

May 31, 2024

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National Marine Fisheries Service
1315 East-West Highway (F/IS5)
Silver Spring, MD 20910

Re: NOAA Review of Seafood Import Monitoring Program (SIMP)

Dear Ms. Cole,

Thank you for the opportunity to provide comments on NOAA's review of the Seafood Import Monitoring Program (SIMP) to strengthen implementation and enforcement of the Program. Our groups represent a collection of environmental, labor and human rights organizations, with millions of supporters in the U.S., working to combat illegal, unreported, and unregulated (IUU) fishing, seafood fraud, and human rights and labor abuses in the seafood sector.

As recent reportingⁱ, Government studiesⁱⁱ, Congressional Hearingsⁱⁱⁱ, NGO reports^{iv}, academic studies^v, Customs petitions for withhold release orders (WROs), and other sources have shown, the challenges of IUU fishing, seafood fraud, and forced labor in seafood supply chains remains daunting and ever-present, amounting to billions of dollars of illegal products that continue to enter the U.S. market, posing threats to marine ecosystems, sustainable fisheries, the safety and security of workers, the livelihoods and food security of coastal communities, maritime security, and to fair economic competition for honest fishers. The need for strong Government action to address the problem is even more critical.

SIMP is a key tool in the United States' efforts to decrease or eliminate the economic incentives to bring IUU seafood to market. The National Marine Fisheries Service (NMFS) enacted SIMP by regulation in 2016 with an explicit goal to detect, prevent, and deter the entry of illegally harvested and/or mislabeled seafood into the U.S. market.^{vi} The extensive collection, screening, and auditing of seafood import data currently taking place under SIMP provides an essential platform for furthering the current policy of the U.S. government to "limit the market for products derived from IUU fishing, forced labor, or other abusive labor practices."^{vii}

Yet, there is broad agreement that several improvements are needed, both in the immediate future and the long-term, in order for SIMP achieve its goals as an import control in detecting and deterring illegal shipments before they enter U.S. commerce, as well as to support the U.S. government's policy to combat labor abuses in the seafood sector, harmonize data collection and enforcement efforts by major market states, and reduce duplication of government reporting requirements.

A decade after the first Presidential Task Force on Combating IUU Fishing and Seafood Fraud was established, that later led to the development of SIMP, NOAA now has an important opportunity to further strengthen that Program to make it more effective at combatting IUU fishing, seafood fraud, and labor abuse in seafood supply chains. Several key improvements should be made to help SIMP more

effectively block IUU seafood and support robust enforcement against illegal fishing and labor abuses in the seafood sector.

In particular, it is critical that NOAA issue a proposed rule no later than Fall 2024 in order to update the catch information and key data elements (KDEs) collected in the data submission process, and to provide a concrete timeline for expanding SIMP to more fully cover imported species. A formal rulemaking and comment period will be required to make necessary regulatory revisions as well as to ensure transparent stakeholder participation and close interagency consultation. There are also several improvements NOAA can make without a rulemaking, such as using existing regulations to improve data collection, developing an automated risk-screening system using predictive analytics, and strengthening enforcement, including deeper coordination with other key agencies including Customs and Border Patrol (CBP), Department of Labor (DOL), Department of State (State), Department of Justice (DOJ), and the Food and Drug Administration (FDA). Finally, although not a precondition to NOAA acting to improve SIMP now, additional legal authorities may assist NOAA and partner agencies with their mission of combating IUU fishing, seafood fraud, and forced labor.

Strengthening implementation and enforcement, and expanding the scope and function of the Program could be accomplished through the following approach for addressing the broad range of priorities:

- I. **Release an Updated Proposed Rule to Strengthen Implementation and Expansion of SIMP**
 1. Create a timeline to expand SIMP to include all seafood imports.
 2. Update the timing of data submission to require prior notification (i.e., 72 hours in advance of entry) of SIMP data.
 3. Refine, align and strengthen conservation KDEs as a condition of import.
 4. Incorporate labor KDEs into the Program.

- II. **Take Immediate Actions under Existing Authority Without Need for a New Rulemaking to Strengthen Implementation and Enforcement**
 1. Develop standardized formats for SIMP data.
 2. Improve risk screening/predictive analytics.
 3. Better connect the country identification system (Moratorium Protection Act process) and other Government tools (ILAB List of Goods, State TIP Report, etc.) to SIMP.
 4. Ramp up enforcement efforts.
 5. Strengthen the Interagency working arrangement to allow for improved information sharing and threat detection.

- III. **Develop Longer-term Processes to Harmonize Requirements under Existing Authority**
 1. Evolving SIMP to align with EU catch documentation scheme as part of the EU IUU regulations, including external verification of catch data.
 2. Utilize prior notification (i.e., 72 hours in advance of entry) and conditional release to effectively reject IUU and fraudulent products.
 3. Formalize interagency workstreams, data sharing, and enforcement coordination.

- IV. **Develop New Legal Authorities to Further Strengthen Functioning**

1. Define IUU fishing to include labor abuses, across U.S. authorities.
2. Enhance criminal and civil penalties and sanctions across the board.
3. Further, amend data confidentiality provisions to allow for better sharing of information across government agencies.

Tackling the challenge of improving SIMP in this way would allow NOAA and partner agencies to create a manageable process for addressing the current issues with SIMP in a practical manner, while still taking strong concrete actions to address many of the urgent issues contributing to IUU fishing and the use of forced labor in the seafood supply chains that the U.S. is sourcing from. Doing so will also help to provide industry with more certainty about the requirements of the Program going forward and will create a pre-competitive level playing field that helps to ensure greater accountability and oversight.

More detail on this proposed framework for strengthening SIMP is outlined below.

RELEASE A PROPOSED RULE TO STRENGTHEN IMPLEMENTATION AND EXPANSION OF SIMP

1. Plan and timeline to expand SIMP to include all imports

The Seafood Import Monitoring Program (SIMP) was a direct outcome of the Obama Administration's Presidential Task Force on Combating IUU Fishing and Seafood Fraud [https://gulfcouncil.org/wp-content/uploads/A-8\(a\)IUUActionPlanReport.pdf](https://gulfcouncil.org/wp-content/uploads/A-8(a)IUUActionPlanReport.pdf) was developed with the intent of preventing the entry of illegal seafood into the U.S. market. The Task Force noted that "it is the goal of the U.S. government to eventually expand the program to all seafood at first point of sale or import"^{viii} and, that the species listed in the rule of December 2016 are a "first step" in a comprehensive program of reporting on imported seafood. However, SIMP currently only applies to 45% of seafood imported into the U.S. market. This leaves massive loopholes that are easy for bad actors to exploit.^{ix} As long as there are significant gaps in the seafood covered, there will be opportunities to launder illegally caught and misrepresented fish into the U.S. market. This creates unfair competition for the domestic seafood industry that follows the rules and is inconsistent with the policy of the Biden Administration.^x SIMP's effectiveness is also undermined by the lack of pre-import screening and enforcement shortcomings.

