

House Natural Resources Subcommittee on Water, Oceans, and Wildlife

NOAA Testimony on Oversight of NOAA's Report on IUU Fishing

November 14, 2019

Questions for the Record

Questions from Democrat members

Questions from Rep. Jared Huffman

1. The United States has already codified by reference in the Port State Measures Agreement implementing legislation the definition of illegal, unreported, and unregulated fishing that was adopted by the Food and Agriculture Organization's (FAO) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated fishing. The Secretary of Commerce has broad authority to define IUU fishing by regulation. Using the FAO's definition would allow NOAA to consider other factors in identifying nations engaged in IUU fishing, such as illegal fishing by one nation in another's exclusive economic zone, and violation of other laws, such as those that prohibit forced labor and human trafficking. Why hasn't NOAA adopted by regulation the same definition? Is there anything preventing NOAA from adopting the same definition?

Answer: The definition of illegal, unreported, and unregulated (IUU) fishing in the Food and Agriculture Organization's (FAO) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA), based on the description of IUU fishing activities in the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), serves a different purpose than the definition of IUU fishing for purposes of the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), which sets forth the minimum elements that must be included in the regulatory definition of IUU fishing promulgated under the Act. Essentially, the PSMA focuses on the actions of vessels while the Moratorium Protection Act focuses on the actions of nations, therefore, it would not be appropriate to adopt the same definition for the Moratorium Protection Act.

The FAO Port State Measures Agreement commits States and other entities to adopt measures to prevent IUU fish and fish products from entering trade by restricting entry into port and access to port services to *vessels* that have engaged in IUU fishing or fishing-related activities in support of IUU fishing. In contrast, the statutory mandates in the Moratorium Protection Act, distinct from the aims of the FAO Port State Measures Agreement, provide authority to identify and certify *nations* for IUU fishing.

NOAA has determined that IUU fishing, as used in the Moratorium Protection Act, is potentially broader than the current definition set out in NOAA's implementing regulations. Therefore, NOAA will propose a regulatory action to potentially change, consistent with the statute, its regulatory definition of IUU fishing for the purposes of identification under the Moratorium Protection Act to include situations where there is a pattern of vessels flagged to a nation conducting fishing activities in the Exclusive Economic Zones (EEZ) of other nations without authorization of the respective coastal state. Pursuant to the Executive Order on Promoting American Seafood Competitiveness and Economic Growth, NOAA will propose the rule no later than 90 days of the date of issuance of the Executive Order.]

2. The Seafood Import Monitoring Program (SIMP) collects records on seafood imports, but NOAA only reviews them through random audits after the products have entered the country and are presumably in the marketplace for consumption. Artificial intelligence and machine learning can help improve pre-screening of imported products before they reach the American marketplace. What research, if any, has NOAA conducted on the use of AI and machine learning to screen imports? What resources would NOAA need to transfer this kind of research to operations?

Answer: As part of its Seafood Import Monitoring Program (SIMP), NOAA currently works with U.S. Customs and Border Protection (CBP) to place holds, when appropriate, on inbound seafood entries, prior to their admittance into U.S. commerce, to facilitate examination of the product, collection and analysis of related documents, and, in some cases, seizure of the product.

NOAA has begun to explore the application of criteria for risk targeting imports for audit or investigation. The desired investments for modernization include introducing artificial intelligence (AI) and machine learning to develop a smarter system for identifying risk factors and trends in shipment data to direct targeted audits, building better reporting and data analytics capabilities, and migrating the NOAA Fisheries International Trade Data System (ITDS) database and SIMP into the cloud to provide the ability to utilize AI and machine learning technologies present with cloud service providers.

At a broader level, we are incorporating public comment into a draft NOAA AI Strategy that will guide the dramatic expansion of AI in every NOAA mission area, including SIMP. As we move ahead with this draft strategy, we will have more information regarding the resources needed to incorporate AI and other advanced technology in these mission areas.

3. How can SIMP requirements be revised to identify seafood imports produced by forced labor?

Answer: NOAA supports effective and efficient implementation of the risk-based SIMP with respect to IUU fishing and seafood fraud. SIMP is designed for data collection to establish that imported fish and fish products were lawfully harvested and traded. SIMP was not designed to address risk factors associated with human trafficking or labor abuses. It might be possible for other agencies, such as CBP, to use SIMP data on particular vessels and the area of catch to address labor concerns when independently derived information implicates particular vessels.

