphates.

State Department DS-2031 Certificate Requirement: U.S. Public Law 101-162, Section 609 prohibits the importation of shrimp harvested with commercial fishing technology that may adversely affect sea turtles. The U.S. Department of State ensures and oversees the implementation of this legislation. The agency requires that all shrimp imports to the U.S. be accompanied by a D.S. 2031 certificate.

Certification to export shrimp to the U.S. is based on several factors, including the assessment that the exporting nation has taken specific measures to reduce the incidental taking of sea turtles in trawls, which usually involves implementing a Turtle Exclusion Device (TED) program.

Approximately 40 countries are currently permitted to export shrimp to the U.S. on the basis of sea turtle conservation.

### **VIII. Additional Industry Practices Being Used to Address IUU**

In addition to the legal requirements listed above, the seafood industry has also developed additional, voluntary steps to address the issues, including:

International Maritime Organization Numbers: The IMO in 1987 established a vessel registry – the IMO Ship Identification Number Scheme – for all merchant vessels above 100 GT. The registry assigns each vessel a unique IMO number, which remains with the vessel regardless of change in ownership or flag country. Merchant vessels from IMO member nations are required to obtain an IMO number as the keel is laid.

In November 2013, the IMO General Assembly expanded the program to fishing vessels of similar displacement, on a voluntary basis. This reform allows commercial seafood businesses in most cases to insist on sourcing wild-capture products from sources that can supply an IMO number cross-referenced against IUU blacklists.

Model Specification Language Regarding IMO Numbers for Inclusion in Purchasing Contracts: The NFI Executive Committee will consider a policy that all NFI member companies should source only from harvesters who can provide an IMO number for the vessel responsible from which the fish was purchased. This will assure the buyer that a given wild-capture product comes from a vessel not on an IUU black list.

To that end, NFI is developing model contract language that can be inserted into contracts by NFI importers, processors, and others not directly engaged in fishing. This language will be based in part on similar language already in use by companies participating in the International Sustainable Seafood Foundation Proactive Vessel Register<sup>15</sup> (which itself is based on the IMO Ship Numbering Scheme). The language is intended to commit domestic and overseas seafood suppliers – whether they are harvesters or not – to ensuring that they are selling only fish harvested from vessels bearing an IMO ship number, thus embedding this form of sustainability requirement into the contracting policies of seafood industry leaders.

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<sup>15</sup> "International Seafood Sustainability Foundation." *International Seafood Sustainability Foundation*. Web. 29 Aug. 2014. <<http://iss-foundation.org/pvr/>>.

International Coordination of IMO Number Requirements: NFI, through the International Coalition of Fisheries Associations (ICFA), is also urging other national associations to adopt the IMO numbering system. NFI is also coordinating with the major global harvesting companies to ensure they adopt IMO numbers.

Seafood Traceability Guidelines, in Conjunction with GS1: The NFI *Traceability for Seafood: U.S. Implementation Guide* was published in March 2011 and is available to download for free.<sup>16</sup> It was developed by NFI members, GS1 US, and North Carolina State University Seafood Laboratory. The Guide is based on the FDA terms of Critical Tracking Events (CTEs) and Key Data Elements (KDEs) which describe product transition points in a supply chain (CTEs, both internal and external) and information required at those points to support important tracing information (KDEs) needed in the event of a recall. The Guide recommends capture of information from water to trading partner or technology provider. NFI endorsed the use of GS1 Global Traceability Standards to enhance traceability and urged the seafood industry to use the Guide in developing best practices in traceability. While the Guide was initially envisioned with a food safety focus, its stepwise method of examining the seafood supply chain makes it readily adaptable to other areas of interest, such as sustainability.

Good Business Practices in Plants Overseas that Process U.S.-caught Seafood: Several U.S. integrated seafood companies catch fish in U.S. waters and process that fish in overseas plants. To ensure legal compliance, the companies establish local offices in the production countries, staffed by a mix of ex-pat Americans and local professionals. A typical process is:

1. U.S. company ships fish from U.S. to processing plants in China.
2. U.S. company's local office receives the fish, which will remain under its custody until processing plants need to produce them in the forms customers desire.
3. U.S. company ensures that the production facility only processes its fish at that period.
4. U.S. company quality assurance staffs are at each plant to inspect products as well.
5. Once completed, processing plants will ship processed fish back to the U.S. company in the U.S.

This strict monitoring process significantly reduces the risk of mixing fish from other resources.

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<sup>16</sup> "Traceability and Sustainability in the Supply Chain." *About Seafood*. National Fisheries Institute. Web. 29 Aug. 2014. <<http://www.aboutseafood.com/about/us-seafood-traceability-implementation-guide>>.

**Recommendation:** The Task Force should catalogue and fully appreciate the existing legal requirements for traceability before considering additional actions the seafood supply chain would be required to take. The Task Force should also encourage continued private sector action to eliminate any IUU in the U.S. market.

## IX. Challenges to Some Solutions Offered to Address IUU

There are several challenges to some suggested solutions to address IUU, including:

**Ability to Trace Fish Directly to a Vessel (Bristol Bay Example):** One solution offered to ensure the U.S. market remains free of IUU is a requirement to trace each fish to a specific vessel. This suggested approach is less valuable to sustainability than a district or region-based fisheries management model and will be impractical in a number of fisheries. Further, it attempts to replace a systems approach with the more transactional and costly vessel specific approach.

Bristol Bay (Alaska) is considered “best in class” for salmon fisheries management. Catch levels are determined by government scientists based on salmon runs, and the season can be adjusted to reflect new data. Thousands of small catcher boats fish for salmon and deliver their catch to about 225 “tenders” which in turn deliver the fish to about 20 shore side processors. From 16 June to 17 July 2014, the total catch was 28,252,263 adult salmon or about 158,212,700 pounds. The average daily catch was 911,363 salmon.<sup>17</sup>

16 June 2014

		Catch Daily	Cumulative	Escapement Daily	Cumulative	In-River Estimate	Total Run
Bristol Bay East	Ugashik	0	4,032	0	0	0	4,032
	Ugashik River			0	0	0	0
	Egegik	35,663	55,046	450	6,580	0	61,634
	Egegik River			450	6,580	0	0
	Naknek-Kvichak	4,574	4,731	414	1,578	0	6,309
	Kvichak River			48	48	0	0
	Naknek River			366	1,530	0	0
Bristol Bay West	Nushagak	534	3,153	7,322	33,998	0	37,151
	Igushik River			0	0	0	0
	Nushagak River			3,524	17,996	0	0
	Wood River			3,798	16,002	0	0
	Togiak	0	25	0	0	0	25
	Togiak River			0	0	0	0
	<b>Bristol Bay Totals:</b>	<b>40,771</b>	<b>66,987</b>	<b>8,186</b>	<b>42,164</b>	<b>0</b>	<b>109,151</b>

17 July 2014

		Catch Daily	Cumulative	Escapement	Cumulative	In-River	Total Run
Bristol Bay East	Ugashik	25,800	1,975,980	16,056	532,800	40,000	1,948,780
	Ugashik River			16,056	532,800	40,000	0
	Egegik	40,000	6,071,249	0	1,382,466	0	8,253,715
	Egegik River			0	1,382,466	0	0
	Naknek-Kvichak	20,000	13,699,325	24,090	5,926,974	0	19,626,299
	Kvichak River			17,736	4,452,546	0	0
	Naknek River			6,354	1,474,428	0	0
Bristol Bay West	Nushagak	10,000	6,108,812	58,000	3,616,986	0	9,797,398
	Igushik River			12,042	273,660	0	0
	Nushagak River			6,616	608,676	0	0
	Wood River			99,942	2,734,650	0	0
	Togiak	6,000	192,284	0	31,896	0	224,180
	Togiak River			0	31,896	0	0
	<b>Bristol Bay Totals:</b>	<b>101,000</b>	<b>28,319,250</b>	<b>98,146</b>	<b>11,491,122</b>	<b>40,000</b>	<b>39,858,372</b>

<sup>17</sup> "Bristol Bay Daily Salmon Run Summary, Alaska Department of Fish and Game." *Bristol Bay Daily Salmon Run Summary, Alaska Department of Fish and Game*. Alaska Department of Fish and Game. Web. 29 Aug. 2014.

<<http://www.adfg.alaska.gov/index.cfm?adfg=commercialbyareabristolbay.harvestsummary>>.



Each salmon plant processes about 134,000 salmon (750,000 pounds) on average per day. Maximum capacity, at the height of the season, can reach 268,000 salmon, or about 1.5 million round pounds per day.

Requiring a traceability system, down to the individual vessel, would require each tender or receiving processing plant to have specific holds or storage areas dedicated to individual catch vessels. Each processing plant would be required to start and stop production for each new catcher vessel's fish, to ensure only that vessel's fish entered a can or package. Such a requirement would grind the entire Bristol Bay system to a halt, as boats would be required to wait for offload at tenders or plants.

What is more important for regulators and consumers to understand is that any fish caught in Bristol Bay comes from a system that regulates how much fish is caught, when it is caught, and by whom it is caught. The government system disciplines any illegal fishing, up to and including removing licenses.

Value of Tracking Fish to Specific Vessels versus Tracking to a Fishery Management System: The U.S. and many other countries operate excellent fisheries management systems. Part of those systems are enforcement actions taken against individual boats that violate the system's legal requirements. For instance, a vessel caught violating the law could face fines, restitution payments for illegally caught fish, cancellation of a permit, or jail terms.

If a system is considered to be well-developed and implemented correctly, the value of tracing fish to an individual vessel for sustainability purposes is of less value. The important fact is that the vessel operates under a set of rules established by the U.S. or foreign governments.

Ability to Trace Fish Directly to a Vessel (Maine Lobster Example): The Maine lobster industry is comprised of fishing vessels, buying stations, and processors. For food safety reasons, each processor must define a "lot." A lot can be as small as a single boat or as large as a 25 mile stretch with 50 lobster boats. For food safety purposes, processors and distributors must be able to trace and recall a whole "lot" if there is a problem. Buyers define a lot based on the level of risk they can assume. A smaller lot means lower risk in the case of a recall. However, a small lot also requires a buyer to segment each small lot into separate holds, totes, and other storage devices and then track each lot. Smaller lots, like the suggestion to trace a fish directly to an individual vessel, are a much higher burden.

Administrative Cost of a Catch Certificate Transactional Approach versus U.S.-Negotiated Solution (EU Example): The European Commission (EC) requires Fisheries Management Authorities to provide a "catch certificate" for wild-caught seafood

imported into the European Union (EU) including product exported to a third country for secondary processing. Catch documentation schemes have incurred significant challenges. For instance, the catch certificate must be certified by captains and validated by authorized government officials prior to unloading. It is impossible for government officials to validate the activity of the vessel captain.<sup>18</sup> The transactional costs of each shipment being accompanied by a certificate are also high. For some smaller exporters this burden has eliminated Europe as an export market.

Understanding that the EU catch certificate system did not recognize the rigor of the U.S. fisheries management system, in 2009 NOAA negotiated an alternate NOAA-EU agreement with the Commission that allows for a U.S. specific catch certificate. NOAA issues fishery product export certificates electronically without the captain or vessel's name for fish caught in U.S. waters. In essence, the European Union accepted that U.S. fisheries are well-managed and do not require the more cumbersome catch documentation. The NOAA Seafood Inspection Program conducts quarterly audits to monitor the process of EU Export Certificate inspections.

Duplicate Traceability Systems: The seafood supply chain must already comply with several laws and rules that mandate traceability for food safety reasons. Adopting a private sector traceability system is a market decision. Those market decisions, though should not be confused with ensuring good fisheries management.

Impact of Task Force Recommendation on U.S. Seafood Exports: It is critical to recognize that binding IUU requirements imposed on U.S. seafood imports are likely to be imposed by our trade partners on U.S. seafood exports. U.S. exports in 2013 totaled \$5.7 billion, virtually all of them in the form of wild-caught products, and those exports of course supported a substantial portion of the domestic industry.<sup>19</sup> If a U.S. trade partner views newly proposed requirements as exceeding what is necessary to address IUU fishing (a real possibility if the requirements go beyond PSMA implementation), or believes its fishing industry is being unfairly targeted, then that nation may well propose

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<sup>18</sup> We must also make the Task Force aware that some countries and companies have used information supplied on catch certificates as a means to "deconstruct" supply chains and identify supply sources that had previously been confidential to U.S. businesses (thus harming American processing companies).

<sup>19</sup> "Commercial Fisheries Statistics." *Annual Product by Country/Association*. NOAA Fisheries. Web. 29 Aug. 2014. <<http://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/applications/annual-product-by-countryassociation>>.

even more aggressive IUU mandates for U.S. fishermen to meet. This is an important consideration for major markets such as China and the EU.<sup>20</sup>

#### **X. NFI Recommendations Regarding IUU**

NFI recommends the Task Force consider the following actions regarding IUU:

1. The Task Force should develop a risk-based approach to the problem of IUU. The principles of HACCP (Hazard Analysis and Critical Control Points) as a food safety management system are based on a modes of failure concept used in manufacturing where it is not feasible to test every item for defects, but rather to analyze points of failure to control and inspect at those points. This properly focuses attention and resources to the problem areas rather than on the entire process. This concept, which originated at NASA, has been translated to other situations as well. For example FSMA requires FDA to establish inspection frequencies on the risk level of the food or firm. In terms of IUU this concept can be translated to focus on segments of the fishing industry or countries that have an IUU problem and evaluate the best controls for those systems rather than utilizing attention and resources to control all areas even those where the problem does not exist.

2. The Task Force should craft recommendations that enhance economic opportunities for the full seafood chain, not merely one segment.

3. The Task Force is encouraged to continue to seek the views of those companies that will be most impacted by its recommendations, to ensure the ideas can be implemented and achieve the goals desired.

4. The Task Force should carefully analyze data on what Americans eat, from where Americans source their seafood, and what the likely scale of IUU fish in the U.S. market might be before developing recommendations that will impact the full U.S. seafood sector. Developing the country-product pairs that represent the greatest risk of IUU from entering the U.S. market is the “risk-based approach suggested in Recommendation 1. Defining the scope of the IUU challenge in the U.S. market is an essential first step for the Task Force.

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<sup>20</sup> If a given U.S. IUU requirement is in fact found to unfairly target a particular exporting nation, that nation may bring a WTO case. A recent WTO ruling repudiating U.S. COOL requirements for livestock imports, left unresolved, will place U.S. food exports to Mexico and Canada at risk of retaliation. Nirmala, Menon. "WTO Panel Decides Against U.S. in Meat-Labeling Dispute." *The Wall Street Journal*. Dow Jones & Company, 21 Aug. 2014. Web. 28 Aug. 2014.  
<<http://online.wsj.com/articles/wto-panel-decides-against-u-s-in-meat-labeling-dispute-1408645566>>.

5. The Task Force is encouraged to look carefully at what consumers seek on packages and what value consumers will find in additional information on labels.

6. The Task Force should develop a risk-based framework to ensure its efforts focus on actual IUU hot spots. The waters off West Africa are recognized as hot spots, and the U.S. government should lend assistance there. However, the Task Force should recognize the U.S. gets no seafood from that region, so the Task Force should not recommend solutions that burden U.S. industry with solutions to that problem.

7. The Task Force should recognize the primacy of the Magnuson-Stevens Act and NOAA in establishing standards of sustainability and the Task Force should reject calls for mandatory third party certification of seafood.

8. The Task Force should fully utilize the government tools already in place before recommending additional actions.

9. The Task Force should recognize and encourage further steps by the private sector to address IUU, as the private sector can often achieve results more quickly in this area. The Task Force should encourage the development of an industry framework that the private sector can implement internally to achieve compliance with already existing federal programs.

The effort should be about standard enforcement of existing rules and regulations before introduction of new rules.

## **XI. Efforts to Combat Seafood Fraud**

Given that some IUU fish can be accurately labeled, and that some legally caught fish can be mislabeled, NFI offers separate comments to discuss IUU fishing and seafood fraud. We urge the Task Force to consider solutions to these two problems separately.

The following section of NFI's comments addresses fraud.

## **XII. NFI Definition of Fraud**

NFI defines seafood fraud as:

- Mislabeling any species, for instance a lower value species for a higher value species
- Misstating a seafood product's country or origin, including doing so to avoid a duty
- Misstating weights and counts of seafood
- Not accurately labeling seafood products for treatment with moisture retention agents (MRA)

While species substitution often receives the most media attention, the issue of short weight and lack of proper labeling for MRA treatments costs the seafood community and ultimately consumers much more. An example email sent to arrange of seafood buyers from 11 August 2014 demonstrates the short weight problem:

**From:** "Phil" <[phil@seafooddoctor.com](mailto:phil@seafooddoctor.com)>

**Date:** August 11, 2014 at 3:56:25 PM CDT

**Subject:** Fillets

I am putting together container orders for 5-7, 7-9, 9-11

I have

100 % net wt. at

1.62 West coast

1.65 East Coast

85 % net wt. at

1.40 West Coast

1.43 East Coast

The offer to label product at less than true weight (essentially to pass the weight of ice off as fish weight) is an offer to collude to break the law.

NFI-sponsored research at the University of Rhode Island's Department of Fisheries Economics (Cathy Roheim, now with University of Idaho) reports that experts estimate that short weighting of five species costs the industry up to \$144 million annually.

Recommendation: The Task Force is encouraged to make recommendations that focus government resources in combatting where the greatest economic damage occurs, not where the media most portrays a problem.

### **XIII. Existing Legislation and Regulations Available to Address Fraud**

The federal, state, and local governments have a variety of laws, regulations, and policy tools to combat fraud, including:

#### *Local and State Governments*

State and Local Departments of Weights and Measures: State and local governments have the authority to regulate weights and measures within their jurisdiction. Uniform weights and measures laws and regulations are adopted by the Conference for Weights and Measures – a partnership between federal, state and local governments and industry stakeholders. The Department of Commerce's National Institute for Standards and Technology (NIST) serves as the federal advisor to the state and local governments and industry.<sup>21</sup> State and local governments will incorporate and regulate to these uniform codes. The main focus of the state and local governments are retail products (including seafood), however some states do have the authority to regulate the weights of any product offered for sale.

State and Local Departments of Food Protection: State and local governments have the authority to regulate food safety and sanitation conditions at retail (grocery and restaurants) facilities. A Model Food Code<sup>22</sup> is maintained by the U.S. FDA to provide a

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<sup>21</sup> *Seafood Forum May 28, 2009 National Institute of Standards and Technology Gaithersburg, Maryland Prepared by David Sefcik (NIST): National Institute of Standards and Technology.* 28 May 2009. Web. 29 Aug. 2014. <<http://www.nist.gov/pml/wmd/metric/upload/Seafood-Forum-Final.pdf>>.

<sup>22</sup> "Food." *FDA Food Code 2009: Chapter 3 - Food.* U.S. Food and Drug Administration, Part 3-6. Web. 29 Aug. 2014. <<http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm186451.htm>>.

science-based regulation for states and local governments to ensure public health and that food is unadulterated and *honestly presented*. The Food Code is developed and adopted by the Conference for Food Protection – a partnership between federal, state and local governments and consumer and industry stakeholders. FDA, USDA-Food Safety and Inspection Service and Centers for Disease Control and Prevention serve as federal advisories to the Conference with FDA maintaining the Food Code and serving as advisor to state and local governments and industry. State and local governments will incorporate and regulate to this model code.

Local Health Departments and Offices of Consumer Affairs: Two specific examples highlight how state or local governments can use their existing authorities for addressing seafood fraud issues.

The state of Florida has an active program to fight seafood mislabeling and species substitution. The Florida Department of Agriculture and Consumer Services maintains information on their website<sup>23</sup> educating consumers about species substitution and provides contact information for reporting suspected seafood mislabeling at Florida restaurants and retail stores. The website<sup>24</sup> also maintains information for businesses on seafood menu misrepresentations and species substitution. Florida's Division of Hotels and Restaurants inspection program actively reviews menus to discern seafood misrepresentations. Violations are posted at <http://www.myfloridalicense.com/dbpr/hr/food-lodging/foodmisrep.html>.

The Los Angeles County Department of Public Health, in conjunction with the FDA and the California Department of Public Health Food and Drug Branch, conducted a survey of the prevalence of seafood mislabeling in the county. Seventy-four percent of the 103 facilities (66 restaurants and 37 food markets) investigated had at least one seafood label misbranding or false and/or misleading advertising on menus. The results of the survey prompted an education campaign for food establishments and consumers. Enforcement will follow after completion of the education campaign.

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<sup>23</sup> "Mislabeling Seafood Products Is Illegal." *Mislabeling Seafood Products Is Illegal*. Florida Department of Agriculture and Consumer Services. Web. 29 Aug. 2014.  
<<http://www.freshfromflorida.com/Food-Nutrition/Food-Safety/Mislabeling-Seafood-Products-is-Illegal>>.

<sup>24</sup> "Seafood Menu Item Misrepresentation and Product Substitution." Florida Department of Agriculture and Consumer Services. Web. 29 Aug. 2014.  
<<http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Business-Development-Resources/Seafood-Menu-Item-Misrepresentation-and-Product-Substitution>>.

State Food Inspection Laws and Agencies: Many states have adopted food protection laws and regulations which parallel the Federal Food Drug and Cosmetic Act to regulate processed food products. Active inspection programs by state agencies play a key role in ensuring food products – including seafood products – are not adulterated or misbranded.

#### *Federal Government*

Federal Food Drug and Cosmetic Act: FDA's guiding law already prohibits all aspects of seafood fraud. Products that bear labeling that is misleading in any way can be deemed misbranded. Therefore seafood products with incorrect name, incorrect representation of net weight, and incorrect country of origin statement, as examples, are misbranded. Products can be deemed adulterated if found to be absent of, substituted with or addition of constituents that make the product less valuable. Seafood products that are substituted with species or have excess water added without declaring on the label can be deemed adulterated. *There is no need to create new laws to prohibit seafood fraud – it is already against the law in the U.S.*

Food and Drug Administration Species Testing: FDA has established a compliance program for testing seafood to determine identity. The multi-pronged Fish SCALE (Seafood Compliance and Labeling Enforcement) program<sup>25</sup> includes the development of validated DNA testing methods along with a library of DNA sequence data for species which have been authenticated with taxonomically identified specimens and sampling assignments to pull samples from imports, warehouses, distribution centers and retail.

FDA has taken compliance actions such as Warning Letters, injunction orders, Import Alerts, against seafood firms for misbranding violations determined with DNA testing. Two recent examples of actions include:

- Indonesian exporter placed on Detention without Physical Examination (DWPE) for Import Alert 16-04 (Misbranded Seafood) for mislabeling of snapper species. Future shipments will be detained at the U.S. border until the firm can prove that the labeling is correct.
- A Chicago seafood distributor agreed to a permanent injunction to settle criminal and civil charges for mislabeling fish and misrepresenting the net weight of shrimp. The owner also received a maximum \$100,000 fine and was sentenced to five years federal probation with six months of home

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<sup>25</sup> "About FDA." *Fish SCALE (Seafood Compliance and Labeling Enforcement)*. U.S. Food and Drug Administration. Web. 29. Aug. 2014. <<http://www.accessdata.fda.gov/FDATrack/track-proj?program=cfsan&id=CFSAN-ORS-Fish-Scale>>.



confinement. The permanent injunction requires the firm to hire an independent expert to develop and implement a written plan for the receipt, processing, packing, labeling and distribution of seafood to ensure proper labeling in addition to regular certification to the FDA. This injunction will be in effect for a minimum of five years.

FDA Seafood List: FDA and other federal law require seafood to be properly labeled for species identification. *The Seafood List*<sup>26</sup> is FDA's Guide to Acceptable Market Names for seafood. The List contains a fish's Acceptable Market Name, Common Name, and Scientific Name. It is updated every six months, in coordination with NOAA and experts at the Smithsonian. It is available on the internet and easily searchable.

FDA Hazard Analysis and Critical Control Point Regulations: FDA's seafood HACCP regulation requires all seafood processors to assess the potential hazards associated with each seafood species being processed in order to properly develop and implement a HACCP plan. Therefore the accurate identification of seafood species is critical for compliance with the Seafood HACCP regulation because hazards will vary depending on the species. In addition, all finfish and crustaceans need to declare the specific species in order to be in compliance with the Food Allergen Labeling and Consumer Protection Act (FALCPA) requirements. FDA's guidance recommends that HACCP plans include controls to ensure that finfish and crustaceans are properly labeled to ensure compliance with FALCPA. Substituting species will compromise compliance with Seafood HACCP and FALCPA and may cause the product to be adulterated or misbranded as defined by the Federal Food Drug and Cosmetic Act.

Food Safety Modernization Act (FSMA) Economic Adulteration Rules: FSMA has authorized FDA to establish preventive control-type regulations to control food safety hazards that are the result of economically motivated adulteration (EMA). Species substitution, a type of economically motivated adulteration, may be addressed in new regulations supporting FDA's existing authority with the Seafood HACCP regulation and FALCPA requirements.

#### **XIV. Additional Industry Practices Being Used to Address Fraud**

In addition to the legal requirements listed above, the seafood industry has also developed additional, voluntary steps to address fraud issues, including:

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<sup>26</sup> "The Seafood List." *The Seafood List*. U.S. Food and Drug Administration. Web. 29 Aug. 2014. <<http://www.accessdata.fda.gov/scripts/fdcc/?set=seafoodlist>>.

Better Seafood Board: The Better Seafood Board is a marketplace solution which has the promise to reward the seafood community's good players – those who are committed to outstanding business practices. The BSB was the result of NFI's members desire to rid the industry of unscrupulous vendors or customers willing to defraud customers and to highlight for buyers at the processor, distributor, retail and restaurants levels, those seafood providers that have systems in place to ensure that their products are properly labeled for weights and counts, country of origin and species. Each NFI member CEO has committed to only sell products properly labeled for weights, origin, and species. Each CEO also agreed to pay for and undergo a third party audit if the BSB received complaints about the company's products. The BSB process includes a call center that accepts comments from buyers in the seafood value chain about challenges they have had with seafood suppliers providing them products which they believe are not in accord with industry and legal practices. NFI member companies found to be violating the commitment to economic integrity will be dismissed from the association.

Memorandum of Understanding with the National Restaurant Association: To address the problem of menu mislabeling, NFI and the BSB entered into an MOU with the NRA. NFI's responsibility is to review a restaurant's menu to ensure it is compliance with the FDA Seafood List.

Department of Commerce Seafood Inspection Program: NOAA's Seafood Inspection Program is a fee-for-service inspection program for fish, shellfish, and fishery products. Any seafood company in the U.S. and overseas may voluntarily utilize the Program's inspection services to ensure their products meet FDA regulatory requirements including those for product identity and net weight as well as customer quality standards.

Engaging Foreign Governments and Trade Associations: When alerted to offers of short weight product or mislabeling, if from an exporting nation, NFI communicates with the exporting trade association, Embassy and any contacts it has within that nation's government. NFI emphasizes that, even if requested by an importer to provide short weight, mislabeling packaging that comes to the U.S. harms the country's reputation.

Engaging U.S. Embassies/Consulates in Countries Suspected on Sending Short Weight Product: When senior NFI staff travel overseas, they meet with U.S. Embassy officials in countries that are more suspected of providing short weight product, to alert them of the problems. NFI urges them to communicate the long-term damage that offering and providing short weight products have on country's reputation.

## **XV. Challenges to Some Solutions Offered to Address Fraud**

There are several challenges to some suggested solutions to address seafood fraud, including:

### **Traceability Would Not Solve the Most Common Species Substitution Problem:**

Traceability from the vessel through a distributor will not address the most common form of species substitution – the intentional or innocent renaming of a fish at the restaurant level. Several media have reported that “fish served in restaurants is not what consumers believed they were buying, up to 48% of the time,” but in the same article state that the seafood distributor “technically followed the law” by delivering fish in accordance with the FDA Seafood List.<sup>27</sup> There is nothing “technical” about following the FDA Seafood List regulations.

The challenge of ensuring proper labeling does not stop when seafood distributors deliver product to the back door of a restaurant. Often chefs will change the name to reflect a more “fanciful” dish or a name that “rolls off the tongue.”<sup>28</sup> This practice would not be stopped with the development of additional traceability demands. Rather, NFI and the National Restaurant Association have entered into an MOU, in which NFI commits to review, when asked, NRA members’ menus for proper labeling.

**Confusing Fraud and Sustainability Issues:** Some groups charge that the seafood supply chain fraudulently hides the name of a fish due to sustainability concerns. This turns economics on its head. If a fish is troubled from a sustainability standpoint, it is lower supply. Basic economics suggest a fish in lower supply would generate a price premium. It does not make economic sense for a restaurant or its suppliers to disguise a fish in short supply as one with greater supply.

**Undermining the FDA Seafood List:** Recently passed state legislation would conflict with the FDA Seafood List rules or otherwise cause consumer confusion. For instance, the legislation would require the Common Name to be listed. The Seafood List requires the Market Name. This will cause confusion in the market and for processing companies. For instance, dolphinfish is the Common Name for mahi, the acceptable Market Name. As a result, consumers are likely to believe they are actually eating dolphin!

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<sup>27</sup> Jenn, Abelson, and Beth Daley. "On the Menu, but Not on Your Plate - The Boston Globe." *BostonGlobe.com*. 23 Oct. 2011. Web. 29 Aug. 2014.  
<<http://www.bostonglobe.com/2011/10/22/dnatest/NDbXGXdPR6O37mXRSVPGL/story.html>>

<sup>28</sup> Jenn, Abelson and Beth Daley. "On the Menu, but Not on Your Plate." *Boston.com*. The Boston Globe, 23 Oct. 2011. Web. 29 Aug. 2014.  
<[http://www.boston.com/business/articles/2011/10/23/on\\_the\\_menu\\_but\\_not\\_on\\_your\\_plate/](http://www.boston.com/business/articles/2011/10/23/on_the_menu_but_not_on_your_plate/)>.

Unfunded Mandate to NOAA: Pending legislation would require NOAA to undertake additional inspection actions, without funding. The NOAA Seafood Inspection Program is paid for by industry, not through appropriated funds. Industry is unlikely to pay additional funds for NOAA services that are already required under FDA law. Any additional NOAA inspections would need to be funded through appropriations.

Duplicate Existing FDA Functions: Pending legislation would require NOAA to develop, publish, and regularly update a list of acceptable seafood names. FDA already publishes and updates the FDA Seafood List, with input from NOAA and the Smithsonian's seafood taxonomists.

Expanding NOAA Responsibilities to Inspect Seafood at Border: Pending legislation would require NOAA to interdict seafood at the border. Both FDA and Customs already have the role of ensuring unsafe and improperly labeled seafood does not enter the U.S.

Duplicate Existing Memoranda of Understanding between FDA and NOAA: Pending legislation would require NOAA and FDA to enter into an MOU to share resources and expertise. Several NOAA and FDA MOUs already require the agencies to cooperate.

Confusing NOAA Seafood Inspection Program Quality Effort with FDA Food Safety Focus: Pending legislation would require NOAA SIP personnel to act in role of food safety regulators. NOAA SIP primarily ensures the quality of the product produced (e.g., does the system produce the exact size portion requested) and does not primarily focus on food safety. SIP inspectors would be required to be trained under FDA food safety systems to take on that role. Industry would not pay additional funds for that work, as it already is mandated by FDA oversight.

## **XVI. NFI Recommendations Regarding Seafood Fraud**

NFI recommends the Task Force consider the following actions regarding economic integrity:

1. FDA Should Adopt a Broken Windows Theory for Fraud: Seafood operators that are willing to cheat customers are probably willing to take short cuts on food safety. FDA should formally examine the connection between bad economic actors and bad food safety actors to realign inspection priorities. By addressing economic issues, FDA is likely to address food safety issues also.
2. FDA Should Enforce Existing Short Weight Laws: FDA has responsibility to enforce economic adulteration laws. Merely stating, "no one has died from eating short

weight seafood” is not an adequate reason for not acting on information provided on short weights.

3. FDA Should Protect the Integrity of The Seafood List: FDA should engage with states when the states consider laws that would diminish the authority of The Seafood List (e.g., recently passed legislation on California), to ensure the states under the existing federal requirements for seafood labeling.

4. Congress Should Mandate FDA Enforcement of Seafood Fraud Rules: FDA has not aggressively moved against seafood fraud issues, “because no one has died from a short weight fish.” Congress should use its appropriations and other oversight responsibility to ensure FDA enforces economic adulteration laws and regulations.

5. FDA Should Consider Using FSMA EMA Rules to Combat Fraud: NFI encourages FDA to include the prevention of all types of economically motivated adulteration, such as short weights or misuse of additives, when considering new regulations for two reasons. One, the perpetrators of economically motivated adulteration are not intending to cause harm with the adulteration but rather to achieve financial gain. Two, considering the “Broken Window” concept, processors who are “allowed” to continue to foster fraud are likely to be lapse in areas of food safety.

6. Recognize the Role that State Regulators Play in Enforcing Laws and Regulations: FDA should include existing partnerships with state food and drug programs to expand inspection and enforcement resources.

7. FDA and NOAA to Fully Implement Existing MOUs: FDA and NOAA already have MOUs in which they pledge to work on related issues. If the MOUs are not working, the agencies should rewrite them or recommit their organizations to effective collaboration.

8. National Institute of Standards and Technology Should Convene Follow on Forum on Short Weights: After a 2008 NIST forum, 17 states conducted a coordinated examination of seafood weights. As a result, improvements in industry practices occurred from seafood processors to retailers. In addition, the governments developed a harmonized approach to weight measurement methodology. Another NIST forum could report on progress and determine if another coordinated testing at the state level would be valuable.

9. FDA Should More Aggressively Communicate When Regulatory Actions Taken: Word spreads quickly in the global seafood community. A few high profile and well-communicated cases of regulatory or criminal actions in the area of seafood fraud is highly likely to have a deterrent impact on bad actors. Without action and without communicating that action, FDA runs the risk of bad actors not fearing them.

10. Embassies Should Caution Exporting Nation Governments: U.S. Embassies and Consulates should communicate with exporting nation governments about the long term-damage offering and providing short weight product does to an exporting country's reputation.

## **XVII. Conclusion**

NFI appreciates the opportunity to submit these comments. In doing so, NFI and its member companies have drawn on over two decades of seafood sustainability and traceability experience. NFI urges the Task Force to carefully analyze data on American seafood sourcing and the potential scale of IUU fish in the U.S. market, recognizing that for a large portion of U.S. consumption IUU fishing simply is not a problem. In crafting solutions, the Task Force must also ask whether a given proposal duplicates authority that the Administration already has. The Task Force – consistent with Section 4(a)(iii) & (a)(vi) of the President's June 17 Memorandum – must consider whether and how the seafood industry will be able to comply with a recommendation under consideration, especially in light of the dramatically different ways various species are harvested. Our companies, and the employees and families reliant on those companies, will be among the few commenters that will be accountable for compliance with whatever recommendations assume the force of law. NFI urges the Task Force to recognize this as it concludes its work.



these reviews. The Department gave interested parties an opportunity to comment on the *Preliminary Results*. We received no comments from interested parties.

