

**National Customs Brokers and Forwarders Association of America**

**Responses to Written Questions Post-April 7, 2022  
Hearing**

**House Committee on Natural Resources**

**Draft Answers to the Committee's Questions**

**Question 1:** One witness testified that the FDA is working on a food traceability rule that may include seafood. If FDA can do this, why do you say the proposed SIMP expansion requirements are “wildly unrealistic” for NOAA to implement?

A: Unlike the SIMP expansion legislation, the FDA supply chain tracking proposal does NOT require the supply chain data and records to be reported as part of the **entry process**. The FDA proposal establishes a standardized approach to traceability recordkeeping, requiring the first entity that both purchases and takes physical possession of the food to maintain and pass on Key Data Elements to the next party in the supply chain. The proposal is meant to pave the way for industry to adopt, harmonize and leverage more digital traceability systems in the future. This data moves as part of the supply chain – but it specifically does NOT propose that all this data be entered as part of the customs entry process. So, yes, the SIMP expansion proposal, with its massive manual data entry requirements, is indeed “wildly unrealistic.”

We should also add that the FDA has been working on this concept of full traceability for a decade, with the first pilots conducted in 2012, only last year was a proposed rule published in the Federal Register.

In the meantime, FDA has had a supplier verification program in place for several years. Under this Foreign Supplier Verification Program (FSVP), the FDA requires as part of the entry process the name and contact person for a U.S. person who has the records to verify that the overseas supplier of the food product maintains the preventative controls to produce a safe product. As you can imagine for food-borne illnesses, this tracking mechanism is very important to get to the source, but it is not a requirement for entry of the goods. The requirements include onsite audits of the supplier or a certification by a 3<sup>rd</sup>-party certifier. The FDA later audits these records. An entity who fails to verify the supplier's controls can lose the ability to import the product into the U.S.

Unlike NOAA, the FDA is a border enforcement agency with over 100 years of experience in developing systems which give them the necessary information to pinpoint critical supply-chain issues while not impacting our economy and the government with unnecessary duplicate data collection.

We should also be asking, if FDA will be implementing traceability of seafood supply chains, why are we attempting to duplicate that effort with NOAA? Why not leverage what other enforcement agencies are already doing?



**Question 2:** Ms. Sally Yozell testified that if the SIMP expansion legislation were implemented, that “Chinese processors can accommodate these traceability requirements.” Do you see the Chinese processors as a reliable mechanism for tracing the origin?

A: No, in our experience, the Chinese producers cannot be relied upon as a resource for accurate data on the origin of the seafood. That is a pipe dream that will only lead to unreliable data. They have no incentive to keep track of the origin, nor are they accountable to U.S. enforcement authorities. They will merely provide whatever information is asked for, rather than take steps to ascertain accurate origin data.

The responsibility for data accuracy should be a shared responsibility between the parties who have a financial interest in the importation. Again, we look at the approach taken by the FDA with a third-party certification that the supplier has the controls in place to ensure US requirements are met, with the importer responsible for auditing to ensure data is correct.

**Question 3:** The ban on Russian seafood is the most urgent concern right now. You stated that SIMP expansion would not prevent Russian seafood from entering the U.S. since it would take years to implement. Do you have any suggestions for how we could prevent Russian origin seafood from entering the U.S?

A: We already do this in other situations, such as antidumping – where the original source of raw materials must be tracked for products processed in a 3<sup>rd</sup> country. In these circumstances, an MID (Manufacturers Identification Number) code is provided by the U.S. importer/customs broker to identify the exporter as well as an MID for the original manufacturer/country of manufacture.

In the context of seafood and the Russian ban, a similar approach could be taken requiring only minimal changes in ACE, whereby the importer would provide the identity of the exporter (as they do now) AND the identity of the country/entity where the seafood was harvested or first landed.

This method could provide a more immediate and straightforward solution to enforce the Russian ban, rather than hastily enacting a drastic and questionable expansion of SIMP that would take years to accomplish.

**Question 4:** You mention leveraging the use of technology, such as blockchain and AI, to improve seafood supply chain transparency. How do you envision this working? And, is the SIMP expansion legislation compatible or incompatible with this approach?

The focus of any SIMP legislation should be on how current and emerging technologies can be utilized to target violative seafood shipments and to enhance the visibility of seafood supply chains. We do not yet know exactly what this will entail, but we do know the opportunities are promising. For example, the FDA is in its 3<sup>rd</sup> phase of a pilot using Artificial Intelligence to identify unsafe seafood shipments. Without sharing details of their methods, the agency tells us that the pilot is proving to be a huge success in interdicting unsafe seafood before it enters the country. I can’t help but think there must be an overlap between “unsafe” seafood and IUU seafood shipments. Can the



seafood AI program be expanded to include IUU? Or, at the very least, can NOAA learn from FDA's experience with AI and seafood?

Of even greater significance, Customs and Border Protection (CBP) is in the early stages of an acquisition process to enable the development of a new system to replace the Automated Commercial Environment (ACE) – which is the current platform connecting CBP, the Partner Government Agencies (including NOAA) and the private sector for the submission and processing of entry data.

Called ACE 2.0, this is a transformative effort to completely reimagine the entry process. ACE 2.0 will embrace 21<sup>st</sup> century processes and emerging technologies to achieve greater supply chain transparency and a completely automated supply chain. It would allow interoperability with blockchain and other future systems and incorporate the concept of “the digital twin” – where the physical movement of goods is reflected digitally. More information is available [here](#).

Achieving transparency in the seafood supply chain should be part of this effort. Instead, the SIMP expansion legislation is an overly prescriptive solution grounded in yesterday's technology. It builds upon the current plodding inefficient process, relying on vast amounts of manual data input, with no clear vision of how this data will be used to actually improve the visibility and legality of seafood supply chains.

The goals of the SIMP expansion are solid. The means to achieve those goals are not. The SIMP legislation, with its elaborate certification scheme and massive data input requirements, gets ahead of itself. Never once does it ask: is this the right approach? Can the private sector even do this? How will the government utilize this data? How can we better leverage technology? There are no pilots to test out the feasibility of this plan. There is no engagement with the private sector. We, therefore, urge Congress to rethink the SIMP legislation.