4. Illegal harvest of red snapper from American waters by Mexican nationals is an ongoing problem documented in each of NOAA's IUU reports. NOAA's 2019 report notes that the United States imported nearly 5 million kilograms of fresh and frozen red snapper from Mexico in 2018, which may have included illegally harvested fish. Does NOAA conduct targeted audits of SIMP records for red snapper coming from Mexico? How much of the red snapper imported from Mexico is the product of illegal harvest?

Answer: SIMP requires the reporting and recordkeeping of traceability data that can be used to identify products that were harvested contrary to a foreign law or regulation or contrary to a binding conservation measure of a regional fishery organization. Imports selected for audit are carefully evaluated by the Office of International Affairs and Seafood Inspection against criteria developed in coordination with NOAA Fisheries Office of Law Enforcement (OLE). Audits that identify discrepancies or deficiencies are currently referred to OLE for potential follow-up action. SIMP does not require importers to provide vessel identification for product harvested by small vessels (≤ 20 measured gross tons or ≤ 12 meters length) if other required data elements are provided. Instead, imports from small vessels are accompanied by aggregated harvest data. A significant portion of snapper imports from Mexico fall within the scope of this small vessel harvest provision. NOAA has raised concerns with Mexico about the possibility that illegally harvested red snapper is entering the United States, and has received assurances from the Mexican government that these imports come from the “compliant” lancha fleet as opposed to the “rogue” lancha fishermen who illegally fish in U.S. waters. Despite widespread enforcement and diplomatic efforts by the U.S. government, illegal fishing in U.S. waters by lancha vessels from Mexico has been a chronic problem for several decades.” However, the premise that significant percentages of red snapper imported to the United States is the product of IUU fishing has not been substantiated and there is not a reliable estimate of the amount of illegally harvested product that may be imported from Mexico. Without an extensive analysis of exports with the cooperation of the Government of Mexico, U.S. audits of the import data provided are not likely to reveal the amount of product that was potentially illegally harvested. However, we will continue to work closely with Mexico to ensure these imports are indeed from the compliant fleet whose lanchas are registered and using tracking devices.

5. NOAA's certification of nations identified as engaged in IUU fishing only takes into account implementation of corrective actions, but not the results of those actions. Mexico's repeated violations of illegal harvest of red snapper is a prime example. In future reports, will NOAA account for effectiveness of corrective actions in consideration of a nation's certification status?

Answer: Despite widespread enforcement and diplomatic efforts by the U.S. government, illegal fishing in U.S. waters by lancha vessels from Mexico has been a chronic problem for several decades. After its 2015 identification under the Moratorium Protection Act, Mexico finally began to make some efforts to control the activities of its vessels. NOAA is pleased to see progress on this long-standing issue; however, it is clear that Mexico's efforts are not yet having the necessary effect on the illegal activities. The United States will continue to encourage Mexico to take more effective actions, including increased monitoring and control of the lanchas to address these activities by improving compliance and preventing the illegal fishing rather than just prosecuting the violators intercepted by the United States. In the 2019 Report to Congress on Improving International Fisheries Management, we identified a number of areas where we will be closely monitoring Mexico's progress during the ongoing two-year consultation period. When making our 2021 certification determination with respect to Mexico, we will focus on whether we are seeing significant reductions in both the amount of illegal fishing and the number of repeat offenders found fishing illegally in U.S. waters.

6. The U.S. Government Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud's (which has become defunct in the Trump Administration) recommendation for a seafood traceability program, which became SIMP, envisioned expansion of such a program to all seafood species after an initial phase of monitoring species identified as being "at risk" to IUU fishing and seafood fraud. NOAA has identified those at-risk species and has since wisely expanded the program to also include shrimp and abalone. What is the status of evaluation of the program and recommendations on how to expand it to all species?

Answer: The Administration continues to prioritize combating IUU fishing, as evidenced by its inclusion in the President's Executive Order on Promoting American Seafood Competitiveness and Economic Growth, signed in early May.

While the Task Force was disbanded following its finalization of recommendations and guidance to various federal agencies on their implementation, robust interagency coordination on combating IUU fishing has continued during the Trump Administration including through an interagency working group on IUU Fishing and Seafood Fraud, co-chaired by NOAA and the State Department. The current whole-of-government approach

enhances inter-agency cooperation, reduces duplication and conflict in U.S. government approaches to IUU fishing, and expands our influence on these issues by coordination in the application of available resources. As directed by the EO, Federal agencies will continue to work together to improve coordination and enforcement of IUU activities.

Regarding your question about the potential expansion of SIMP, although the IUU fishing Task Force expressed an interest in expanding the seafood traceability program to other seafood, it was predicated on a number of factors, including consideration of authorities needed, stakeholder input, and, importantly, the cost-effectiveness of program expansion. Expanding the program to cover species that are not at risk of IUU fishing would not be an effective use of federal resources, would impose additional burdens on importers, and would add to the cost of imported seafood.