To more effectively combat IUU fishing, seafood fraud, and the use of forced labor in seafood supply chains, and to prevent illegal products from entering the U.S., NOAA should use its existing authorities to the fullest extent and issue a new proposed rule, that leverages the U.S.' market power, and expands the requirements for transparency and traceability to all imported seafood to ensure that illegal seafood is not entering the U.S. The U.S. has several existing authorities to make changes to improve SIMP under Magnuson-Stevens (as well as the Lacey Act and the Tariff Act), and new legislative authorities are not necessary to make the following recommended changes to strengthen the Program.

The President's NSC Memo on IUU Fishing from July 2022 called on NOAA to specifically expand SIMP:

- (a) ***By the end of 2022***, the Administrator of NOAA shall initiate a rulemaking to expand the Seafood Import Monitoring Program (SIMP) to include additional species and species groups, as appropriate. NOAA shall continue to seek resources and technological tools to improve the effectiveness of SIMP and other efforts to address IUU fishing. NOAA shall pursue its ongoing efforts to conduct risk-based assessments of SIMP species and species groups and continuously

expand coverage of the program, as appropriate, to meet the objectives of combating IUU fishing and seafood fraud most effectively.^{xi}

NOAA's withdrawal of the proposed rule to expand SIMP in 2023 meant that the Agency has still not yet fulfilled this directive from the President, despite being almost two years after it was made. NOAA should provide a timeline for when the requirements of SIMP will eventually apply to all seafood imports in the rule. SIMP requirements must be comprehensive and apply to all imported seafood so that gaps cannot be exploited by illegal operators to evade compliance. The loopholes that currently exist, as well as the gaps in coverage in tariff codes and species that are subject to SIMP requirements, undermine the effectiveness of the program and of the U.S. government's ability to adequately detect and prevent IUU-harvested fish and/or mislabeled seafood from entering the U.S. NOAA could continue expanding the Program in a stepwise approach, but **a new rule should include a clear commitment and timeline for expanding the requirements to ALL seafood imports**, within the next two to three years.

The concept of applying the traceability and information requirements of SIMP to a limited set of "at-risk" species, does not square with the reality of the IUU problem. IUU fishing risk does not break down primarily by species type. A previous analysis of public data has demonstrated that over 85% of commercial fish stocks captured worldwide are subject to a significant or moderate risk of IUU fishing.^{xii} The implications of this are magnified by the global reach of U.S. imports. In 2022, U.S. seafood imports spanned more than 100 different wild-caught species, representing over 400 diverse products from more than 130 nations. SIMP, as it was intended when developed, must be capable of disincentivizing IUU activity across the range of U.S. imports, while providing broad incentives for adoption of best practices.

The issues of illegal fishing and seafood fraud are not limited to the few species currently covered under SIMP. The current partial implementation of the program also provides an incentive for mislabeling between SIMP-listed and non-SIMP-listed products. The loopholes that currently exist, as well as the gaps in coverage in tariff codes and species that are subject to SIMP requirements, undermine the effectiveness of the program and of the US government's ability to adequately detect and prevent IUU-harvested fish and/or mislabeled seafood from entering the U.S.

In addition, not only is IUU fishing pervasive, but seafood mislabeling, particularly across similar looking species and products, is also a common practice. Bad actors will be able to continue to launder IUU-harvested products that are covered by SIMP by simply mislabeling the product to another similar product that is not covered. Current practices allow illegal fish to be concealed, mixed indistinguishably into legal product flows, even for some species that are covered under SIMP, because the requirements are not uniformly applied to all imported seafood. This lack of comprehensive coverage allows for mislabeling and misreporting to avoid compliance, and for the continued entry of illegally caught fish.

A Program that covers some species, but not others, will create significant incentives for supply chain actors to mislabel species that are covered as "at risk" to similar species that are not covered. For example, red king crab (*Paralithodes camtschaticus*) which is on the "at risk" species list, is very similar in appearance to blue king crab (*Paralithodes platypus*), which is not currently listed as an "at risk" species. It is very difficult to distinguish cooked and frozen red king crab from blue king crab. Furthermore, since both species as well as golden king crab (*Lithodes aequispinus*) all fall under the same Harmonized Schedule code for all King Crabs (0306144010), there will be ample incentive for companies to mislabel red king crab as blue king crab upon import into the U.S. to avoid the reporting

requirements. To ensure that this type of mislabeling does not occur, NOAA needs to further expand the coverage of SIMP's requirements otherwise the program will remain easy to exploit.