We conducted these reviews in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.1010 and 1605.40.1090, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.0010 and 0306.29.0000, which are reserved for fish and crustaceans in general. On February 10, 2012, the Department added HTSUS classification number 0306.29.0100 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

#### Final Results of the Review

The Department made no changes to its calculations announced in the *Preliminary Results*. As a result of our administrative review, we determine that a weighted-average dumping margin of 0.00 percent exists for Xiping Opeck for the POR.

For the final results of the new shipper review, the Department determines that a dumping margin of 0.00 percent exists for merchandise produced and exported by Hubei Nature for the POR.

#### Assessment

In accordance with 19 CFR 351.212 and the *Final Modification*,<sup>2</sup> the Department will instruct CBP to liquidate all appropriate entries for Xiping Opeck, and Hubei Nature without regard to antidumping duties

because their weighted-average dumping margins in these final results are zero.<sup>3</sup>

Pursuant to the Department's refinement to its assessment practice in NME cases,<sup>4</sup> for entries that were not reported in the U.S. sales databases submitted by companies individually examined during these reviews, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.

We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of reviews.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Xiping Opeck, the cash deposit rate will be the rate established in the final results of the administrative review; because the rate is zero or *de minimis*, no cash deposit will be required for that Xiping Opeck; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 223.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC entity that supplied that non-PRC exporter.

With respect to Hubei Nature, the respondent in the new shipper review, the Department established a combination cash deposit rate for this company consistent with its practice as follows: (1) For subject merchandise produced and exported by Hubei Nature, the cash deposit rate will be the rate established for Hubei Nature in the final results of the new shipper review; (2) for subject merchandise exported by Hubei Nature, but not produced by Hubei Nature, the cash deposit rate will

be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Hubei Nature but not exported by Hubei Nature, the cash deposit rate will be the rate applicable to the exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of reviews are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i) of the Act and 19 CFR 351.213(h), 351.214 and 351.221(b)(4).

Dated: December 12, 2014.

Paul Piguado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014-29660 Filed 12-17-14; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

RIN 0648-XD652

##### Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

<sup>2</sup> See 19 CFR 351.212(b)(1).

<sup>3</sup> See *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

<sup>4</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

**SUMMARY:** On June 17, 2014, the White House released a *Presidential Memorandum* entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce with twelve other Federal agency members: the Council on Environmental Quality, Departments of Agriculture, Defense, Health and Human Services, Homeland Security, Interior, Justice, the Federal Trade Commission, the Office of Management and Budget, the Office of Science and Technology Policy, the U.S. Agency for International Development, the National Security Council and the U.S. Trade Representative. The Task Force is directed to report to the President within 180 days with “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.” Those recommendations have now been provided to the President through the National Ocean Council. This is a request for comments from the public to advise the Task Force on how to most effectively implement these recommendations. Specific questions are posed after some of the recommendations to help elicit feedback on potential implementation issues and concerns which will help inform development of an implementation plan in the months ahead.

**DATES:** Comments must be received by January 20, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2014–0090, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Carrie Selberg, 1315 East-West Highway; Silver Spring, Maryland 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Task Force. All comments received are a part of the public record and will generally be posted for public viewing on

[www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Task Force will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Carrie Selberg, (301) 427–8021.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The United States is a global leader in sustainable seafood. Over the course of the last six years, the United States has largely ended overfishing in federally managed waters and successfully rebuilt a record number of overfished stocks, with both overfishing and overfished fish stocks at all-time lows. Effective management and enforcement of domestic fishing regulations has supported near record highs in both landings and revenue for our domestic fishing industries. As a result, the United States’ approach of science-based fisheries management is recognized internationally as a model for ending overfishing and implementing sustainable fisheries management practices.

One of the biggest global threats to the sustainable management of the world’s fisheries is illegal, unreported, and unregulated (IUU) fishing. IUU fishing occurs both within nations’ waters and on the high seas and undermines the biological and economic sustainability of fisheries both domestically and abroad. IUU fishing in other parts of the world can cause problems in places where there are strong rules managing fisheries, such as the United States. By circumventing conservation and management measures and cutting or avoiding the operational costs associated with sustainable fishing practices and harvesting levels, entities engaged in IUU fishing undermine the sustainability of fish stocks and the broader ecosystem. Further, IUU fishers gain an unfair advantage in the marketplace over law-abiding fishing operations as they do not pay the true cost of sustainable production. Global losses attributable to IUU fishing have been estimated to be between \$10–23 billion annually. Additionally, U.S. efforts to reduce global hunger, malnutrition, and coastal risks are being undermined by IUU fishing in developing countries. Over 2.5 billion

people depend upon fish for food and nutrition, and IUU and unsustainable fishing threatens valuable food resources. Combating IUU fishing will directly contribute to U.S. commitments and efforts to enhance global food and nutrition security.

A number of factors including complex trade systems, comingling, and broad geographic distribution contribute to difficulties in documenting the chain of custody for fish and seafood products. According to the United Nations’ Food and Agriculture Organization, fish and seafood products are among the most widely traded food commodities in the world. Additionally, some seafood is comingled in the global supply chain as part of processing and distribution. Once a shipment of seafood enters U.S. commerce, it is often distributed widely making it difficult to document the chain of custody and guarantee that the product reaching the consumer has been legally harvested or is in fact the product it is claimed to be.

While not necessarily related to IUU fishing, seafood fraud (whereby fish is mislabeled with respect to its species or country of origin, quantity, or quality) has the potential to undermine the economic viability of U.S. and global fisheries as well as the ability of consumers to make informed purchasing choices. Seafood fraud can occur at any point along the seafood supply chain from harvest to market. It can be driven by diverse motives, from covering up IUU fishing to avoiding duties, to increasing a profit margin through species substitution or falsification of the country of origin. While it is difficult to know the extent of seafood fraud, the frequency of seafood fraud incidents has received increasing attention in peer-reviewed journals, government reports and private sector reports. Seafood fraud threatens consumer confidence, serving to further undermine the reputation and market competitiveness of law-abiding fishers and businesses in the seafood industry.

A number of challenges exist with respect to information collection, sharing, and analysis in support of federal efforts to combat IUU fishing and seafood fraud: (1) A vast industry with a large quantity of international and domestic trade; (2) multiple Federal agencies responsible for regulating only a part of this trade and only for particular issues (e.g., food labeling and fishing violations); (3) disparate information collection abilities and requirements among those agencies with no specific common collection, analysis or sharing mechanism; (4) federal jurisdiction not including the entire



supply chain as states manage their own fisheries and generally have primary jurisdiction over intrastate sales, including most retail and restaurant sales; (5) statutory constraints on the use and sharing of some information collected by the federal government; and (6) weak institutions and poor data collection and management in some source countries.

It is in the interest of the United States to promote a comprehensive framework that supports sustainable fishing practices while combating seafood fraud and the sale of IUU seafood, including by improving the transparency and traceability of the seafood supply chain. To achieve these objectives, the United States will need to improve implementation of and enhance and broaden the tools it has available to combat IUU fishing and seafood fraud. The Task Force was established to identify and achieve these objectives.

The Task Force initiated a public engagement process to gain broad input to inform and advise development of these recommendations. This process included two public meetings, two webinars, input from 32 countries, and a public comment period noticed in the **Federal Register**. The Task Force also began to analyze the federal government's existing authorities to combat IUU fishing and seafood fraud, and identify potential gaps in those authorities. Furthermore, it examined specific areas for improved coordination among the Task Force agencies regarding these issues.

Based on this public engagement process and the Task Force's analysis of existing authorities, gaps in those authorities, and current and potential levels of interagency coordination, the Task Force developed recommendations designed to enhance the tools we have available to combat IUU fishing and seafood fraud. Doing so will level the playing field for legitimate fishers and businesses in the seafood industry and increase consumer confidence in seafood sold in the United States.

Recommendations by the Task Force fall under four general themes:

- **International:** Combat IUU fishing and seafood fraud at the international level;
- **Enforcement:** Strengthen enforcement and enhance enforcement tools to combat IUU fishing and seafood fraud;
- **Partnerships:** Create and expand partnerships with state and local governments, industry, and non-governmental organizations to identify and eliminate seafood fraud and the sale of IUU seafood in U.S. commerce; and

- **Traceability:** Create a risk-based traceability program to track seafood from harvest to entry into U.S. commerce to prevent entry of illegal product into the supply chain and better inform retailers and consumers.

## II. Recommendations

Comment is generally sought on how to implement the following recommendations. Specific questions intended to elicit comment are listed below some of the recommendations. Proposed timeframes have been specified in some of the recommendations discussed below.

### *International: Combat IUU fishing and seafood fraud at the international level*

1. The 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) is the first binding global instrument focused specifically on combating IUU fishing. The PSMA sets minimum standards for the conduct of port inspections and the training of inspectors to prevent IUU seafood products from entering commercial markets. The PSMA also requires port States to prevent entry into or use of ports by vessels that have engaged in IUU fishing, except for the purpose of inspection or other enforcement actions. The PSMA requires 25 ratifications to enter into force; to date there are 11. The U.S. Senate provided its advice and consent to ratification of the PSMA in 2014. Before the United States can deposit its instrument of ratification, however, Congress must pass legislation to implement U.S. obligations under the PSMA. Recommendation: Work with Congress to pass implementing legislation for the Port State Measures Agreement (PSMA). Direct the Secretary of State to promote entry into force and full implementation of the PSMA.

2. Many fisheries that exist in the waters of several nations and/or on the high seas are managed by Regional Fisheries Management Organizations (RFMOs). RFMOs have sought to promote compliance with the management measures they have adopted using a wide variety of tools. Drawing on experience gained from participation in various RFMOs, the United States is in a position to identify the best practices for combating IUU fishing through RFMOs and promote the adoption of such practices in all RFMOs in which the United States participates. Some examples include:

(A) Several RFMOs, including the International Commission for the Conservation of Atlantic Tunas and the Commission for the Conservation of

Antarctic Marine Living Resources, have developed catch documentation and trade tracking requirements that enable governments to monitor the movement of fish and fish products through international commerce. The United States should develop, in collaboration with RFMOs, foreign governments, and other intergovernmental organizations, best practices for electronic systems that collect catch information and that track data across harvest and transport vessels and fisheries management agencies—these should include uniform data elements such as harvest vessel, species name, gear type, and region of catch. Best practices should also include interoperability among U.S. domestic and foreign national-level documentation and data tracking systems, with a view to avoiding duplication with existing systems.

(B) Article 21 of the 1995 United Nations Fish Stocks Agreement (UNFSA) establishes a reciprocal high seas boarding and inspection regime that is a critical tool for greater cooperation in enforcement of RFMO-adopted conservation and management measures. Under this regime, any UNFSA Party, including the United States, that is a member of an RFMO can board and inspect the fishing vessels of any other UNFSA Party in high seas areas covered by and subject to measures adopted by that RFMO, collect information on any apparent violations of applicable fisheries management measures, and provide this information to the flag State or relevant RFMOs for follow-up action. To date only the Western and Central Pacific Fisheries Commission (WCPFC) has implemented measures to the full extent outlined in UNFSA. The United States should continue to call upon additional RFMOs to which it is a party to follow the lead of the WCPFC, putting particular pressure on other UNFSA parties to support such efforts, reminding them of their obligations under the UNFSA, while reserving the right of the United States to use its authority deriving from UNSA to conduct high seas boardings and inspections.

(C) Many RFMOs require vessels above a minimum size to carry satellite-based vessel monitor systems (VMS) that enable at least the flag States to monitor the position of vessels at sea on a real-time basis. The United States should develop, in collaboration with RFMOs, foreign governments, and other intergovernmental organizations, best practices for implementation of vessel monitoring systems across all types of commercial fishing vessels and those vessels engaged in the fisheries supply chain (including transshipment and

processing vessels). The United States should also seek expansion of international vessel-tracking requirements to include, where appropriate, the use of Automatic Identification System (AIS), VMS, innovative and low-cost technology suitable for small vessels, and updated technical standards to improve reporting frequency and accessibility of vessel position data.

(D) The United Nations Food and Agriculture Organization (FAO) has been working to develop a Global Record of Fishing Vessels and Fishing Support Vessels. The United States should continue to support the FAO's design and implementation of Phase One of the Global Record of Fishing Vessels (vessels greater than or equal to 100GT, 100GRT, or 24m) to ensure that implementation is accomplished as soon as possible. At the same time, the United States should continue to advance measures in the RFMOs to require International Maritime Organization (IMO) numbers for all eligible vessels, and to work with the IMO and other relevant organization to expand the category of commercial vessels that are eligible for IMO numbers, to ensure that all commercial fishing vessels can be tracked even as they change owners, flags, or names.

Recommendation: Direct the Task Force to develop, within one year (and refined as appropriate in subsequent years), best practices for catch documentation and data tracking; high seas boarding and inspection; monitoring, control, and surveillance measures (including observer programs, vessel tracking systems, authorized vessel lists); port state control; and compliance monitoring and promote their adoption in each of the Regional Fishery Management Organizations (RFMOs) of which the U.S. is a member.

Question: Are there any categories of best practices to be developed by the U.S. government missing from the list above?

3. Various U.S. government agencies are engaged in initiatives with foreign governments to support broader maritime domain awareness such as regional law enforcement activities to counter trafficking of people, drugs or weapons. IUU fishing should be included in these activities to capitalize upon current efforts and resources and foster comprehensive maritime domain awareness. Recommendation: Direct the Secretaries of Defense and Homeland Security to include IUU fishing threat analysis and monitoring as a component of U.S. and international efforts to

increase overall maritime domain awareness.

Question: What regions or fisheries should be prioritized for threat analysis and monitoring? What technical tools or analytical approaches are most needed?

4. The vast majority of U.S. Free Trade Agreements (FTAs) contain obligations that require U.S. trading partners to "effectively enforce" their environmental and labor laws, including laws that protect and conserve natural resources, such as marine fisheries, and that protects certain internationally recognized labor rights. These obligations are subject to dispute settlement under the trade agreement, and the U.S. Trade Representative has authority to monitor and review implementation of these and other FTA commitments. The United States is currently seeking commitments in two FTAs, the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), to address IUU fishing activities. Further, looking beyond existing negotiations and to future agreements, it will be important to pursue commitments from trading partners to effectively enforce conservation and management measures they have adopted pursuant to RFMOs. Recommendation: Direct the U.S. Trade Representative to use existing Free Trade Agreements and future FTAs to combat IUU fishing and seafood fraud, including through enhanced cooperation with our trading partners and commitments to enforce environmental and labor laws.

5. Some governments continue to provide subsidies to their fisheries sectors that encourage overfishing or contribute to excess capacity of fishing fleets. Such subsidies also undermine the effectiveness of fisheries management regimes and can contribute to IUU fishing. Recommendation: Direct the U.S. Trade Representative, and the Secretaries of State and Commerce to pursue international commitments to eliminate fisheries subsidies that contribute to excess fishing capacity, overfishing and IUU fishing by 2020.

6. Especially in developing nations, increased national-level capacity is needed to strengthen fisheries governance and transparency, implement the Port State Measures Agreement (PSMA), enforce fisheries laws, and prosecute fisheries violations and related criminal activities. Nations that register fishing and support vessels need the capacity to exercise their responsibilities as flag States, which include issuing fishing authorizations, monitoring fishing and transshipment at

sea, conducting enforcement operations, inspecting vessels dockside, and monitoring landings. Improved technological infrastructure is needed for collecting information on vessels and catch to enable effective enforcement, support traceability schemes, and foster sustainable fisheries management. Efforts to combat IUU fishing and seafood fraud need to be integrated with international development activities, in particular food security dialogues and programs. Recommendation: Direct the Secretaries of Commerce, Defense, Homeland Security, State, the Administrator of USAID, and the Attorney General to coordinate with donors, multilateral institutions and foreign governments and prioritize building capacity to sustainably manage fisheries, combat IUU fishing and seafood fraud.

Question: What are the best ways to coordinate in capacity building efforts? In which countries and what types of capacity building activities would have the most impact?

7. Efforts to address development or governance issues related to sustainable fisheries benefit greatly from the active support of and coordination with senior government officials through diplomatic channels, engagement in future oceans conferences, and engagement in influential regional fora. Building these key relationships will further encourage our foreign government partners to enhance their efforts to combat IUU fishing as well as work with U.S. investigative agencies to ensure that illegally caught or fraudulently labeled seafood does not enter commerce. Recommendation: Direct the Secretary of State to maintain combating IUU fishing and seafood fraud as a diplomatic priority in order to gain the support of senior officials in priority countries to enhance political will for combatting IUU fishing and seafood fraud.

*Enforcement: Strengthen Enforcement and Enhance Enforcement Tools To Combat IUU Fishing and Seafood Fraud*

8. Obtaining and sharing information is another critical element in preventing IUU or fraudulently labeled seafood (including false labels, fraudulent customs declarations, and other similar actions) from entering U.S. commerce (whether from domestic or foreign sources). Mechanisms to gather, share, and analyze information on goods entering the United States exist among relevant administrative and law enforcement agencies, including through Customs and Border Protection's Commercial Targeting and

Analysis Center, Immigration and Customs Enforcement's Homeland Security Investigations Trade Transparency Unit, and through forensic capabilities across the Federal government. However, certain gaps concerning collection, sharing, and analysis of fisheries-related information remain. Recommendation: Direct the Task Force members, to include the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, the Interior, and the Attorney General to develop within 180 days a strategy with implementation deadlines to optimize the collection, sharing, and analysis of information and resources to prevent IUU or fraudulently labeled seafood from entering U.S. commerce. This strategy should include a plan to increase support and coordination across agencies for forensic analysis of seafood species and corresponding collection, archiving and analysis of related reference specimens, as well as reflect efforts to increase coordination with state and local governments per Recommendation 11.

Question: Which key actions should be included in this strategy?

9. Broader customs enforcement tools can also continue to be leveraged to combat IUU fishing and seafood fraud. The U.S. has now signed over 70 Customs Mutual Assistance Agreement (CMAAs) with other customs administrations across the world. CMAAs are bilateral agreements between countries and are effectuated by their respective customs administrations. They provide the legal framework for the cooperation and exchange of information and evidence to assist countries in the enforcement of customs laws, including duty evasion, fraud, smuggling, trafficking, proliferation, money laundering, and terrorism-related activities. CMAAs can be used to support IUU fishing and seafood fraud investigations, facilitate risk-based targeting of illicit seafood shipments, and for further cooperation with foreign governments to develop best practices to prevent IUU or fraudulent seafood from reaching our borders. Recommendation: Direct the Secretary of Homeland Security to leverage existing and future CMAAs to exchange relevant information and encourage foreign customs administrations to cooperate in combating IUU fishing and seafood fraud.

10. Standardizing rules across the U.S. government concerning how to properly identify a seafood product's species, common name and origin would better support detection and

enforcement efforts to combat IUU fishing and seafood fraud. Standardization of this information would minimize opportunities to avoid detection by exploiting inconsistencies across Federal agencies and ambiguities in existing requirements and industry conventions. Standardized rules would also promote better industry compliance and reduce inadvertent noncompliance by providing clearer guidance to industry about how to properly identify fish and seafood, including their origin. Recommendation: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, with input from the Attorney General, to standardize and clarify rules on identifying the species, common name, and origin of seafood. Direct the Secretaries of Commerce and Homeland Security and the U.S. Trade Representative to work with the International Trade Commission to adjust U.S. tariff codes to enhance identification in trade of species subject to IUU fishing or seafood fraud accordingly. The agencies should aim to publish these revised rules and adjusted codes not later than one year after the adoption of this recommendation.

Questions: What seafood products could benefit most from clarification of species, common name and rules of origin? What revisions to the tariff codes (at the level than can be adjusted for U.S. statistics) could help address seafood fraud and facilitate monitoring of species that may be harvested in IUU fisheries?

11. State and local enforcement authorities have an important role in regulating fisheries, both through enforcement in state waters and working with the National Oceanic and Atmospheric Administration (NOAA) on landings of fish harvested in federal waters. The National Oceanic and Atmospheric Administration works with state and local authorities to obtain and share information with respect to domestic fisheries. State and local enforcement authorities also have an important role in detecting and preventing seafood fraud, since intrastate seafood sales, including those at the restaurant and retail level, are largely regulated by state and local authorities. Recommendation: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, and the Attorney General to work with state and local enforcement authorities to expand information sharing and develop tools that address illegal fishing and seafood fraud at the state and local level.

Question: How can Federal enforcement agencies expand information sharing with state and local enforcement authorities?

12. Additional enforcement tools are needed by certain enforcement agencies to address growing concerns over IUU fishing and the entry of seafood products from IUU fishing into U.S. commerce including: Broader and clearer search and inspection authorities, investigative subpoena authority, increased penalties, and civil judicial enforcement mechanisms. Recommendation: Work with Congress to the extent necessary to broaden agency enforcement authorities, including those to (1) search, inspect and seize seafood, both at the point of entry into U.S. commerce (whether from foreign or domestic sources) and throughout the supply chain; and (2) pursue a full range of judicial enforcement options for trafficking and other violations related to IUU fishing and seafood fraud.

*Partnerships: Create Partnerships With Industry and Non-Governmental Organizations To Identify and Eliminate Seafood Fraud and IUU Seafood in U.S. Commerce*

13. Private and public sector partnerships are essential to preventing and reducing the entry of fraudulent seafood products and products from IUU fishing into U.S. commerce. Recommendation: Direct the Task Force to establish a regular forum with harvesters, importers, dealers, retailers, processors and non-governmental organizations to enhance collaboration in combating IUU fishing and seafood fraud and to improve understanding of the levels and nature of IUU fishing and seafood fraud and related criminal activities.

*Traceability: Create a Risk-Based Traceability Program To Track Seafood From Harvest to Entry Into U.S. Commerce*

14. It is in the national interest to prevent the entry of illegal goods, including illegal seafood into U.S. commerce. Creating an information system that better facilitates data collection, sharing, and analysis among relevant regulators and enforcement authorities would be a significant step forward in addressing IUU fishing and seafood fraud. To that end, the United States should work with industry and other stakeholders to define the types of information to be collected regarding seafood sold in the United States and the operational standards to be applied to the collection, retention, and

transmission of such information. The information collected could include:

- Who harvested or produced the fish (e.g. name and flag State of harvesting vessel and/or farm facility, type of fishing gear)?
- What species was harvested (e.g. species name, form, and quantity of the product)?
- Where and when was the seafood harvested and landed (e.g. ocean area of catch, farm location, date of harvest, date/point of first landing)?
- Other relevant details, such as transshipment and/or processing activity.

The process to develop types of information and operational standards under each of the categories above should allow for input from interested stakeholders including industry, non-governmental organizations, supply-chain experts, and state, local and foreign governments. It should also draw upon and utilize applicable experience, best practices, and existing standards where possible. This program should be developed in a way that permits all authorized agencies to enter, analyze, use, and verify the data while still protecting information consistent with statutory authorities. The types of information and operational standards should apply no less favorably as between domestic and imported products. Recommendation: Direct the Task Force, with input from U.S. industry and other stakeholders, to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce.

Question: Accounting for those listed above, what types of information and operational standards should be included in a traceability program?

15. Following Recommendation #14, a program will be developed and implemented to establish these types of information and operational standards as pre-requisites for entry into commerce. The program will initially be applied to certain fish or seafood that are of particular concern because they are subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing. However, the goal would be to eventually expand the program to all seafood at first point of sale or import, after consideration of relevant factors such as input from stakeholders and cost-effectiveness. To achieve this:

a. The Secretaries of Commerce, Health and Human Services, State, and any other relevant agencies will identify

certain species of fish or seafood that are of particular concern because they are subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing. The Secretaries of Homeland Security, HHS, and Commerce, and other agencies, as appropriate, will work together to implement Recommendation #14 requirements for the collection of relevant and necessary data from, and compliance with operational standards by, importers of these identified species, as consistent with existing authorities.

b. The Secretaries of Commerce and Health and Human Services will then work with the Regional Fishery Management Councils, states, and other partners to require this same information from these identified species when they are domestically harvested or produced.

c. Information collected will be shared among Federal administrative and law enforcement agencies for analysis and other relevant actions to prevent IUU or fraudulently labeled seafood from entering U.S. commerce pursuant to the strategy developed by the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, and the Interior, and the Attorney General (Recommendation #8).

d. The Secretary of Homeland Security will collaborate with the Secretary of Commerce and other agencies as relevant to assist in developing a voluntary Commerce Trusted Trader Program for importers of these identified species. The Program will provide benefits such as reduced targeting and inspections and enhanced streamlined entry into the United States for certified importers.

e. Implementation of this risk-based traceability program will be evaluated regularly, beginning within one year of requiring the types of information for at-risk species, to identify whether it is meeting the intended objectives in the most effective way possible, while considering costs and benefits. The Task Force will consider the next steps in expanding the program to other seafood entering U.S. commerce. This evaluation will include input from stakeholders and identify any additional resources or legal authorities that may be necessary to cover additional species and types of product, and to make the information available to the consumer.

f. Within one year of requiring the types of information for at-risk species, the Task Force will develop further recommendations on how certain types of information within the traceability system (e.g. species; geographic origin; means of production, such as wild-

caught versus aquaculture; and gear type) could be made available to the consumer.

Recommendation: Direct the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into the U.S. commerce.

Questions for Recommendation #15:

(a) Which species are currently at highest risk of IUU fishing and seafood fraud and what factors contribute to species becoming at high risk in the future?

(b) What are the specific characteristics and workings of the global seafood supply chain that should be taken into account when requiring information?

(c) What are the best approaches for expanding the risk-based program to incorporate other fish and seafood products entering into U.S. commerce?

(d) How often should the risk-based program be evaluated?

(e) What roles should government and private sectors serve in managing and evaluating the program?

**Reporting:** Where a timeframe is not specifically noted under a recommendation, the relevant agencies will report to the Task Force on the progress of implementing that recommendation in one year from receiving guidance from the President. In addition, recognizing that a valuable and extensive body of information on fisheries and seafood products would be created by the recommendations above, the Task Force will report annually to the President, via the National Ocean Council, on seafood trends, key issues related to IUU fishing and seafood fraud, and progress on development and implementation of a comprehensive and risk-based traceability program.

Dated: December 15, 2014.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID USA-2014-0047]

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to alter a System of Records.



January 20, 2015

Mr. Samuel D. Rauch III  
Deputy Assistant Administrator for Regulatory Programs  
National Fisheries Service  
National Oceanic and Atmospheric Administration  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: Recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud (Docket No. NOAA-NMFS-2014-0090-0058; 79 Federal Register 75536 (December 18, 2014))**

***SUBMITTED VIA REGULATIONS.GOV***

Dear Mr. Rauch:

This letter is in response to the December 18, 2014, *Federal Register* notice referenced above regarding recommendations of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing (IUU) and Seafood Fraud. The National Fisheries Institute (NFI) appreciates the opportunity to provide these comments.

NFI has been the nation's leading advocacy organization for the seafood industry since 1945. From responsible aquaculture, to a marketplace supporting free trade, to ensuring consumers have the facts on the sustainability and health benefits of fish and shellfish, NFI and its members support and promote sound science-based public policy, as well as engaging every step of bringing fish from the boat or farm to dining tables.

We offer the comments below as to the Task Force's specific recommendations. Before doing that, however, we have several general reactions. First, NFI and our over 300 member companies believe that IUU fishing and fraud are unacceptable and should not be tolerated. We think that these two challenges undermine decades of conservation measures, hurt honest fishermen and businesses that play by the rules, and provoke billions of dollars in economic losses. NFI members have lead the global industry initiative tackling the fraud challenge, by creating the Better Seafood Board (BSB) in 2007.

That said, however, we have some concerns with several of the Task Force's recommendations. President Obama, in establishing the Task Force, stated, "The United States is a global leader in sustainable seafood. And that the nation's system of fisheries management is the envy of the world."<sup>1</sup> With that in mind, it is notable that the Task Force does not appear to have quantified or analyzed the scope of the IUU challenge in the U.S. market. Moving forward with Task Force recommendations related to IUU, without first substantiating the nature and extent of IUU fishing, will hurt American seafood businesses that care about sustainability and take that responsibility seriously. In light of this, we urge the Task Force to acknowledge the numerous Federal and private sector efforts already underway before imposing new and unworkable requirements on the seafood industry. We also urge the Task Force to clearly identify what they believe to be the scope of the problem in the U.S. market.

On seafood fraud, the Food and Drug Administration (FDA), which maintains jurisdiction over misbranded food under the Federal Food Drug and Cosmetic Act, tested 174 wholesale product lots in 14 states for the past two years.<sup>2</sup> It is important to note that this sample was focused on seafood that was allegedly "normally mislabeled." FDA's survey finds that 85 percent of seafood is properly labeled as it heads for restaurants or retailers' shelves.<sup>3</sup> The result that suggests fraud may not be as extensive in the U.S. industry as some activists have argued. We urge the Task Force to emphasize enforcement of existing laws and to recommend a focus of government resources on combatting where the greatest economic damage occurs, not where the media portrays a problem.

NFI supports practical recommendations that focus on strengthening enforcement and enhancing tools already in place. NFI also applauds the Task Force for recognizing the need for potential legislative actions before certain prescriptive changes can be executed. Under the four themes in the Task Force recommendations, NFI will provide following comments:

### **International Collaborations**

- *Recommendation #1: Work with Congress to pass implementing legislation for the Port State Measures Agreement (PSMA). Direct the Secretary of State to promote entry into force and full implementation of the PSMA.*

NFI supports the adoption and endorses Senate's implementing legislation for PSMA. Through increased accountability, monitoring, communication, and enforcements of suspect fishing vessels, the PSMA builds a global information sharing network for the

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<sup>1</sup> <http://www.whitehouse.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreported>.

<sup>2</sup> <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/ucm419982.htm>.

<sup>3</sup> Ibid.

U.S. government to ensure only legally caught fish enter the U.S. market as well as bringing “science based U.S. fishery management” standards to a global level.<sup>4</sup>

- *Recommendation #2: Direct the Task Force to develop, within one year (and refined as appropriate in subsequent years), best practices for catch documentation and data tracking; high seas boarding and inspection; monitoring, control, and surveillance measures (including observer programs, vessel tracking systems, authorized vessel lists); port state control; and compliance monitoring and promote their adoption in each of the Regional Fishery Management Organizations (RFMOs) of which the U.S. is a member.*

(A) NFI supports the U.S. government working with RMFOs in other regions and intergovernmental organizations to strengthen the level of RFMOs especially with an emphasis on developing stronger science based recommendations.

(B) NFI views UNFSA as providing this boarding authority already.

(C) NFI supports VMS and other vessel traveling tools for the successful monitoring, control, and surveillance of fisheries activities. Nevertheless, the Task Force should realize that certain countries may not have technical capability to implement these tools and should commit to working with those countries to put in place the needed technology.

(D) NFI supports completion of the FAO Global Record of Fishing Vessels.

Moreover, NFI supports the adoption of IMO numbers of all vessels over 24 meters, and efforts to expand IMO eligibility to vessels of smaller size. NFI is considering a policy that all NFI member companies should source only from harvesters who can provide an IMO number for the vessel responsible from which the fish was purchased so that buyers will not purchase any wild-capture products from an IUU black list. On an international front, NFI, through the International Coalition of Fisheries Associations, urges other national associations to adopt the IMO numbering system. In addition, NFI is coordinating with the major global harvesting companies to ensure they adopt IMO numbers.

Nevertheless, it is important to note that U.S.- and foreign - flag fishing vessels are often under 24 meters and note currently eligible for IMO numbers, and export products from those nations should not be disadvantaged to enter U.S. commerce.

- *Recommendation #3: Direct the Secretaries of Defense and Homeland Security to include IUU fishing threat analysis and monitoring as a component of U.S. and international efforts to increase overall maritime domain awareness.*

NFI does not oppose Department of Defense and Homeland Security tracking vessels as part of a broader IUU fishing strategy, within resource constraints of the Departments’

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<sup>4</sup> <http://www.whitehouse.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreported>.

budgets. NFI questions how the Task Force determines which regions, fisheries, or types of fish will be prioritized for threat analysis and monitoring. Will this analysis lead to the seizure of all imports from that particular region or just certain types of fish or fish products from the area?

- *Recommendation #4: Direct the U.S. Trade Representative to use existing Free Trade Agreements and future FTAs to combat IUU fishing and seafood fraud, including through enhanced cooperation with our trading partners and commitments to enforce environmental and labor laws.*

Ensuring that FTAs contain appropriate environmental safeguards that meet the countries' WTO obligations, as this recommendation states, is unobjectionable. But the Task Force should carefully consider the "how" and "why" of this recommendation make sure there is no trade dispute and to prevent other countries from responding by retaliating against U.S. seafood exports.

- *Recommendation #5: Direct the U.S. Trade Representative, and the Secretaries of State and Commerce to pursue international commitments to eliminate fisheries subsidies that contribute to excess fishing capacity, overfishing and IUU fishing by 2020.*

NFI supports elimination of subsidies as defined by WTO. NFI urges the Task Force to consider carefully which mechanism/fora is best for international agreement on subsidies considering various economic situations in each country.

- *Recommendation #6: Direct the Secretaries of Commerce, Defense, Homeland Security, State, the Administrator of USAID, and the Attorney General to coordinate with donors, multilateral institutions and foreign governments and prioritize building capacity to sustainably manage fisheries, combat IUU fishing and seafood fraud.*

NFI supports capacity buildings for developing countries in fishery management, especially for those small-scale fisheries struggling with IUU fishing challenges. (See also discussion of recommendation #2(c) above.)

- *Recommendation #7: Direct the Secretary of State to maintain combating IUU fishing and seafood fraud as a diplomatic priority in order to gain the support of senior officials in priority countries to enhance political will for combatting IUU fishing and seafood fraud.*

NFI supports efforts by the U.S. Government to collaborate with other countries wherever possible to eliminate IUU fishing and seafood fraud.

## **Enforcement**

- *Recommendation #8: Direct the Task Force members, to include the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, the Interior, and the Attorney General to develop within 180 days a strategy with implementation*



*deadlines to optimize the collection, sharing, and analysis of information and resources to prevent IUU or fraudulently labeled seafood from entering U.S. commerce. This strategy should include a plan to increase support and coordination across agencies for forensic analysis of seafood species and corresponding collection, archiving and analysis of related reference specimens, as well as reflect efforts to increase coordination with state and local governments per Recommendation 11.*

NFI encourages and strongly supports greater coordination among U.S. Government agencies. NFI urges the Task Force to emphasize better and more aggressive enforcement of existing law, both because such an emphasis can be put into action right away and because greater interagency cooperation – including with respect to enforcement – can capitalize on the entire Government’s capabilities in what is a difficult budgetary environment for domestic regulatory agencies.