Questions from Republican members

Questions from Rep. Tom McClintock

1. During the November 14 hearing, you stated that NOAA had imposed several civil penalties on International Fisheries Trade Permit ("IFTP") holders for violations of the seafood import monitoring program ("SIMP"). Without including any identifying information regarding the IFTP holders involved, please provide an accounting of the number of civil penalties imposed, the dollar amount imposed for each civil penalty, the date each civil penalty was assessed, and a general description of the underlying violation for each such penalty.

Answer: Since the implementation of SIMP, the following penalties have been imposed for violations of this program and related requirements:

- A written warning was issued on February 27, 2019, for the importation of shrimp in violation of Section 609 of Public Law 101-162. This involved 0.2 KG of Japanese Glass Shrimp from Japan, which is only permitted to export wild caught shrimp to the United States that has been harvested with shrimp baskets in Hokkaido, Japan. The importer modified the import, removing the shrimp from the entry. The product was destroyed by CBP.
- A written warning was issued on October 9, 2019, for failure to submit complete and accurate information in the entry filing. A \$1,500.00 summary settlement was issued on October 22, 2019, for importing shrimp without a valid International Fisheries Trade Permit.

- A \$250.00 summary settlement was issued on August 26, 2019, for importing fresh fish and shellfish without any markings or labels on the outside of the containers.
- A \$2,500.00 summary settlement was issued on June 5, 2019, for the importation of shrimp from Nigeria without a valid International Fisheries Trade Permit and for misreporting shrimp as crayfish.

While it does not entail a financial penalty, a written warning is considered a prior violation that can be used as an aggravating factor and can lead to the imposition of a higher penalty for any future similar violation.

2. Has NMFS/NOAA, either through the Office of Law Enforcement or otherwise, referred any violation of SIMP for prosecution by the United States Department of Justice ("DOJ")? If so, please provide documentation substantiating the referral(s) to DOJ.

Answer: Since the program went into effect, no cases have been referred to the Department of Justice (DOJ) based on violations of SIMP requirements. Violations of the SIMP program, i.e., permitting, reporting and recordkeeping requirements, are only subject to civil administrative enforcement under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Should seafood imports be suspected of being the product of IUU fishing or species misrepresentation, this could constitute a violation of the Lacey Act or the MSA and would trigger further investigation. If the investigation determines that a person with knowledge and intent engaged in the mislabeling or trafficking, this may reach the threshold for a criminal prosecution under the Lacey Act or other federal statutes and the case would be referred to DOJ.

3. Please describe how the data received from IFTP holders via SIMP, either through required uploads to the International Trade Database System or through information obtained through audits of IFTP holders, has permitted NOAA/NMFS to detect and punish seafood companies for unlawful seafood fraud, species mislabeling, or related economic integrity violations. For any cases of seafood fraud identified through the use of data arising out of SIMP, did NOAA/NMFS refer the information collected to the U.S. Food and Drug Administration, DOJ, or any other federal agency? If so, please provide information about the disposition of that information by the federal government, including whether any enforcement action was taken by any agency. If not, why not?

Answer: SIMP requires the reporting and record keeping of traceability data that can be used to identify products that were harvested contrary to a foreign law or regulation or contrary to a binding conservation measure of a regional fisheries management organization. Imports selected for audit are carefully evaluated by the Office of International Affairs and Seafood Inspection against criteria developed in coordination with OLE. Audits that identify discrepancies or deficiencies are currently referred to OLE for potential follow-up action.

As part of this process, OLE has referred twelve incidents to other agencies based on examination of product that was conducted during SIMP enforcement activities at U.S. ports of entry. We do not track incidents once referred to other agencies, and typically do not get feedback from those agencies as to what actions, if any, they took regarding the referred incident. Details on the cases we referred follow:

- OLE referred five incidents to the Texas Parks and Wildlife Department due to violations of state law involving the import of undersized seafood products (red snapper and flounder) and the import of species into the state without required state import documents. The undersized products were seized, and state citations were reportedly issued.
 - OLE referred two incidents to the U.S. Fish and Wildlife Service (FWS) due to mislabeling of a product. In one of these cases, OLE notified FWS about mislabeled abalone due to suspicion that they were a species protected under the Endangered Species Act (ESA). Forensic lab analysis determined that the abalone was mislabeled, but that the particular species in the product was not protected under the ESA. FWS took enforcement action for mislabeling.
 - OLE made three referrals to CBP for misclassification of a product (albacore tuna represented as bonito to avoid higher tariff rates), and improper filing, including the use of an incorrect Harmonized Tariff Schedule.
 - OLE made two referrals to the Food and Drug Administration (FDA). The first was for a shipment of dried sea cucumbers accompanied by expired documentation. The FDA refused entry to this product. The second referral was for a discrepancy involving the labeling of a certain crab product as a different crab species according to the FDA's Seafood List.
4. Please provide a full accounting of the personnel and federal funds utilized to date to launch SIMP, to review information obtained from IFTP holders, to take enforcement actions, and to coordinate these activities across the federal government. Please exclude from this accounting any resources expended in preparing the Biennial IUU Report and following up with other nations concerning activities described by that Report.

Answer: From Fiscal Year 2017, when appropriated funds were first received to begin implementation of SIMP, through the end of Fiscal Year 2019, the National Marine Fisheries Service (NMFS) has received a total of \$6.8 million to implement SIMP. A team of three full-time federal staff and one full-time contractor established SIMP, with executive assistance from three federal staff throughout the initial implementation phase of the program. SIMP currently has the following staff supporting the program: one full-time federal supervisory program lead, two full-time federal staff, one the audit supervisor and one an auditor, seven full-time contractors, and one half-time contractor. Five of the contractors perform document audits, and two and a half perform program

and industry support. Once fully staffed, NOAA will have nine federal staff dedicated to supporting SIMP: four federal staff providing program oversight and coordination and five federal staff conducting document audits.

Since January 1, 2018, when SIMP went into effect, OLE has not received an appropriation to specifically implement SIMP. Therefore, SIMP enforcement has been incorporated into the range of activities carried out by OLE through base funding. Enforcement of the program is an added responsibility for our current staff. A full accounting of personnel and federal funds to implement SIMP is therefore currently not possible.

Additionally, our staff conduct seafood trade import monitoring for multiple regulatory programs, such as the Tuna Tracking and Verification Program (i.e., dolphin safe labeling program) and to meet our international obligations as members of regional fisheries management organizations. OLE's case management system does not currently capture data specific to each unique seafood trade monitoring program. OLE is undertaking modifications to its case management system to segregate data associated with the various seafood trade monitoring programs.

5. From the November 14, 2019 hearing, it appears that the Obama Administration relied on a 2014 research paper published in the academic journal, *Marine Policy*, regarding the prevalence of IUU-harvested seafood in the U.S. market, to justify the need for SIMP. Several of the authors of that paper used the same methodology in support of a 2017 paper they also published in the same journal, regarding the presence of IUU-harvested seafood in the Japan market.^[1] In 2019, a separate set of researchers questioned the methodology of the 2017 paper. In raising these questions, the authors of the 2019 paper stated, "the deficiencies in the estimate of IUU in Alaskan Pollock must cast serious doubt on [Pramod and Pitcher's] approach for all fisheries."^[2] Does NOAA/NMFS agree that the methodology employed by the authors of the 2014 and 2017 *Marine Policy* papers is unreliable in terms of estimating the prevalence of IUU-harvested seafood in a given market?

Answer: NMFS cited the Pramod et al. 2014 study in its Final Regulatory Impact Review and Final Regulatory Flexibility Analysis (<https://www.regulations.gov/document?D=NOAA-NMFS-2015-0122-0112>) as a published estimate of the prevalence of IUU fishing product in the U.S. market. However, NMFS neither endorsed the paper's methodology nor the authors' range estimate. We recognize that estimating the volume of IUU fish and fish products in global markets is difficult because of the very nature of the activity and that Pramod et al.'s paper is illustrative of that difficulty.

6. Does the Administration support the expansion of SIMP to include all species?

Answer: Although the IUU Task Force expressed an interest in expanding the seafood traceability program to other seafood, it was predicated on a number of factors, including consideration of authorities needed, stakeholder input, and, importantly, the cost-effectiveness of program expansion. Expanding the program to cover species that are not at risk of IUU fishing would not be an effective use of federal resources, would impose additional burdens on importers, and would add to the cost of imported seafood.

^[1] G. Pramod, K. Nakamura, T.J. Pitcher, et al., "Estimates of illegal and unreported fish in seafood imports to the USA," *Marine Policy* (2014); G. Pramod, T.J. Pitcher, G. Mantha, "Estimates of illegal and unreported seafood imports to Japan," *Marine Policy* (2017).

^[2] C. Oliver, D. Agnew, R. Hilborn, et al.; "Pramod et al. methods to estimate IUU are not credible," *Marine Policy* (2019).