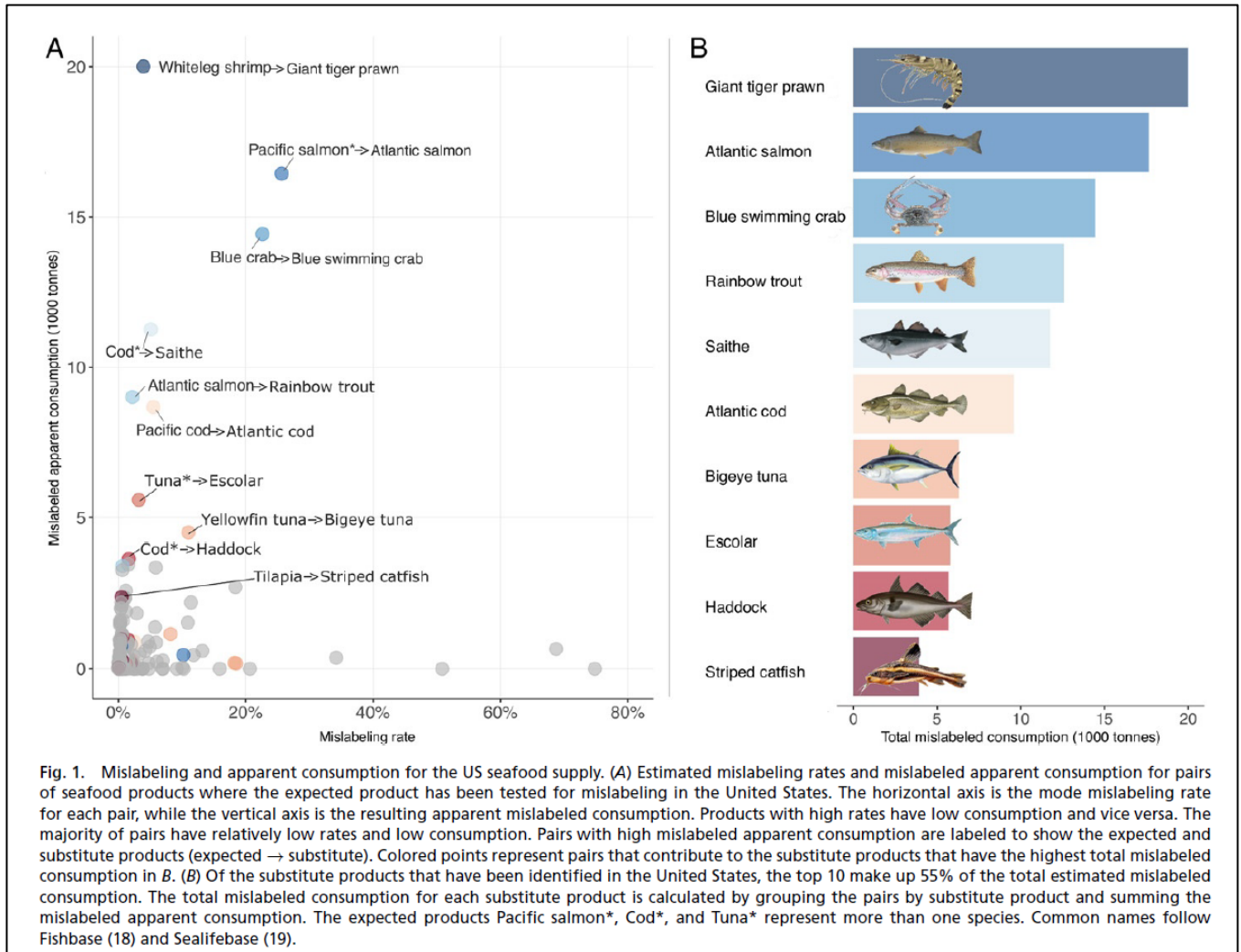
Irrespective of the route to market, products are often combined from different sources or species that are difficult to distinguish and may be mislabeled. For example, Atlantic cod fillets may be labeled as haddock or blue whiting in mixed shipments to avoid complying with NOAA's SIMP. The species that are close substitutes to both Atlantic and Pacific Cod are many and, when considered together, their aggregated U.S. import values in 2021 were \$658 million. Cusk, Haddock, Hake, Whiting, Lingcod, Alaska Pollock, Grouper, and Sablefish are all species that can be considered close substitutes to Atlantic and Pacific Cod. The majority of the value of these species' imports into the U.S. are in the commodity-product form of frozen fillets—the same product form that the majority of cod is imported under. Yet, none of these close substitute species are covered by SIMP, which can easily allow for mislabeling of cod imports as a close-substitute species to avoid compliance with SIMP. Importantly, there is IUU-harvesting risk for many of these close-substitute species in the Northwest Pacific, where catches from Russian, Korean, or Chinese vessels are often processed in China, mixed with other legal (and possibly IUU) catches, and then exported to the US. Furthermore, because the EU, another major market for these products, requires catch documentation to be reported for these products (and has since 2010), high-risk and/or illegal product is likely being diverted to markets such as the US, that do not currently have the same requirements in place for these species.

The complexity of global seafood trade makes the problems associated with IUU-fishing to be compounded by the unintentional (misrepresentation) or intentional (fraud) swap of one species for another, especially if the interchanged species are difficult to visually distinguish or "close substitutes". While some close-substitute species might be at a lower risk for being IUU-harvested, others may come from fisheries where IUU-harvesting and trade are prevalent. Without transparency of fishing practices, and traceability of seafood products through the supply chain, it can be difficult for U.S. importers to avoid trade in high-risk and illegal products.

For implementation and compliance concerns/challenges, when a selection of imports triggers extra reporting requirements upon entry into the U.S., there may be incentives for U.S. importers – or their foreign suppliers who often end up preparing the additional documentation – to represent the seafood incorrectly to bypass extra reporting requirements. The figure below highlights mislabeling rates for several SIMP-listed species and their close substitutes (Blue Swimming Crab, Saithe, Atlantic Cod, Pacific Cod, Tunas, Escolar, Yellowfin Tuna, Bigeye Tuna, and Haddock).

Figure 2 - Mislabeling Rates for SIMP-listed Species^{xiii}

Source: Kroetz et al., 2020, 2



Cod, a SIMP-listed species, may often be mislabeled as saithe or haddock - two species not presently covered under SIMP. More broadly, of the top ten substitute products that make up 55% of the estimated mislabeled consumption in the U.S. market, three are SIMP-listed while the remaining seven are not SIMP-listed, and of those remaining seven, three are close-substitutes of SIMP-listed species. By excluding close substitutes to the currently species – and, more broadly, not covering all seafood under SIMP – NOAA, CBP, and other U.S. government agencies miss the opportunity to create a mechanism that requires importers to affirmatively declare the species of all seafood upon US import. The accurate identification of species at the time of U.S. import is a key data element that is important both as a reporting element and as a recordkeeping and traceability element. While seafood fraud and mislabeling may occur at any point along a supply chain, within the U.S., there are two main places where the declared species might be able to be verified or tested, upon U.S. import and at the point of sale to a consumer.

The operational way to expand SIMP coverage to all fish and seafood would be to require that all products in Chapter 3 of the U.S. Harmonized Tariff Schedule and those products in Chapter 16 under HS

1603, 1604, and 1605 trigger SIMP requirements. NOAA would not then need to designate which individual species it was covering for inclusion. This could be done through a phased-in approach, that expands the Program initially to those species proposed for inclusion in the proposed rule, but where the final rule makes it clear that the Program requirements will apply to all imported seafood within two to three years.

Correcting the loopholes and gaps, and potential expansion of SIMP can be done by naming and listing additional “species”. To make SIMP more efficient and effective, NOAA should simplify SIMP inclusion to exclusively the HTS code criterion. When implementation and enforcement of a regulation can be streamlined, it may also lead to more consistent and streamlined business operations for all the U.S. importers that are required to comply. There are clear benefits to the expansion of SIMP, including ending the unfair competition these illegal products pose to U.S. domestic fishermen and combatting the environmental degradation illegal fishing causes. The potential denial of market access is a significant incentive for improving management and governance in foreign fisheries the U.S. sources from. By requiring information about fishing operations and restricting access to the U.S. market to only those products that can demonstrate their legal origin, the U.S. can then drive change for more responsible fisheries management.