- *Recommendation #9: Direct the Secretary of Homeland Security to leverage existing and future CMAAs to exchange relevant information and encourage foreign customs administrations to cooperate in combating IUU fishing and seafood fraud.*

The Customs Mutual Assistance Agreement (CMAA) is concerning. Some countries have already signed similar agreements to address the importance of sharing information and cooperating with each other to eliminate these two challenges. Companies have to bear extra burdens to provide the duplicative information to their national authorities under CMAA. NFI suggests that the Task Force should review existing Customs Partnerships before proposing a new one.

- *Recommendation #10: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, with input from the Attorney General, to standardize and clarify rules on identifying the species, common name, and origin of seafood. Direct the Secretaries of Commerce and Homeland Security and the U.S. Trade Representative to work with the International Trade Commission to adjust U.S. tariff codes to enhance identification in trade of species subject to IUU fishing or seafood fraud accordingly. The agencies should aim to publish these revised rules and adjusted codes not later than one year after the adoption of this recommendation.*

NFI is concerned that standardizing the Common Name will cause unnecessary confusion in international trade and among U.S. consumers – without providing consumers any useful information. As Common Names will vary from country to country, companies have to create this specific Common Name label for the U.S. market only. For more than 25 years, the FDA’s Seafood List has provided the single, authoritative standard of identity for acceptable Market Name for seafood sold in the United States.<sup>5</sup> As a result, U.S. consumers, who are used to know the fish by Market Name, will be confused. For

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<sup>5</sup> <http://www.accessdata.fda.gov/scripts/fdcc/?set=seafoodlist>.

instance, the Common Name for Mahi Mahi (Market Name) is dolphin fish. The Common Name would be an unnecessary burden to seafood business and creates confusion for U.S. consumers. Again, NFI urges the Task Force to focus on where the problems are and to enhance its existing law enforcement to FDA and related agencies.

Further, NFI questions the need for adjustment of harmonized tariff codes seafood. Seafood has the most complex supply chain in global merchandise system. If such adjustments also lead to changes in the HTSUS, then that modification could easily result in new tariff treatment of seafood products in international trade. NFI questions 1) whether the adjustment of tariff codes will occur in the U.S. and other countries; 2) whether this change will comply with WTO laws or applicable free trade agreements or other bilateral treaties; and 3) whether this adjustment will be completed within a year.

- *Recommendation #11: Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, and the Attorney General to work with state and local enforcement authorities to expand information sharing and develop tools that address illegal fishing and seafood fraud at the state and local level.*

The Task Force should be cautious about the cooperation with the state and local government. Some states, using their regulatory authorities in the past, have tried to bar products imported from competitive markets. Delegating authority to state or local government in this manner may result in non-tariff barriers to imported seafood – barriers that, again, will be erected against U.S. exports in retaliation.

- *Recommendation #12: Work with Congress to the extent necessary to broaden agency enforcement authorities, including those to (1) search, inspect and seize seafood, both at the point of entry into U.S. commerce (whether from foreign or domestic sources) and throughout the supply chain; and (2) pursue a full range of judicial enforcement options for trafficking and other violations related to IUU fishing and seafood fraud.*

The Task Force should not add new enforcement tools without extensive new data. As discussed at the beginning of these comments, the Task Force has simply not generated data establishing the specific size and the scope of IUU fishing as it touches the U.S. market or seafood fraud in the supply chain. It is unfair to propose more regulation in response to problems whose dimensions the Task Force has not precisely defined.

NFI also questions whether this recommendation, as put into practice with specific new authorities, aligns with U.S. obligations under WTO or applicable bilateral trade agreements. There are many existing tools, such as PSMA, IMO, Lacey Act, and MSA to address the challenges.

Without a greater justification of existing IUU fishing and fraud challenges, NFI is concerned that many exporting nations, which have already established authorities to detain products of IUU fishing and mislabeling, will take actions to increase level of inspection detections and law enforcement for U.S. exported seafood products in response to the recommendation.

### **Global Partnership**

- *Recommendation #13: Direct the Task Force to establish a regular forum with harvesters, importers, dealers, retailers, processors and non-governmental organizations to enhance collaboration in combating IUU fishing and seafood fraud and to improve understanding of the levels and nature of IUU fishing and seafood fraud and related criminal activities.*

NFI does not oppose the idea of establishing a regular forum among industry and NGOs. It is important to recognize that the large majority of seafood consumed in the U.S. is imported, and so this consultation should include exporting nations.

### **Risk Based Traceability System**

- *Recommendation #14: Direct the Task Force, with input from U.S. industry and other stakeholders, to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce.*

These final two recommendations raise serious concerns for the commercial seafood industry. NFI questions who will create and maintain the database of information collected in any traceability program. What agency acting under what legal mandate carry out this work? If some countries have already established similar agreements with the U.S. Government, which laws should these countries follow? Will these target specific countries or apply to all nations?

Regarding traceability architecture, the commercial seafood supply chain is already required to trace product for food safety reasons under the Food Safety Modernization Act. NFI supports efforts such as GS 1 US (barcodes) as the traceability architecture already common in the broader food industry. It makes no sense to require an additional traceability system merely for seafood when that same traceability is not required for all other foods.

NFI also urges the Task Force to understand what may be commercially desirable among suppliers, and customers need not become regulatory requirements along the seafood supply chain. Merely because some partners have agreed to share detailed information about the sustainability of a fish product does not mean it should be a legal mandate.

More broadly, although the Task Force to date has eschewed any sustainability labeling requirement, the December 18 recommendations retain the idea for future consideration. Such a requirement would accomplish nothing but would significantly burden legitimate seafood companies. Providing consumers with additional new information about their seafood is only a good idea if the information supplied itself is of use. Arming consumers with data about, say, the FAO region in which their fish was caught will not help those consumers make more intelligent dietary or sustainability choices, but it will handicap companies doing business in the United States with a massive new compliance mandate, and it will certainly invite U.S. trading partners to require the same information of U.S. exporters and their \$5.7 billion in annual seafood exports.

*Recommendation #15: Direct the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into the U.S. commerce.*

NFI questions how the U.S. government decides fish is at “significant risk” for IUU fishing or seafood fraud. Will the Departments of State, Commerce and Health and Human Services rely on media reports? On NGO reports? On seafood competitors anxious to gain an advantage in the market against another fish? One of the reasons NFI so strongly urges the Task Force to quantify the level of IUU in the U.S. market is that such data would result in better information about what specific species and from what countries are IUU. Absent such country-species pairing, the Task Force risks damning all species across global regions or all fish from a specific country. That kind of political designation of risk runs totally counter to the science-based fisheries management decisions of which the U.S. should be rightfully proud. It also potentially runs counter to U.S. WTO obligations.

NFI is concerned that a Commerce Trusted Trader Program implies that other seafood exporters or importers, those that have elected to not run the traps of entering in the Program, are not to be trusted. Indeed, it is not clear what legal authority the Task Force proposes to utilize in order to put this recommendation into place. Certainly, if the United States requires company participation as a prerequisite for merchandise to enter the U.S., then it is almost certain that our trading partners will require a similar program for U.S. seafood exporters, whose product is, *by your own estimation*, already sustainable by virtue of having been caught in U.S. waters. If some companies, who have already imported and exported a large amount of seafood and have consistently followed rules and laws for a long time, are not in the program, will they be disadvantaged? This reverses the burdens to companies to prove they are trustworthy, while many of them have been able to comply with regulations. The Task Force should be cautious about causing unnecessary regulatory burdens that yield no actual reduction in IUU catch.

Lastly, NFI questions whether seafood importing and exporting companies will be required to change labels if the traceability program is established. If so, under what labeling law would those changes be required? Will any traceability requirement be an “affirmative requirement” for foods entering the U.S., or merely a requirement to be “available on U.S. Government demand”? Industry has already been required to comply with a food safety-focused traceability system. Establishing a different system will create additional burdens —without adequate demonstration that this change will get at the IUU fishing that does occur.<sup>6</sup>

## **Conclusion**

NFI appreciates the opportunity to provide inputs on this important guidance and potential future rulemaking effort. NFI and its members have zero tolerance on IUU fishing and seafood fraud. We ask the Task Force to continue analyze the scope of two challenges and to provide the industry a legal basis underlying any proposed new requirements. We also ask the Task Force to keep in mind the steps industry has taken as well as existing laws to eliminate IUU fishing and seafood fraud. We urge the Task Force to recognize this as it concludes its work and look forward to a continued dialogue on these recommendations.

Sincerely,



John Connelly  
President  
National Fisheries Institute

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<sup>6</sup> In addition, NFI requests that the Task Force confirms that IUU fishing should be defined to include only wild-capture (and not farmed) fish. Particularly in a time of limited governmental resources – and recognizing that the Task Force has identified improved enforcement as a major objective – it is critical to focus on that component of the seafood industry that could potentially be contributing to the IUU challenge. Agreeing to a definition of IUU fishing that excludes the more than 50 percent of U.S. consumption attributable to a farmed product is the first step to narrowing the U.S. Government focus to – again – get at the limited IUU fishing that does occur.





The background of the entire page is a close-up photograph of several fish, likely salmon, caught in a white, diamond-shaped mesh fishing net. The fish are silvery with hints of blue and green on their scales, and some have yellowish-orange fins. The net is draped over them, creating a grid-like pattern. A semi-transparent orange-red rectangular box is overlaid on the right side of the image, containing the title and subtitle text.

# Presidential Task Force on Combating IUU Fishing and Seafood Fraud

**Action Plan for Implementing the  
Task Force Recommendations**

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# Presidential Task Force on Combating IUU Fishing and Seafood Fraud

## Action Plan for Implementing the Task Force Recommendations

### Task Force Members

Department of Agriculture (USDA)

Department of Commerce (DOC)

National Oceanic and Atmospheric  
Administration (NOAA)

Department of Defense (DOD)

The Navy

Department of Health and Human Services (HHS)

Food and Drug Administration (FDA)

Department of Homeland Security (DHS)

U.S. Customs and Border Protection (CBP)

U.S. Immigration and Customs Enforcement (ICE)

U.S. Coast Guard (USCG)

Department of the Interior (DOI)

U.S. Fish and Wildlife Service (USFWS)

Department of Justice (DOJ)

Department of State (DOS)

Bureau of Oceans and International

Environmental and Scientific Affairs (OES)

Executive Office of the President

Council on Environmental Quality (CEQ)

National Security Council (NSC)

Office of Management and Budget (OMB)

Office of Science and Technology Policy (OSTP)

Office of the U.S. Trade Representative (USTR)

Federal Trade Commission (FTC)

U.S. Agency for International Development  
(USAID)

# Acronyms

<b>APEC</b>	Asia-Pacific Economic Cooperation	<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>CBP</b>	U.S. Customs and Border Protection	<b>NOC</b>	National Ocean Council
<b>CCAMLR</b>	Commission for the Conservation of Antarctic Marine Living Resources	<b>NSC</b>	National Security Council
<b>CEP</b>	Cooperative Enforcement Program	<b>OES</b>	Bureau of Oceans and International Environmental and Scientific Affairs
<b>CEQ</b>	Council on Environmental Quality	<b>OMB</b>	Office of Management and Budget
<b>CMAA</b>	Customs Mutual Assistance Agreement	<b>OSTP</b>	Office of Science and Technology Policy
<b>CTAC</b>	Commercial Targeting and Analysis Center	<b>PKI</b>	Public Key Infrastructure
<b>DHS</b>	U.S. Department of Homeland Security	<b>PSMA</b>	Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing
<b>DOC</b>	U.S. Department of Commerce	<b>RFMO</b>	Regional Fishery Management Organization
<b>DOD</b>	U.S. Department of Defense	<b>RICO</b>	Racketeer Influenced and Corrupt Organizations Act
<b>DOI</b>	U.S. Department of the Interior	<b>TPP</b>	Trans-Pacific Partnership
<b>DOJ</b>	U.S. Department of Justice	<b>T-TIP</b>	Transatlantic Trade and Investment Partnership
<b>DOL</b>	U.S. Department of Labor	<b>TTU</b>	Trade Transparency Unit
<b>DOS</b>	U.S. Department of State	<b>UNCLOS</b>	United Nations Convention on the Law of the Sea
<b>EEZ</b>	Exclusive Economic Zone	<b>UNFSA</b>	United Nations Fish Stocks Agreement
<b>FAO</b>	United Nations Food and Agriculture Organization	<b>USAID</b>	U.S. Agency for International Development
<b>FDA</b>	Food and Drug Administration	<b>USCG</b>	U.S. Coast Guard
<b>FTA</b>	Free Trade Agreement	<b>USDA</b>	U.S. Department of Agriculture
<b>FTC</b>	Federal Trade Commission	<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>FY</b>	Fiscal Year	<b>USTR</b>	Office of the U.S. Trade Representative
<b>HHS</b>	U.S. Department of Health and Human Services	<b>VMS</b>	Vessel Monitoring System
<b>HSI</b>	Homeland Security Investigations	<b>VTR</b>	Vessel Trip Report
<b>HTS</b>	Harmonized Tariff Schedule	<b>WCPFC</b>	Western and Central Pacific Fisheries Commission
<b>IATTC</b>	Inter-American Tropical Tuna Commission	<b>WTO</b>	World Trade Organization
<b>ICE</b>	Immigration and Customs Enforcement		
<b>ISE</b>	Information Sharing Environment		
<b>ITC</b>	U.S. International Trade Commission		
<b>IUU</b>	Illegal, unreported, and unregulated		
<b>MDA</b>	Maritime Domain Awareness		
<b>MSA</b>	Magnuson-Stevens Fishery Conservation and Management Act		

# Introduction

On June 17, 2014, the White House released a *Presidential Memorandum* entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State with 12 other federal agency members. The Task Force was directed to report to the President within 180 days with “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.” Those recommendations were provided to the President through the National Ocean Council and published in the *Federal Register* on December 18, 2014.

The 15 recommendations are broad in scope and call on agencies to take concrete and specific actions to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud throughout the seafood supply chain. By circumventing conservation and management measures and engaging in fraudulent practices, entities engaging in IUU fishing and seafood fraud undermine the sustainability of U.S. and global fish stocks and negatively impact general ecosystem health. At the same time, IUU and fraudulent seafood products distort legal markets and unfairly compete with the catch and seafood products of law-abiding fishers and seafood industries. The actions to address these issues fall under four general themes: 1) combating IUU fishing and seafood fraud at the international level; 2) strengthening enforcement and enhancing enforcement tools; 3) creating and expanding partnerships with non-federal entities to identify and eliminate seafood fraud and the sale of IUU seafood products in U.S. commerce; and 4) increasing information available on seafood products through additional traceability requirements. Each of these components is inter-related and complementary such that information and action developed under one supports the others. For example, these actions include establishing an integrated program that traces the path of seafood products from harvest or production to entry into U.S. commerce. This traceability program will feed enhanced information streams into improved enforcement targeting of illegal or fraudulent seafood products through newly integrated risk assessment and enforcement strategies. Similarly, the actions include efforts to improve the international governance of seafood harvest and trade that will complement our domestic efforts. Further, federal agencies are called upon to work with Congress to ensure that officials have the range of authorities necessary to identify and keep IUU seafood and fraudulent seafood products out of U.S. commerce.

Tackling the challenge of IUU fishing and seafood fraud and implementing the broad and integrated set of actions necessary for the task requires a cross-government effort. The full scope of agency expertise, capacity, and authorities reflected in the Task Force membership are vital to the success of this effort.<sup>1</sup> Of the Co-Chairs, the National Oceanic and Atmospheric Administration (NOAA) has broad fisheries management authorities domestically and internationally through Regional Fishery Management Organizations (RFMOs) while the Department of State serves as the U.S. government lead to coordinate U.S. foreign policy and negotiate international agreements related to IUU fishing and seafood fraud.

<sup>1</sup> Co-chaired by the Departments of State and Commerce through NOAA, the Task Force is made up of 12 other agencies. They include: the Council on Environmental Quality; the Departments of Agriculture, Defense (Navy), Health and Human Services (FDA), Homeland Security (Customs and Border Protection, Immigration and Customs Enforcement, U.S. Coast Guard), the Interior (U.S. Fish and Wildlife Service), and Justice; Federal Trade Commission; Office of Management and Budget; Office of Science and Technology Policy; U.S. Agency for International Development, National Security Council; and Office of the U.S. Trade Representative.

The Task Force includes such diverse members as the Department of Homeland Security (DHS), which has authorities at the border to inspect and seize commodities such as fraudulent or illegally imported seafood, and the U.S. Agency for International Development (USAID), which supports capacity building efforts that support sustainable fisheries management and legal harvests in developing countries. The Food and Drug Administration (FDA) has established Principles for determining acceptable common and market names for seafood offered for sale in the United States, while the Department of Defense (DOD) contributes efforts to combat IUU fishing through the use of maritime domain awareness tools. The Federal Trade Commission (FTC) protects consumers by addressing business practices that are deceptive to consumers and enhancing informed consumer choices, while the Office of the U.S. Trade Representative (USTR) oversees the development of U.S. trade policy, including seeking commitments in U.S. trade agreements to address IUU fishing and fisheries subsidies and help prevent seafood fraud. While the Task Force members have different missions and areas of focus and expertise, they also have complementary authorities and expertise that can be leveraged to more effectively combat IUU fishing and seafood fraud. For this reason, the recommendations also make the crucial call for Task Force agencies to improve coordination and cooperation with one another.

Implementation of the Task Force's recommendations will begin with the integration of programs and data across the federal government, increased federal agency collaboration, and the development and phased implementation of a traceability program for at-risk species. Some recommendations, including those concerning traceability and ways of identifying seafood fraud, may adapt and evolve along with changing trends in IUU fishing and seafood fraud. It will also be important for Task Force agencies to work with international partners, states, and interested stakeholders in order to adapt to such trends and ensure successful implementation of the recommendations. This Action Plan outlines the Task Force's recommendations and provides key initial steps in implementing each recommendation.

## Scope and Nature of IUU Fishing and Seafood Fraud

The Task Force was established to address both IUU fishing and seafood fraud; however, it is critical to understand the distinctions between the two issues and where they may overlap. Notably, neither issue is limited to fish, but refer to all seafood species, including crustaceans and shellfish.

IUU fishing consists of fishing activities that are illegal, unreported, or unregulated. *Illegal* fishing refers to fishing activities conducted in contravention of applicable laws and regulations, including those laws and rules adopted at the regional and international level. *Unreported* fishing refers to those fishing activities that are not reported or are misreported to relevant authorities in contravention of national laws and regulations or reporting procedures of a relevant RFMO. Finally, *unregulated* fishing occurs in areas or for fish stocks for which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law. Fishing activities are also unregulated when occurring in an RFMO-managed area and conducted by vessels without nationality, or by those flying a flag of a State or fishing entity that is not party to the RFMO in a manner that is inconsistent with the conservation measures of that RFMO.

Entities that engage in IUU fishing circumvent conservation and management measures, avoid the operational costs associated with sustainable fishing practices, and may derive economic benefit from exceeding harvesting limits. These entities undermine efforts to maintain harvests of managed stocks at sustainable levels and deprive scientists of data needed to develop recommendations on how to sustainably manage fisheries. Those who engage in IUU fishing practices are also unlikely to observe rules designed to protect the marine environment and its resources from the harmful effects of fishing activity. Examples of such rules include restrictions on the harvest of juvenile fish, gear restrictions established to minimize waste and bycatch of non-target species or harm to the ecosystem, catch limits, and prohibitions on fishing in known spawning areas. To avoid detection, IUU fishers often violate certain basic safety requirements, such as keeping navigation lights lit at night, which puts other mariners at risk. Operators of IUU fishing vessels also tend to deny to crew members fundamental

## **Entities that engage in IUU fishing circumvent conservation and management measures, avoid the operational costs associated with sustainable fishing practices, and may derive economic benefit from exceeding harvesting limits.**

rights concerning the terms and conditions of their labor. Other rules that can be flouted by IUU fishers include those associated with food safety and aquatic animal health, potentially putting consumers and fish populations at risk. Added together, these factors contribute to the unfair advantage that IUU fishing has over fishers who follow the rules and operate under the true costs of sustainable fishing practices.

By its very nature, IUU fishing is difficult to quantify. It can occur in capture fisheries both within areas of national jurisdiction and on the high seas and undermines the sustainability of fish stocks and the broader ecosystem. Because more than 2.5 billion people depend upon fish for food and nutrition, IUU fishing practices threaten food security and sustainability and undermine efforts to reduce global hunger and malnutrition, especially in developing countries. IUU fishing also threatens economic security, impacting livelihoods and potentially contributing to international conflict and conflicts between industrial and small-scale fishers.

The Task Force was also directed to address seafood fraud that undermines the economic viability of U.S. and global fisheries, and deceives consumers about their purchasing choices. Seafood fraud includes mislabeling or other forms of deceptive marketing of seafood products with respect to their quality, quantity, origin, or species (i.e., species substitution). Seafood fraud is generally driven by economic motives and can occur at multiple points along the seafood supply chain. Seafood fraud includes practices like visual enhancement, where a product is made to look better in grade and quality than it actually is. For example, treating tuna steaks with carbon monoxide to make the fish stay red while frozen would be fraud if not noted on the label. Mislabeling quantity includes instances where, for example, added water weight is noted instead of the actual weight of the seafood product by declaring glaze weight as the net weight, or the fish is soaked in water or water is pumped through the fish to change the weight.

Seafood fraud and IUU fishing can overlap when there is mislabeling or other forms of deceptive marketing with respect to origin or species. Species substitution is a form of seafood fraud where, for example, a product is labeled and marketed as a different species than it actually is. This often occurs when a lower value species is represented as a higher value species for economic gain, or vice versa when a higher value species is represented as a lower value species to avoid tariffs. However, species substitution can also occur in attempts to conceal IUU fishing activity, such as when a product's species or origin is mislabeled in order to hide that it is a protected species or from a protected area. Additionally, some seafood is fraudulently comingled and mislabeled or otherwise deceptively marketed in the global supply chain as part of processing and distribution. Marine species may be comingled with freshwater species or freshwater species may be substituted for marine species.

The full extent of seafood fraud is difficult to determine, particularly as it often happens at the retail level. Cooperation with state and local authorities on addressing seafood fraud is essential in strengthening links of the supply chain that occur intrastate, or at the local level, and are sometimes outside federal jurisdiction.

## International Framework

The United Nations Convention on the Law of the Sea (UNCLOS) sets out the basic duty of countries to cooperate in the conservation and management of shared fisheries resources. Other global agreements—such as the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement), and the 1993 United Nations Food and Agriculture Organization (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas—further spell out the rights and obligations of nations to control their vessels fishing on the high seas and ensure they do not undermine agreed conservation and management rules. The recently negotiated Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing (PSMA), once in force, will build on these global instruments to add the first set of binding minimum standards specifically intended to combat IUU fishing.

Nations cooperate to manage specific fish stocks through the agreements that establish the Regional Fisheries Management Organizations/Arrangements (RFMOs). Through the RFMOs, the United States works with members and other participants to develop binding international measures to manage shared fisheries resources and to combat IUU fishing. These measures can include requirements for observer coverage, catch reporting, satellite-based vessel monitoring, and joint boarding and inspection schemes. These organizations are increasingly undertaking transparent and comprehensive compliance reviews to shine a light on those members that do not meet these obligations. Despite this, many RFMO members still face significant challenges in fully implementing RFMO measures due to lack of resources and technical capacity.

The United States also takes an active role in negotiating international guidelines and standards through the United Nations General Assembly and the FAO. These include the FAO International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, international guidelines on flag State responsibility, and standards to support the establishment of a Global Record of fishing vessels. The United States also works through non-fisheries organizations to support efforts to combat IUU fishing. For example, the International Maritime Organization (IMO)—the United Nations specialized agency responsible for improving maritime safety and security—recently amended its ship identification numbering scheme to allow most large fishing vessels to obtain an IMO number, which facilitates the identification and monitoring of vessels over time despite changes in name, ownership, or flag.

The United States also maintains a number of bilateral and multilateral agreements that facilitate cooperation on fisheries enforcement and monitoring among treaty partners and U.S. government agencies. Bilateral agreements addressing transnational crimes including IUU fishing enable the U.S. Coast Guard (USCG) to put foreign shipriders onboard Coast Guard vessels and aircraft, allowing partner nation law enforcement personnel to exercise their authorities in their Exclusive Economic Zones (EEZs) and over their flagged vessels operating on the high seas. Multilateral agreements allow for the sharing of information, data, and personnel for the purposes of cooperative enforcement efforts and support multilateral large-scale operations.

Trade is another arena where the United States' international efforts can help combat IUU fishing and seafood fraud. The United States is currently engaged in negotiations with 11 other countries in the Trans-Pacific Partnership (TPP), which represents a large percentage of the value of global seafood exports. The United States has set high ambitions for the environment provisions in the TPP, including the incorporation of obligations to end harmful fisheries subsidies that contribute to overfishing and to support measures being developed or implemented through relevant RFMOs and other arrangements in the region, such as catch documentation schemes and port State measures.



## U.S. Framework

The United States is a global leader in sustainable seafood and is committed to preventing illegally harvested or fraudulently marketed fish from entering the global stream of commerce. This Action Plan reinforces our commitments and underscores our position as a world leader in fighting IUU fishing. As a result of sound science, strong management programs, and enforcement controls the United States has successfully reduced domestic overfishing to its lowest level in decades and rebuilt a record number of historically depleted domestic stocks. IUU fishing and seafood fraud undermine these efforts.

The United States' greatest asset in fighting domestic IUU fishing and seafood fraud is the vast amount of data collected across our U.S. fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as well as regulations passed through the regional fishery management councils and regulations promulgated by interstate commissions and states agencies. Data collection requirements begin with the permitting of harvesters and dealers, providing the foundational information to cross-reference all other subsequent data collected. Permits are required for almost any person who will sell or purchase fish or fish products harvested from U.S. waters from the vessel, or who will sell such fish. Permitting requirements vary by fishery, but at a minimum they include the permit holder's name and contact information along with vessel identification information (e.g., name and registration/USCG documentation/IMO Number) and authorized activity. These permits establish the framework for data collection for covered species.

The MSA also provides tools for combating IUU fishing conducted by non-U.S. flagged fleets. Among other things, this process focuses on the actions that foreign governments take to ensure that vessels flying their flag do not violate sustainable management measures adopted by various regional fisheries management organizations. Foreign governments that are found to have vessels engaged in such activities may be identified in a biennial report to Congress as having vessels engaged in IUU fishing. Countries may also be identified for having vessels that fish illegally in U.S. waters or for overfishing of stocks shared with the United States (with adverse impacts on such stocks), in areas without applicable international measures or management organizations. NOAA's National Marine Fisheries Service (NOAA Fisheries) will engage in consultations with these newly identified nations to press for corrective action. If sufficient action is not taken, prohibitions on the importation of certain fisheries products into the United States and the denial of port privileges for fishing vessels of that nation may be levied.

While at sea, permitted domestic commercial fishing vessels are often required to have operational Vessel Monitoring Systems (VMS) on board to track their location and movement in the U.S. EEZ and treaty waters. The U.S. VMS program currently monitors more than 4,000 vessels and is the largest national VMS program in the world. Permitted domestic commercial harvesters can also be required to submit a vessel trip report (VTR) for each fishing trip prior to landing. The VTR provides a detailed report of the vessel's fishing activity, including trip duration, location of fishing activity, gear used, catch harvested, catch composition (species and weight for both landed and discarded fish), and identity of who is purchasing the landed catch. This information can be verified by enforcement or by on-board and/or portside monitoring programs where used. At the point of sale, or entry into U.S. commerce, permitted dealers are often required to submit purchase records. These records can include species data that can be cross-referenced with landing records provided by the vessel. These data are collected, managed, and shared on the national, regional, and local level by NOAA Fisheries; the Atlantic Coastal Cooperative Statistical Program and the Pacific Fisheries Information Network, which are cooperative state-federal programs that design and implement marine fisheries statistics data collection and integrate those data into a single data management system; state agencies; and other partners.

As a result of the data collection programs in place for U.S. fleets, domestic fishery activities are of less concern relative to seafood fraud, though problems with species substitutions exist at the retail level in grocery stores and restaurants and could occur when U.S. product is processed overseas. Domestic fish and fishery products harvested under a federal fisheries management plan have low incidences of species substitution. Similarly, state-managed fisheries have a high incidence of compliance, though product traceability is more difficult as a result of information delays and the large number of separate systems in place.

## **The United States is a global leader in sustainable seafood and is committed to preventing illegally harvested or fraudulently marketed fish from entering the global stream of commerce. This action plan reinforces our commitments and underscores our position as a world leader in fighting IUU fishing.**

The Food and Drug Administration (FDA), Federal Trade Commission (FTC), and U.S. Department of Agriculture (USDA) all play important roles in preventing seafood fraud, including with respect to species, net weight, Country of Origin Labeling, or any other attributes important to the supply chain and consumers. For example, under the Federal Food, Drug, and Cosmetic Act, all seafood products are subject to examination by FDA authorities at import and must provide information to ensure that they meet the same standards as domestic seafood products—they must be sanitary, wholesome, safe to eat, and contain informative and truthful labeling in English. In addition, NOAA also operates a voluntary, fee-for-service Seafood Inspection Program (SIP) to inspect seafood processing facilities and products at various points in the supply chain for the purpose of label and species verification. In total, the SIP annually inspects approximately 20 percent of domestic consumption annually. Non-compliant products that are discovered can be barred from further entering U.S. commerce or referred to the appropriate enforcement agencies.

Further, NOAA's Office of Law Enforcement (NOAA OLE), Department of Homeland Security (DHS) components (U.S. Coast Guard, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE)), the FDA, and the U.S. Fish and Wildlife Service (USFWS) all have complementary authorities to collect information; make inquiries, examinations, inspections, searches, seizures, and arrests to ensure compliance with U.S. laws; and seize or refuse entry of cargo when necessary. Good cooperation exists between the relevant enforcement entities and efforts are being made under this Action Plan to further enhance the interagency cooperation to address the issue of seafood fraud.

### **Challenges**

The United States remains committed to preventing illegally harvested and mislabeled seafood from entering into U.S. commerce, but the complexities of the global seafood supply chain pose a number of challenges to doing so. For example, even with the large network of international agreements and measures available, combating IUU fishing in international waters remains a complex challenge. IUU fishing fleets move easily from fishery to fishery and region to region. Few countries have the resources or capacity to directly monitor the expanses of international waters. While the obligations for the control of vessels are clear under international law, the legal tools to enable nations to control the actions of their nationals are less so. Domestically, several critical statutes lack robust civil judicial and criminal enforcement authority, adequate administrative penalties, or appropriate forfeiture authority to address IUU and fraudulently marketed seafood products. These low and disproportional penalties are often factored in as “the cost of doing business” and pose a serious challenge to deterring illegal actions.

There are particular challenges for law enforcement. Over half of the world's fish production is processed at sea or soon after landing, which in many cases renders the species unidentifiable without forensic laboratory analysis. NOAA, CBP, and FDA have forensic laboratories with the capability to conduct DNA testing of fish in suspected fraud cases, but have not been able to significantly expand efforts to effectively address the issues of seafood fraud and IUU fishing. Further, the information collected for seafood imports is not as comprehensive as that required under domestic fisheries regulations, with limited exceptions for certain high-value species. Once the seafood products have entered U.S. commerce, this less-extensive information limits the ability to distinguish between and track illegally



imported seafood products once they flow into the distribution chain, creating significant challenges for maintaining effective chain of custody.

Further, fraud that occurs at the retail (i.e., restaurant and supermarket) level is difficult to address as retail sales are predominantly regulated by the state and local authorities. Effective implementation of initiatives aimed at preventing the trafficking of IUU and fraudulently marketed fish is often made more difficult by the simple fact that there are inconsistent rules across agencies regarding how to properly identify the name and origin of seafood products.

The Task Force's Action Plan to implement its recommendations to the President helps tackle these challenges by leveraging the capabilities and authorities of its federal agency members. For example, by determining concrete steps and timelines to better share critical data in a timelier manner across federal agencies and ensuring consistency in the way agencies identify the name and origin of seafood products, agencies will be able to more effectively deal with the challenges of the seafood supply chain in combating IUU fishing and seafood fraud.

## How We Got to This Point

It is in the interest of the United States to promote a comprehensive framework that supports sustainable fishing practices while combating seafood fraud and the sale of IUU seafood products, including by improving the transparency and traceability of the seafood supply chain. To achieve these objectives, the United States must improve and enhance the implementation, application, and coordination of the tools available to combat IUU fishing and seafood fraud to the maximum extent allowed by law. The Task Force was established to identify and achieve these objectives.

After its establishment, the Task Force initiated a public engagement process to gain broad input to inform and advise the development of these recommendations. This process included two public meetings, two webinars, a diplomatic message to countries with fisheries interests and marine coastlines, and a public comment period noticed in the *Federal Register*. The Task Force also analyzed the federal government's existing authorities to combat IUU Fishing/Seafood Fraud Committee, and identified potential gaps in those authorities. It further examined specific areas for improved coordination between the Task Force agencies and broader U.S. government efforts regarding these issues. For example, this Task Force recognizes the importance of coordinating with related efforts under the Presidential Task Force on Wildlife Trafficking, the White House Strategy to Combat Transnational Organized Crime, and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons.

Based on this public engagement process and the Task Force's analysis of existing authorities, gaps in those authorities, and current and potential levels of interagency coordination, the Task Force developed 15 recommendations designed to enhance the tools currently available to combat IUU fishing and seafood fraud. The recommendations were published in the *Federal Register* on December 18, 2014, as well as in a diplomatic message to foreign countries with fisheries interests and marine coastlines, soliciting comment on the implementation process of each recommendation. The Task Force received valuable feedback from domestic stakeholders and international partners on the 15 recommendations and will continue the process of engaging stakeholders and international partners as it implements the recommendations.

The following Action Plan for the 15 Task Force recommendations lays out more detail on the scope of the action in question, how agencies translate the recommendations into action, and—most importantly—a timeline and lead entities for implementation. Oversight of this Action Plan will be carried out by the National Ocean Council (NOC), which will establish a standing IUU Fishing/Seafood Fraud Committee (NOC Committee) to take the place of the Presidential Task Force on Combating IUU Fishing and Seafood Fraud. The NOC Committee will be co-chaired by NOAA and the Department of State, includes all current members of the Task Force, and may incorporate other agencies as required and approved by the NOC.

# Recommendation 1

## International – Port State Measures

*Work with Congress to pass implementing legislation for the Port State Measures Agreement (PSMA). Direct the Secretary of State to promote entry into force and full implementation of the PSMA.*

### Rationale

The absence of binding multilateral port State measures has hindered the process of addressing IUU fishing. With the United States as a driving force, the FAO adopted the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (PSMA). The PSMA envisages that Parties, in their capacities as port States, will take a series of steps to ensure that foreign vessels do not land or transship IUU seafood in their ports, thus preventing such seafood products from entering markets. Among other things, the PSMA requires Parties to: designate ports to which foreign vessels may request entry and to require such vessels seeking port entry to provide advance notice with detailed information relevant to their fishing activities and fish on board; inspect an appropriate number of foreign vessels that have entered their ports to determine whether the vessels were engaged in or supported IUU fishing; and cooperate with port States in the implementation of PSMA with respect to their flagged vessels.

The PSMA requires 25 ratifications to enter into force; to date there are 11 with 14 more required. In the United States, the Senate provided advice and consent to join the Agreement in 2014, but ratification is pending the passage of implementing legislation in Congress. U.S. ratification will help ensure consumer confidence in the seafood supply chain by helping keep illegal product out of the market. It will demonstrate strong leadership in the global battle against IUU fishing and encourage broad ratification of the PSMA by other countries. Global implementation of robust port State controls on port access will disrupt IUU fishing vessel operations by decreasing the ports where IUU fishing products can be landed and increasing the costs associated with IUU fishing.

## Implementation Steps

*Lead agencies:* NOAA and the Department of State

The implementation plan for this recommendation is comprised of two components: a domestic agenda and an international agenda. Specific implementation steps include:

- Continue to work with Congress to support timely adoption of legislation necessary for ratification and effective implementation of the PSMA.
- **By July 2015**, facilitate briefings for key Congressional Committees, Members, Caucuses, and staff with agency leadership and stakeholders, to highlight linkages between the PSMA and efforts to combat IUU fishing, and the benefits of entry in force and robust implementation of the PSMA globally to domestic fishing interests. Keep these efforts going through the remainder of 2015 and beyond as needed.
- Use existing fora such as Capitol Hill Oceans Week in June 2015 to continue to discuss the PSMA and its benefits with Congressional members, staff, and constituents.
- Through direct diplomatic outreach, identify at least 14 countries that are supportive of the PSMA and work with them to ratify the Agreement as soon as possible and ideally **by the end of 2015**. Continue to advocate for speedy entry into force and broad implementation of the Agreement in international fora such as regional fishery management organizations (RFMOs), the United Nations, and FAO's Committee on Fisheries.
- Identify impediments to ratification of the PSMA by foreign partners and provide information and assistance to help overcome those obstacles as feasible and appropriate.
- Continue efforts to support, and provide technical assistance to, developing countries seeking to ratify and implement the PSMA.
- Ensure that the PSMA remains a top priority for senior officials' dialogues with foreign State representatives.

## Recommendation 2

### International – Best Practices

*Direct the Task Force to develop, within one year (and refine as appropriate in subsequent years), best practices for catch documentation and data tracking; high seas boarding and inspection; monitoring, control, and surveillance measures (including observer programs, vessel tracking systems, authorized vessel lists); port State control; and compliance monitoring and promote their adoption in each of the Regional Fishery Management Organizations (RFMOs) of which the United States is a member.*

#### **Rationale**

Effective management of internationally shared fish stocks requires cooperation among nations to develop the necessary monitoring, control, and surveillance measures to ensure that all follow the agreed upon rules. Different RFMOs have adopted different measures over the years, and they are often developed ad hoc within each organization and not always updated in light of improvements in technology or other advances. Particularly among the RFMOs that manage similar fish stocks, consistent and up-to-date measures that reflect best practices will facilitate enforcement, eliminate loopholes, and improve cooperation. At the same time, there is no one-size-fits-all solution. Effective use of these tools also means identifying which tools fit best with the specifics of each fishery or region.

Article 21 of the 1995 United Nations Fish Stocks Agreement (UNFSA) establishes a reciprocal high seas boarding and inspection regime that is a critical tool for greater cooperation in enforcement of RFMO-adopted conservation and management measures. This regime serves as the best-practice model for RFMO schemes. To date only the Western and Central Pacific Fisheries Commission (WCPFC) has implemented measures to the full extent outlined in UNFSA, and the United States will continue to seek adoption of comparable regimes in the other RFMOs to which it is a party.

## Implementation Steps

*Lead Agencies:* NOAA and the Department of State

*Other agencies involved:* DOJ

This work, and particularly efforts to regularly update it into the future, may also be rolled into efforts to revise and further implement the U.S. National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing.

- **By June 2015**, NOAA and the Department of State will convene an interagency group to evaluate existing RFMO measures related to monitoring, control, and surveillance (including port State controls) and compliance monitoring, related U.S. regulations, and input received from U.S. and international comments on the draft recommendations. The interagency group will identify best practices among these existing measures, including evaluating their overall effectiveness and the status of implementation and compliance by RFMO members with the various measures. The work will also include identifying the circumstances in which a particular tool might be most effective or appropriate.
- **By September 2015**, the interagency group will complete a set of best practices, including, as appropriate, model text and/or key elements that could form the basis of RFMO measures.
- **By December 2015**, U.S. delegations to RFMOs will begin, as appropriate given existing measures, to advance proposals to adopt new, or modify existing, measures based on these best practices, including UNFSA-consistent high seas boarding and inspection regimes. Specific proposals will also take into account input from relevant U.S. constituent Advisory Committees appointed to advise the U.S. delegations to each RFMO.
- **By December 2015**, based on the results of expert work convened by the FAO to develop best practices for catch documentation and trade tracking, the interagency group will, as appropriate given existing measures, expand this work to include multilateral catch documentation schemes.

## Recommendation 3

### International – Maritime Domain Awareness

*Direct the Secretaries of Defense and Homeland Security to include IUU fishing threat analysis and monitoring as a component of U.S. and international efforts to increase overall maritime domain awareness.*

#### Rationale

The National Maritime Domain Awareness (MDA) Plan promotes favorable conditions for global maritime security and prosperity through the effective understanding of the maritime domain and by improving our ability to appropriately share information, including intelligence, law enforcement information, and all-source data from the public and private sectors. The Plan promotes improved domain awareness through enterprise-level access to data and encourages broad interaction and expanded collaboration among members of the Global Maritime Community of Interest—an informal community of all levels of domestic and international government along with private and commercial maritime stakeholders, bound by the common interest of maintaining the maritime domain for global security and prosperity.

The U.S. Departments of Homeland Security (DHS), Defense (DOD), and others have contributed to the development of enterprise tools—common services, capabilities, and processes—to increase awareness of the maritime domain. These tools can bring tremendous value when applied to the efforts of the United States and its foreign partners in combating IUU fishing. Many in the U.S. government are unaware of these enterprise tools or lack training on how to apply these tools to conduct IUU fishing threat analysis and monitoring. In addition to the challenges faced within the U.S. government, many foreign governments may lack an appropriate (i.e., unclassified, Non-Public Key Infrastructure (non-PKI), etc.) Information Sharing Environment (ISE)—the people, projects, systems, and agencies that enable responsible information sharing for national security—with the necessary access to maritime data, automated analytics, and information sharing capabilities would enhance their ability to combat IUU fishing. The Task Force believes that improving awareness of enterprise tools within the U.S. government and establishing an appropriate information sharing environment between U.S. and foreign partner users would increase the awareness of decision-makers responsible for combating IUU fishing.

This recommendation does not alter existing constitutional or statutory authorities or responsibilities of agency heads to carry out operational activities or to exchange information. It does however, direct the Secretaries of Defense and Homeland Security to ensure tools and capabilities used to increase overall maritime domain awareness support IUU fishing threat analysis and monitoring.

## Implementation Steps:

*Lead Agencies:* DOD and DHS

*Other Agencies Involved:* NOAA and the Department of State

DHS and DOD will assemble a U.S. government interagency team to identify enterprise tools used by the MDA community that could be applied to combating IUU fishing and ensure linkage of those tools to the strategy developed pursuant to Recommendation 8.

- **By May 2015** the Department of State, NOAA, and DOD will co-host a workshop to gain better understanding into relevant surveillance and enforcement technologies currently being piloted to support management in marine protected areas around the globe.
- **By September 2015** the team will:
  - Catalogue existing initiatives.
  - Establish an Enterprise Tools IUU Fishing Implementation Planning Team.
  - Produce a report on findings to inform an implementation plan.
- **By December 2015**, the Enterprise Tools IUU Fishing Implementation Planning Team will formulate an implementation plan with timelines to support efforts to enhance IUU fishing threat analysis and monitoring.
- **By December 2015**, the Secretaries of Homeland Security and Defense will provide a report to the NOC Committee on developing an appropriate environment for sharing information between U.S. and foreign government partner users in order to enhance threat analysis and monitoring, which would increase the awareness of decision-makers responsible for combating IUU fishing.

## Recommendation 4

### International – Free Trade Agreements

*Direct the U.S. Trade Representative to use existing Free Trade Agreements (FTAs) and future FTAs to combat IUU fishing and seafood fraud, including through enhanced cooperation with our trading partners and commitments to enforce environmental and labor laws.*

#### **Rationale**

U.S. Free Trade Agreements (FTAs) and environmental cooperation programs can help to combat IUU fishing and seafood fraud and support sustainable fisheries management by helping to develop management practices and tools in FTA partner countries. For example, FTAs with Korea, Panama, Colombia, and Peru require these trading partners to “adopt, maintain and implement” laws, regulations, and any other measures to fulfill obligations under a number of relevant multilateral environmental agreements—including those establishing the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Inter-American Tropical Tuna Commission (IATTC)—as well as to “adopt and maintain” in its statutes, regulations, and practices fundamental internationally recognized labor rights. U.S. FTAs also contain obligations that require U.S. trading partners to “effectively enforce” their environmental and labor laws, including laws that protect and conserve natural resources, such as marine fisheries. These obligations are subject to dispute settlement under the trade agreement, and the Office of the U.S. Trade Representative (USTR) has authority to monitor and review implementation of these and other FTA commitments. Other U.S. agencies provide support for implementation of FTA commitments through technical assistance and labor and environmental cooperation programs. U.S. FTAs also support cooperation to enforce consumer protection laws, achieve compliance with respective laws and regulations on customs matters, and encourage the use of voluntary market mechanisms to protect the environment and natural resources.

The United States, with USTR as the lead agency, is also in the process of negotiating trade agreements with 11 other countries for a Trans-Pacific Partnership (TPP) agreement and with the European Union for a Transatlantic Trade and Investment Partnership (T-TIP) agreement, together representing more than 70 percent of the value of all global seafood imports. In these negotiations, the United States is pursuing commitments to ensure effective enforcement of labor and environmental laws, as well as to address specifically IUU fishing activities, including the implementation of port State measures. The United States will seek similar commitments in future FTAs as well.



## Implementation Steps

- **In 2015**, conclude TPP negotiations, including provisions to effectively enforce labor and environmental laws and to combat IUU fishing and seafood fraud, where appropriate. Prepare the agreement for Congressional consideration, seek to put the agreement into force as quickly as possible, and monitor implementation of the agreement.  
*Lead Agency:* USTR  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate, including DHS, FDA, DOJ, and the Departments of State and Commerce.
- **In 2015**, continue to develop proposals with the European Union to effectively enforce labor and environmental laws and to combat IUU fishing and seafood fraud, where appropriate. Seek to conclude T-TIP negotiations with a robust outcome as soon as possible, and thereafter prepare the agreement for Congressional consideration, seek to put the agreement into force, and monitor implementation of the agreement.  
*Lead Agency:* USTR  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate, including DOJ, DHS, and the Departments of State and Commerce.
- Continue to prioritize implementation of FTA commitments to effectively enforce labor and environmental laws, including laws pertaining to the conservation and management of marine fisheries resources, through, inter alia, regular meetings of FTA labor and environment bodies.  
*Lead Agencies:* USTR, Department of Labor (DOL), and the Department of State  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate, including DOJ, DHS, the Departments of State, Commerce, and the Interior (DOI), the Environmental Protection Agency and USAID.
- Develop and enhance labor and environmental cooperation programs, where appropriate, including to support existing and future FTA partner commitments to effectively enforce labor and environmental laws and to address IUU fishing. In coordination with DHS, use FTAs as a vehicle to enhance customs cooperation and information sharing on IUU fishing and the fraudulent importation of fish and seafood.  
*Lead Agencies:* DOL and Department of State  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate, including DOI, DOJ, the Department of Commerce, the Environmental Protection Agency, USAID, and USTR.

## Recommendation 5

### International – Fishery Subsidies

*Direct the U.S. Trade Representative, and the Secretaries of State and Commerce to pursue international commitments to eliminate fisheries subsidies that contribute to excess fishing capacity, overfishing, and IUU fishing by 2020.*

#### **Rationale**

While some fisheries subsidies provide important benefits like supporting fisheries research and conservation, subsidies that contribute to overfishing and overcapacity are one of the main drivers of unsustainable levels of fishing. Such subsidies also undermine the effectiveness of fisheries management regimes and can contribute to IUU fishing. Global fisheries subsidies were estimated at approximately \$35 billion in 2009, of which approximately \$20 billion consisted of capacity-enhancing subsidies.

The United States has long been a global leader and advocate in support of disciplines on harmful fisheries subsidies, and the United States has long identified disciplines on fisheries subsidies as a key area in which trade agreements can contribute to environmental conservation and sustainable development. Since 2001, as part of the Doha Round of World Trade Organization (WTO) negotiations, the United States has pursued commitments to limit harmful fisheries subsidies and provide greater transparency for fisheries subsidies. The United States will continue to seek and support multilateral commitments in the WTO on fisheries subsidies. In the Asia-Pacific Economic Cooperation (APEC) forum the United States is promoting transparency in fisheries subsidies and their ultimate elimination, as reflected in the 2014 Xiamen Declaration of the APEC Ocean-Related Ministerial Meeting. The United States is also pursuing ambitious commitments to discipline harmful fisheries subsidies in our ongoing free trade agreement negotiations for a Trans-Pacific Partnership (TPP) agreement with 11 other Asia-Pacific countries and a Transatlantic Trade and Investment Partnership (T-TIP) agreement with the European Union.

## Implementation Steps

To implement this recommendation, USTR, along with the Departments of State and Commerce and other relevant agencies, will continue to pursue meaningful commitments to discipline harmful fisheries subsidies and promote greater transparency of fisheries subsidies. Specific steps include:

- **In 2015**, conclude negotiations on the TPP environment chapter, including commitments on some of the most harmful fisheries subsidies, such as those linked to IUU fishing, and to enhance transparency and reporting requirements for fisheries subsidies programs. Seek Congressional approval for the TPP agreement and seek to put the agreement into force as quickly as possible.  
*Lead Agency:* USTR  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate.
- **In 2015**, seek, with the European Union, proposals to discipline harmful fisheries subsidies, and to enhance transparency and reporting requirements for fisheries subsidies in the T-TIP agreement. Seek to conclude negotiations with a robust outcome on fisheries subsidies as soon as possible, and prepare for Congressional consideration and subsequent entry into force of the T-TIP agreement.  
*Lead agency:* USTR  
*Other Agencies involved:* Coordination with relevant agencies, as appropriate.
- **In 2015–2016**, continue to pursue commitments in the WTO rules negotiations to discipline harmful fisheries subsidies and provide greater transparency for fisheries subsidies. Seek to ensure other WTO Members are more transparent in the notification of their fisheries subsidies.  
*Lead Agency:* USTR  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate.
- **In 2015–2016**, work to complete and release an updated study reporting on the nature and extent of fisheries subsidies provided by APEC economies, and pursue regional commitments to enhance transparency and efforts to reform fisheries subsidies programs.  
*Lead Agencies:* USTR, Department of State  
*Other Agencies Involved:* Coordination with relevant agencies, as appropriate, including the Department of Commerce.
- When Chile hosts the second Our Ocean Conference **in 2015**, seek to build on the outcomes of Secretary Kerry's Our Ocean Conference, including by seeking a commitment not to provide subsidies linked to IUU fishing.  
*Lead Agencies:* USTR, Departments of State and Commerce  
*Other Agencies Involved:* Coordination with other relevant agencies, as appropriate.

## Recommendation 6

### International – Capacity Building

*Direct the Secretaries of Commerce, Defense, Homeland Security, and State, the Administrator of USAID, and the Attorney General to coordinate with donors, multilateral institutions, and foreign governments and prioritize building capacity to sustainably manage fisheries and combat IUU fishing and seafood fraud.*

#### Rationale

IUU fishing and seafood fraud are global issues that can impact maritime and national security and require a global, concerted effort to combat. Enhancing other countries' capacity for effective fisheries management and enforcement and prosecution of violations can ultimately improve U.S. marine resources. Many less-developed countries lack adequate maritime domain awareness, governance structures, and capable institutions to secure their Exclusive Economic Zone rights and prevent IUU fishing and other activities associated with illegal fishing and trade in illegally harvested fish. Assisting developing countries to strengthen their fisheries governance and enforcement can help regulators in other countries more carefully manage and monitor legitimate fishing and combat IUU fishing practices and help ensure seafood sold in different markets is produced in accordance with the applicable law.


Building capacity and political will to combat IUU fishing will be most successful when we recognize the broader context in which these activities occur, and undertake a strategic and comprehensive approach to fisheries sector reform and address associated criminal activities. IUU fishing and seafood fraud have different impacts that require different capacity building approaches across fishery sectors, including: industrial fisheries, small-scale fisheries, and aquaculture. Effective capacity building will require the use of strategic partnerships, a comprehensive approach to IUU fishing as a development issue, and coordinated delivery of U.S. government support.

#### Implementation Steps

*Lead Agencies:* NOAA, Department of State, and USAID

*Other Agencies Involved:* NOC Committee agencies as appropriate, including USFWS, DOJ, and DHS/USCG

- **By May 2015**, NOAA, the Department of State, and USAID will convene an interagency working group consisting of experts from all interested agencies. This group will prioritize capacity building efforts across agencies, with international development organizations and non-federal organizations including coordinating with related efforts under the Presidential Task Force on Wildlife Trafficking, the White House Strategy to Combat Transnational Organized Crime, and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons.

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- **By August 2015**, the Department of Justice will form an IUU fishing and seafood fraud multinational advisory body in cooperation with INTERPOL, to inform the aforementioned U.S. interagency working group coordination process by:
    - Sharing information regarding multilateral or bilateral priority areas of IUU fishing and seafood fraud investigations.
    - Developing mechanisms for coordinated and targeted enforcement or interdiction actions to address priority areas.
    - Identifying needed international enforcement tools, and promoting development and implementation of these tools through the capacity building strategic plan to be defined by the interagency working group.
  - **By January 2016**, members of the interagency working group, in consultation with relevant donors, governments, technical organizations, industry, and the non-governmental community, will:
    - Define priority geographies and seafood species that present the most pressing problems with IUU fishing and seafood fraud.
    - Create an ongoing inventory of cooperation and assistance activities to include recently completed, ongoing, and planned activities implemented by the broad community of donors, technical groups, government, and non-governmental organizations working on these issues.
    - Complete a review of the types of interventions, best practices, and enforcement tools that have been successful in strengthening fisheries management and eliminating IUU fishing at national, regional, and global scales.
    - Encourage external development of innovative tools and technology to address IUU fishing and seafood fraud.
  - **By April 2016**, the interagency working group, in consultation with relevant government, donor, technical, industry, and non-governmental organizations and with appropriate public outreach, will develop a strategic, coordinated action plan for building capacity to strengthen fisheries management and eliminate IUU fishing.

## Recommendation 7

### International – Diplomatic Priority

*Direct the Secretary of State to maintain combating IUU fishing and seafood fraud as a diplomatic priority in order to gain the support of senior officials in priority countries to enhance political will for combating IUU fishing and seafood fraud.*

#### Rationale

IUU fishing and seafood fraud are global problems, and no single nation alone can solve them. Diplomacy tools and public outreach can be used to build on key bilateral relationships and encourage our foreign government partners to enhance their efforts to combat IUU fishing and seafood fraud. These issues must continue to be prioritized in our bilateral and multilateral work with other nations and in our public engagement. Building effective coalitions to combat IUU fishing and seafood fraud will also require effective engagement through multilateral organizations and at high-profile, high-level international meetings. Diplomatic efforts will emphasize the negative impacts of IUU fishing and seafood fraud on food and nutrition security, economic security, peace and security, and rule of law.

#### Implementation Steps


*Lead Agency:* Department of State

*Other Agencies Involved:* NOAA, USTR, USAID, and other NOC Committee agencies as appropriate

The Task Force agencies will ensure that issues related to implementing a strong international framework to combat IUU fishing and seafood fraud are featured in discussions between senior officials and their foreign counterparts, including those at the foreign affairs, fisheries, finance, trade, and justice ministries. Discussions at the Secretary, Deputy Secretary, and Under Secretary and ambassadorial levels will seek to advance specific priorities related to efforts to combat IUU fishing and seafood fraud, such as ratification of the Port State Measures Agreement, and the overall implementation of the Task Force recommendations. This will facilitate collaboration between our respective technical and enforcement agencies to ensure that illegally caught or fraudulently labeled seafood does not enter U.S. commerce.

Senior Department of State and NOAA officials will seek outcomes that prioritize action to combat IUU fishing and seafood fraud at high-level events in the next 18 months, including:

- The Boston International Seafood Show, March 2015
- The Third World Ocean Summit, hosted by *The Economist*, June 2015
- The 39th Session of the Conference of the UN Food and Agriculture Organization, June 2015
- The 70th Regular Session of the UN General Assembly, September 2015
- The Second Our Ocean Conference, hosted by Chile, October 2015
- The 32nd Session of the FAO Committee on Fisheries, Spring 2016



The Department of State will coordinate with NOAA, USTR, USAID, and other relevant agencies to develop a strategy **by June 2015** to strengthen embassy advocacy and public diplomacy to increase awareness of issues related to IUU fishing and seafood fraud, and build support for actions for addressing these issues at the national, regional, and global levels, particularly in developing countries. This strategy will include:

- Training modules to prepare embassy officers to engage in IUU fishing and seafood fraud issues effectively.
- Guidance for developing diplomatic demarches and public outreach strategies, including engaging stakeholders and partners.
- Diplomatic demarches.
- A harmonized approach to public diplomacy and public outreach events in support of specific fisheries issues or high-level events over the next 18 months.

## Recommendation 8

### Enforcement – Information Sharing

*Direct the Task Force members, to include the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, and the Interior, and the Attorney General to develop within 180 days a strategy with implementation deadlines to optimize the collection, sharing, and analysis of information and resources to prevent IUU or fraudulently labeled seafood from entering U.S. commerce. This strategy should include a plan to increase support and coordination across agencies for forensic analysis of seafood species and corresponding collection, archiving, and analysis of related reference specimens, as well as reflect efforts to increase coordination with state and local governments per Recommendation 11.*

#### Rationale

Close cooperation among law enforcement organizations at the international, federal, and state/local levels is utilized to identify and interdict IUU and fraudulently labeled seafood. Maximizing the effectiveness of this collaboration, and further enhancing ongoing cooperation will be necessary to prevent IUU and fraudulently labeled seafood from entering U.S. commerce.

Federal and state agencies have a role in preventing the distribution of IUU seafood products and in detecting and preventing seafood fraud throughout the supply chain. While federal law enforcement agencies cooperate routinely, engagement in the effort to target IUU seafood products and seafood fraud is relatively new for some critical agencies, particularly those at the state and local level. Development of information sharing mechanisms, coordination of joint, intelligence-driven enforcement operations, and development of protocols across agencies to better utilize law enforcement tools, such as forensics, would maximize the effectiveness of limited law enforcement resources to detect and interdict IUU fish and fish products from entering U.S. commerce. Additional coordination and investment in forensic resources will allow greater throughput, decreasing turnaround time for processing of evidence in time-sensitive cases, and allowing more effective targeting of shipments examined for fraud.

This recommendation seeks to expand existing interagency collaboration for information sharing (such as through Customs and Border Protection's Commercial Targeting and Analysis Center (CTAC)), and joint law enforcement operations, as well as formalizing new protocols for cooperation on sharing of expertise in necessary enforcement tools, such as forensics.



## Implementation Steps

*Lead Agencies:* NOAA, DHS/CBP, and DOJ

*Other Agencies Involved:* DHS/ICE, DHS/USCG, FDA, USDA, USFWS, DOS, DOD

- **By May 2015**, complete an inventory of existing interagency agreements, joint activities, and ongoing/planned operations that may be utilized under this recommendation. This would include identification of existing facilities for conducting forensic analysis and their capabilities. In addition, identify any necessary amendments to or modifications of existing agreements, or the need for new agreements, and pursue them. Finally, the inventory should make allowance for inclusion of relevant MDA tools identified pursuant to Recommendation 3. This inventory is necessary to determine gaps in collaboration and cooperation on information sharing.
- **By September 2015**, finalize a strategy to optimize the collection, sharing, and analysis of information and resources to prevent IUU or fraudulently labeled seafood from entering U.S. commerce and circulate to the NOC Committee. Present to state and local law enforcement personnel and stakeholders as appropriate. The strategy will include sub-groups to develop focused input on:
  - Information sharing to include DHS assets such as CBP's Commercial Targeting and Analysis Center (CTAC) and expanded access to information across all relevant enforcement agencies including MDA tools developed pursuant to Recommendation 3, trend information on fraudulent seafood that may be collected under Customs Mutual Assistance Agreements pursuant to Recommendation 9, and information collected from the traceability program collected pursuant to Recommendations 14 and 15.
  - Protocols, procedures, and agreements for joint enforcement operations targeting IUU fish and fish product as well as seafood fraud.
  - Procedures for interagency cooperation on: 1) use and development of forensic tools, including means to fill existing gaps in capabilities and eliminate duplication; 2) procedures for when/how resources of one agency can be accessed and utilized by partner agencies; 3) development of specific forensic analysis information required by each agency to promote effective enforcement actions by any or all agencies; and 4) cataloging resources, aligning product codes and taxonomies pursuant to Recommendation 10, and for example, obtaining reference specimens and test results.
  - Mechanisms/processes for coordination, information sharing and development of proposed joint operations to include appropriate federal, state, and local law enforcement agencies.

## Recommendation 9

### Enforcement – Customs Mutual Assistance Agreements

*Direct the Secretary of Homeland Security to leverage existing and future Customs Mutual Assistance Agreements (CMAAs) to exchange relevant information and encourage foreign customs administrations to cooperate in combating illegal, unreported, and unregulated (IUU) fishing and seafood fraud.*

#### Rationale

While there is significant information available related to domestic seafood product, there is often a lack of information readily available for seafood products in international commerce, including farmed products and fish processed at sea. The United States needs to leverage its existing resources and available tools to facilitate the sharing of information to close this gap and ensure that law enforcement personnel have the information they need to take action to prevent the fraudulent importation of seafood into the United States.

DHS has broad authorities to share and exchange information and cooperate with domestic and international partners to combat customs violations, including the fraudulent importation of fish and seafood, and illegal imports of fish and seafood originating from IUU fishing activities as they relate to customs violations. CMAAs are essential tools that provide the legal framework for the exchange of information, documents, and other mutual assistance that aid the United States and its partners in the prevention, detection, and investigation of customs offenses.

The United States currently has 73 bilateral CMAAs with customs administrations around the world. CMAAs are jointly negotiated and implemented by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) within DHS. As CBP and ICE have broad authorities to enforce federal laws at the border, information sharing under CMAAs can extend to include information pertaining to fraudulent and other illegal importations of fish and seafood. Additionally, CMAAs establish the foundational framework for further customs-to-customs engagement between the Parties on specific issues. More information on CMAAs can be found here: <http://www.cbp.gov/border-security/international-initiatives/international-agreements/cmaa>.

## Implementation Steps

*Lead Agency:* DHS

The United States is eager to increase our information sharing abilities via CMAAs to deter customs violations, collect revenue, and facilitate lawful trade. DHS, working with other agencies as appropriate, will leverage CMAAs to support investigations of seafood fraud and of imports originating from IUU fishing as they relate to customs violations, to support risk-based targeting of illicit seafood shipments, and to facilitate further cooperation with foreign governments to encourage the development of best practices to prevent illicit commodities and shipments from entering U.S. commerce long before they reach U.S. borders.

- Immediately begin to highlight its increased focus on combating fraudulently imported fish and seafood, whether wild-caught or farmed, and IUU fishing as it relates to customs violations, working closely with its partners, particularly in those regions where fraudulently imported seafood originates.
- On an ongoing basis, work with NOC Committee partner agencies, pursuant to the strategy developed under Recommendation 8, partners under the Commercial Targeting Analysis Center (CTAC), and partners in the ICE Homeland Security Investigations (HSI) Trade Transparency Unit (TTU), to identify the gaps in information exchanged across customs and enforcement agencies and take action on those areas where it can use its authorities and agreements to achieve the most effective enforcement.

## Recommendation 10

### Enforcement – Species Name and Code

*Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, with input from the Attorney General, to standardize and clarify rules on identifying the species, common name, and origin of seafood. Direct the Secretaries of Commerce and Homeland Security and the U.S. Trade Representative to work with the International Trade Commission to adjust U.S. tariff codes to enhance identification in trade of species subject to IUU fishing or seafood fraud accordingly. The agencies should aim to publish these revised rules and adjusted codes not later than one year after the adoption of this recommendation.*

#### **Rationale**

A wide variety of finfish and shellfish products are consumed by the American public, amounting to about 15 pounds per capita annually, with the majority imported. Whether imported or domestically produced, seafood products should not be marketed to consumers in a way that is false or misleading. For classification of imports, codes and descriptions are assigned to seafood products under the Harmonized Tariff Schedule (HTS) of the United States which is maintained by the U.S. International Trade Commission (ITC). In addition, the FDA maintains a list of product codes to describe seafood commodities entered into U.S. commerce. The FDA product codes refer to fish name, packaging, and type of processing. Deliberate misrepresentation of the species in trade can defraud consumers and allow the infiltration of the products of IUU fishing into the supply chain. Increasing the specificity of HTS codes, and names could help address issues of proper identification of seafood products in trade. Such specificity will help enforcement officials focus limited resources on shipments more likely to contain IUU seafood as well as help to protect against seafood fraud.

## Implementation Steps

*Lead Agencies:* NOAA, DHS/CBP, and FDA

*Other agencies involved:* USTR, USFWS, DOJ, USDA and ITC

**By April 2015**, the lead agencies will convene an interagency technical working group for the purpose of implementing this recommendation.

- **By August 2015**, the Working Group will catalogue the existing rules on identifying the species, name, and origin of seafood entering into commerce in the United States and determine where standardization or clarification of these rules would help to address problems of IUU fishing and seafood fraud. For those areas where the Working Group determines standardization or clarification of the rules is appropriate, the Working Group will prepare recommendations on how those rules should be standardized or clarified. These recommendations will include, where appropriate, which codes should be adjusted and at what level adjustments are needed, and whether common, market, and/or scientific names should be utilized. Such recommendations will be referred to the ITC and FDA as appropriate.
- **By August 2015**, the Working Group will also consider how the current list of U.S. tariff codes for seafood can be adjusted, including by increasing product specificity, to facilitate identification of species susceptible to IUU fishing or seafood fraud, in support of efforts to keep such products out of U.S. commerce. The Working Group will develop recommendations as to what adjustments should be made and will share them with ITC and FDA and integrate them into the strategy developed pursuant to Recommendation 8.
- **By December 2015**, FDA and other relevant agencies shall standardize and clarify rules on identifying the species, common name, and origin of seafood and adjust U.S. tariff codes to enhance identification in trade of species subject to IUU fishing or seafood fraud based on the recommendations of the Working Group, including with the publication of proposed revisions to any rules **by March 2016**.

## Recommendation 11

### Enforcement – State and Local

*Direct the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security, and the Attorney General to work with state and local enforcement authorities to expand information sharing and develop tools that address illegal fishing and seafood fraud at the state and local level.*

#### Rationale

State and local enforcement authorities have long played an important role in combating illegal fishing and seafood fraud. In regulating fisheries through enforcement in state waters and working with NOAA, monitoring landings of fish harvested in federal waters, state and local authorities are often the first recipients of information regarding potential illegal activity and illegally harvested products. They are a vital source of information for federal enforcement agencies and a critical component of fisheries enforcement. In many places, federal agencies already cooperate with state and local authorities on enforcement actions dealing with fisheries violations. For example, NOAA has a Cooperative Enforcement Program (CEP) in place with 27 state and territorial law enforcement agencies, which provide those agencies with the training and authority to enforce federal marine resource laws. DOI-USFWS also has a CEP in place with 47 state and territorial law enforcement agencies, which provide those agencies with the training and authority to enforce federal wildlife laws. Likewise, the Department of Justice (DOJ) frequently works with state and local law enforcement officials on investigations and prosecutions, and has helped establish regional environmental crimes task forces that help foster valuable information sharing and other efficiency building coordination.

State and local authorities also play a key role in detecting and preventing seafood fraud, since intrastate seafood sales, including those at the restaurant and retail level, are regulated by state and local, rather than federal, authorities. Agencies such as the FDA contract with state and local authorities that inspect retail and food establishments to carry out inspections at facilities under FDA's jurisdiction. State and local authorities thus benefit from FDA training and information regarding seafood inspections and species designations.

## Implementation Steps

*Lead Agencies:* NOAA and DOJ

*Other Agencies Involved:* FDA, USFWS

- **By June 2015**, NOAA Fisheries Office of Law Enforcement (OLE) will prioritize combating seafood fraud and the sale of IUU seafood products for joint federal/state enforcement operations under its CEP. Actions to reflect this prioritization would include:
  - Providing IUU fishing and seafood fraud–specific enforcement trainings on a semi-annual basis with state and local personnel, including inspectors and investigators.
  - Developing online training modules and technical assistance (e.g., assistance to increase species identification capabilities) to help law enforcement recognize and document potential IUU fishing and seafood fraud issues.
  - Developing procedures for expanded information sharing and access to NOAA OLE fisheries intelligence analysts for law enforcement partners under the CEP.
  - Committing NOAA enforcement officers and special agent resources as appropriate to investigating potential seafood fraud and IUU seafood products violations.
- **In 2015**, DOJ will prioritize investigation and prosecution of cases involving IUU fishing and seafood fraud in coordinated efforts, including with U.S. Attorneys’ Offices and the relevant regional environmental crimes task forces. These efforts will include NOAA CEP state enforcement representatives.
  - **By April 2015**, DOJ will designate contact points for fisheries agents to directly speak with and obtain support from specialized prosecutors about ongoing investigations or referrals related to seafood fraud and illegal fishing.
  - **By May 2015**, DOJ’s Environmental Crimes Policy Committee will explore ways to engage U.S. Attorney’s Offices on the need to prioritize seafood fraud and illegal fishing cases.
  - **By July 2015**, DOJ will explore ways and means to conduct a pilot judicial training workshop regarding both fisheries and wildlife cases, with a goal, if those explorations are productive, of conducting a limited pilot workshop during 2015.
- The negotiated FDA state food safety inspection contracts to be awarded in **FY 2016** will include a focus area on mislabeling and seafood species substitution issues. FDA will conduct training with state contractors and encourage information sharing of mislabeling and seafood species substitution issues beginning **in FY 2015**.