NOAA thus needs to expand SIMP coverage to include all seafood imports, and changes to the current Program to improve the requirements for catch information, traceability, transparency, verification, and risk-screening to ensure that illegal products are not entering the U.S. and competing unfairly with U.S. products in trade. The earlier joint U.S. Government Task Force on Combating IUU Fishing and Seafood Fraud noted that “it is the goal of the U.S. government to eventually expand the program to all seafood at first point of sale or import,”^{xiv} and, that the species listed in the rule of December 2016 are a “first step” in a comprehensive program of reporting on imported seafood. NOAA now has an opportunity to close the gaps in the Program and strengthen efforts to prevent the entry of illegal fish into the U.S. market by establishing a clear timeline for expanding the requirements to all seafood imports.

2. Update timing of data submission to require prior notification of SIMP data

Part of the challenge with SIMP is that the data is collected and reviewed post entry of the product and relies on post-release audits that do not block product, totally undermining the goal of the Program to prevent illegal products from entering the market. This makes it impossible to use the Program to effectively identify and prevent illegal products from entering the market. For the Program to function as an effective import control, it has to be more than just a data collection exercise. For this to happen, it is critical that the catch information has to be submitted prior to entry of the product and the information has to be reviewed and screened to validate the legal origin. Like the EU import control system, the U.S. should require that the data required within SIMP be submitted 72 hours in advance of product entry for frozen products, and at least four hours advance of product entry for fresh products.^{xv} This will allow for CBP and NOAA to evaluate the veracity of the catch information before the product has been released onto the market.

3. Refine and strengthen the fisheries key data elements (KDEs) as a condition of import

Strengthening and refining the key data elements (KDEs) of SIMP is also needed to ensure that the information requirements can effectively identify the legal origin of products and prevent the entry of

illegal products. As currently implemented, SIMP does not clearly require an importer of record to provide certain key data elements, such as the Unique Vessel Identifier (UVI) or authorization to fish, at the time of entry into U.S. commerce.

To strengthen implementation of SIMP, a new rule should require more specific data on the following additional information that is required from importers to be recorded, and should be reported at the time of entry:

- Evidence of authorization to fish
- Unique vessel identifier (i.e. IMO number)
- Time at sea (including date of landing and offloading at end of trip or date of transshipment at-sea)
- Geographic location at a resolution of not less than 1-degree latitude by 1-degree longitude
- Chain-of-custody records, including transshipment, processors, storage facilities, and distributors
- Information on transshipment of product
- Documentation of commingling and transformation of product including: source(s), ingredients, weights, date(s), location(s), product format
- Lot and batch numbers and unique identifiers that connect commingling documents to the supply chain

This information should be required of all imports, no matter how or where they enter as an import (via air, road, rail, or sea). Some additional information that is not currently recorded or reported should be required from importers at the time of entry for the fish products, including:

- The International Organization for Standardization country code, if the catch was within the exclusive economic zone of a country
- The regional fisheries management organization (RFMO) or regional fishery body (RFB) when fishing occurs within the jurisdiction of a RFMO or RFB
- The maritime mobile service identity (MMSI) number of the harvesting and transshipment vessel (the number associated with an Automatic Identification Systems (AIS) device)
- The beneficial owner of harvesting and transshipment vessels

Table 1 below provides a summary for how some of the key data elements in SIMP should be strengthened.

Table 1 – Recommended Improvements for Reporting of Key Data Elements in SIMP

Current SIMP Information Requirements	Recommended Improvements for Current Info Requirements	Recommended New Data Elements to be Reported in SIMP
Name and flag state of harvesting vessel	n/a	Require reporting of the ultimate beneficial owner of the fishing vessel/harvest facility and any processing facility

Evidence of authorization to fish (if available)	Require evidence of authorization to fish at time of entry	n/a
Unique vessel identifier (UVI) (requested when available; not required)	Require unique vessel identifier at time of entry (IMO number should be goal)	Require reporting of the maritime mobile service identity number (MMSI #) of harvesting and transshipment vessel (the number associated with an AIS device)
Type(s) of fishing gear	n/a	n/a
Species of fish	Require the FAO 3- Alpha species codes (ASFIS)	n/a
Harvest date(s)	Require date of landing/offloading at end of trip or date of transshipment at sea at the time of entry	n/a
Product form(s) at time of landing (including quantity, weight)	n/a	n/a
Area(s) of wild-capture or aquaculture harvest	Require location of catch, including, geographic location at a resolution of not less than 1-degree latitude by 1-degree longitude at the time of entry	Require the International Organization for Standardization country code if the catch was within the Exclusive Economic Zone of a country; Require the regional fisheries management organization (RFMO) when fishing occurs within the jurisdiction of any RFMO; Require the Food and Agriculture Organization (FAO) major fishing area codes
Point(s) of first landing	n/a	n/a
Name of entity(ies) to which fish was landed or delivered	n/a	n/a
Importer of Record - Name, affiliation and contact information	n/a	n/a
NOAA Fisheries – issued international fisheries trade permit (IFTP) number	n/a	n/a
Importer of record responsible for keeping records regarding chain-of-custody	Require reporting of chain-of-custody (CoC) records including transshipment, processors, storage facilities, or distributors at the time of entry	n/a

Information on transshipment of product (declarations by harvesting/carrier vessels, bills of lading)	Require reporting of information on transshipment of product, including volumes and transformations of product at the time of entry (EU catch certificate transshipment form as model.)	n/a
Records of processing, re-processing and co-mingling of product	Require documentation of commingling and transformation of product, including: source(s), ingredients, weights, date(s), location(s), product format; Require lot/batch numbers and/or unique identifiers that connect commingling documents to supply chain	n/a

Additionally, implementation of SIMP can be strengthened by requiring data related to all commingling events (at-sea or on land), including:

- Species, date of event, facility/vessels involved, product form, and transformation steps (if any)
- Weight before and after each commingling event and mass-balance reconciliations
- Estimated live weight and conversion factors

A significant proportion of farmed seafood products also rely upon IUU wild-caught fish as the source of feed for aquaculture. This fishmeal is also at greater risk of having forced-labor on-board vessels. SIMP requirements for farmed products, such as shrimp, should be extended to encompass the entire supply chain, including the source of feed for farmed products. The basic information required to be collected should also apply to feed, to help ensure that feed produced illegally, often with forced labor, is not used in the production of the farmed product.

Strengthen Transparency Through the Use of AIS

Another way to enhance monitoring, control, and surveillance (MCS) efforts is to require greater transparency around vessel behavior, and to also make the continuous use of open-source vessel monitoring systems, like Automatic Identification Systems (AIS), a precondition for market access. Transparency of fishing vessels is a deterrent of illegal activity as it allows governments and others to know the location and movements of vessels whether they are fishing within EEZs or the high seas.