## Recommendation 12

### Enforcement – Enforcement Authorities


*Work with Congress to the extent necessary to broaden agency enforcement authorities, including those to 1) search, inspect, and seize seafood, both at the point of entry into U.S. commerce (whether from foreign or domestic sources) and throughout the supply chain; and 2) pursue a full range of judicial enforcement options for trafficking and other violations related to IUU fishing and seafood fraud.*

#### Rationale

Agencies need to leverage existing authorities through stronger coordination and, where necessary, seek additional enforcement tools to address growing concerns over IUU fishing and seafood fraud, in particular the illegal entry of seafood products into U.S. commerce. At present, there are crucial gaps in federal authorities that prevent agencies from monitoring the entirety of the seafood supply chain. Although NOAA has responsibility for implementing and enforcing an increasing number of U.S. obligations related to implementation of catch documentation and trade tracking schemes, many of NOAA's existing enforcement authorities are focused on at-sea and dockside enforcement that is more appropriate to the enforcement of harvesting violations. DHS (CBP and ICE HSI), FDA, NOAA, and USDA have robust regulatory authorities applicable at the point of entry of seafood, and USDA has additional authorities at the point of food processing. However, to more effectively curb the entry of IUU and fraudulently marketed seafood products into U.S. commerce, agencies need the ability to inspect and verify the legality of fish and fish product throughout the supply chain. For example the Magnuson-Stevens Fishery Conservation and Management Act (MSA) prohibits the import of fish taken in violation of foreign law but effective enforcement of this prohibition requires the cooperation and coordination with border control agencies such as ICE HSI and CBP.

Tools such as increased penalties and administrative and judicial enforcement mechanisms are also vital to combating IUU fishing and seafood fraud. However, a number of key statutory authorities that deal with IUU fishing and seafood fraud do not have adequate penalties or administrative and judicial mechanisms, while others that could be used expressly exempt fisheries violations. For example, the Lacey Act, which prohibits the importation of fish and fish products taken or imported in violation of a foreign law or treaty, and the Antarctic Living Marine Resources Convention Act, both have very low civil penalty maximums. In addition, many of the statutes implementing international fisheries agreements have limited criminal provisions that are not applicable to the harvest or trade of fish, but only to conduct such as assault, harassment, obstruction, and false statement. Tools such as increased





civil monetary penalties, clear forfeiture authority, and increased authority to impose criminal fines and penalties, including through the application of laws related to money laundering and the Racketeer Influenced and Corrupt Organizations Act (RICO), are needed to deter illegal activity motivated by the large profits that may be associated with IUU fishing and trade in the resulting product. ICE HSI and CBP can leverage their existing Title 19 seizure and forfeiture authorities, and ICE HSI can leverage its authority and jurisdiction over criminal customs violations as specified unlawful activities under the Money Laundering Control Act and as predicate offenses under RICO. If collaboration with ICE HSI or CBP is not possible, these tools would provide law enforcement officials within other agencies and prosecutors with greater ability to punish illegal activity with penalties that provide an effective deterrent.

## Implementation Steps

*Agencies involved:* NOAA, DOJ, DHS/CBP, DHS/ICE, and other NOC Committee agencies as relevant

- Review pending investigations and enforcement actions and leverage other agencies' authorities for successful outcomes.
- Continue to work with Congress to identify and propose necessary law enforcement tools and to strengthen and pass legislation to address IUU fishing and seafood fraud.
- **By July 2015**, NOAA and DOJ will hold briefings for key Congressional Committees, Members, Caucuses, and staff with agency leadership, as well as enforcement experts and stakeholders, to explain the rationale and need for appropriate enforcement tools to combat IUU fishing and seafood fraud.
- Use existing fora such as Capitol Hill Oceans Week in June 2015 to continue to educate Congressional members, staff, and constituents about IUU fishing, seafood fraud, and the need to enhance enforcement authorities.

## Recommendation 13

### Partnerships – Forum

*Direct the Task Force to establish a regular forum with harvesters, importers, dealers, retailers, processors, and non-governmental organizations to enhance collaboration in combating IUU fishing and seafood fraud and to improve understanding of the levels and nature of IUU fishing and seafood fraud and related criminal activities.*

#### **Rationale**

Just as one federal agency alone cannot combat IUU fishing and seafood fraud, these issues cannot be addressed only by the federal or state governments. It is important that the federal agencies join forces and take strong steps in partnership with the non-federal entities such as harvesters, importers, dealers, retailers, processors, academia, and non-governmental organizations. In particular, the wide range of entities that provided public comments on both the establishment of the Task Force and the implementation of its recommendations demonstrates a broad knowledge and investment made in addressing these issues across the seafood supply chain. As federal efforts to address issues related to IUU fishing and seafood fraud continue, it is crucial to bring together all relevant stakeholders so that the NOC Committee has a range of experience and collaborative resources to draw upon and inform federal policy. From this regular forum, areas of collaboration between federal agencies and stakeholders can be identified to address IUU fishing and seafood fraud concerns in the supply chain. A number of initiatives and professional fora external to the federal government already exist to bring together various stakeholders and collaborate on a wide range of fisheries issues. It is important to build upon and engage in these venues as an opportunity to continue robust dialogue and engagement with interested stakeholders.

Taking this context into account, the NOC Committee will establish a regular forum open to all interested stakeholders to facilitate discussion and exchange information on combating IUU fishing and seafood fraud. Comprised of both virtual and in-person components, this forum would, among other things, enhance public awareness of NOC Committee activities, as well as highlight non-government efforts to combat IUU fishing and seafood fraud, and develop public-private partnerships. This forum would not supplant formal comment periods for specific regulatory proposals or policies that are developed in response to other Task Force recommendations, but could serve as a feedback loop as the NOC Committee implements recommendations as well as help provide innovative ideas and solutions moving forward.

## Implementation Steps

*Lead Agency:* NOAA

*Other Agencies Involved:* All NOC Committee agencies

The forum will manifest in a few different ways:

- NOC Committee agencies will develop and maintain a public web portal to facilitate the work of the forum **by December 2015**. Among other things, this web portal will:
  - Serve as a repository of information on relevant laws, regulations, and policies related to IUU fishing and seafood fraud.
  - Link to the websites and relevant pages of NOC Committee agencies.
  - Provide contact information of NOC Committee agencies.
  - Provide a mechanism to report IUU Fishing and seafood fraud complaints.
  - Serve as a public web portal to inform stakeholders and other interested parties about various NOC Committee engagement events and related federal activities throughout the year.
  - Provide other related NOC Committee information, as relevant.
- Hold an annual, public, in-person forum of interested stakeholders that may focus its discussions on a specific IUU fishing or seafood fraud concern. Topic suggestions will be solicited throughout the year at various NOC Committee engagement sessions and through the public web portal. **By December 2015**, the first in-person forum will be held, with a focus on the implementation of particular Task Force recommendations of interest to stakeholders (to be determined through stakeholder engagement).
- To support these in-person meetings, the NOC Committee will develop a series of ongoing virtual meetings such as webinars to exchange information on implementation of Task Force recommendations and on the roles of NOC Committee agencies, and to solicit public feedback. A first virtual meeting will take place **in June 2015**.
- NOC Committee representatives will regularly engage at other stakeholder forums throughout the year to apprise stakeholders of ongoing NOC Committee efforts and receive feedback. Such forums could include: conferences and industry trade shows organized by entities external to the government, various Regional Fishery Management Council meetings, and Capitol Hill Ocean Week, among others.

## Recommendations 14 and 15

### Traceability – Traceability Program

*Direct the Task Force, with input from U.S. industry and other stakeholders, to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU seafood in U.S. commerce.*

*Direct the Task Force to establish, within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entry into U.S. commerce.*

#### **Rationale**

It is in the national interest to prevent the entry of illegal goods, including illegally harvested or produced seafood, into U.S. commerce. Creating an integrated program that better facilitates data collection, sharing, and analysis among relevant regulators and enforcement authorities would be a significant step forward in addressing IUU fishing and seafood fraud. The federal government will work with states, industry, and other stakeholders to develop and implement this program, consistent with U.S. international legal obligations, including U.S. obligations under the World Trade Organization Agreement.

First, the federal government will need to define the types of information to be collected regarding seafood sold in the United States and the operational standards to be applied to the collection, retention, and transmission of such information, such as electronic collection wherever possible. This program should be developed in a way that permits all authorized agencies to enter, analyze, use, and verify the data while still protecting information consistent with statutory authorities. NOAA and its fishery management partners already collect much of this information for many species for use in domestic fisheries management. Also, at the border the FDA collects information on the identity of imported seafood products, harvested or farmed. CBP is able to utilize its authorities at the border to enforce other U.S. agency requirements for imported seafood products, while ICE has the authority to investigate cross-border violations. It will be critical to this effort to knit together the information collected by these agencies and others and leverage their respective authorities, while ensuring that other federal agencies have access to that information and identifying the domestic and international gaps in information.

The program will initially be applied to seafood products of particular concern because the species at issue are subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing (referred to in this recommendation as “at risk” species). The federal government will first need to outline the criteria and principles to determine which species currently face these risks, as well as to understand whether additional data need to be collected for these species, and develop a strategy to collect those data. Once the steps outlined on pages 37-39 have been implemented, the NOC Committee

will evaluate the program's development and use lessons learned to outline next steps required for eventually expanding the program to other seafood entering U.S. commerce. The NOC Committee will again evaluate progress in implementing the program and the steps outlined in the previous report after one full year of program implementation. As set forth in the *Federal Register* notice that relayed the Task Force's recommendations to the President, it is the goal of the U.S. government "to eventually expand the program to all seafood at first point of sale or import." The process for expansion will account for, among other factors, consideration of authorities needed, stakeholder input, and the cost-effectiveness of program expansion. The NOC Committee will also consider how certain types of information within the traceability system (e.g., species, geographic origin, means of production (such as wild-caught versus aquaculture), and gear type) could be made available to the consumer.

## Implementation Steps

The NOC Committee intends to take steps to develop this program in six key areas: 1) developing types of information/operational standards related to data collection; 2) determining species currently "at risk" to IUU fishing and seafood fraud, 3) analyzing what data are collected and the gaps in data; 4) sharing information within the federal government and with consumers, as allowable by law; 5) establishing a trusted trader program; and 6) evaluating and expanding the overall program. As noted above, implementing these steps will require engagement from several members of the NOC Committee but coordinated implementation of authorities held by CBP, NOAA, and FDA will be especially critical. Some steps will be concurrent and some will need to be sequential. The notes after each heading indicate where in the process each step is expected to be implemented.

- **Types of Information and Operational Standards** – April through September 2015: The information collected will include the following information: who harvested or produced the fish (e.g., name and flag State of harvesting vessel and/or farm facility, type of fishing gear); what species was harvested (e.g., species name, form, and quantity of the product); where and when the seafood was harvested and landed (e.g., ocean area of catch, farm location, date of harvest, date/point of first landing). The operational standards under each of the categories above should also draw upon and utilize applicable experience, best practices, and existing standards where possible. Operational standards may include things such as how data is to be collected, in what format, who would collect the data, data verification processes, and data security, among others.
- **By June 2015**, the NOC Committee will put out a proposal for the minimum types of information, as well as operational standards for a 30-day public comment period. **By September 2015**, the NOC Committee will finalize recommendations in this regard for appropriate agency action.

- **Identifying Current At Risk Species Threatened by IUU Fishing and Seafood Fraud** – April through October 2015: The Secretaries of Commerce, Health and Human Services, State, and any other relevant agencies will identify certain species of fish or seafood that are presently of particular concern because they are currently subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing.
  - The NOC Committee will start a two-month effort to engage the public to gather input on what principles we should use to determine what species are “at risk.”
  - **By July 2015**, within two months after the end of the aforementioned public engagement, the NOC Committee will release proposed principles for evaluating whether species are “at risk,” as well as a proposed list of species for a 30-day public comment period.
  - **By October 2015**, two months after the end of the public comment session, the NOC Committee will finalize recommendations both with respect to the principles as well as the list of species that are “at risk” for appropriate agency action.
- **Data Collection – Determining Gaps** – October 2015 through January 2016: The Secretaries of Homeland Security, HHS, and Commerce, and other federal agencies, states, and other partners, as appropriate, will work together to determine data collection needs for these “at-risk” species.
  - There will be a number of species for which we already collect the necessary data. For those species that need additional data collected, within 3 months of the “at-risk” list of species being finalized, the federal government will develop a strategy to collect this data including working with Regional Fishery Management Councils for domestically managed species and working through RFMOs for those species managed by those organizations.
- **Additional Point of Entry Data Collection** – October 2015 through September 2016: Based on the results of the gap analysis, the Department of Commerce (NOAA), in consultation with Departments of Homeland Security (CBP), Health and Human Services (FDA), and Treasury, as lead for the International Trade Data System (ITDS)/Single Window, shall, if there is need for additional data to be collected, initiate a rulemaking to collect additional information electronically as a requisite of entry into U.S. commerce for at-risk species. This rulemaking would propose types of information outlined above to accompany shipments of seafood at their point of entry into U.S. commerce.
  - The final rule will be issued **by August 2016** in order for it to be effective **by September 2016**.

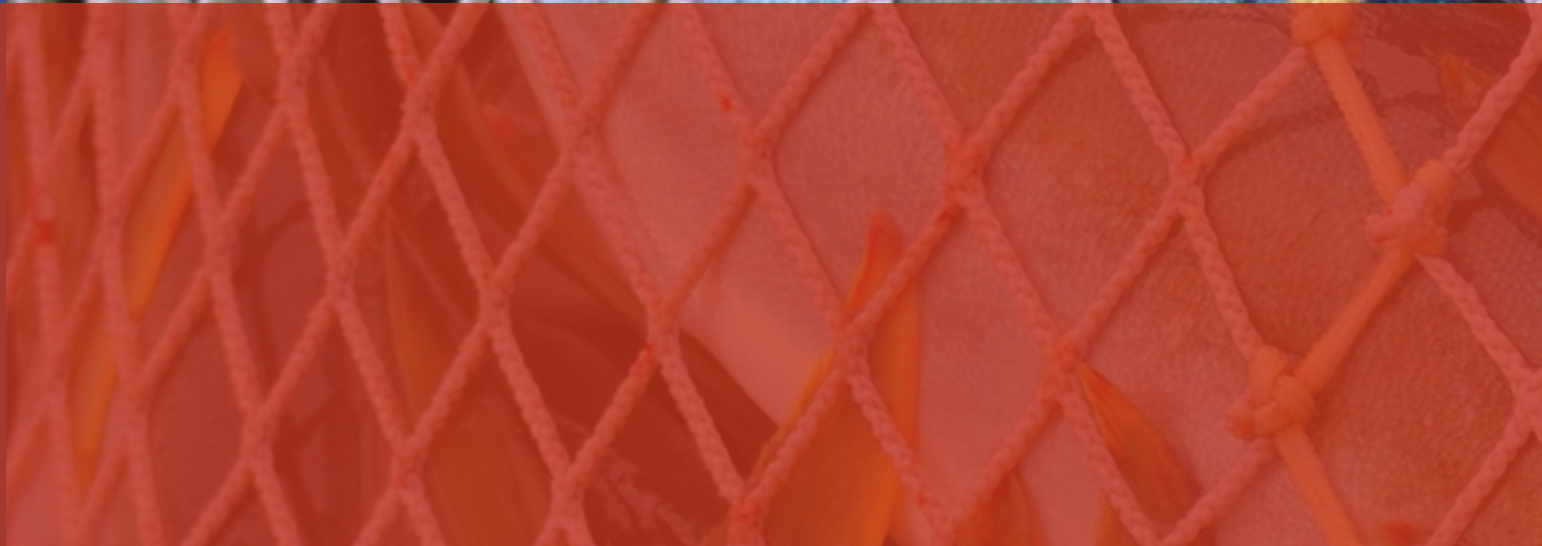
- **Information Sharing** – October 2015 through November 2016: Information collected will be shared among federal regulatory and law enforcement agencies for analysis and other relevant actions to prevent IUU or fraudulently marketed seafood from entering U.S. commerce pursuant to the strategy developed by the Secretaries of Agriculture, Commerce, Health and Human Services, Homeland Security, and the Interior, and the Attorney General (see Recommendation 8 for additional information).
- **By July 2016**, work with our non-federal partners who have data collection systems to ensure MOUs and other similar documents are in place to ensure data can be shared with federal law enforcement agencies.
- **Trusted Trader Program** – April 2015 through September 2016: The Secretary of Commerce will collaborate with the Secretary of Homeland Security and other agencies as relevant to assist in developing a voluntary Commerce Trusted Trader Program for importers of these identified species. The Program will provide benefits such as reduced targeting and inspections and enhanced streamlined entry into U.S. commerce for certified importers.
  - **By March 2016**, DHS and Commerce will propose a voluntary trusted trader program for a two-month public comment period. The program will be finalized **by September 2016**.
- **Evaluation and Further Implementation** – Implementation of this risk-based traceability program for collection of information at the point of entry into U.S. commerce will be evaluated regularly to identify whether it is meeting the intended objectives and how it can be expanded to provide more information to prevent seafood fraud and combat IUU fishing.
  - **By December 2016**, the NOC Committee will issue a report that includes an evaluation of the program as implemented to date as well as recommendations of how and under what timeframe it would be expanded. If the program cannot be expanded to all fish at this time, the report will explain why not and lay out a timeline to steps that advance this objective. The report will further update the list of at-risk species developed and lay out additional authorities needed for more robust implementation, and recommend how shareable information within the traceability program (e.g., species, geographic origin, means of harvest or production, and gear type) could be made available to the consumer.
  - **By September 2017**, an update and evaluation of the program and next steps as outlined on page 37 will be issued.

## Conclusion

*Where a timeframe is not specifically noted under a recommendation, the relevant agencies will report to the National Ocean Council's standing IUU Fishing/Seafood Fraud Committee on the progress of implementing that recommendation one year from receiving guidance from the President. In addition, recognizing that a valuable and extensive body of information on fisheries and seafood products would be created by the recommendations above, the IUU Fishing/Seafood Fraud Committee will report annually to the President on seafood trends, key issues related to IUU fishing and seafood fraud, and progress on development and implementation of a comprehensive and risk-based traceability program.*









June 8, 2015

Mr. Samuel D. Rauch III  
Deputy Assistant Administrator for Regulatory Programs  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
1315 East-West Highway  
Silver Spring, MD 20910

*SUBMITTED VIA REGULATIONS.GOV*

RE: Docket No. NOAA-NMFS-2014-0090-0109; Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud Action Plan Recommendations 14/15 Identifying Species “At Risk” of IUU Fishing and Seafood Fraud; 80 Federal Register 24247 (April 30, 2015).

Dear Dr. Rauch:

The National Fisheries Institute appreciates the opportunity to comment on the work of the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud, specifically on the Task Force’s above-captioned notice concerning “at risk” species.

NFI’s comments are organized into the two primary issues the Task Force has examined, IUU fishing and seafood mislabeling. Some comments, however, apply to both topics.

To begin, it must be emphasized once more: NFI member companies believe that IUU fishing and seafood fraud are practices that punish honest seafood businesses, diminish the effectiveness of existing regulation, and erode consumer confidence in the seafood available for purchase. There can be no substitute for clear regulation and effective management and enforcement of both priorities – responsibilities that are in nearly all circumstances best carried out at the federal level.

As explained in greater detail below, in working on Recommendations 14 and 15, the Task Force and all Federal agencies should be guided by data and the best science available. President Obama, in one of his first acts as the government’s chief executive, issued guidance to agencies that they must adhere to verifiable information, data and the science that results. To quote:

Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other



resources, mitigation of the threat of climate change, and protection of national security.<sup>1</sup>

Because the results of the Task Force’s identification of a species as “high risk” for IUU or fraud will likely cause those fish to be required to adhere to additional traceability requirements, the government should take specific care to ensure their decisions are based on facts not rumor, deeds not words. “High risk” species designation should be based on credible data that those species are indeed at high risk of unlawful harvest or mislabeling, not random anecdotes of bad actors intent on skirting the law or misunderstanding of existing labeling regulations and conventions. That is perhaps a particularly important point with respect to IUU fishing – and, according to recent statements – it is a perspective the Task Force supports. Further, any designation should be based on relatively current information, not based on issues that have long been resolved.

## **I. DEFINING HIGH RISK.**

Because any designation of a species as “high risk” of IUU or fraud will carry with it additional regulatory burden, the government should ensure it uses this tool with great care. An entry discussion must be how is “high risk” defined?

In the academic study of risk, and its practical application in food safety, the definition of risk might be the combination of exposure to a problem and its severity.

The U.S. government uses this definition as a template in other areas of regulation. For instance, in food safety, the U.S. participates and adheres to the principles of CODEX Alimentarius which define risk as:

A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.<sup>2</sup>

Other U.S. government organizations have modeled risk on the combination of exposure and impact.

During this stage, each potential hazard is evaluated based on the severity of the potential hazard and its likely occurrence. Severity is the seriousness of the consequences of exposure to the hazard. Considerations of severity (e.g., impact of sequelae, and magnitude and duration of illness or injury) can be helpful in understanding the public

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<sup>1</sup> Memorandum for the Heads of Executive Departments and Agencies. (2009, March 9). Retrieved from [https://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/](https://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/)

<sup>2</sup> Joint FAO/WHO Food Standards Program, 2015. Codex Alimentarius Commission Procedural Manual, 23<sup>rd</sup> ed. World Health Organization/Food and Agriculture Organization of the United Nations, Rome, p. 116.

health impact of the hazard. Consideration of the likely occurrence is usually based upon a combination of experience, epidemiological data, and information in the technical literature. When conducting the hazard evaluation, it is helpful to consider the likelihood of exposure and severity of the potential consequences if the hazard is not properly controlled.<sup>3</sup>

So, a fish designated as “high risk” should be one that is common in the United States market (high exposure) and can cause significant damage (in IUU context to fisheries and in fraud context in health or economic disadvantage to legitimate supply chain participants).

## **II. ILLEGAL UNREGULATED UNREPORTED (IUU) FISHING.**

IUU fishing erodes seafood resources, punishes legitimate seafood businesses, and undermines fishery management systems. The National Oceanic and Atmospheric Administration (NOAA) is an acknowledged international leader in fishery science, preventing overfishing, and rebuilding overfished stocks. We agree with President Obama, who in a message to Congress in May 2015 stated that the “current requirements of [the Magnuson Stevens Fishery Conservation and Management Act] are working – the percentage of stocks that are subject to overfishing and the percentage that are in an overfished state are at historic lows.”<sup>4</sup> Dr. Kathryn Sullivan, Under Secretary of Commerce of Oceans and Atmosphere and Administrator of NOAA and Task Force Co-Chair, amplified the President’s point by noting that

[United States] domestic fisheries are more sustainably managed than ever before, and this is directly because of the world class science that informs our decision-making. Our recent report to congress on the Status of U.S. Fisheries outlines our progress showing that overfished stocks and overfishing are at all-time lows. It is vital that our science not regress, as this would inevitably lead to declines in our stocks and a loss in the economic and social values they provide. Our progress in making fisheries management more effective is based on the principle that management is based on sound science.<sup>5</sup>

We applaud Administration efforts to eliminate IUU fishing and the leadership to address this issue globally. Other countries have systems based on the same principles – strong and independent science, adherence to catch limits, awareness of fishing impacts on the ecosystem, and enforcement. In light of this, we urge the Task Force to carefully assess the true extent of IUU fish in the U.S. market before proposing new mandates to be put in place on top of the many tools available today to deter and punish IUU fishing. Our comments in this section

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<sup>3</sup> National Advisory Committee on Microbiological Criteria for Foods. Hazard Analysis and Critical Control Point Principles and Application Guidelines. 1998. J. Food Protect. 61:1246-1259.

<sup>4</sup> President Barack Obama: "Statement of Administration Policy: H.R. 1335 – Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act," May 19, 2015

<sup>5</sup> Improvement and Innovation in Fisheries Data Collection: Hearings before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard. Committee on Commerce, Science, and Transportation. (2015) (testimony of Dr. Kathryn D. Sullivan).

include: the effectiveness of existing laws to combat IUU, analysis of high risk IUU species, and principles to identify IUU species.

## A. EFFECTIVENESS OF EXISTING LAWS

### 1. *Global Level*

The Task Force has been focused to a great degree on suspected IUU fishing in non-U.S. waters. For instance, “Our domestic management system is one of the best in the world, if not the best in the world, but despite all of that and all the successes we have had, there are still some IUU fishing issues going on, and that really is however you – and I’m sure yours – can be an economic disadvantage to the good players and our domestic fisheries.”<sup>6</sup> In light of that, it is imperative to take stock of the existing tools available to U.S. policymakers when it comes to imported, wild-capture seafood.<sup>7</sup>

First, the United States has multiple tools available to combat IUU fishing through Regional Fisheries Management Organizations (RFMOs), the primary agents for managing fisheries in international waters. Starting in 2012, the United States began working closely with international partners to strengthen the ability of the Members of various RFMOs to identify IUU vessels and outlaw fishing by them via their flag countries. This has been carried out through the adoption and implementation of specific management measures. These measures included development and sharing of lists of IUU vessels, enhanced monitoring and control programs, adoption of port States inspection schemes, and better regulation of transshipment at sea.<sup>8</sup>

NOAA is also engaged with numerous coastal nations, on a bilateral basis, to highlight the need for effective IUU regulation and enforcement, and to strengthen the capacity of those nations to target likely IUU activity. Again beginning in 2012, NOAA collaborated with several developing coastal States to support their domestic fisheries management, including helping to establish scientific stock assessments and strong enforcement regimes. For example, over the past 2 years, NOAA has trained West African fisheries management and enforcement officials. In February 2012, U.S. trainers presented a 5-day course in Liberia to observers and inspectors on collecting data from tuna purse seine and longline vessels. NOAA is engaged in similar efforts in Latin and South America and in the Pacific Rim region.

NOAA has recently expanded on this work with both the Russian Federation and the European Union. NOAA is today negotiating a bilateral agreement with the Russian Federation designed to improve that country’s IUU enforcement and sustainability efforts across wild-capture

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<sup>6</sup> In the Matter of: Task Force on Combatting IUU Fishing and Seafood Fraud, August 20, 2014 (p. 7). Retrieved at [http://www.nmfs.noaa.gov/ia/iuu/iuu\\_transcript\\_8\\_20\\_14.pdf](http://www.nmfs.noaa.gov/ia/iuu/iuu_transcript_8_20_14.pdf)

<sup>7</sup> We renew our request for confirmation from the Task Force that, as a conceptual and legal matter, farmed seafood cannot be illegally fished.

<sup>8</sup> National Oceanic and Atmospheric Administration, Level the Playing Field. Retrieved from <http://www.nmfs.noaa.gov/ia/iuu/ltpf.pdf>

species.<sup>9</sup> The United States has signed a U.S.-EU joint statement on combatting IUU fishing, pledging bilateral cooperation to targeting and preventing IUU fishing in U.S. and EU waters and on the high seas – a first in the longstanding partnership between the U.S. and the EU on fisheries management.<sup>10</sup>

Recent changes in U.S. law enhance the Administration’s ability to address suspected overseas IUU fishing. Recent Magnuson-Stevens amendments modified the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), directing the United States to strengthen international fisheries management organizations and to address illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources. The Moratorium Protection Act was then amended in 2011 by the Shark Conservation Act to improve the conservation of sharks domestically and internationally.<sup>11</sup> And most recently, the Billfish Conservation Act of 2012 prohibited the commercial harvest of marlin and related species, barring that seafood from the U.S. market.<sup>12</sup>

These legal authorities, initiatives, and partnerships collectively represent a strong enforcement regime for imported, wild capture seafood. It also important for the government to ensure fish designed as “high risk” have significant “exposure” in the U.S. market. As noted in previous NFI comments to the Task Force, while the United States imports more than 80% of the seafood Americans enjoy, the amount of wild capture seafood is much smaller and concentrated on a few species (e.g., tuna)<sup>13</sup>

## 2. *Federal Level*

All of this is, of course, in addition to the existing NOAA processes specifically aimed at identifying and deterring IUU fishing. That process involves first the NOAA biennial report on Improving Fisheries Management to Congress.<sup>14</sup> NOAA’s most recent report identified 10

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<sup>9</sup> Strengthening U.S.-Russian Cooperation on Fisheries. (2013, April 30). Retrieved from [http://www.nmfs.noaa.gov/ia/slider\\_stories/2013/04/us\\_russia.html](http://www.nmfs.noaa.gov/ia/slider_stories/2013/04/us_russia.html)

<sup>10</sup> Joint Statement Between the European Union and The United States Government on Efforts to Combat Illegal, Unreported and Unregulated (IUU) Fishing. (2011, September 7). Retrieved from [http://www.nmfs.noaa.gov/stories/iuu/docs/statement\\_online\\_handout.pdf](http://www.nmfs.noaa.gov/stories/iuu/docs/statement_online_handout.pdf)

<sup>11</sup> Shark and Fishery Conservation Act, 111-348 U.S.C.

<sup>12</sup> Billfish Conservation Act of 2012, 112-183 U.S.C.

<sup>13</sup> NFI Comments, September 2, 2014, Docket No. NOAA-NMFS-2014-0090 and NFI Comments, January 20, 2105, Docket No. NOAA-NMFS-2014-0090-0058

<sup>14</sup> The High Seas Driftnet Fishing Moratorium Protection Act, as amended by the Magnuson-Stevens Reauthorization Act, requires NOAA to identify countries that have fishing vessels engaged in IUU fishing activities. NOAA has completed three of these required reports (in 2011, 2013, and 2015).

nations whose fishing vessels recently engaged in IUU fishing.<sup>15</sup> The United States is required to consult with each of the 10 nations to encourage them to take action to address IUU fishing. If a nation fails to take concrete actions to address the instances of illegal fishing activities described in the report, that nation's fishing vessels may be denied entry into U.S. ports, and its seafood exports to the United States may be prohibited. This straightforward but effective tool already gives NOAA the authority to force other countries to prioritize IUU identification and enforcement, lest they lose access to the lucrative U.S. market.

On the enforcement side, legislation pending in Congress would strengthen the nation's ability to punish IUU fishing up and down the supply chain. That legislation would empower NOAA, the United States Coast Guard, and others to identify and then intercede products generated from IUU fishing. The Agreement and its implementing legislation together would help to eliminate ports of convenience, making it far more difficult and costly for IUU vessels to operate and far more difficult for illegal product to enter the stream of commerce.

Finally, the Lacey Act also provides the United States with wide-ranging authority to impose significant sanctions against individuals and companies engaged in trafficking illegally taken fish and wildlife.<sup>16</sup> That authority can be used against all manner of wild-capture seafood, domestic or imported.<sup>17</sup>

## B. ANALYSIS OF "AT RISK" IUU SPECIES

In order to effectively and accurately assess the extent and nature of "at risk" IUU fishing, NFI urges the Task Force to keep in mind several points:

- The Task Force should analyze all allegations of IUU fishing and make an independent, U.S. Government determination of the veracity of any allegations.<sup>18</sup>

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<sup>15</sup> United States continues global leadership to address illegal, unreported, and unregulated fishing. (2015, February 9). Retrieved from <http://www.noaanews.noaa.gov/stories2015/20150208-united-states-continues-global-leadership-to-address-illegal-unreported-and-unregulated-fishing.html>

<sup>16</sup> 16 U.S.C. 3371-3378.

<sup>17</sup> Consider the recent case of Robert Thompson. On April 17, 2015, a two-and-a-half-year investigation and judicial process came to a close when Mr. Thompson, 53, of Rockwood, Maine, was sentenced to eight months imprisonment for evading federal income tax and for sales of illegally harvested lobsters. He pled guilty to violating the Lacey Act. The Court, in addition to the prison sentence, ordered Mr. Thompson to pay the Internal Revenue Service restitution of \$65,172. Contrary to the implication in the Task Force final report ('For example, the Lacey Act, which prohibits the importation of fish and fish products taken or imported in violation of a foreign law or treaty, and the Antarctic Living Marine Resources Convention Act, both have very low civil penalty maximums.' accessed at [http://www.nmfs.noaa.gov/ia/iuu/noaa\\_taskforce\\_report\\_final.pdf](http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf)), the Lacey Act is a powerful tool in the fight against IUU.

<sup>18</sup> NFI has reviewed U.S. Government, RFMO, non-governmental organization, industry, and media reports alleging IUU, from 2002 to 2015. NFI noted 449 allegations. NGOs made 39% of the allegations, with Greenpeace alone making 135 claims. RFMOs logged 56% of the allegations, but it



- The Task Force should treat private sector or civil society data and media reports, especially such reports that are reliant on anonymous sources, as not credible without significant corroborating support from other sources.<sup>19</sup>
- While the majority of IUU fishing concentrate on tuna and toothfish, the Task Force must recognize the significant work of other nations and the private sector in addressing IUU in these fisheries. For instance, the International Seafood Sustainability Foundation (ISSF), representing the vast majority of the global tuna industry, has adopted a widely regarded series of measures designed to improve tuna fisheries management.<sup>20</sup> In the Toothfish fishery, the combined action of industry (Coalition of Legal Toothfish Operators)<sup>21</sup> and governments' actions have helped dramatically reduce illegal fishing in the southern seas and nearly eliminated it from markets.<sup>22</sup>
- The Task Force should also analyze data for trends. The military adage that "Admirals and Generals often fight the last war" (meaning the leaders think about past actions and do not reflect on change in enemy strategies, tactics, and weapons), is an apt advisory. The Task Force should understand if a problem with a particular fishery or species is growing or being eliminated by other means (e.g., toothfish) before designating it as "high risk" and thus forcing that fishery to be undergo increased regulatory burdens.

### C. PRINCIPLES FOR DESIGNATING FISH AS HIGH RISK FOR IUU

The Task Force seeks input regarding what criteria to employ in designating seafood "at risk" for IUU fishing.<sup>23</sup> Consistent with the discussion above, and with the Administration's commitment to relying on sound science, the Task Force should rely on the following factors:

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should be noted that 116 of the 250 vessels were removed from the IUU lists. This could indicate the designation was in error or the vessel addressed its shortcomings. Of the total, tuna was noted in 73% of the allegations, but again it should be noted that 113 of these vessels were removed from IUU lists.

<sup>19</sup> A widely-read 2014 report in Marine Policy makes splashy allegations about the amount and percentages of IUU fishing in a number of categories but does so based on anecdotal information culled from news reports and interviews with anonymous sources. The report concedes that the "total amount of illegal fishing for all major fishing countries has been estimated and these figures have been refined here by fish species and region using additional [unspecified] information" (p. 103), and in many cases "information gathered through confidential interviews with knowledgeable individuals was also used: these are cited here as anonymous when necessary" (p. 104).

<sup>20</sup> ISSF Annual Conservation Measures & Commitments Compliance Report, p. 4. (2014, June). Retrieved from <http://iss-foundation.org/wp-content/uploads/downloads/2014/06/ISSF-Public-Compliance-Report-Final-6-14.pdf>

<sup>21</sup> Coalition of Legal Toothfish Operators: <http://www.colto.org/>

<sup>22</sup> McCully, M. (2015, May 23). NZ welcomes interception of IUU fishing vessels. Retrieved from <https://beehive.govt.nz/release/nz-welcomes-interception-iuu-fishing-vessels>

<sup>23</sup> The Task Force's April 30 Notice asserts that the Notice "is the first step in implementing Task Force Recommendations 14 and 15, 'Identifying current at risk species threatened by IUU fishing and seafood fraud.' Once 'at-risk' species have been determined, the NOC Committee will transmit the list to agencies for appropriate action. This list will form the basis for the species addressed in the first phase of the risk-

- The Task Force should identify IUU fishing based on latest evidence and not outdated data.
- The Task Force should rely on government resources to determine IUU fishing.
- The Task Force should independently verify media or other allegations of IUU. United States government action should not be based on innuendo or rumor.
- The Task Force should refer to RMFO IUU vessel lists, but must recognize that vessels are often eliminated from IUU lists (indicating that the original listing may have been in error or that the vessel addressed its shortcoming)
- The Task Force should differentiate between sport and commercial fishing when determining IUU fishing activities.
- The Task Force should recognize other countries' actions to address IUU allegations, if the exporting nations are legitimate, and not add species that those countries are already addressing.

### III. SEAFOOD MISLABELING

NFI and its member companies have had a long record of positive engagement on both food safety and economic integrity. For many years, NFI has worked with FDA, the nation's leading food safety regulator, to meet the requirements of the FDA Hazard Analysis and Critical Control Points (HACCP) regulatory system for the safe production of seafood products from both domestic and international sources. As discussed in greater detail in previous comments<sup>24</sup>, HACCP is a comprehensive, science-based system of hazard control designed to eliminate food

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based seafood traceability program, as described in the Task Force Action Plan.... Both the draft list of principles and the draft list of 'at-risk' species will be published in the Federal Register for public comment in July 2015." 80 Fed. Reg. at 24247.

Though appreciative of this opportunity to comment here, NFI is compelled to point out that the Task Force's solicitation of public input in this manner does not and cannot substitute for formal notice-and-comment rulemaking by Executive Branch Department on any requirement – traceability-related or not – applicable to industry. Unless "appropriate action" by agencies such as NOAA and FDA means notice-and-comment rulemaking, interested parties will remain unable to understand and react to any number of crucial outstanding issues. Those issues include at the very least the precise statutory and regulatory basis for new traceability, economic integrity, or other requirements; the exact wording of changes to affected provisions in the Code of Federal Regulations; and, in final rulemaking, the relevant agency's considered replies to matters raised by commenters. That is to say nothing of the potentially mandated Office of Management and Budget review of any rulemaking deemed economically significant and a host of other requirements governing the Federal regulatory process. See 5 U.S.C. 501 et seq.; Executive Order No. 12866, Regulatory Planning and Review (Sept. 30, 1993). The Task Force is simply not engaged in rulemaking, and the right of NFI, its member companies, and others to review and react to changes sought by the Administration via rulemaking is undiminished by the Task Force's solicitation of public input here.

<sup>24</sup> NFI Comments, September 2, 2014, Docket No. NOAA-NMFS-2014-0090 and NFI Comments, January 20, 2015, Docket No. NOAA-NMFS-2014-0090-0058

safety risks at their source, instead of relying solely on inspection and testing of the finished products to verify food safety.

Due to rigorous FDA enforcement of seafood safety regulations, the safety of seafood imports and the effectiveness of FDA seafood regulations have been established over several decades of increasingly globalized fisheries trade and confirmed by U.S. government agencies. The Centers for Disease Control and Prevention analyzed 6 years of reported foodborne illnesses data from 2005-2010, from across the country.<sup>25</sup> CDC found that less than 2 percent of the more than 122,000 reported illnesses were attributed to imported food. An even smaller percentage of reported illnesses – 0.12 percent – were caused by imported seafood. The CDC found that only 141 of the 122,000 reported illnesses were connected to imported seafood.<sup>26</sup>

In light of outcomes such as these, Congress expressly exempted companies in compliance with seafood HACCP from the preventive controls and foreign supplier verification activities that the FSMA imposed on the rest of the food industry,<sup>27</sup> signifying confidence in FDA to ensure the safety of seafood products consumed in the United States.

#### A. EXISTING ACTIONS ON SEAFOOD MISLABELING

Particularly to combat seafood fraud, FDA's guiding law, the Federal Food, Drug, and Cosmetic Act, already prohibits all aspects of seafood fraud. Products that bear labeling that is misleading in any way can be deemed misbranded. Therefore, seafood products with incorrect name, incorrect representation of net weight, and incorrect country of origin statement, as examples, are misbranded. Products can be deemed adulterated if found to be absent of, substituted with or addition of constituents that make the product less valuable. Seafood products that are substituted with species or have excess water added without declaring on the label can be deemed adulterated.

##### 1. *Federal Level*

FDA and other federal law require seafood to be properly labeled for species identification. To aid firms in properly fulfilling this mandate, FDA has developed *The Seafood List*<sup>28</sup>, the agency's Guide to Acceptable Market Names for Seafood. The List contains a fish species' Acceptable Market Name cross-referenced with its Common Name and Latin Scientific Name and is updated every six months, in coordination with NOAA and experts at the Smithsonian Institute. The List is available on the internet and easily searchable.

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<sup>25</sup> <http://wwwn.cdc.gov/foodborneoutbreaks>.

<sup>26</sup> Ibid.

<sup>27</sup> Food Safety Modernization Act, 111-353 U.S.C. § 103(j)(1)(A) and 301(e)(1).

<sup>28</sup> The Seafood List. (2015, February). Retrieved from <http://www.accessdata.fda.gov/scripts/fdcc/?set=seafoodlist>

FDA has also established a compliance program for testing seafood to determine identity. The multi-pronged Fish SCALE (Seafood Compliance and Labeling Enforcement) program<sup>29</sup> includes the development of validated DNA testing methods, a library of DNA sequence data for species which have been authenticated with taxonomically identified specimens, and sampling assignments to pull samples from imports, warehouses, distribution centers and retail. FDA has taken compliance actions such as Warning Letters, injunction orders, and Import Alerts,<sup>30</sup> against seafood firms for misbranding violations determined with DNA testing.

## 2. *Industry actions*

From an industry perspective, NFI members have come to a market solution – the establishment of the Better Seafood Board (BSB), an association of companies each of which pledges to abide by federal prohibitions against mislabeling, short-weighting, and other illegal practices that cheat NFI companies and the consumers they serve. The BSB was the result of NFI members' desire to rid the industry of unscrupulous vendors willing to defraud customers and to highlight for buyers at the processor, distributor, retail and restaurant levels, those seafood providers that have systems in place to ensure that their products are properly labeled for weights and counts, country of origin and species. Each NFI member CEO has committed to only sell products properly labeled for weights, origin, and species. Each CEO also agreed to pay for and undergo a third party audit if the BSB received complaints about the company's products. The BSB process includes a call center that accepts comments from buyers in the seafood value chain about challenges they have had with seafood suppliers providing them products which they believe are not in accord with industry and legal practices. NFI member companies found to be violating the commitment to economic integrity will be dismissed from the association, a "public shaming" that companies would seek to avoid.

## B. PREVALENCE OF SEAFOOD MISLABELING

An aspect of FDA's multi-pronged Fish SCALE program was a two-year survey of seafood labeling. The Agency sampled 174 wholesale product lots in 14 states with a focus on species that were allegedly "normally mislabeled."<sup>31</sup> ("Wholesale" is that point in the supply chain prior to retail or restaurants. This is key, as it demonstrates where, if a problem exists, it is along the

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<sup>29</sup> Fish SCALE (Seafood Compliance and Labeling Enforcement). (n.d.). Retrieved from U.S. Food and Drug Administration website: <http://www.accessdata.fda.gov/FDA/Track/track-proj?program=cfsan&id=CFSAN-ORS-Fish-Scale>

<sup>30</sup> FDA Import Alert 16-04, FDA Import Alert 16-47, and FDA Import Alert 16-128 all address seafood mislabeling

<sup>31</sup> FY13-CFSAN Sampling for Seafood Species Labeling in Wholesale Seafood. (2012, April). Retrieved from <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419983.pdf>

chain ---- at the supplier or restaurant level.<sup>32</sup>) FDA's survey found that 85 percent of the seafood tested was properly labeled at the point of distribution to restaurants or retailers' shelves with the majority of mislabeling found being with groupers and snappers.<sup>33</sup> It is important to emphasize that FDA tested products that were alleged to be regularly mislabeled. These results suggest that fraud may not be as extensive in the U.S. industry as some activists have argued. Therefore, we urge the Task Force to emphasize clarification and enforcement of existing laws to address seafood mislabeling where the greatest economic damage occurs rather than utilizing government and industry resources implementing a costly traceability "solution" that has not been proven to address seafood mislabeling. NFI supports practical solutions.

### C. FOOD SAFETY IMPACT OF SEAFOOD MISLABELING

NFI believes that all seafood products should be properly labeled as to identity, country of origin, added ingredients, and net weight because 1) that is what is required by U.S. laws and regulations, 2) correct labeling provides for fair business practices and 3) consumers deserve to receive the product they believe they are purchasing. In addition, because different seafood species may carry different food safety risks, the proper identification of seafood species is necessary to ensure adequate control of these food safety risks throughout the supply chain.

To understand the food safety implications of mislabeled seafood, NFI reviewed examples of seafood mislabeling from reports of FDA, non-governmental organizations and media published between 2011 and 2014. For each of the examples, the potential species-related hazards were identified for the actual species and for the species identified on the label following Guidance provided by FDA.<sup>34</sup> A public health implication would occur if there were unique hazards associated with the actual species that, because of the mislabeling, would not be apparent to the consumer or supply chain after the primary processors. An assessment was made as to the public health implications of the mislabeling with the results categorized as follows:

- No public health implications because there are no hazards associated with the actual species.

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<sup>32</sup> To assist restaurants with properly labeling, the BSB and National Restaurant Association in 2013 signed a Memorandum of Understanding in which NFI agrees to review NRA members' menus for adherence to the FDA Seafood List

<sup>33</sup> FY13-CFSAN Sampling for Seafood Species Labeling in Wholesale Seafood. (2012, April). Retrieved from <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419983.pdf>

<sup>34</sup> U.S. Food and Drug Administration. 2011. Fish and Fishery Products Hazards and Controls Guidance, Fourth Edition.; Chapter 3. Retrieved from <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/ucm2018426.htm>. Note, Chapter 3 of the Fish and Fishery Products Hazards and Controls Guidance also addresses potential process- and packaging-related hazards. These were not considered in this assessment because these hazards apply to all seafood species and would not be impacted by mislabeling.

- No public health implications because the hazards associated with both species are the same.
- No public health implications because the hazards associated with the actual species are controlled by the primary processor (i.e., the processor who purchases the fish or shellfish from the harvest vessel or the aquaculture farm) and controls are not necessary beyond the primary processor.
- No public health implications because the product is typically cooked or if eaten raw, frozen prior to raw consumption as required by the Food Code.
- Potential for histamine formation if mishandled because the risk associated with certain species will not be apparent.
- Potential exposure to gempylotoxin because the risk associated with certain species will not be apparent.

Of the 98 examples assessed only three had unintended food safety implications because the consumer or establishments through the supply chain would be unaware of the actual hazards associated with the species.

#### D. PRINCIPLES FOR DESIGNATING FISH AS HIGH RISK FOR SEAFOOD FRAUD

The Task Force seeks input regarding the criteria to employ to designate seafood “at risk” for seafood fraud. Consistent with the discussion above, and with the Administration’s commitment to relying on sound science, the Task Force should rely on the following factors:

- The Task Force should identify species “at risk” for mislabeling based on latest evidence and not outdated reports which may not reflect current seafood purchasing patterns in the U.S.
- The Task Force should rely on Government resources, endorsing FDA as the authoritative agency for identifying and enforcing mislabeling and seafood fraud.
- The Task Force should rely on recent FDA analysis of the prevalence of potential seafood mislabeling along the supply chain, i.e., FDA’s two year study of mislabeling (October 2014)
- The Task Force should NOT deem a species as “high risk” based on evidence of mislabeling provided by non-governmental organizations or media reports without first independently verifying the reports.
- The Task Force should understand where in the supply chain any mislabeling occurs. Because of the regulatory burden any additional tracking of seafood will incur, it will be unfair to impose those costs on parts of the supply chain that are acting properly (e.g., if mislabeling occurs at the restaurant point, it is not appropriate to require the supply chain to have additional tracking requirements).

- The Task Force should consider “at risk” species to be only those that are consistently found to be mislabeled between point of harvest and point of first U.S. sale.<sup>35</sup> Random occurrences of mislabeling do not constitute “at risk” species.
- The Task Force should weigh the magnitude of labeling violations and impact on the U.S. consumer prior to deeming a species “at risk”. The following are examples of mislabeling that should represent lower concern and should NOT be the sole basis for an “at risk” determination:
  - Species that are mislabeled within the same genus or within the same acceptable market name grouping, e, g, shrimp, cod or grouper
  - Species that are of low volume for consumption, importation or production (low on the exposure aspect of risk).<sup>36</sup>
  - Species that do not represent a food safety risk to the end-user.
- The Task Force should assess how the risk-based traceability program will prevent mislabeling of the potential “at risk” species throughout the supply chain.<sup>37</sup>

#### **IV. POTENTIAL IMPLICATIONS OF “HIGH RISK” DESIGNATIONS ON U.S. WORLD TRADE ORGANIZATION OBLIGATIONS**

Trade is essential to the U.S. seafood sector. According to the Department of Commerce economic analysis, the seafood industry generates 1,270,141 jobs in the U.S. and has a sales impact of \$140,660,993,000.<sup>38</sup> U.S. harvested seafood creates 744,850 jobs, and imported seafood creates another 525,291 American jobs. Imported seafood also generates about 64% of the sales of the seafood industry and creates about 56% of the value addition to fish in the United States.<sup>39</sup> It is important that the Task Force understand the broad seafood industry and appreciate the economic impacts its decisions will have on American processing jobs.

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<sup>35</sup> The scope of the Task Force recommended traceability program is to track at-risk seafood from harvest to entry into U.S. commerce (79 Fed. Reg. at 75540). Species found to be mislabeled at the later points in the supply chain (i.e., the restaurant or retail) would be beyond the scope of the Task Force’s recommendations.

<sup>36</sup> Ninety-seven percent of the 14.5 pounds of seafood that Americans ate in 2013 was provided by 10 species (shrimp, salmon, canned tuna, tilapia, pollock, pangasius, cod, catfish, crabs, clams). Many of the highly reported mislabeled species such as snapper, grouper, and escolar comprise a small portion of the remaining three percent of US consumption and could be considered a low volume species. (National Marine Fisheries Service 2014 Landings data).

<sup>37</sup> As an example, if red snapper is determined to be an “at risk” species, will requiring a traceability system for red snapper prevent any other species of fish to be labeled red snapper throughout the supply chain?

<sup>38</sup> National Overview U.S. Summary Management Context. NOAA Fisheries, 2012. Web. 29 Aug. 2014. [http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012\\_NationalOverview.pdf](http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012_NationalOverview.pdf).

<sup>39</sup> Understanding the Commercial Fisheries and Recreational Fisheries Economic Impact Estimates. NOAA Fisheries, 2012. Web. 29 Aug. 2014. [https://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/Understanding\\_fisheries\\_economic\\_impact\\_estimates.pdf](https://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/Understanding_fisheries_economic_impact_estimates.pdf)

The “at risk” designation for either IUU or seafood mislabeling raises another issue: The possibility that the designation and the mandates it creates conflicts with basic obligations shared by all WTO Member States. Those obligations include the basic national treatment requirement that new regulatory measures be applied equally to all Member States, and that the requirements for non-U.S. persons be the same as those for U.S. persons. That means, of course, that U.S. rules for IUU and seafood mislabeling as they apply to domestic seafood must be the same as applied to imported seafood, absent a clear evidentiary basis that justifies different treatment. But WTO obligations go further, providing that even a facially non-discriminatory regulatory measure is unlawful if it effectively denies some or all non-U.S. firms an equal opportunity to compete in the U.S. market.

These obligations are especially important to bear in mind when it comes to U.S. regulation related to trade in commercial foods. Twice in recent years, the WTO Appellate Body has held that Federal regulatory measures violate WTO Agreements, first with respect to NOAA “dolphin-safe” regulations intended to eliminate dolphin bycatch in commercial fishing.<sup>40</sup> Second and most recently, country of origin labeling rules for beef and poultry that the WTO ruled could not be sustained in the face of objections from major trading partners Canada and Mexico.<sup>41</sup>

If the Task Force’s work translates into at-risk designations and differentiation without sufficient factual justification – either on an import versus import basis, or on a U.S. product versus import basis – then the at-risk analysis and the traceability requirements imposed as a consequence will be vulnerable to attack by fellow WTO Members. That legal vulnerability, as always, could then result in reaction – justified or not – against the nearly \$6 billion in annual U.S. seafood exports, in the form of copycat regulation or even retaliatory tariffs aimed specifically at U.S. harvesters and their exported product.

## V. CONCLUSION

NFI appreciates the opportunity to provide principles to identify at risk species for mislabeling challenges from the perspective of over 300 NFI member companies engaged in harvesting, importing, processing, distributing and selling domestic and imported seafood at retailers and restaurants. We urge the Task Force, given the additional regulatory burden likely to result from a fish being designated as “high risk” of IUU or fraud to ensure its decisions are made based on government analysis and verification. NFI also asks that the Task Force ensure its decisions are consistent with applicable federal administrative law and Executive Orders (particularly Executive Order No. 12866, Regulatory Planning and Review (Sept. 30, 1993)). Finally, because so many American jobs depend on processing and distributing imported seafood, NFI urges

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<sup>40</sup> World Trade Organization Dispute Settlement: Dispute DS384, United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, January 22, 2014

<sup>41</sup> World Trade Organization Dispute Settlement: Dispute DS384, United States — Certain Country of Origin Labelling (COOL) Requirements, May 29, 2015



caution that the Task Force decisions are made acknowledging the United States World Trade Organization obligations.

Sincerely,

A handwritten signature in black ink, appearing to read "John Connelly". The signature is fluid and cursive, with a prominent loop at the end.

John Connelly  
President  
National Fisheries Institute





July 31, 2015

Ms. Melissa Beaudry  
 Quality Officer  
 Office of International Affairs and Seafood Inspection  
 National Oceanic and Atmospheric Administration Fisheries  
 Suite 9511  
 1315 East-West Highway  
 Silver Spring, Maryland 20910

***SUBMITTED VIA REGULATIONS.GOV.***

**RE: Docket No. NOAA-NMFS-2014-0090-0265; Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud Action Plan Recommendations 14/15; Determining Types of Information and Operational Standards Related to Data Collection; 80 *Federal Register* 37601 (July 1, 2015).**

Dear Ms. Beaudry:

The National Fisheries Institute (“NFI”) once more submits comments on a proposal developed by the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud. NFI in these comments focuses specifically on the Task Force’s above-captioned *Federal Register* Notice proposing types of information and operational standards related to data collection for a traceability system applicable to commercial seafood.

**Executive Summary**

The Task Force and the National Ocean Council on July 1 proposed “minimum” types of information necessary to establish a seafood traceability program intended to help the United States combat U.S.-connected IUU fishing and seafood fraud as well as an operational standard by which affected companies would be required to collect and report required data to the Federal Government. Specifically, the July 1 Notice: (i) lists 17 data elements that would be required for wild-capture seafood imports from harvest to importation and 13 data elements that would be required for farmed seafood imports from fry stage to importation; (ii) proposes that seafood businesses would have to upload to the International Trade Data System the collected data for all covered product; (iii) calls for “trace-back” audits that would determine the quality and accuracy of the submitted data and would identify missing information and discrepancies; and (iv) seeks comment on these concepts, as well as any data security risks to the proposal.

NFI agrees that the challenges of IUU fishing and seafood fraud are legitimate ones for Federal policymakers to examine and act upon. Nevertheless, both the overall direction of the Task Force's work and many of the specific actions the Task Force has endorsed raise serious concerns for NFI and its member companies. The July 1 Task Force traceability proposal, regrettably, continues this trend and indeed presents severe difficulties for many of the seafood businesses around the United States that NFI represents.

NFI is compelled to point out numerous shortcomings in the July 1 traceability proposal and to renew once more its hope that the Task Force and the National Ocean Council will genuinely consider an industry perspective as the Administration (apparently) now turns to actual rulemakings to put the traceability Recommendations and others into place. In summary, the Task Force in its July 1 proposal:

- Ignores the complexity of the international seafood supply chain and mandates the collection of data from seafood processors and importers that cannot reasonably be collected and accurately reported without significant costs and in some cases substantial operational changes;
- Expects – in a glaring non-sequitur and without any substantiation – that by collecting massive amounts of data about legitimate ongoing commerce, the Federal Government will be able to identify trends in such commerce that will enable vastly improved deterrence of both IUU fishing and also the seafood mislabeling that overwhelmingly occurs *after* seafood enters interstate commerce;
- Conflates voluntary sustainability certifications with mandatory IUU-related traceability, thus confusing what industry participants sometimes choose to report to customers and supply chain partners about sustainability, with the far more onerous obligation to report in perpetuity reams of supply chain data unrelated to the fishery management systems that drive sustainability; and
- Apparently assumes that restricting the proposal almost exclusively to seafood caught or farmed overseas will not raise serious questions of unfair treatment under foundational World Trade Organization Agreements, thus putting U.S. seafood exports at risk of retaliation from countries reliant on fair and equal access to the vital U.S. market.

**A. Providing The Required “Minimum” Traceability Data Would Force U.S. Seafood Businesses To Extract From Overseas Suppliers Voluminous Data About A Highly Complex Supply Chain, In Some Cases Resulting In Costly Changes To Both Harvesting And Processing Operations.**

The Task Force proposes to require of all imported seafood<sup>1</sup> the following specific data elements, “from harvest to the point of entry into U.S. commerce”:

Wild-Capture Products	Farm-Raised Products
<ol style="list-style-type: none"> <li>1. Name of harvesting vessel</li> <li>2. Flag state of harvesting vessel</li> <li>3. Name of processor</li> <li>4. Name of gear types</li> <li>5. Information about primary and secondary processors who maintain custody of the shipment prior to entering the U.S.</li> <li>6. Species of fish</li> <li>7. Product of description</li> <li>8. 3 different names of product</li> <li>9. Form of the product</li> <li>10. Quantity and/or weight of the product</li> <li>11. Area of wild-capture harvest</li> <li>12. Country of Origin</li> <li>13. Harvest date(s)</li> <li>14. Point of first landing</li> <li>15. Date of first landing</li> <li>16. Transshipment of product</li> <li>17. Processing, re-processing or comingling of product</li> </ol>	<ol style="list-style-type: none"> <li>1. Name of farm or aquaculture facility</li> <li>2. Name of processor</li> <li>3. Whether the aquaculture facility or the body of water is appropriate point of origin in a traceability system for aquaculture species</li> <li>4. Information about primary and secondary processors who maintain custody of the shipment prior to entering the U.S.</li> <li>5. Species of fish</li> <li>6. Product of description</li> <li>7. 3 different names of product</li> <li>8. Form of the product</li> <li>9. Quantity and/or weight of the product</li> <li>10. Area of aquaculture harvest</li> <li>11. Country of Origin</li> <li>12. Transshipment of product</li> <li>13. Processing, re-processing or comingling of product</li> </ol>

***Seafood Supply Chain Complexities Must Be Accommodated By The Traceability System.***

Requiring this data will create severe logistical difficulties for any U.S. seafood processor reliant to almost any degree on imported product, and especially as to imported wild-capture product. The supply chain for seafood processing is complex, which complicates traceability – especially when trying to use a generic, one-size fits all system. No longer are fish just sold whole, headed and gutted, or block frozen for the end user to further prepare. But with more defined processing comes the need for combined harvest lots of products to ensure that there are sufficient products

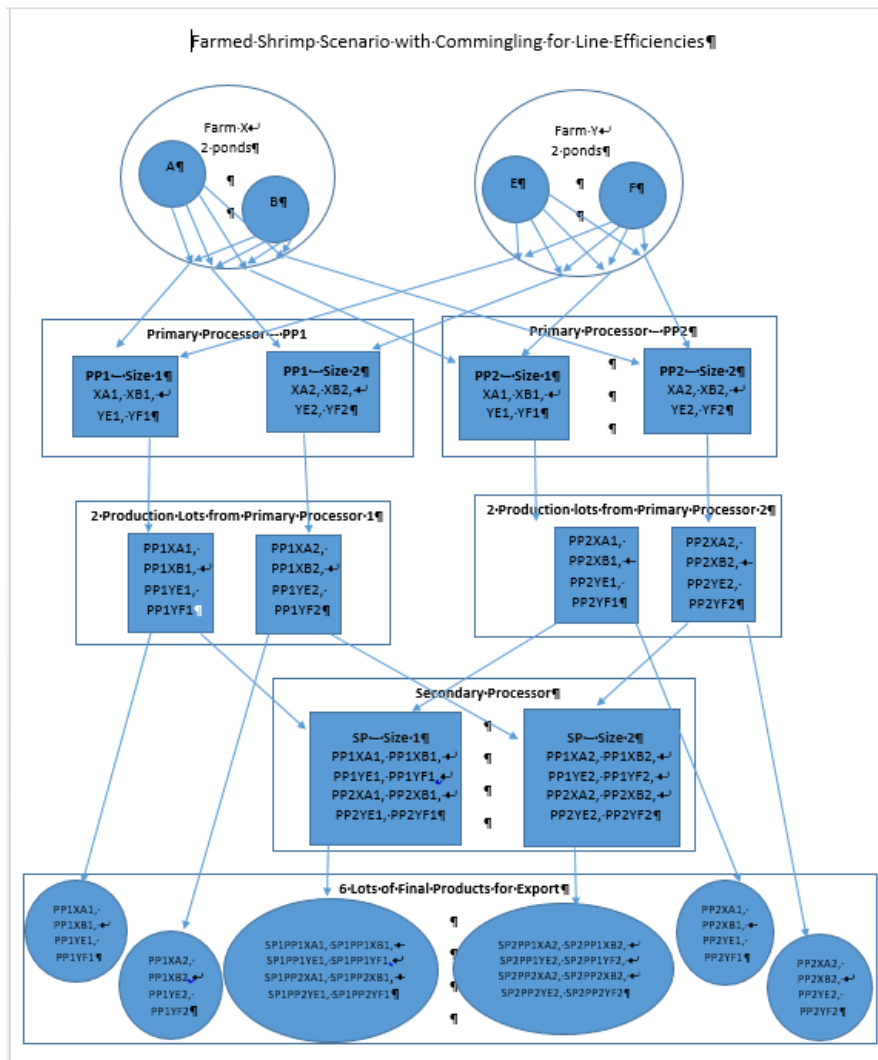
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<sup>1</sup> The July 1 *Federal Register* Notice limits the scope of the proposed traceability reporting system to imports, with the exception of “at-risk species that are harvested domestically, exported for reprocessing, and then re-imported to the U.S.,” which may or may not be included. The Task Force justifies this distinction because “to a large extent, relevant data are already generated and reported through existing state and federal permitting, catch monitoring, and landing reports implemented under federal and state fishery management plans.” 80 Fed. Reg. at 37601.

types/sizes for efficient processing. So while some may argue that commingling is a way to launder IUU-caught fish into the legal supply chain, commingling is an absolute necessity for efficient operations. A traceability system that will not accommodate commingling will compromise these efficiencies which benefit the consumer by keeping production costs as low as possible. Consider the following examples from seafood businesses across a range of species and business models.

### 1. *Aquacultured Shrimp From Foreign Suppliers.*

As an example, to secure a sufficient quantity of shrimp of a certain size, multiple ponds may need to be sourced. After sorting the harvest by size, same sized shrimp from multiple ponds may be blended to form single code date lot. Further processing at another processor down the supply chain may necessitate combining several code date lots, again for efficiency of production. Starting and stopping a production line to accommodate separated code date lots for capturing a unique chain of custody from harvest to final product is inefficient and will increase the cost of production. This complex commingling is depicted in a simplified graphic below.



This graphic shows two primary processors processing shrimp sourced from two separate farms, each with two ponds. Combining shrimp from four ponds provides the necessary production volumes for full utilization of the processing lines. Each of the two primary processors will produce two different sized shrimp on separate processing lines resulting in two separate production lots – one for each shrimp size. These two lots could then each be sold to two separate customers, one being a secondary processor who in turn produces two lots of product, one of each size. While this is a theoretical example, it demonstrates how like-sized shrimp from multiple ponds may be sourced and processed to utilize the full capacity of the processing facility. Eliminating the ability to commingle by requiring traceability straight from harvest to final product would effectively create 32 separate lots of product to be tracked – eight by each of the primary processors and 16 by the secondary processor. Each of the 32 separate lots would require a production line to be stopped and restarted. This is a logistical nightmare that will dramatically increase costs.

## **2. *Wild Harvest Fish from both Domestic and Foreign Suppliers.***

Commingling or combining different harvest lots is not unique to aquaculture. Wild harvest species will be sorted by size when off-loaded. For production and packaging efficiencies, fish from multiple harvest vessels will be sized and combined with similar sized fish and held until sufficient quantities are off-loaded. This allows customers' needs for specific-sized portions to be met in a more economical manner by processing like sizes together in a continuous production run. Other fish, such as tuna harvested for canning, will be sorted by size at receipt to allow for more uniform cooking during production. Forcing a traceability system that will track chain of custody from the name of the harvest vessel all the way to the package will force these efficiencies to stop because production lines will be operated at partial capacity.

## **3. *Wild Pink Salmon from Domestic Source.***

Commingling or combining may also include multiple gear types, as is the case with pink salmon harvested from U.S. waters which may harvest by nets, traps, and purse seines. Some of the boats may head and gut on board or deliver to the plant for H&G. Fish are therefore commingled from the start, regardless of capture methods. Daily deliveries of harvested salmon are gathered into 20 kg blocks without lot segregation and sent to either cold storage or a "reefer tramper," a large container ship. The reefer will transfer fish to China for further processing of combined days of H&G. Then, plants in China will further process (e.g., filleting) multiple lots of 20 kg blocks into a single lot for shipping back to the U.S. So in wild salmon processing, there is primary and secondary processing with fish that could have been harvested by any of three gear types on multiple vessels involving multiple catch days. The permutations, while not infinite, are significant – and, again, each gear type-vessel-harvest day would require a processing plant to start and stop, solely for traceability purposes. Food safety has never been a concern in pink salmon harvesting and processing to drive the need for traceability.

#### **4. *Pasteurized Crabmeat.***

The simple process which is envisioned with a single fish being caught, minimally processed then packaged for a single consumer as depicted in a continuous chain of custody traceability system from harvest vessel to consumer, a system it appears the Task Force, considers to be a reality, would be impossible to achieve with some fishery products. Pasteurized crabmeat where the meat from a single crab will be packed into at least 2-3 different cans and sold to different customers will never be able to achieve traceability from a specific harvest through to a single lot of product. Crab fishers offload their daily harvest at a centralized landing/cooking station. The harvest from multiple fishers will form the daily lot for cooking purposes and transporting to the picking facility. During picking the crabmeat is sorted and combined by the various forms such as jumbo lump, backfin, special, and clawmeat. The sorted crabmeat is then packed and pasteurized according to the type of meat resulting in a production flow which combines crabs from multiple harvest vessels then divides that combined lot into multiple product forms.

#### **5. *Blocks of Frozen Trimmings.***

Similarly the “bits and pieces” or trimming that accumulate from the production of white fish loins and fillets are used to produce frozen blocks. The resulting blocks are produced from fish from multiple harvest days and perhaps different harvest zones. Traceability requirements that will not accommodate this resource-saving practice will compromise sustainability efforts to avoid food waste by utilizing as much of the fish resource as possible. That is, blocks and frozen trimmings enable the seafood industry to use as much of a fish as possible. The model envisioned by the Task Force will not enable use of this fish, thus creating more food waste.

These examples are a few of the literally thousands of permutations in the international seafood supply chain for seafood, and the severe difficulties the July 1 proposal would pose to companies collecting data under those circumstances. The Task Force should have considered these many variables before proposing a far-reaching, one-size-fits-all traceability system.

### **B. The Task Force Fails To Demonstrate How Submission Of Terabytes Of Supply Chain Data To The Federal Government Would Deter IUU Fishing Or Curtail Seafood Fraud; In Fact, Collecting These Data Elements Would Offer Nothing In Support Of Enhanced Enforcement.**

The high price of complying with the traceability proposal might ultimately be worth paying if the proposal stood a chance of deterring U.S.-connected IUU fishing and seafood economic adulteration. But the Task Force offers no evidence of how dumping trillions of pieces of data from the international seafood supply chain into a Federal server farm will translate into an enforcement regime that reduces IUU fishing and economic adulteration below what existing NMFS anti-IUU enforcement, FDA enforcement, and non-U.S. enforcement together achieve



right now.<sup>2</sup> This is not an academic point, and NFI companies have a right to understand *precisely* how their compliance will improve enforcement outcomes.

The Task Force demands that affected companies upload collected data to the International Trade Data System, and then – *voilà!* – responsible Federal agencies will utilize the data to crack the code that facilitates illegal fishing around the world. Beyond insisting that the collected data will support a “risk-based” system, the Task Force offers no explanation at all of cause and effect. The disconnect between the information demanded and the Federal Government’s plan to put it to effective use is nothing short of astounding, given that building this system with collected industry data appears to be the Task Force’s *raison d’être*. Task Force agencies have a legal obligation to demonstrate the utility of information collected from private parties. The Paperwork Reduction Act of 1995 requires Federal agencies to reduce the total amount of paperwork burden on private business and citizens under four criteria, including “whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.”<sup>3</sup>

Many of the required data elements in fact offer nothing to aid in the policing of either activity. For instance, knowing the name of the farm where aquacultured shrimp is raised, where the farm is located, and how much the shrimp from that farm weighs will do nothing to address seafood mislabeling that, if the targeting of FDA and prominent NGOs is to be trusted, occurs *post-importation* and near the end of the supply chain.<sup>4</sup> Certainly, FDA mislabeling tests focus on wholesale samples and are entirely concerned with product in the U.S. For instance, FDA’s multi-pronged Fish SCALE program was a two year survey of seafood labeling. The agency sampled 174 wholesale product lots in 14 states with a focus on species that were allegedly “normally mislabeled.” FDA found that 85 percent of the seafood tested was properly labeled at the U.S. point of distribution to restaurants or retailers’ shelves.