With respect to fisheries, a near continuous data stream of location points can be processed using machine learning and neural networks, as done with Global Fishing Watch, to identify patterns and behaviors. For example, fishing activity can be isolated from transiting. Offloading catch at sea, or transshipping, can now be identified by vessel behavior and the associated vessels tracked. Even the type of fishing gear used by the vessel can be inferred as the fishing behavior of a trawler is different

than a purse seiner which is different than a long liner. Access to the AIS information of a vessel can be used to verify information that has been reported and to establish whether a vessel has been operating in areas it is not authorized to fish in.

SIMP can thus be strengthened as a tool if the U.S. requires transparency of foreign vessels whose catches are exported to the U.S. by collecting a MMSI number -an identification number associated with an AIS device - as a key data element under the SIMP program and a condition of market access. NOAA, in partnership with the Coast Guard's Blue Technology Center or the Navy's National Maritime Intelligence-Integration Office, could use this information and data to help verify catch documentation and use that information to assist NOAA and CBP for risk-based screening and enforcement of seafood imports. NOAA and CBP should also establish what information should be considered at high risk of being illegally caught or produced and utilize predictive analytics to screen the data and flag which shipments are high risk for further inspection and audits.

4. Incorporate labor KDEs into the Program

SIMP was developed under Section 307(1)(Q) of The Magnuson-Stevens Fishery Conservation and Management Act (MSA) which prohibits the import of fish "taken, possessed, transported, or sold in violation of any foreign law or regulation." NOAA should seek to pursue enforcement of the full authority granted under the MSA against fish imported in violation of *any foreign law*, including laws prohibiting the use of forced labor and other labor abuses.

To ensure NOAA's full enforcement against forced labor within the authority granted under the MSA, NOAA, the Department of Homeland Security, the Department of Labor, the Department of State, and other relevant government entities should work together to identify what data could be recorded to help address the risk of forced labor in seafood supply chains, and should develop a built-in process for changing, updating, and adjusting KDEs as needed. KDEs related to labor conditions should be required as a condition of import, as well as part of a record-keeping requirement that would serve NOAA's SIMP audits, and that could be shared with other agencies conducting labor rights investigations.

Preventing the use of forced labor and ensuring safe labor conditions involves not just the country where a vessel is registered, but also the country or regional fishery management organization (RFMO) where the fishing occurs, the home country of the fishers, and the countries where the fish may be processed or consumed. Faced with this reality, it is important that tools like SIMP are deployed to address the risk of forced labor. Strong import controls that increase transparency and government oversight of imports should be used to safeguard against both IUU fishing and labor abuses, helping to bring greater transparency to opaque supply chains and level the playing field for U.S. fishermen.

SIMP is in a unique position of having broad authority to collect basic supply chain information on the origin and chain-of-custody of a product; information that is vital to stronger enforcement of other laws, including Section 307 of the U.S. Tariff Act.

Customs and Border Protection (CBP) can use the information collected in NOAA's SIMP to link an import back to an allegation of forced labor on a fishing vessel or in a processing facility to issue a Withhold Release Order (WRO) to prevent the entry of an imported product into the U.S. market. WROs depend on information collected on the origin and chain-of-custody of a product to link an import back to a vessel or processing facility where forced labor may have occurred. Without the information and

traceability requirements, however, CBP enforcement of the Tariff Act is much more difficult. Ensuring that the SIMP information and traceability requirements apply to all imported seafood will assist CBP in properly enforcing the Tariff Act prohibition on the importation of goods created with forced labor.

In addition to records on the origin or chain-of-custody of a product, NOAA should require that importers supply the following information, as a condition of import:

- Worker and crew manifests at sea, including proof of minimum age requirements (18 years of age or older) and nationality;
- Disclosure of the duration of time at sea between trips to port, as well as duration of time that vessels and crew stayed ashore at ports;
- MMSI number of the vessel (the number associated with an AIS device);
- Disclosure of crew access to Wi-Fi
- Up-to-date records of labor and fishing/vessel violations by competent authorities

It is important to note that these KDEs—in combination or in isolation—cannot in themselves constitute evidence of the definitive presence of forced labor. They should be used to flag forced labor risks to help inform NOAA’s auditing process and ensure audits are informed and based on forced labor risks, among other risks. These KDEs should also be used in the context of labor rights investigations by other government agencies, including the Department of Labor, CBP, and the Department of Justice.

The table below summarizes how these KDEs are associated to risks of forced labor:

Table 2 – Key Data Elements Associated with Forced Labor Risks

KDE	Associated forced labor risks
Worker and crew manifests at sea (including age and nationality)	Access to worker/crew manifests can help NOAA assess risks of child labor. It could also provide information on crew turnover. A high level of turnover (the percentage of crew that has left in a given period of time) can be an indicator of adverse or abusive work conditions aboard the vessel.
Disclosure of the duration of work at sea between trips to port, as well as duration of time that vessels and crew stayed ashore at ports	Excessive days at sea (more than three months), frequent port switching, and repeated transshipments of catch or transfer of crew at sea can serve as warning signs for the following ILO forced labor indicators: abuse of vulnerability, isolation, excessive overtime, abusive working and living conditions, restriction of movement, and deception.
MMSI number of the vessel	MMSI numbers are associated with an AIS device. AIS data can be used to cross-reference importers’ disclosures of the duration of work at sea and the length of time stayed at ports.

	Access to vessels’ MMSI numbers also gives NOAA information about when vessels turn off their AIS systems, which can be an indicator of IUU fishing activity, and is thus associated with labor risks.
Disclosure of crew access to Wi-Fi	Lack of crew Wi-Fi connectivity enhances workers’ vulnerability to forced labor risks. Wi-Fi access is necessary for workers to be able to exercise their right to freedom of association and collective bargaining, and thus protect their rights, including the right to protection from the risk of forced labor.
Up-to-date records of labor and fishing/vessel violations by competent authorities	These can provide NOAA with information related to previous labor rights violations, as well as details about whether and how these violations were effectively remediated. A poor past compliance record can be an indicator of overall management and risk of abuse.

NOAA should work with CBP and other relevant entities to also require record-keeping of additional information related to labor conditions from importers and supply chains as a condition of market access. These records—along with records on the origin or chain-of-custody of a product and the KDEs we propose above—can provide critical information for NOAA’s random and targeted audits of supply chains as part of SIMP enforcement and for interagency efforts to investigate and determine whether forced labor has occurred.