Thus, identifying the name of the overseas pond and its location overseas will have no impact on mislabeling that takes place downstream in the supply chain – in the United States and after the “entry into U.S. commerce” that is the trigger for reporting data to the ITDS.

Similarly, knowing the FAO Fishing Area in which the fish was harvested does not provide enforcement officials with useful knowledge. For instance, the FAO Fishing Area 67 covers tens of millions of square miles of the Pacific Ocean and Bering Sea; includes parts of the U.S.,

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<sup>2</sup> See NOAA summary of 2013 Biennial IUU Fishing Report to Congress, “Leveling the Playing Field” (stating that in 2012 “NOAA made great strides to combat IUU fishing” domestically and overseas) (<http://www.nmfs.noaa.gov/ia/iuu/ltpf.pdf>.)

<sup>3</sup> 44 U.S.C. Sections 3501-21.

<sup>4</sup> Beth Lowell, Patrick Mustin, Kate Ortenzi, and Kimberly Warner, Ph.D., *One Name, One Fish: Why Seafood Names Matter*, Oceana (July 2015) (focusing entirely on alleged mislabeling on retailer labels and restaurant menus found in the United States).

Canada, and Russia EEZs, along with multiple state and provincial waters; and also covers high seas commercial fishing, all for dozens of different species. It cannot be argued that reporting this locational information for every fillet, pouch, can, mince, loin, and different seafood by-product imported into the United States will yield enforcement benefits sufficient to justify the collection burden.

Seafood names deserve special attention. The July 1 proposal contemplates requiring that reporting businesses identify each fish by three separate names: market name, common name, and scientific name.<sup>5</sup>

First of all, some clarification. The nomenclature terms as defined in FDA's Seafood List must guide the Task Force:

- "Scientific Name" is the Latin name for the genus and species of a fish established by fisheries taxonomists. It is unique to each species of seafood.
- "Common Name" is the name in English established by fish experts to describe each species. It is also unique to each species but will vary from country to country because it is in the language of the country.
- "Acceptable Market Name" is the name FDA recognizes as being a suitable "statement of identity" for labeling fish in a way that will not be a misleading statement of identity of the species for U.S. consumers.<sup>6</sup>

The Task Force's statement that the common or market names "tend to group similar species" is incorrect. Though it is true that FDA's market name will group similar species, the common name is unique to each individual species. These are important clarifications to make because some will call for the use of "common name" for identifying and labeling seafood. While recognizably confusing, the "common name" referenced by fish scientists and included on FDA's Seafood List may not be the name "commonly" recognized by consumers. For example, fish scientists in the U.S. have assigned the common name of Dolphinfish to *Coryphaena hippurus*, but it is commonly called mahi-mahi by the seafood industry and consumers. FDA has determined that mahi-mahi is the acceptable market name for this fish because it is not misleading for the consumer.

Second, and more importantly, requiring all three names would increase the compliance burden on reporting companies with limited value to regulators and no value to consumers. In recent years, state legislators in three different states have proposed legislation to require multiple different names for seafood, including the common and scientific names. In Maryland, Illinois, and California, those bills were rejected or shelved because of the complexity of providing and tracking the names along the supply chain and a recognition that having the additional

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<sup>5</sup> 80 Fed. Reg. at 37602.

<sup>6</sup> FDA's *Guidance for Industry: The Seafood List – FDA's Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce*.

information would not effectively address seafood fraud. In California in 2014, Governor Brown vetoed a labeling bill because he concluded that identifying the common name in addition to the market name, as the legislation would have required, would have been too difficult for industry to comply with. Despite recognizing that “much of what the bill seeks to accomplish is good,” the Governor rejected SB 1138:

Requiring more precise, species-specific labeling of seafood, however, is not as easily achieved.... The U.S. Food and Drug Administration publishes both market names and common names under which fish and shellfish may be sold. The bill’s requirement to use the FDA published common name in all fish and shellfish labels, unless the state promulgates a different common name, would create uncertainties and complexities that may not be easily resolved.<sup>7</sup>

Seafood labeling bills in Illinois (HB 133) and Maryland (HB 760) in 2015 have stalled out over similar concerns. What is more, requiring the scientific name as part of any labeling requirement the Task Force ultimately imposes would directly contradict FDA’s own judgment that market names are preferred over scientific names when it comes to informing consumers.<sup>8</sup>

The Task Force itself appears to recognize the difficulty of going beyond the market name. In its July 30 Notice concerning “at-risk” species, the Task Force states that “in some cases, the Working Group combined related species (e.g., shrimp), together in its analysis because the supporting data utilized nomenclature *which made further analytical breakouts (e.g., by scientific name) unworkable.*”<sup>9</sup> In other words, when confronted with the 48 common names that apply to the single market name “shrimp,” the Task Force opted for simplicity. NFI submits that a naming construct that is too complex for a Presidential Task Force to manage should not be the basis for a traceability reporting requirement imposed on industry.

Ultimately, seafood sustainability – and consumer confidence therein – is most directly ensured through management systems that rely on sound science, clear regulation, and enforcement of those regulations against actual bad actors on the water. As discussed previously, the U.S. has the world’s leading fishery management system for domestic fisheries, and plays an important role in advancing system-wide solutions in overseas fisheries as well.<sup>10</sup> The Task Force should

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<sup>7</sup> Veto Message of Governor Edmund G. Brown, Jr. regarding SB 1138 (Sept. 30, 2014) (attached as Attachment A).

<sup>8</sup> *Guidance for Industry: The Seafood List – FDA’s Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce* (noting that scientific names “are included in the list to permit exact species identification and are not, by themselves, acceptable market names”).

<sup>9</sup> NOAA Notice concerning draft principles for determining seafood species at risk of IUU fishing and seafood fraud, at 7 (July 30, 2015) (emphasis supplied).

<sup>10</sup> For instance, in its 2015 biennial IUU fishing report to Congress, NOAA stated: “As a result of strong U.S. leadership in 2013 and 2014, nearly all RFMOs in which the United States participates adopted measures requiring all eligible vessels to use the International Maritime Organization’s (IMO) numbering

build on this success rather than insisting on a Byzantine traceability structure that will burden NFI member companies but do precious little to curb bad behavior.

**C. Reporting Data To The ITDS Poses Significant Technical And Commercial Problems The July 1 Proposal Leaves Unanswered.**

The Task Force proposes mandating that U.S. seafood processors and importers upload the collected data to the ITDS. NFI has concerns here as well.

To begin, the Task Force choice of ITDS is so summarily described that NFI cannot offer detailed comments. For instance, the Task Force has not described what other Federal systems were considered and offered evidence of the superiority of the ITDS. Because there is no cost-benefit analysis for the Task Force writ large, NFI can only assume that the Task Force made its choice in ignorance of the costs in time and money for affected business to upload data to this particular portal, as opposed to others. Nor has the Task Force explained the specific requirements for industry to interact with the ITDS, other than stating that it will be unlikely that ITDS will be capable of automatically “retrieving” data from existing databases.<sup>11</sup> Thus, any interoperability designed into the to-be-developed system is among regulatory agencies but not between industry and government. Though consolidating all import and export data to one system might be efficient from a Federal perspective, it will be duplicative for seafood businesses, which will have to maintain multiple data entry streams, one for government requested information and one for customer-driven data.

The Task Force concludes that data security concerns associated with the ITDS “are minimal.”<sup>12</sup> Here, too, NFI cannot offer significant comments because the description of Task Force thinking is so spare. Recent large-scale breaches of classified documents certainly do not inspire confidence about the ability of Federal agencies to secure sensitive data. Because the traceability proposal would compel the sharing of large amounts of confidential business information, the Task Force cannot possibly expect its blithe assurance in the July 1 Notice to be sufficient. Which Federal, state, and non-U.S. agencies would have access to the data? How and for how long would that data be stored? Could it be disclosed under a FOIA request? Would submitting companies have liability for erroneous data or for unauthorized Federal disclosure? Would U.S. and overseas competition authorities be permitted to mine the data? The July 1 Notice does not begin to address this complex situation.

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scheme. IMO numbers will aid management authorities in combating IUU fishing by ensuring the accurate identity of vessels, regardless of change of name, ownership, or flag.”

<sup>11</sup> 80 Fed. Reg. at 37603.

<sup>12</sup> *Id.*

**D. The Task Force Ignores The Food Safety Traceability Project Authorized By Congress In The Food Safety Modernization Act, Thus Raising The Prospect That Seafood Businesses Will Have To Comply With Two Different, Complex Federal Traceability Mandates For The Same Seafood.**

Section 204 of the Food Safety Modernization Act (the “FSMA”) authorized FDA to develop an enhanced traceability system, compatible with domestic and international commerce, based on the results of pilot projects conducted concerning foods that were subject to outbreaks in the last five years. The pilot exercises helped to develop and demonstrate effective traceability of foods produced in a variety of facilities, while evaluating costs and benefits as well as feasibility of technological tools for tracing. FDA contracted with the Institute of Food Technologists (the “IFT”) to conduct the pilot. Based on the results of the pilot, IFT recommended that FDA establish a uniform set of recordkeeping requirements for all FDA-regulated foods. The results of the pilot will also guide FDA’s new recordkeeping requirement for enhanced tracking and tracing of food products by identifying key data elements that are needed to trace a product back through the distribution system.

It is not clear the Task Force is even aware of this work, and certainly NFI knows of no effort the Task Force has made to work with FDA and IFT to harmonize the specific requirements of the two traceability proposals, or to minimize their impacts on food industry firms that could be subject to competing or even contradictory mandates. NFI member companies and the retailers and restaurants those companies have been preparing for a uniform traceability system applicable to all food products. The Task Force’s proposal, by singling out seafood, undercuts this priority in what is the most significant food safety legislation in decades.<sup>13</sup>

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<sup>13</sup> NFI has supported development of a voluntary traceability program that would help participating companies assure customers of the sustainability of their wild-capture and farmed products. As part of that work, this group has concluded that the program should include three data elements: (i) the Latin or scientific name; (ii) the production method as classified by the FAO; and (iii) the location of capture or the country of the aquaculture farm. This work, like sustainability certification programs that have come before it, is voluntary and can be utilized by seafood companies when commercial imperatives call for it. NFI companies already participate in a variety of such programs, such as the Marine Stewardship Council and the Global Aquaculture Alliance’s Best Aquaculture Practices. Merely because companies participate in such programs does not imply that an entire industry should be permanently required to report data to government. Moreover, these systems are each concerned with *sustainability* broadly, and have nothing to do with the detection and punishment of bad actors that should be the focus of anti-IUU efforts.

**E. The Task Force Traceability Proposal, As Described In The July 1 Notice, Unjustifiability Discriminates Against Imported Seafood Products And As Such Violates Basic World Trade Organizations Requirements.**

The Task Force has repeatedly emphasized that Recommendations 14 and 15 will be applied to imported seafood – initially to a category of “at-risk” nations and species and ultimately to all imports – but not to the bulk of domestically harvested or farmed product. As noted above, the July 1 *Federal Register* Notice limits the scope of the proposed traceability reporting system to imports, with the exception of “at-risk species that are harvested domestically, exported for reprocessing, and then re-imported to the U.S.” (Even then, those products “may” (or may not) be included.) The Task Force justifies this distinction because “to a large extent, relevant data are already generated and reported through existing state and federal permitting, catch monitoring, and landing reports implemented under federal and state fishery management plans.”<sup>14</sup>

Even were this difference between existing U.S. and non-U.S. reporting requirements substantiated – and the Task Force makes no attempt to demonstrate why similar non-U.S. reporting regimes are inadequate – that does not absolve the Task Force and the National Ocean Council from meeting longstanding World Trade Organization obligations. Unfortunately, the traceability system as proposed would likely violate, at a minimum, the General Agreement on Tariffs and Trade (the “GATT”) and the Technical Barriers to Trade Agreement (the “TBT Agreement”), both of which squarely apply to non-food safety seafood traceability measures.

***The General Agreement on Tariffs And Trade.***

The GATT is one of the three foundational WTO agreements and is a good place to start. Article III:1 and Article III:4 of the Agreement articulate the basic principle of national treatment as applied to regulatory measures:

[L]aws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production....

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin *in respect of all laws, regulations*

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<sup>14</sup> 80 Fed. Reg. at 37601.

*and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.*<sup>15</sup>

Under national treatment, an importing nation must afford the same treatment to the products of other countries as it affords to their domestic counterparts. Simply put, imported and locally produced goods must be treated equally.

Further, Article XI:1 of the GATT provides:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Article XI:1 forbids import restrictions, including those made effective through “other measures” – a “broad residual category” covering “any measures that result in any form of limitation imposed *on*, or *in relation to* importation.”<sup>16</sup> A recent WTO decision held that “restrictions” in Article XI:1 refers to “measures that create uncertainties and affect investment plans, restrict market access for imports, or make importation prohibitively costly.”<sup>17</sup> “Restrictions” cover situations where the goods are allowed into the market but are “only allowed under certain conditions which make the importation more onerous than if the condition had not existed, thus generating a disincentive to import.”<sup>18</sup>

The Task Force’s July 1 proposal is a discriminatory import restriction that violates both Articles III and XI of the GATT. First of all, there can be no doubt the Administration plans to require full reporting of the traceability data elements as a condition of importation into the United States. According to the Task Force co-chair, such compliance will be “a requisite of entry into U.S. commerce.”<sup>19</sup>

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<sup>15</sup> Emphasis supplied.

<sup>16</sup> Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1, adopted May 20, 2009, para. 7.227 (emphasis in original).

<sup>17</sup> Panel Report, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/DS395/DS398/R, July 5, 2011, para. 7.206 (citing Panel Report, *Colombia – Ports of Entry* at para. 7.240).

<sup>18</sup> Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R and Corr.1, adopted April 5, 2002, para. 7.269.

<sup>19</sup> “Presidential Task Force releases action plan to combat illegal, unreported, and unregulated fishing and seafood fraud,” NOAA Fisheries webpage (<http://www.noaanews.noaa.gov/stories2015/20150315-presidential-task-force-releases-action-plan-to-combat-illegal-unreported-and-unregulated-fishingand-seafood-fraud.html>).

Second, the discriminatory impact of the proposal is unmistakable. The July 1 Notice does not attempt to justify the starkly different treatment imported and domestic products would be subjected to, even though in many instances the imported fish in question is also domestically harvested, and the U.S. processor, cold storage operator, distributor, and end customer are the same regardless of the country of origin. As described above in detail, collecting the mandated traceability information would present severe reporting and logistical difficulties – in some cases of nightmare proportions – for U.S. seafood processors and their overseas supply chain partners. That compliance burden would unquestionably restrict access to the U.S. market and would result in an uncertain investment climate for U.S. seafood businesses.

The Task Force in its Action Plan and elsewhere has argued that IUU fishing is more prevalent overseas, but that cannot explain the need to impose – on top of the existing NMFS anti-IUU framework – an onerous new traceability system on imports, *en masse*. Nor can concerns over seafood fraud justify an imports-only approach, given that *the bulk of seafood mislabeling occurs post-importation* and therefore cannot possibly be identified and policed through the collection of such pre-importation data as the name and location of the farm.<sup>20</sup>

### ***The Technical Barriers To Trade Agreement.***

The Task Force traceability proposal in addition would likely violate the TBT Agreement. The Agreement recognizes the right of nations to put into place measures intended “for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices,” provided that those measures are not applied “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.”<sup>21</sup>

Expanding on this principle, Article 2 states in part:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia:

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<sup>20</sup> See above discussion, and CFSAN Sampling for Seafood Species Labeling in Wholesale Seafood, at <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419983.pdf>. (April 2012-September 2013) (concluding that at the wholesale and distribution level in the U.S., “the fish species was correctly labeled 85% of the time”).

<sup>21</sup> Preamble, TBT Agreement.



national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.

These two provisions reinforce the national treatment requirement found in the GATT and establish limits on the regulatory measures nations can deploy in international commerce. Even a cursory review of the meaning and application of Article 2 makes clear that the traceability proposal is likely to fall short under the TBT Agreement.

For instance, the WTO Appellate Body recently ruled that NOAA regulations under the Dolphin Protection Consumer Information Act had the effect of modifying competitive conditions in the U.S. market, to the detriment of Mexico tuna exports to the U.S. The Appellate Body held that NOAA regulations did not stem solely from “legitimate regulatory distinctions” and struck the dolphin-safe labeling measure as inconsistent with Art. 2.1.<sup>22</sup> In another case, the Appellate Body found that in banning clove cigarettes while exempting also-harmful menthol cigarettes from the ban, Section 907(a)(1)(A) of the Federal Food, Drug, and Cosmetic Act gave imported clove cigarettes less favorable treatment than that accorded domestic menthol cigarettes. The trial-level Panel, in a holding left undisturbed on appeal, also held that the ban on clove cigarettes was more trade-restrictive than necessary to address the legitimate U.S. objective of curbing youth smoking.<sup>23</sup>

Most recently, of course, the Appellate Body held that U.S. country of origin labeling requirements for livestock violate Article 2.1 by according less favorable treatment to imported Canadian cattle and hogs than to like domestic cattle and hogs. In its analysis under Article 2.1 of the TBT Agreement, the Appellate Body found that the U.S. COOL measure had a detrimental impact on imported livestock because its recordkeeping and verification requirements create an incentive for processors to use exclusively domestic livestock, and a disincentive against using like imported livestock.<sup>24</sup>

The Task Force traceability proposal is similar to the U.S. measures struck down in these cases. The proposal, though intended to advance legitimate goals, burdens U.S. companies sourcing from overseas with reporting requirements inapplicable to domestically harvested product, even when the seafood in question is exactly the same. Although as yet unwilling to mandate labeling, the Task Force makes no secret of its intent to “determine how information within the

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<sup>22</sup> *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, DS381, Appellate Body Report adopted June 13, 2012; *see* 16 U.S.C. 1385 and 50 C.F.R. 216.91.

<sup>23</sup> *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, DS406, Appellate Body Report adopted April 24, 2012.

<sup>24</sup> *United States — Certain Country of Origin Labelling (COOL) Requirements*, DS384, Appellate Body Report May 18, 2015; *see* 7 U.S.C. Section 1638.

traceability system – including species, geographic origin, and means of production – can be shared with consumers”<sup>25</sup> and that collected data “logically should be considered” to remain with the product “through the supply chain.”<sup>26</sup>

That means NFI member companies sourcing from overseas would be obliged to track and then display on their packaging data elements that provide consumers no possible benefit, with respect to fish for which there is no allegation of illegal harvesting or economic adulteration, and without any relation to the risk-based enforcement system that the traceability proposal is supposed to be all about. NFI submits that is more than the TBT Agreement allows.

But far more important than NFI’s opinion are the views of major seafood exporting nations, which are familiar with WTO Agreements and which are quite capable of enforcing those Agreements against U.S. laws and regulations affecting the international trade in seafood. A similar outcome here would place U.S. seafood exports at risk as the first and most logical target of retaliation. If the traceability proposal remains unaltered through the upcoming regulatory process,<sup>27</sup> one of the Task Force’s concrete achievements will have been to place a vibrant U.S. export industry in jeopardy.

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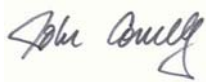
<sup>25</sup> “Presidential Task Force releases action plan to combat illegal, unreported, and unregulated fishing and seafood fraud,” NOAA Fisheries webpage (<http://www.noaanews.noaa.gov/stories2015/20150315-presidential-task-force-releases-action-plan-to-combat-illegal-unreported-and-unregulated-fishingand-seafood-fraud.html>).

<sup>26</sup> 80 Fed. Reg. at 37601.

<sup>27</sup> The Task Force recognizes that the traceability proposal cannot be put into place via the current process but instead can be advanced only through conventional notice and comment rulemaking subject to the Administrative Procedure Act, the Paperwork Reduction Act, agency cost-benefit analysis, documentation of applicable statutory authorities, and other Federal requirements. The Task Force’s September 2016 deadline for a final rulemaking, however, is completely unrealistic, especially when compared to the lengthy timeline of the Administration’s food safety traceability project. Moreover, it does not appear that the predicate for this proposal – the “at risk” analysis proposed in the April 27 Task Force *Federal Register* Notice – will also be subjected to similar rulemaking. In light of this, NFI renews its objection to implementation of *any* Task Force Recommendation affecting NFI members without completion of required rulemaking as to that *entire* Recommendation. See “Presidential Task Force releases action plan to combat illegal, unreported, and unregulated fishing and seafood fraud,” NOAA Fisheries webpage rulemaking (<http://www.noaanews.noaa.gov/stories2015/20150315-presidential-task-force-releases-action-plan-to-combat-illegal-unreported-and-unregulated-fishingand-seafood-fraud.html>).

### **Conclusion**

NFI urges the Task Force to better understand the negative impacts and additional burdens that proposed seafood traceability program will unquestionably create for companies that provide billions of seafood meals a year to Americans.

A handwritten signature in dark ink, appearing to read "John Connelly", is centered on a light yellow rectangular background.

John Connelly  
President



## OFFICE OF THE GOVERNOR

SEP 30 2014

To the Members of the California State Senate:

I am returning Senate Bill 1138 without my signature.

Much of what the bill seeks to accomplish is good. Requiring seafood producers and wholesalers to identify whether fish and shellfish are wild caught or farm raised, domestic or imported – these are reasonable and helpful facts for purchasers to know.

Requiring more precise, species-specific labeling of seafood, however, is not as easily achieved.

The U.S. Food and Drug Administration publishes both market names and common names under which fish and shellfish may be sold. The bill's requirement to use the FDA published common name in all fish and shellfish labels, unless the state promulgates a different common name, would create uncertainties and complexities that may not be easily resolved.

Proponents of this measure have made enormous strides in helping consumers and policymakers understand the health, safety and sustainability impacts in our consumption of seafood.

Let's continue to work to give California consumers information that will help them make wise decisions.

Sincerely,

A handwritten signature in black ink, reading "Edmund G. Brown Jr.", with a long, sweeping flourish extending from the bottom right.

Edmund G. Brown Jr.



September 11, 2015

Ms. Danielle Rioux  
 Office of Sustainable Fisheries  
 National Marine Fisheries Service  
 National Oceanic and Atmospheric Administration  
 1315 East-West Highway  
 Silver Spring, Maryland 20910

***SUBMITTED VIA REGULATIONS.GOV.***

**RE: Docket No. NOAA-NMFS-2014-0090; Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan; 80 *Federal Register* 45955 (August 3, 2015).**

Dear Ms. Rioux:

The National Fisheries Institute (“NFI”) hereby submits comments on the proposal contained in the August 3 Federal Register Notice captioned above. NFI appreciates the opportunity to provide the views of the harvesters, processors, importers, distributors, restaurants, and retailers responsible for much of the fish Americans consume every day.

### **Executive Summary**

NFI again submits comments to the Presidential Task Force on IUU Fishing and Seafood Fraud/National Ocean Council, this time in response to the Task Force’s August 3, 2015, *Federal Register* Notice applying seven principles to designate 12 seafood categories as “at risk” for both IUU fishing and seafood fraud and one as “at risk” for seafood fraud. These categories, according to the Task Force’s Action Plan, will be subjected to the traceability system outlined in a similar, July 1, 2015, *Federal Register* Notice, which requires affected seafood businesses to continuously collect and submit for unrestricted, perpetual Federal review a minimum of 17 pieces of data for every package containing any of those items imported into the United States.

NFI must again express disappointment with the Task Force’s proposal. In the August 3 Notice, the Task Force:

- Adopts as principles for designating seafood at risk for IUU fishing and seafood fraud the concept of “complexity of the chain of custody and processing” – a

widely applicable (and entirely unobjectionable) characteristic of the global seafood industry.

- Concludes with no evidence beyond the opinions of unidentified “experts” that the 13 chosen seafood categories – among them four of the top ten domestic categories – are at risk for IUU fishing and mislabeling, in effect alleging that multiple U.S. trading partners are complicit in widespread illegality intended to defraud tens of millions of American consumers and subvert fishery management systems that those partners established in the first place.
- Ignores the simple fact that seafood fraud related to imported and domestic product occurs overwhelmingly in the United States and cannot possibly be addressed by targeting overseas producers who have no connection to the violations in question.
- Denies, apparently, the obvious beneficial impact of enforcing existing Food and Drug Administration requirements related to economic adulteration of seafood in reducing seafood fraud.
- Continues on a path that will trigger retaliation, in seafood and perhaps elsewhere, in the form of traceability requirements designed to hobble market access for U.S. exporters.

**I. By Using “Complexity Of The Chain Of Custody And Processing” As A Principle For Identifying At-Risk Categories, The Task Force Attempts To Convert An Essential Characteristic Of The 21st-Century Seafood Industry Into Evidence Of Criminality.**

The Task Force identifies seven principles to be used in selecting the at risk species for either IUU fishing or seafood fraud:

1. Enforcement capability.
2. Catch documentation scheme.
3. Species substitution.
4. Mislabeling.
5. History of violations.
6. Human health risks.
7. Complexity of the chain of custody and processing.<sup>1</sup>

To begin with, a nation’s enforcement capability bears directly on its ability to ensure that fishery management rules are observed and, similarly, to root out and punish economic integrity violations. Evidence of mislabeling and species substitutions, and a history of such violations in a particular category are of course relevant to assessing that category’s status.

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<sup>1</sup> 80 Fed. Reg. at 45956.

That point applies to the United States Government as much as to any other: As NFI argues in greater detail below, the key to reducing seafood fraud in the United States is for U.S. authorities to more aggressively enforce existing laws against violators. The potential health risks arising from consumption of a fish that is not what the consumer purchased is also a legitimate consideration with respect to assessing seafood fraud, and that is yet another reason the nation's food safety regulator for seafood, FDA, should take the lead in identifying and punishing mislabeling and other economically motivated adulteration. The simplest solution to any issue of fraud is for the Administration to require FDA to enforce its regulations.

The Task Force also proposes using the complexity of the chain of custody and processing as a final factor in making at risk designations, and points to the extent of lawful transshipment, processing, and commingling present for a given product as indicative of an "at risk" category. This principle does not so much identify a vulnerability to IUU fishing or fraud as it does describe the modern seafood industry. As explained in prior NFI comments to the Task Force, categories such as tuna, shrimp, crab, cod, snapper, mahi-mahi, and swordfish are all characterized by multi-continent harvesting and processing, value-added processing and commingling, and large-scale multi-modal shipping across national boundaries. That such characteristics are present in one seafood item does not demonstrate a tendency towards violations in that category any more than an investment bank's regular cross-border funds transfers indicate financial chicanery. Those transfers are what make it a global investment bank, not an international scofflaw.

To that point, the Task Force has conceded that it is impractical to require vessel-specific information in fisheries, such as the Bristol Bay salmon fishery in Alaska, that depend on thousands of tender vessels transferring catch to larger ships at sea.<sup>2</sup> The August 3 Notice nevertheless emphasizes that "the transfer of fish from one vessel to another, either at sea or in port" makes for a lack of supply chain transparency, and thus tends towards IUU fishing. NFI agrees that vessel-specific information in certain fisheries will be extremely difficult to collect and report, but that begs the question of why the presence of such a complex supply chain should be weighted heavily in determining which seafood is genuinely susceptible to either of the problems the Task Force has set out to address.

The fundamental problem with the principles the Task Force has identified is not the principles themselves but what the Task Force would have Federal agencies *do* in response to those seven concepts. Having identified a lack of enforcement capability, or insufficient catch documentation, or a history of violations in a particular fishery, the Federal Government – one would think – would react by building outreach to nations to help strengthen enforcement, improve basic catch documentation, emphasize capacity to improve enforcement capabilities, or

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<sup>2</sup> In a fishery "with tender vessels taking deliveries from many smaller harvesting boats, collection of this information could become burdensome. In this instance, the Committee currently anticipates requiring only the name of the tender vessels making traceable deliveries to a buyer or processor." 80 Fed. Reg. 37602.

immediately target likely violators. The Task Force, in its “at risk” approach, takes a different tack.

## **II. Even Were The Task Force’s At-Risk Principles Well-Chosen, Its Application Of Those Principles To The 13 Designated Seafood Categories Is Highly Flawed.**

### **A. The August 3 *Federal Register* Notice Contains Virtually No Objective Evidence Justifying The Task Force’s At-Risk List, And Relies Instead On Unsubstantiated Conclusions Gleaned From Unspecified Government Data And Unidentified “Subject Matter Experts.”**

Though the above concerns as to the “at risk” principles are real, the application of those principles to the 46 categories considered by the Task Force raises far more serious questions. That process yielded 13 at-risk categories, 12 of them at risk for IUU fishing and fraud, and blue crab, which is deemed at risk for fraud alone. The Task Force arrived at these conclusions based on information from CBP, FDA, NOAA, RFMOs, and “the knowledge of subject matter experts, including members of the Working Group and other personnel from represented agencies.”<sup>3</sup>

This methodology as described in the August 3 Notice is sorely wanting. The Task Force apparently utilized some relevant government data, but did not consider information from other reliable sources, such as the United Nations Food and Agriculture Organization. It is not clear which agency data was considered and which was ignored.

The Task Force’s consultation of unidentified subject matter experts – including, apparently, non-government “experts” – is of concern. These experts may (or may not) have an understanding of the commercial seafood industry inside and outside the United States. They may (or may not) have experience in the enforcement of international fisheries requirements and economic integrity requirements. They may be interested parties or even commenters in this process. Moreover, even if these experts are Task Force participants with decades of relevant experience, *reliance on their views cannot and does not substitute for particularized evidence that supports the at risk determinations.*

But there is no such evidence in the August 3 Notice, which makes The Task Force’s summaries of each of these 13 determinations less than compelling. The August 3 Notice includes dozens of conclusory allegations of “a lack of enforcement capability,” “a history of violations,” and “a history of species substitutions.” These summaries contain not a single substantiated fact in support of the at risk determinations.<sup>4</sup> The glaring absence of substantiated facts calls into question the entire “at risk” exercise, especially as to large categories such as tuna, shrimp, and

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<sup>3</sup> 80 Fed. Reg. at 45956.

<sup>4</sup> The only substantiated fact in these 13 summaries NFI can locate – a reference to the U.S. Government’s maintenance of a data program relating to swordfish, on behalf of ICCAT – cuts *against* the Task Force’s finding that swordfish is at risk for IUU fishing. 80 Fed. Reg. at 45958.



crab, in which fishery management requirements – and the effectiveness of enforcement of such requirements – differ and where, as a result, broad-brush conclusions about violations and enforcement do not apply.

This makes it challenging for NFI and other commenters to meaningfully respond to the August 3 Notice. For instance, which “value-added [tuna] products,” from what “certain regions” are at risk?<sup>5</sup> Without inside knowledge of the Task Force working groups and their subject matter experts’ views, there is no way to know for certain and therefore no way to comment in any detail. But more importantly, this is an obstacle to effective implementation of Task Force Recommendations. The August 3 Notice restricts the scope of the traceability program to certain seafood imports into the United States, at least in the “first phase” of this effort, and is thus critically important.<sup>6</sup> Surely the significance of this step in the Task Force’s work calls for a more substantial, data-driven approach conducted in a fully transparent manner. That would be to the benefit of the United States and to the many nations that supply seafood to American consumers.

**B. The August 3 Notice In Effect Alleges That Numerous Major U.S. Trading Partners Support Widespread Criminality In Their Seafood Exports, Without The Slightest Effort To Document A Record Of Law-Breaking To Justify The Allegations.**

Seafood fraud and illegal, unreported, and unregistered fishing are already crimes under numerous Federal laws. Through the Lacey Act, the Federal Food, Drug, and Cosmetic Act, country of origin provisions, the Nicholson Act, and other statutes, numerous Federal agencies (including Task Force participants the Departments of Justice, Commerce, Health and Human Services, Agriculture, Interior, and Homeland Security) have wide-ranging authority to investigate and punish those who, for instance, illegally fish in U.S. waters; inaccurately label or short-weight their seafood in interstate commerce; import into interstate commerce seafood that was harvested in violation of the harvest nation’s laws; attempt to land any fish caught on the high seas, or any product made from that fish, in a port of the United States, under a foreign flag, unless authorized by treaty; or transport across state lines fish that has been illegally harvested or impermissibly labeled. Punishments for violations of these provisions of U.S. law range from modest civil penalties to \$500,000 per violation and five years in prison, plus forfeiture of tainted seafood.<sup>7</sup>

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<sup>5</sup> 80 Fed. Reg. at 45958.

<sup>6</sup> 80 Fed. Reg. at 45962.

<sup>7</sup> See, e.g., 16 U.S.C. Section 3373 (Lacey Act); 7 U.S.C. Section 1638a (USDA COOL); 21 U.S.C. Section 343 (FFDCA); 19 U.S.C. Section 1304 (CBP COOL); and 46 U.S.C. Section 55114 (the Nicholson Act).

NFI has identified 35 countries that substantially harvest/farm, process, or harvest/farm and process one or more of the 13 designated categories. Each of the 35 nations on the attached chart is responsible for a substantial percentage of the total landed catch of the category noted. Only one such major producer – the United States – is excluded, as the proposed traceability program does not apply to the large majority of U.S. harvested or farmed seafood. The chart also identifies which countries have been listed by the NMFS as IUU violators in any of the four biennial IUU reports since 2009, for any of the 13 designated at risk categories in which the country is a major producer.<sup>8</sup>

	Albacore		Atlantic Cod		Pacific Cod		Blue Crab (Alligator of Blue Swimming Crab)		Mahi Mahi		Grouper		King Crab		Red Snapper		Sea Cucumber		Sharks		Shrimp		Swordfish		Tuna		
	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	Major Harvester or Processor	USG Designated IUU Countries	TOTAL USG Designated Countries
Argentina													H														0
Australia	H																										0
Brazil														H													0
Burma							H&P																				0
Canada			H										H&P				H&P		H				H&P				0
Chile	H																										0
China	H&P												P								H&P				H&P		0
Costa Rica									H														H				0
EU			H																								0
Ecuador									H&P												H&P		H&P		H&P	2011, 2013, 2015	1
Faroese			H																								0
Guatemala									H																		0
Hong Kong	H&P																		P								0
Honduras																	H										0
Iceland			H																								0
India							H&P				H&P											H&P					0
Indonesia							H&P						P									H&P			H&P		0
Japan					H																				H		0
Korea					H		H&P																		H	2013	1
Malaysia							H&P														H&P						0
Mexico	H							H&P		H		P		H		H		H	2013	H&P		H		H&P	2013, 2015	2	
New Zealand										H									H								0
Nicaragua														H													0
Norway			H																								0
Panama									H&P		H				H								H				0
Philippines							H&P															H&P			H&P		0
Russia			H		H								H														0
Sri Lanka							H&P																				0
Singapore																								H			0
Spain																									H	2013	1
Taiwan									H		H&P														H		0
Thailand							H&P						P									H&P			H&P		0
Trinidad													H&P														0
USA			H		H																				H		0
Viet Nam							H&P						P												H&P		0
TOTAL	5	0	7	0	4	0	9	0	6	0	6	0	8	0	4	0	3	0	4	1	10	0	6	0	12	4	

<sup>8</sup> See NOAA's Biennial Reports to Congress on IUU Fishing from 2009, 2011, 2013, and 2015.

The chart shows that of the 35 producing nations whose seafood products are alleged to be at risk for IUU fishing and seafood fraud, only four – Ecuador, Korea, Spain, and Mexico – have *ever* been previously found by the United States to be responsible for IUU fishing of an at risk item in a category where they are a major producer. Again excluding the United States, this means producers of the other 30 nations in effect now stand accused, for the first time, of serial IUU and seafood fraud violations.<sup>9</sup> Though the Task Force does not name countries, no other conclusion is possible: For each of the 13 at risk categories, the major producers must be complicit in ongoing Federal felonies in order for the designation to make any sense.

What is more, Task Force leadership has stated that the at risk designation applies to all imports from any harvesting or processing nation and has specifically stated that the Administration will not take into account differences in fishery management systems or the effectiveness of enforcement from nation to nation:

To the extent that a species is on the list, those data requirements will be applied to all fisheries both domestic and import. With respect to any particular species where one might think that there are different management schemes or different levels of risks for seafood fraud on a national or regional basis, the working group is not able to average risk. In other words, good management of a species in one area does not mitigate IUU risk or seafood fraud risk somewhere else. ***For that reason, the working group really needed to assign risk according to sort of the worst case across the range of a species.*** So, and that is addressed specifically in the *Federal Register* Notice, the fact that identifying a species is at risk of IUU fishing or seafood fraud is not an indication that it shares that same risk across the geographic distribution of the species in fisheries, or that it points to any particular conservation concern, but, simply, somewhere across the distribution the working group identified significant risk.<sup>10</sup>

With all due respect, this is the regulatory equivalent of “kill ‘em all, and let God sort ‘em out.” Though the Task Force acknowledges that different countries have different systems and different enforcement outcomes, those differences have been ignored in the at risk determinations. But if each major harvester has a different risk profile for a given species, then imposing the proposed traceability system on that species across the board and without regard to those risk profiles is the very opposite of the risk-based approach the Task Force claims to want. And doing so by reference to the worst performing country for that fish – “the worst case across

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<sup>9</sup> The only fish alleged by NMFS to be an IUU product but not included as an at risk category in the August 3 Notice is toothfish.

<sup>10</sup> Statement of John Henderschedt, Director, NMFS International Affairs & Seafood Inspection Program, August 25, 2015 Task Force webinar at 36’34’’ to 38’ 05’’ ([http://www.nmfs.noaa.gov/ia/iuu/082615\\_at-risk\\_webinar\\_audio.wav](http://www.nmfs.noaa.gov/ia/iuu/082615_at-risk_webinar_audio.wav).) (emphasis supplied).

the species” – punishes the high-performing nations in the chart above, for the alleged shortcomings of a few.

The Task Force compounds this error with what appears to be a lack of consultation with affected trading partners. From a review of comments already filed, it appears that the Task Force has not communicated its designations of IUU and fraud and their implications to the 34 countries listed above.<sup>11</sup> The Presidential Memorandum establishing the Task Force calls for “working with industry and foreign partners to develop and implement new and existing measures, such as voluntary, or other, traceability programs, that can combat IUU fishing and seafood fraud” and “strengthening coordination between Federal, State, local, and foreign agencies, and industry approaches that contribute to efforts to combat IUU fishing and seafood fraud, including with respect to seafood traceability and ways to minimize any costs and reporting burdens on small businesses.”<sup>12</sup> Certainly, other major initiatives to assess and punish countries with unsatisfactory IUU enforcement include consultation with affected countries.<sup>13</sup>

This lack of consultation augurs poorly for both the effectiveness of the proposed system and the receptiveness of major seafood producers not just to the traceability requirements they will have

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<sup>11</sup> See Comments of the Ministry of Primary Industries and Ministry of Foreign Affairs and Trade of New Zealand, August 31, 2015 (NOAA-NMFS-2014-0090-0307). New Zealand states:

“The Working Group recommendation of the 13 species includes little detail about why the species were considered to be of high risk other than broad generalizations, such as lack of enforcement capability. Many of the countries which export the listed species of seafood have never been accused by the US government of IUU fishing (as would be required under existing US law and NOAA’s biannual report to Congress on IUU)” (at 6).

“New Zealand would appreciate clarification as to whether the proposed grouper measure applies to species of Serraninae or more extensively to include related species such as those in Polyprionidae” (at 7).

See Comments of Fisheries and Oceans Canada, September 10, 2015 (NOAA-NMFS-2014-0090-0314). Canada states:

“We are interested to know whether there will be bilateral discussions with implicated trading nations before traceability requirements are finalized” (at 2).

<sup>12</sup> Memorandum for the Heads of Executive Departments and Agencies, at 1 and 3 (June 17, 2014). (<https://www.whitehouse.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreported>).).

<sup>13</sup> For instance, the European Union’s process for identifying IUU violators involves regular consultations. Under Council Regulation (EC) No 1005/2008, when flag States are unable to certify the legality of products in line with international rules, the Commission starts a process of cooperation and assistance with them to help improve their legal framework and practices. The issuance of a yellow card to Thailand is a “result of a thorough analysis and a series of discussions with Thai authorities since 2011.” ([http://europa.eu/rapid/press-release\\_IP-15-4806\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4806_en.htm)).

to meet but also to the Task Force Recommendations involving government-to-government collaboration and capacity building.

**C. It Is Particularly Egregious To Point Fingers At Overseas Seafood Producers For Seafood Fraud That Is Occurring *Inside U.S. Borders* And That Is The Legal Responsibility Of The Businesses Mislabeling Fish.**

IUU fishing that is in fact taking place in the waters of other nations or on the high seas is of course the responsibility of the nation controlling the relevant waters and/or the flag nation of the harvest vessel. In contrast, economic integrity violations and especially species substitution are the responsibility of the country in which the violations takes place, even if the product in question is an at risk category that country heavily imports. Seafood fraud, in particular misrepresenting species or country of origin in a way that affects U.S. consumers, overwhelmingly takes place in the U.S., not overseas. This raises the question of why seafood deemed at risk by the Task Force should have to meet proposed traceability requirements starting at the vessel or farm, when the misrepresentation occurs far downstream in the supply chain.<sup>14</sup>

In its decision to sample at the wholesale/distributor level and at point of importation, FDA certainly has signaled its intent to identify the likely point of suspected substitution in the United States. As noted in prior comments to the Task Force, FDA seafood species labeling tests primarily focus on wholesale rather than retail samples. For instance, FDA's multi-pronged Fish SCALE program included a two year survey of seafood labeling. The agency sampled 174 lots sourced at wholesale or importation in 14 states with a focus on species that were allegedly "normally mislabeled."<sup>15</sup> FDA found that 85 percent of the seafood tested was properly labeled at the U.S. point of distribution to restaurants or retailers' shelves. Of the remaining 15 percent, virtually all of it was fish mislabeled as grouper or an incorrectly labeled variety of snapper. When teasing out the results of the grouper and snapper samples taken at point of importation 88% of the grouper (15 out of 17) and 81% of the snapper (12 out of 15) were correctly identified with the violations being misidentifications as to the specific type of grouper or snapper.

Private sector sources of information back up this conclusion. In a widely-read series on seafood fraud, the *Boston Globe* investigated seafood mislabeling at over 130 restaurants, grocery stores, and seafood markets in the Boston area, finding that 48 percent of the samples tested were mislabeled. The series documents many examples of restaurant owners or chefs admitting to substituting one species for another. State regulators often report similar observations from

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<sup>14</sup> This is not to suggest that some types of mislabeling such as short weights or added water do not happen overseas. However, the Task Force has failed to demonstrate how a complicated traceability system will prevent that form of misbranding and/or adulteration from occurring.

<sup>15</sup> It is interesting to note that although cookie-cuttered skate wings are, according to urban legend, passed off as scallops, FDA did not include scallops in the list of tested species.

routine inspections. One example cited by the Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants is the now-familiar escolar being sold as white tuna: “Observed establishment advertised white tuna on the menu/menu board but served escolar, per chef.”<sup>16</sup>

This only stands to reason: Both the economic incentive for misrepresenting species (the restaurateur, not the farmer, stands to reap a windfall by labeling tilapia as “grouper”) and the practicalities of seafood importing (a package of “wild-caught grouper” arriving at a U.S. port from a Pacific Rim farmed fish producer will raise suspicions) strongly suggests that such mislabeling happens in the U.S. by businesses at or near the end of the supply chain.

Recognizing, of course, that the United States should first address shortcomings in the U.S. market, it is worth noting that over the past 5 ½ years, seafood exported from the U. S. into Canada is second only to China for the number of refused shipments due to mislabeling (i.e., net weight or excessive moisture) violations.<sup>17</sup> This suggests that if the Government of Canada were to address seafood fraud in a similar manner as this Task Force, the United States would be considered an at risk source of mislabeled seafood. Based on the principles proposed in the August 3 *Federal Register* Notice, Canada then would be justified in requiring traceability for seafood products from the U.S. because of a history of mislabeling.

The solution to this problem – to the seafood fraud that is happening in the United States *right now* – is not to impose in coming years a multi-billion dollar traceability mandate on a large swath of the seafood-producing world (and, even later, on all imports from every category). Rather, the solution is *vigorous and immediate Administration enforcement against the U.S. businesses that insist on flouting existing law*. The Lacey Act is a powerful enforcement tool, and the Administration should use it. As one influential environmental organization puts it: “In theory, regular prosecutions and strong penalties should deter potential violators. And because the [Lacey] Act can be applied to distributors and retailers in the U.S., and not merely to importers, it can also serve as an incentive to U.S. seafood merchants to avoid products of dubious origin.”<sup>18</sup> But such prosecutions are not theoretical at all – they are concrete tools available to the Administration *right now* to ensure that domestic and imported seafood products are properly labeled, weighted, and safe to eat.<sup>19</sup> That is nowhere more evident than with respect to the largest U.S. seafood category, shrimp.

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<sup>16</sup> Division of Hotels and Restaurants Food Misrepresentation Cases available at <http://www.myfloridalicense.com/dbpr/hr/food-lodging/foodmisrep.html>

<sup>17</sup> Sourced from the Canadian Food Inspection Agency Mandatory Inspection List available at (<http://www.inspection.gc.ca/active/scripts/fispoi/ial/ialfront.asp?lang=e>).

<sup>18</sup> Comments of the World Wildlife Foundation, NOAA-NMFS-2014-0090-0056 (Sept. 2, 2014), at 7.

<sup>19</sup> The mislabeling violations of seafood shipments into Canada noted in the previous paragraph were the results of a sampling effort by the Canadian government as a means to deter seafood fraud – regulatory oversight of existing laws and regulations.

## D. These Points Are Borne Out By Examination Of The Specific Categories Designated As At Risk.

### 1. Shrimp.

The Task Force identifies shrimp as at risk because of “a significant amount of mislabeling and/or misrepresentation of shrimp,” “the level of processing often associated with shrimp products,” and the alleged use of Sodium Tripolyphosphate to add water weight.<sup>20</sup>

First, there are no specifics here to demonstrate the conclusions the Task Force draws. Second, the degree of processing associated with shrimp in general varies according the specific product in question, as any retail customer comparing the freezer aisle with the seafood counter can attest. Third, the Task Force would have producing nations comply with the traceability proposal described in the July 1 *Federal Register* Notice, thus requiring affected companies to report to the Federal Government both the market name (“shrimp”) and one of 48 scientific names for shrimp as recognized by FDA. But the Task Force itself, when confronted with this complexity, combined all 48 of these species into one name “because the supporting data utilized nomenclature which made further analytical breakouts (*e.g.*, by scientific name) unworkable.”<sup>21</sup> There is more than a littlechutzpah in demanding that major producing and processing countries meet a reporting requirement that the Task Force, after consultation with subject matter experts, does not.

Major Wild and Farm Shrimp Exporters to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitute	Mislabeling
India		108,664	19%	1,380,181,289			X			X	X	X	X
Indonesia		103,329	18%	1,318,682,502			X			X	X	X	X
Ecuador		92,405	16%	901,153,656			X			X	X	X	X
Viet Nam		73,483	13%	1,001,178,791			X			X	X	X	X
Thailand		64,816	11%	816,677,345			X			X	X	X	X
China		32,561	6%	271,480,645			X			X	X	X	X
Mexico		20,262	4%	301,325,957			X			X	X	X	X
Malaysia		17,704	3%	178,473,032			X			X	X	X	X
<b>Total</b>		<b>568,644</b>		<b>6,696,846,217</b>									

Source: Umer Barry and Department of Commerce (Data from 2014).

These allegations amount to a determination that the eight nations in the chart above – responsible for 90 percent of U.S. shrimp imports – are shipping illegally harvested or misbranded shrimp to the U.S., not once in a while, but on a regular basis, and that the numerous other countries that are major producers (but do not ship directly to the U.S. in large amounts) are in league with those eight. Before making such allegations about the nation’s largest seafood category, the Task Force should have adduced specific evidence to support its case.

The IUU designation of imported shrimp in particular is at odds with the trade flows and the realities of commercial shrimp production. That is because about 90 of U.S. consumption of

<sup>20</sup> 80 Fed. Reg. at 45958.

<sup>21</sup> 80 Fed. Reg. at 45956.

shrimp is imported, and the vast majority of that is farmed product. Of remaining U.S. consumption, most is of domestic, wild-capture shrimp – which is exempt from the Task Force’s proposal. Thus, in designating “shrimp” as at risk for IUU fishing, the Task Force condemns a large industry segment of imports for alleged violations committed, if at all, by a far smaller segment comprising a very small slice of U.S. consumption. This effectively turns the process on its head, making shrimp farmers and the U.S.-based processors they supply responsible for illegally fishing a product that cannot be fished.

Finally, it must be noted that NFI supports vigorous enforcement of FDA rules against mislabeling and improper use of Sodium Tripolyphosphate. But, again, it must be emphasized that the Administration has readily-available tools for combatting economically motivated adulteration of food and mislabeling.

Consider the recent prosecution of a North Carolina seafood processor and distributor for mislabeling 25,000 pounds of farm-raised imported shrimp as wild-caught product of the United States and then selling it to customers in Louisiana. The Government made no allegation that the non-U.S. exporter or producer had anything to do with this malfeasance. The company, Alphin Brothers Inc., was sentenced to a \$100,000 criminal fine, forfeiture of 21,450 pounds of shrimp, and three years of probation. The prosecution involved NMFS and the Louisiana Department of Wildlife and Fisheries.<sup>22</sup> If the Task Force believes that relying on this type of prosecution is too laborious or takes too long, then a senior level telephone call between the Task Force and the Department of Justice would appear to be in order.

## **2. Tuna.**

The Task Force’s case for designating tuna at risk is a content-free wonder:

Tunas are a high volume and high visibility species group.... There has been a history of fisheries violations in certain tuna fisheries and in certain regions. Further, harvesting, transshipment, and trade patterns for tunas can be complex, in particular for certain value-added products. While there are multilateral management and reporting measures in place for many stocks within the tuna species group, these management and reporting mechanisms vary in terms of information standards and requirements and do not all provide a complete catch documentation scheme. Tunas are also subject to complicated processing that includes comingling of species and transshipments. Further, there has been a history of some species substitutions, with most instances involving substitution of one tuna species for another. However, there have also been instances of escolar, which can be a toxin, being substituted for albacore tuna.<sup>23</sup>

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<sup>22</sup> “North Carolina Seafood Processor and Distributor Sentenced for Mislabeling Shrimp,” United States Department of Justice press release, August 11, 2015. (<http://www.justice.gov/opa/pr/north-carolina-seafood-processor-and-distributor-sentenced-mislabeling-shrimp>).

<sup>23</sup> 80 Fed. Reg. at 45958



To begin, the “high volume” and “high visibility” nature of tuna does not mean the category is more or less apt to be illegally fished; it merely means consumers are familiar with the product and like it. In the same vein, tuna production indeed “can be complex,” but that is not evidence of wrongdoing; it is evidence of a complex supply chain. But the real problem with this description is its lack of specifics: What “history of violations”? Which “value-added products”? Which “fisheries” “stocks” and “regions”? There is no way to know, and therefore no way to meaningfully respond. It is true that substituting escolar for tuna poses a food safety problem for unsuspecting consumers, but that again underscores the need for the nation’s food safety regulator for seafood, the FDA, to take a lead role in investigating and punishing mislabeling.

Lastly, by designating tuna an at risk category, the Task Force in effect alleges that major harvesting and processing nations are engaged in significant law-breaking that is defrauding the American consumer. The two charts below identify the 14 nations responsible for at least three percent of global harvest and/or at least three percent of all processed tuna exported to the U.S. That means the Task Force has concluded that these countries, *sans* the U.S., are catching tuna illegally, processing that tuna for U.S. customers, and/or violating FDA economic integrity requirements. Of these 13 countries, only Ecuador, Spain, and Mexico have ever been accused by NMFS of IUU fishing for tuna. Unlike the biennial NMFS IUU fishing report, this allegation is leveled without any specific evidence, and for a category that is subject to highly-developed catch documentation and other requirements already in place.<sup>24</sup>

As for substitutions of escolar for white tuna, outreach to local and state regulators with an expectation of enforcement would be a much more effective tool to eliminate this blatant misrepresentation than requiring traceability of an innocent party.

Tuna Harvesters by Countries

Countries	Harvester or Processor	Volume (MT)	Percent	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Document	Transship	Significant Processing	Short Weight	Species Substitution	Mislabeling
Indonesia	H	951,028	17%			X	X	X	X		X	
Philippines	H	491,010	9%			X	X	X	X		X	
Japan	H	372,391	7%			X	X	X	X		X	
Spain	H	341,299	6%			X	X	X	X		X	
Ecuador	H	296,726	5%			X	X	X	X		X	
Korea, Republic of	H	267,970	5%			X	X	X	X		X	
Papua New Guinea	H	194,040	4%			X	X	X	X		X	
USA	H	147,641	3%			X	X	X	X		X	
Mexico	H	142,598	3%			X	X	X	X		X	
<b>Total</b>		<b>5,457,856</b>										

Source: Data from FAO in 2013.

<sup>24</sup> Comments of the International Seafood Sustainability Foundation, NOAA-NMFS-2014-0090-0240 (May 29, 2015) (describing the ProActive Vessel Register, which gives the tuna supply chain assurance that fishing vessels are meeting ISSF sustainability requirements).

Major Exporters of Tuna to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Thailand	H and P	107,794	38%	475,312,852			X	X	X	X		X	
China	H a little and P	29,048	10%	119,768,436			X	X	X	X		X	
Philippines	H and P	25,739	9%	133,825,442			X	X	X	X		X	
Viet Nam	H and P	23,654	8%	131,823,180			X	X	X	X		X	
Indonesia	H and P	19,676	7%	146,373,281			X	X	X	X		X	
Ecuador	H and P	18,576	7%	126,246,934			X	X	X	X		X	
Fiji	H and P	12,180	4%	64,640,634			X	X	X	X		X	
Mauritius	H and P	8,129	3%	43,150,581			X	X	X	X		X	
Mexico	H and P	7,275	3%	36,581,955			X	X	X	X		X	
<b>Total</b>		<b>282,599</b>		<b>1,536,145,345</b>									

Source: Umer Barry and Department of Commerce (2014).

Similar problems arise concerning the Task Force’s conclusions as to other major at risk categories.

### 3. Blue Crab.

Blue swimming crab – the *correct* name for the product produced by the countries in the chart below<sup>25</sup> – is almost always shipped to the United States in pasteurized form, either for retail sale in that form or for further processing into value-added items such as crab cakes. Mislabeling this product so as to trick consumers into believing that it is a U.S. product involves either: (i) changing the label on the cans, thus violating existing country of origin marking requirements; or (ii) removing the crab from each can and then mixing the meat with domestic blue crab, as a kind of filler. These methods, which should be punished when they take place, unquestionably occur in the United States without any involvement from overseas producers or processors.<sup>26</sup>

The Task Force’s designation of blue crab as at risk for seafood fraud can only mean that producers in Indonesia, the Philippines, Vietnam, Thailand, and India reporting 14 data elements to the Federal Government will somehow address such mislabeling, even though those producers have no hand in, and do not profit from, the misconduct taking place thousands of miles from their pots. These two ideas simply cannot be squared, and the Task Force cannot possibly argue that the proposed traceability proposal will result in fewer American restaurant menus illegally touting U.S.-harvested “blue crab.”

<sup>25</sup> This raises the question of which crab specie(s) will be impacted by a required traceability regime – only *Callinectes sapidus* (Blue Crab as identified as being at risk), or also imported *Portunus pelagicus* (blue swimming crab), which is accused of masquerading as domestic product?

<sup>26</sup> Those concerned over seafood fraud involving blue swimming crab do not point to examples of crab entering the United States mislabeled. *See, e.g.*, “Seafood fraud cases plummet as NOAA cuts investigators,” *Baltimore Sun* (December 6, 2014) (quoting a letter from, among others, Senator Barbara Mikulski, stating: “Some processors are importing foreign crabmeat, repacking it at a domestic facility, and then labeling it as a product of the United States.”)

Major Exporters of Blue Swimming Crab to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Indonesia	H&P	9,907,758	46%						X	X	X	X
Philippines	H&P	3,012,357	14%						X	X	X	X
Vietnam	H&P	2,785,472	13%						X	X	X	X
Thailand	H&P	2,695,294	13%						X	X	X	X
India	H&P	1,244,600	6%						X	X	X	X
Sri Lanka	H&P	626,498	3%						X	X	X	X
<b>Total</b>		<b>21,516,384</b>							<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>

Source: Umer Barry and Department of Commerce (Data from 2013).

#### 4. King Crab.

Here, too, the Task Force fails to present evidence for King Crab as an at risk species for IUU fishing and fraud beyond conclusory allegations of a “significant history of violation, lack of effective catch documentation scheme,” and frequent transshipment.

To repeat, Federal agencies are able to punish IUU violators under existing law. In a 2011 prosecution, the Department of Justice with the support of NMFS seized \$2.5 million worth of illegal king crab because a U.S. importer had purchased products

harvested from Russian waters in violation of Russian quotas, was not marked in accordance with regulations implemented by the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Lacey Act, and was not accompanied with information required by the reporting regulations implemented by the Food and Drug Administration pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.<sup>27</sup>

Further, NMFS is on September 11, 2015 signing a bilateral agreement with Russia that commits both countries to work collaboratively to address IUU fishing. The Administration is to be applauded for bringing this agreement to a successful conclusion, but designating a major Russia seafood export as presumptively the product of pirate fishing is a curious way to carry it out.

Major Exporters of King Crab to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Russia	H	10,689	34%	222,681,247	X		X	X	X				X
China	P	6,121	20%	47,755,741	X		X	X	X				X
Canada	H&P	4,580	15%	52,869,687	X		X	X	X				X
Indonesia	P	3,434	11%	86,737,381	X		X	X	X				X
Argentina	P	2,014	6%	24,794,873	X		X	X	X				X
Viet Nam	P	1,599	5%	33,514,531	X		X	X	X				X
Mexico	H a little and P	1,585	5%	9,039,340	X		X	X	X				X
Thailand	P	1,284	4%	18,544,881	X		X	X	X				X
<b>Total</b>		<b>31,306</b>		<b>495,937,681</b>									

Source: Umer Barry and Department of Commerce (2014).

<sup>27</sup> "DOJ And Seafood Importer Reach Settlement Over 112 Tons Of Illegally Imported Russian King Crab – Crab Seized Last Year at Port of Seattle Following Federal Investigation," U.S. Attorney's Office for the Western District of Washington, press release, April 20, 2002.

## 5. Atlantic & Pacific Cod.

The history of cod and in particular U.S. and Canada cod fisheries is a cautionary tale about the need for effective fishery management. But today's major overseas Atlantic cod fisheries are managed by some of the world's most advanced fisheries regulators and are among the world's healthiest. Four nations account for virtually the entire world harvest. The Task Force's conclusion that Iceland, Norway, the EU, and Russia are all responsible for significant IUU fishing of cod – and that is, again, what this designation must mean to make any sense – ignores the highly-developed management systems that have been in place in most of the countries and in the North Pacific for decades.

As for the species substitution the Task Force alleges is taking place, that substitution almost certainly involves lower-value whitefish being labeled *as cod* so as to fetch a premium from retail and restaurant buyers or their customers, something that producers from these four nations have no incentive to do and have no power to stop. To repeat: *Imposing on, for instance, Iceland cod harvesters the obligation to report 17 different data elements to the Federal Government will do nothing to stop mislabeling in the United States* of fish that is of lower value than the cod landed in Reykjavik.

Atlantic Cod By Harvest Countries

Countries	Harvester or Processor	Volume (MT)	Percent	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Norway	H	471,000	35%	X			X				X	X
Russia	H	436,000	32%	X			X				X	X
Iceland	H	236,000	18%	X			X				X	X
EU	H	158,000	12%	X			X				X	X
Faroes	H	32,000	2%	X			X				X	X
U.S./Canada	H	12,000	1%	X			X				X	X
<b>Total</b>		<b>1,345,000</b>										

Source: GFF and FAO Database (2013).

The story with respect to Pacific cod is different. Despite the “clear history of [IUU] violations,” the Task Force exempts the massive U.S. catch that accounts for almost 70 percent of the harvest but simultaneously insists on full compliance by Russia and Japan.<sup>28</sup> In doing so, the Task Force takes most of the world harvest off the table, and in the process invites allegations from both countries that the U.S. is violating basic World Trade Organization obligations. But that will not exempt U.S. harvesters from a *de facto* need to meet the traceability requirements, because at least some of the U.S. harvest is processed in China and then shipped to U.S. customers (as the two charts below together demonstrate). Which means that this specific cod will have to comply

<sup>28</sup> 80 Fed. Reg. at 45957.

with the July 1 Task Force traceability mandate. This for a fish that, when the FDA tested it in 2013, came back as properly labeled in all 15 samples.<sup>29</sup>

**Pacific Cod By Harvest Countries**

Countries	Harvester or Processor	Volume (MT)	Percent	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
USA	H	320,000	68%			X	X	X		X	X	X
Russia	H	78,000	17%			X	X	X		X	X	X
Japan	H	60,000	13%			X	X	X		X	X	X
Korea	H	12,000	3%			X	X	X		X	X	X
<b>Total</b>		<b>470,000</b>										

Source: GFF and FAO Database (2013).

**Major Exporters of Cod to U.S.**

Countries	Harvester or Processor	Volume (MT)	Percent	Value
China	P	45,781	66.9%	239,109,231
Iceland	H&P	7,352	10.7%	64,424,740
Canada	H	4,935	7.2%	33,048,255
Russia	H	4,387	6.4%	29,791,330
Norway	H	3,573	5.2%	24,842,324
<b>Total</b>		<b>68,458</b>		<b>407,911,580</b>

Source: Urner Barry and Department of Commerce (2014).

## 6. Red Snapper.

Management of red snapper is the subject of heated debate on Capitol Hill and among fisheries regulators, but that does not support an at risk designation here. And it certainly does not make the case that Mexico, Nicaragua, Brazil, and Panama are serial IUU violators, based – again – on unsubstantiated allegations of wrongdoing category-wide. In addition, the Task Force correctly notes the human health concerns that could arise from species substitution. Once more (and with feeling): The fact that mislabeling of this category could have an impact on human health – because of “parasites and natural toxins” present in some of the substituted species – is an argument for aggressive FDA enforcement of the agency’s existing food safety and economic integrity requirements, not for imposition of an elaborate traceability system that does not capture the part of the supply chain where mislabeling occurs.<sup>30</sup>

<sup>29</sup> See FY13-CFSAN Sampling for Seafood Species Labeling in Wholesale Seafood. Retrieved from <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419983.pdf>.

<sup>30</sup> 80 Fed. Reg. at 45957.

FDA’s targeted testing of snapper sampled at point of importation found that of the 15 samples tested, only three were misidentified as to the specific type of snapper.<sup>31</sup> None of the red snappers was misidentified, which suggests that FDA’s long-standing import alerts are sufficient deterrents for preventing foreign processors passing off other snapper species as red.<sup>32</sup>

Major Exporters of Red Snapper to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Mexico	H and P	3,273	22%	21,327,445	X		X	X				X	
Nicaragua	H and P	2,666	18%	16,857,842	X		X	X				X	
Brazil	H and P	2,494	17%	14,818,537	X		X	X				X	
Panama	H and P	1,335	9%	9,837,331	X		X	X				X	
<b>Total</b>		<b>14,933</b>		<b>96,576,113</b>									

Source: Umer Barry and Department of Commerce (2014).

## 7. Grouper.

The Task Force finds grouper at risk for a “history of fisheries violations,” “lack of a catch documentation scheme throughout the geographic range of fishing activity,” transshipping and global processing, and lastly, “a strong history of species substitution, including substitution using seafood that is of human health concern”<sup>33</sup> This last point is not surprising since grouper is the poster child for mislabeling, leading one State regulatory agency to provide guidance to consumers on how to protect themselves from being duped.<sup>34</sup>

Similar to testing described above, FDA’s targeted testing of grouper sampled at point of importation found that of the 17 samples tested, only two were misidentified as to the specific type of grouper and these two were actually groupers, just not the specific species identified on the label. This is in contrast to the results from testing of grouper sampled at the wholesale/distributor level (presumably at least one distribution step away from point of importation). Of the 45 samples, five were mislabeled, 2 as other types of grouper, but 3 as

<sup>31</sup> See FY13-CFSAN Sampling for Seafood Species Labeling in Imported Seafood. Retrieved from <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419984.pdf>.

<sup>32</sup> Import Alert 16-47, Detention Without Physical Examination of Red Snapper from Thailand and Import Alert 16-04, Misbranded Seafood both accessed at [http://www.accessdata.fda.gov/cms\\_ia/industry\\_16.html](http://www.accessdata.fda.gov/cms_ia/industry_16.html).

<sup>33</sup> 80 Fed. Reg. at 45957.

<sup>34</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Food-and-Nutrition/Food-Safety/Mislabeling-Seafood-Products-Is-Illegal>.

species other than grouper.<sup>35</sup> To repeat once more: Such mislabeling is wrong, and the Federal Government has ample authority to target the illegal labeling of grouper right now.

Major Exporters of Grouper to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Mexico	H	3,294	70%	28,969,813			X	X	X			X	
Panama	H	539	11%	4,608,991			X	X	X			X	
Taiwan	H&P	173	4%	396,443			X	X	X			X	
Trinidad	H	156	3%	1,457,265			X	X	X			X	
India	H&P	129	3%	544,746			X	X	X			X	
New Zealand	H	63	1%	673,816			X	X	X			X	
<b>Total</b>		<b>4,711</b>		<b>39,071,155</b>									

Source: Umer Barry and Department of Commerce (2014).

## 8. Mahi-mahi & Swordfish.

The same problems that plague the Task Force's other at risk designations are also present with respect to mahi-mahi and swordfish. Ecuador, Canada, Singapore, Panama and Costa Rica supply over 73 percent of U.S. swordfish consumption. None of these nations has ever been named for illegal swordfish catch in the biennial NMFS IUU report. Similarly, for mahi-mahi, major harvesting nations such as Ecuador, Taiwan and Peru have never been accused of illegal fishing. Similar to Atlantic cod, it may be that some mislabeling of other species as "swordfish" or "mahi-mahi" occurs in the U.S., but mislabeling of actual swordfish or mahi-mahi as something else makes no sense, as these are premium categories. Thus, there is no possibility that collecting 17 pieces of traceability data from harvesters of *these* fish will help stamp out mislabeling which those fishermen have nothing to do with and indeed are economically incentivized to *oppose*.

Major Exporters of Swordfish to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Ecuador	H & P	2,505	27%	19,162,612	X		X		X			X	
Canada	H & P	1,248	13%	14,904,589	X		X		X			X	
Singapore	H & P	846	9%	7,646,393	X		X		X			X	
Panama	H & P	844	9%	5,872,033	X		X		X			X	
Costa Rica	H & P	803	9%	6,799,001	X		X		X			X	
Mexico	H & P	542	6%	3,694,940	X		X		X			X	
<b>Total</b>		<b>9,442</b>		<b>81,994,767</b>									

Source: Umer Barry and Department of Commerce (2014).

<sup>35</sup> See FY12—CFSAN Sampling for Seafood Species Labeling in Wholesale Seafood and FY13-CFSAN Sampling for Seafood Species Labeling in Imported Seafood. Retrieved from <http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/UCM419984.pdf>.



Major Exporters of Mahi Mahi to U.S.

Countries	Harvester or Processor	Volume (MT)	Percent	Value (\$)	Low Enforcement Capability	Low Law Enforcement	Fisheries Violation	Ineffective Catch Documents	Transshipment	Significant Processing	Short Weight	Species Substitution	Mislabeling
Ecuador	H&P	7,028	27%	57,971,339	X			X	X			X	X
Taiwan	H	5,813	22%	44,865,066	X			X	X			X	X
Peru	H	5,582	21%	46,039,971	X			X	X			X	X
Costa Rica	H	1,944	7%	14,464,943	X			X	X			X	X
Panama	H	1,596	6%	11,313,319	X			X	X			X	X
Guatemala	H	1,272	5%	5,473,501	X			X	X			X	X
<b>Total</b>		<b>26,479</b>		<b>200,837,933</b>									

Source: Umer Barry and Department of Commerce (2014).

## Conclusion

The Task Force in its at risk approach unfortunately compounds the errors made in the underlying traceability proposal issued earlier this year, consigning large and important segments of the international trade in seafood to a perpetual and burdensome reporting requirement that will come at a significant cost in money and in operational difficulties. That burden might be one worth bearing, if it had the chance of materially reducing illegal and unreported fishing or seafood fraud in the “at risk” categories selected via the wisdom of the Task Force’s unnamed subject matter experts. But, far from offering the prospect of genuine improvements in outcomes, the Task Force’s approach is unlikely to effectively address either challenge. NFI urges the Task Force to reconsider its traceability proposal, as applied to the at risk categories.

Sincerely,



John P. Connelly  
 President