This information includes:

- Union/worker organization membership of crew
 - Names and contact for information for unions or worker organizations representing workers
 - Ratio of unionized workers
- Labor recruitment channel (e.g. government or private; if private, the names of the recruitment agencies or brokers.)
 - Number of workers from different countries recruited through each channel
 - Verification of no recruitment or placement fees paid, or guarantee deposits were charged to workers or deducted from wages
- Proof of crew access to effective, safe grievance mechanisms, including at-sea, that meet UN Guiding Principles on Business and Human Rights.
- Contract provisions in the language of the worker in line with ILO Convention No. 188 (hour and conditions of work, rest hours, payment protocols, etc.)
- Worker retention of identity documents
- Direct reports from workers before and after trips to verify:
 - Pay stubs (withholding, fees, deductions, payment method)

- Time at sea
- Working hours
- Freedom of movement
- Freedom of Association
- Occupational health and safety
- Communication access on board vessels

It is important to note that the KDEs listed above are helpful for assessing risks of labor abuse and potential forced labor. As such, they should not be viewed as a substitute for independent, worker-centered investigations and vessel inspection. As workers are the supply chain actors with the greatest knowledge on and interest in protecting their labor rights, workers themselves and their representative unions and worker organizations are key stakeholders that should be meaningfully engaged in government efforts to investigate forced labor. As noted elsewhere, NOAA should work with Homeland Security, Labor, and State to ensure that risks of forced labor identified through SIMP are thoroughly investigated and remediated when abuses are found.

IMMEDIATE ACTIONS UNDER EXISTING AUTHORITY TO STRENGTHEN IMPLEMENTATION AND ENFORCEMENT

There are several actions that NOAA can take immediately without the need for a new rule or new statutory authority that can help to significantly improve implementation, the functioning of the Program, and enforcement efforts.

1. Develop standardized formats for SIMP data.

The U.S. has some programs and authorities designed to combat IUU fishing, improve traceability and address human trafficking in supply chains already. These include SIMP, Section 307 of the Tariff Act, as well as traceability requirements for health and safety in the Food Safety Modernization Act.^{xvi}

One step NOAA could take immediately without the need for a new rulemaking would be to consolidate and harmonize identical reporting requirements that may exist in other regulatory programs when submitting the data into ACE to eliminate redundancies. Furthermore, NOAA should also work in collaboration with partner agencies like Customs, the FDA, Dept. of Labor, and State to identify where duplicative requirements could be more easily reported in a more comprehensive way and eliminate redundancy in requirements and ensure that the various programs are working in a complementary manner.

One goal of the Program should be to develop a system that is interoperable with private sector systems so that information can be downloaded/extracted for ease of reporting. CBP's Automated Commercial Environment (ACE) and International Trade Data System (ITDS) should refine the architecture of those reporting systems to facilitate the submission of information requirements and reduce inefficiencies in duplicative requirements.

NOAA should also work to ensure that the key data elements within SIMP are harmonized and standardized with requirements in other import control systems, particularly with EU, Japan, and RFMO catch certificate information requirements to make consistent demands from exporters across jurisdictions.

2. Improve risk screening/predictive analytics.

Another key way to improve enforcement efforts is to develop and utilize a risk-screening platform or tool that can rapidly review the information reported in SIMP to screen the data and flag suspicious shipments for further inspection and/or audits. Predictive analytics, pattern-recognition software, algorithms designed to identify shipments at risk of IUU^{xvii} and other automated tools to help identify possible illegal products should all be used to target audits and investigations of supply chains. Existing platforms like the FDA's PREDICT can be models that NOAA can use to develop a risk-screening tool. NOAA should also explore partnering with FDA to build out PREDICT so that it could be used too also screen the SIMP data. Data sharing should not be a constraint following the recent NDAA provisions amending the Magnuson-Stevens Act confidentiality provisions.

Risk screening tools should also be used in conjunction with other requirements for preventing illegal products, such as Section 307 of the Tariff Act, to prevent the entry of products made with forced labor. Customs and NOAA should be using SIMP data, alongside information gathered through the Department of Labor's International Labor Affairs Bureau (ILAB) List of Goods produced with forced or child labor, the State Department's Trafficking In Persons (TIP) report, and other information related to labor practices in supply chains to gain a more complete understanding on the origin of products. When necessary, this combination of information should be used, following an audit or investigation, to issue WROs if IUU fishing, forced labor, or other human rights abuses were used in the production of the product. An increased investment in integrated risk analysis and detection systems with a focus on IUU fishing and labor abuses in the seafood trade should also be made a priority for the CBP's Commercial Targeting and Analysis Center (CTAC) as a partner of NOAA.

3. Better connect the country identification system

NOAA should also work to strengthen systems and processes to increase the coordination and flow of information between NOAA, Customs and Border Protection, Department of State, Department of Labor and other federal agencies as appropriate. This should include considering the data collected under SIMP and all relevant sources in the application of various laws, and how that information can be used in the identification process for countries whose vessels have engaged in IUU fishing. Linking the Moratorium Protection Act/High Seas process with SIMP can mutually reinforce the effectiveness of both tools. Countries that are identified for IUU fishing can have that fact be used when screening the SIMP data to better target audits and investigations in SIMP; and irregularities and suspect data provided in SIMP can be used to evaluate whether vessels of a country have been fishing illegally. Increasing and improving data sharing would thus allow IUU fishing and labor factors to be used more effectively across government agencies and processes for risk-based targeting and screening of imports as data is reported into SIMP and other programs to comply with the various import controls.

4. Ramp up enforcement efforts.

The effectiveness of SIMP is dependent on effectively identifying and blocking illegal products from being released onto the market and imposing strong penalties as a deterrent. The economic impact of having products blocked from entry has a deterrent effect. Prosecuting violators and issuing withhold release orders for products that are of illegal origin are a key component of an effective system and a strong signal to offenders and illegal operators that they will not be able to continue to import illegal products into the U.S. Increased investment in integrated risk analysis and detection systems with a focus on IUU fishing and labor abuses in the seafood trade should be made a priority for NOAA and the CBP's Commercial Targeting and Analysis Center (CTAC) as a partner of NOAA, to more closely review the data collected within SIMP, and to facilitate stronger enforcement. NOAA, Customs, the Department of Labor, the Food and Drug Administration, and the State Department should all ensure that they are using existing authorities effectively to ensure that all products entering the U.S. market are not produced through IUU fishing or with forced labor and should work with the Department of Justice to fine and prosecute violators.

NOAA should also publicly disclose actions that have been taken with respect to enforcement and overall effectiveness of the Program, including penalties issued. Without transparency about audit procedures and how SIMP data are being verified, a lack of confidence in the program's efficacy will undermine support for the Program and impair importers' ability to get the necessary documentation from their suppliers.

5. Strengthen the Interagency working arrangement

Finally, NOAA and partner Agencies should utilize the Maritime SAFE Working Group to create more formal structures for interagency collaboration in enforcing the Program. NOAA should lean on the expertise of colleagues at Labor and State to address issues related to the use of forced labor in seafood supply chains and should create processes and systems for utilizing that expertise when reviewing the data collected in SIMP, evaluating what key data elements may be indicators of risk for forced labor, conducting audits and investigations, and making recommendations Customs' holds on products.

DEVELOP LONGER-TERM PROCESSES TO HARMONIZE REQUIREMENTS UNDER EXISTING AUTHORITY

The future of the program as an effective traceability-based import control program within the contexts of global fisheries management, complex seafood trade dynamics, and a "whole-of-government" approach among U.S. agencies, should evolve to become more a broad-based system of seafood market access requirements for transparency and traceability (SMARTT). In particular the several steps should be prioritized for an ongoing, longer-term process to improve the Program:

1. Evolving SIMP to align with EU system, including external verification of data

External verification of the data by competent government authorities with jurisdiction over catches/harvest is a key component of the EU import control and catch certificate scheme. Incorporating that element of external verification of the catch information into the U.S. system through a hybrid model that also requires a catch certificate where the catch information has been reviewed, verified, and validated by external competent authorities, will help to strengthen confidence in the data

that is reported, and the integrity of the information submitted into SIMP. Adding this requirement for a strong verification system is needed to have in place real-time monitoring of information to review the accuracy and honesty of the information reported.

Exclusive reliance on self-declaration of information by supply chain actors combined with U.S. Federal Government action for verification will not be enough to prevent IUU fishing and seafood fraud from continuing. A key component in a strong verification system is the independent review of information as the fishing activity occurs and when the products is first landed. In a strong verification system, U.S. regulators should eventually be able to access as much of the underlying information as possible, such as a database with vessel registration and license information, vessel monitoring and tracking systems, and other data that can confirm the legitimacy of an operator. The quality of the data that is collected and reported then is important in making credible claims to the legal status of the product and the fishing activity.

Because U.S. regulators cannot be present on all foreign fishing vessels or at ports where the product is landed, a strong verification system needs to also rely upon verification of the fishing activity itself. Verification of information should be conducted by the competent authority with jurisdiction over the management of fishing operations and the catch. This type of verification system is already in place within many RFMOs that require catch documentation for the trade of certain species (i.e. Bluefin tuna within ICCAT or toothfish within CCAMLR) and accepted by the U.S. as well as in the EU import catch certificate system.

Verification then should be required, for additional review and approval of the reported information, by a competent authority responsible for management of the fishing operations and catches. The U.S. needs these partners to verify the information on the legal origin of products. It cannot do it alone and it is still too easy for fraudulent information to be recorded and reported if all that is required are self-declarations from the operators themselves.

Harmonizing the catch information reported in SIMP with other major market state import control requirements, namely the EU and Japan, should also be a priority. Many of the suppliers throughout Asia, and elsewhere around the world, that comply with these EU and Japan requirements, and have in place the necessary traceability systems and catch information to document legal origin, are some of the same suppliers to U.S. importers. SIMP provides a strong foundation to do this with existing data reporting and as a system for electronically reporting that data. Even the EU system is moving towards the development of an electronic reporting system similar to SIMP, where importers have to provide the catch info contained in their catch certificates, through the establishment of their new tool CATCH IT. NOAA should work to ensure that the key data elements required in a validated catch certificate where the information has been externally verified, as in the case with EU system, are identical to the KDEs required to be reported in both the EU and Japan catch certificate schemes, and should follow the EU's lead to establish a timeline for transitioning to a fully electronic traceability system for capturing critical tracking events.

2. Utilize prior notification and conditional release to effectively reject IUU product

Requiring that the catch information be submitted within SIMP prior to entry of the product and utilizing a risk-screening system to evaluate the data and flag potentially illegal shipments, also allows NOAA and Customs the opportunity to conduct audits and investigations prior to the release of that product onto the market. NOAA and Customs should take advantage of their existing authority to issue a “conditional release” of imports where questions around the veracity of the information exist, to allow for investigations to take place prior to official release of the product onto the market.

This would still allow importers the ability to move their products from containers at a port into a cold storage facility to prevent spoilage for perishable goods, while still providing Customs and NOAA more time to evaluate whether products are legal or not. This conditional release can still lead to products being released onto market or Customs can issue a withhold release order to prevent their release. But the key is that authorities have more time to evaluate the legality of a product before it has been released onto the market and allows for NOAA and Customs to more effectively prevent illegal products from entering commerce.

Formalize interagency workstreams, data sharing and enforcement coordination.

While NOAA is engaging in interagency consultation now, agencies should seek to formalize these partnerships and priorities to ensure future information sharing and enforcement coordination. The Maritime SAFE’s existing Interagency Working Group on IUU Fishing should be fully utilized to help address the functioning of SIMP to identify, block and prevent the trade in seafood derived from both IUU and forced labor. The Working Group’s [5-Year National Strategy](#), issued in 2022, includes Strategic Objective 3 to “Ensure Only Legal, Sustainable, and Responsibly Harvested Seafood Enters Trade,” with a SIMP-specific workstream to “develop a modernized information systems approach to identify shipments most at risk of containing IUU fish and fish products using predictive analytics, artificial intelligence, machine learning, and cloud technology.”^{xviii} Developing a formal structure for accomplishing that objective will enhance NOAA’s efforts and Customs’ responsibilities to fully block illegal products from entering trade.

DEVELOP NEW LEGAL AUTHORITIES TO FURTHER STRENGTHEN FUNCTIONING

NOAA, CBP, and partner agencies have substantial legal authority under the Magnuson-Stevens Act, as well as the Lacey Act and the Tariff Act of 1930, to require submission of information to enforce federal prohibitions on the importation of illegally caught fish and fish products, including those produced by forced labor.^{xix} The Seafood Import Monitoring Program has already withstood scrutiny of a federal court, which upheld NMFS’s authority to promulgate regulations pursuant to sections 305(d) and 307(Q)(1) of the Magnuson-Stevens Act.^{xx}

While none of the following are prerequisite to NOAA acting to improve SIMP now, certain legislative clarifications or supplemental authorities may prove useful in meeting the goals to strengthen the Program.

1. Define IUU fishing to include labor abuses and harmonize across U.S. authorities.

U.S. authorities to combat IUU fishing would benefit from a comprehensive definition of illegal, unreported, and unrelated fishing that is consistent with the FAO definition and incorporates “forced

labor” as defined by the Tariff Act of 1930. This will provide the U.S. the discretion and ability to identify more countries whose vessels are engaged in IUU fishing and not be limited by a narrow definition that automatically precludes some countries from being listed.

2. Enhance criminal and civil penalties, seizure authority, and international sanctions for countries and beneficial owners supporting IUU Fishing.

Several legislative proposals have been introduced in the current and past Congressional sessions to strengthen enforcement^{xxi} and NOAA should review and support proposal, particularly those that enhance their ability to impose criminal and civil penalties, seize assets, and sanction countries and beneficial owners that are benefitting financially from IUU fishing and forced labor.

3. Further amend data confidentiality provisions.

Enhancing transparency of data collected across federal agencies and with the broader public will improve efforts to combat IUU fishing, and broader reforms will likely be necessary to achieve this. In its proposed rule that was withdrawn NOAA provided a clarification amending fisheries data confidentiality requirements, that such requirements are not applicable to information collected from foreign fishing vessels.^{xxii} NOAA should make data regarding the identity of foreign vessels, such as vessel license and registration information, authorizations to fish, vessel positions, and beneficial ownership of vessels publicly available. Furthermore, NOAA should also work with partner agencies to ensure that U.S consumers and civil society more broadly have more flexible access to information regarding seafood on the U.S. market, including country of harvest and vessel information. In addition to consumer-facing information, the imperative of making growingly complex supply chains more traceable (including for domestically caught seafood) make it critical for third party auditors and certification systems to have reliable access to aggregated harvest data, supply chain, and other data collected by NMFS.

NOAA should think of the Program as a dynamic system that may need to be updated periodically to respond to changes in behavior, advances in technology, updates to policies and laws, and build a process for regular review and updates as needed to respond to a changing context. As such, SIMP should be routinely reviewed at regular intervals to potentially update the Program and to properly address any changes in behavior, shifts in IUU fishing or illegal trade patterns and methods, technology, legislative changes, etc. When needed, NOAA should seek out additional resources from Congress and the White House to help strengthen implementation and enforcement of the Program.

CONCLUSION

IUU fishing is one of the greatest global environmental threats to ocean health. Representing up to a third of global catches, IUU fishing directly contributes to overfishing, threatening the sustainability of fisheries and marine ecosystems; undermines coastal communities and food security; destabilizes the security of maritime states, economically disadvantages fishers operating legally; and drives human trafficking and labor and other human rights abuses in the fishing industry.

Given that the U.S. is the largest importer of seafood in the world, it is all the more critical for NOAA to play a leadership role in eradicating IUU-fishing and seafood fraud. More collaborative work needs to be done to close the loopholes in SIMP and expand coverage in a way that is implementable and enforceable and achieves the stated aim of preventing IUU-harvested and/or misrepresented seafood from entering US commerce.

It is critical for NOAA to continue taking strong action to combat IUU fishing and forced labor in seafood supply chains. Absent strong measures, the combined and often compounding effects of IUU fishing, climate change, and labor violations will severely and increasingly undermine marine ecosystems and the communities that depend on them and will significantly exacerbate the socio-political and environmental impacts of climate change. Greater interagency action by NOAA and partner agencies to address the environmental and social challenges posed by IUU fishing and forced labor will strengthen the durability and resilience of global fisheries. This will ensure greater economic prosperity for American fishers, reduce labor abuses around the world, increase food security, and promote healthier marine ecosystems and sustainable fish stocks while securing the livelihoods of coastal communities that depend on them.

We look forward to working with NOAA and partner agencies to help strengthen SIMP. By incorporating the recommendations proposed above and establishing strong measures to improve the effectiveness of SIMP to combat IUU fishing, NOAA can greatly improve implementation of SIMP, and help to address the use of forced labor in seafood supply chains. Strong action from NOAA will help to protect the environment, workers, consumers, and honest U.S. fishermen from the damaging effects of IUU fishing and forced labor in seafood supply chains.

Thank you for the opportunity to provide comments.

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ENDNOTES

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- ^{ix} As indicated in 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.”
- ^x According to the National Security (NSC) Memorandum signed by President Biden: “It is the policy of my Administration to address the problem of IUU fishing, including by distant water fishing vessels, and associated labor abuses, including the use of forced labor in the seafood supply chain. I hereby direct executive departments and agencies (agencies) to work toward ending forced labor and other crimes or abuses in IUU fishing; promote sustainable use of the oceans in partnership with other nations and the private sector; and advance foreign and trade policies that benefit U.S. seafood workers.”
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- ^{xiv} 15 CFR Part 902; 50 CFR Parts 300 and 600; Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-09/pdf/2016-29324.pdf>
- ^{xv} Amend regulations at 50 CFR 300.324 which currently require reporting at time of entry.
- ^{xvi} Tariff Act Sec. 307 as amended by the Trade Facilitation and Trade Enforcement Act “[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.”
- ^{xvii} Some combinations of the key data elements – such as vessel flag, location of fishing operations, and species targeted – may be indicators of possible IUU fishing. For example, vessels flagged to China and operating off the coasts of South America that are targeting squid may be of greater likelihood of having engaged in IUU fishing based on an analysis of AIS data. [tps://usa.oceana.org/press-releases/oceana-finds-hundreds-hidden-chinese-vessels-pillaging-waters-argentina](https://usa.oceana.org/press-releases/oceana-finds-hundreds-hidden-chinese-vessels-pillaging-waters-argentina)
- ^{xviii} U.S. Interagency Working Group on IUU Fishing, [National Five-Year Strategy for Combating Illegal, Unreported, and Unregulated Fishing](https://www.fishbase.org/interagency-working-group-on-iuu-fishing) (2022).

^{xix} Lacey Act, 16 U.S.C. § 3372(a)(2); Tariff Act 1930, 19 U.S.C. § 1307; *see also United States v. Flores-Montano*, 541 U.S. 149, 152 (2004) (“The Government’s interest in preventing the entry of unwanted persons and effects is at its zenith at the international border.”); *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (“Since the founding of our Republic, Congress has granted Executive plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant, in order to regulate the collection of duties and to prevent the introduction of contraband into this country.”).

^{xx} *Alfa Int’l Seafood v. Ross*, 264 F. Supp. 3d 23 (D.D.C. 2017).

^{xxi} See, e.g. Illegal Fishing and Forced Labor Prevention Act, H.R. 3075 (117th Cong.); Fighting Foreign Illegal Seafood Harvests (FISH) Act of 2023, S. 1227 (118th Cong.).

^{xxii} National Marine Fisheries Service, Proposed Rule, Confidentiality of Information, 89 Fed. Reg. 17,358 (Mar. 11, 2024).