

March 28, 2023

Thank you for the opportunity to submit public comment on proposed revisions to the U.S. Seafood Import Monitoring Program (RIN 0648-BK85). The Stimson Center is a nonprofit, nonpartisan research institution based in Washington, DC that supports policy action to effectuate durable global change. Our Environmental Security Program has conducted extensive research and published reports on the security threats of Illegal Unreported and Unregulated (IUU) fishing and the importance of effective implementation of NOAA's seafood trade monitoring programs.

This rule has been seven years in the making, as such we commend the National Marine Fisheries Service (NMFS) for proposing to expand to new species including squid, cuttlefish, octopus, eels, Caribbean spiny lobster, and queen conch. Congress specifically directed NOAA to:

Develop a priority list of other species that should be considered for inclusion in the Seafood Import Monitoring Program in accordance with the House Report 116-455 Accompanying the Consolidated Appropriations Act, 2021 (Public Law 116-260) to:

- Reduce human trafficking in the international seafood supply chain;
- Reduce economic harm to the American fishing industry;
- Preserve stocks of at-risk species around the world; and
- Protect American consumers from seafood fraud.

Based on this language and last year's Report to Congress "Developing a Priority List of Species for Consideration Under the Seafood Import Monitoring Program" the proposed rule falls short of meeting its own goals and criteria.

The rule does not go far enough to address the problems of illegal and fraudulent seafood imports entering the U.S. market. It does not address labor concerns, or level the playing field economically for the U.S. fishing industry. It can do much more to help improve fishery resources globally and provide consumers with the confidence that the seafood they consume is safe and not caught illegally. Furthermore, the rule does not address issues needed to improve the overall effectiveness of the program. To address these concerns, more serious measures need to be adopted to strengthen implementation of SIMP, expand the species list, increase risk targeting and global harmonization and address the use of forced labor in the supply chain.

In a recent report to Congress on the Maritime Security and Enforcement Act, NMFS highlighted several IUU fishing investigations they and other agencies conducted involving a variety of imported tuna species, sea cucumber, lobster, shark species, Atlantic Cod and shrimp species,

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INNOVATIVE IDEAS CHANGING THE WORLD

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showing that SIMP if expanded and resourced adequately can work as a deterrent to stop IUU fish and fraudulent species from entering US commerce.¹

Stimson appreciates NOAA's effort to add groups of species to (SIMP through this rulemaking. If done effectively and as the first component of a larger public process, to expand SIMP to all species, it will protect our domestic industry and consumers from illegal and misrepresented seafood. The Stimson Center recommends that NMFS incorporate the following measures in the development of its proposed rule and implementation of SIMP, as summarized below:

Program Scope

- Include additional species considered to be at risk of IUU fishing such as the Blue Swimming Crab, Salmon, and Pollock species in this SIMP rule.
- Begin a transparent public process to evaluate additional at-risk species to help target, identify, evaluate, and prevent IUU-caught fish from entering U.S. markets, including additional at-risk species.
- Add data reporting requirements to address Forced Labor.

Data Harmonization and Understanding Risk

- Align data reporting requirements across NOAA's Trade Monitoring Programs
- Fully digitize entry filing in ACE
- Commit to risk-based import screening that expands risk beyond species to other IUU fishing-related activities including at risk: landings, transshipment, ports, flag states, vessels, companies/owners, processing activities, labor abuses and aquaculture facilities and farms.

Transparency

Increase the transparency of SIMP rulemaking:

- Extend the Public Comment Period if NMFS engages the public; and
- Issue a new revised proposed rule.

Extend the public comment period *Only* if NMFS:

- Holds public meetings and webinars on the rule and SIMP-related improvements that include an open dialogue so that interested stakeholders can better understand the proposed rule, be able to ask clarifying questions, and offer suggestions for improvements.
- Conducts interagency review from Federal agencies who are part of the Maritime Safe Working Groups or CALM-CS;

¹ https://media.fisheries.noaa.gov/2021-08/SAFEACTReport_Enforcement.pdf

- Uses the extended time to solicit public comments on the National Defense Authorization Act (NDAA) requirements related to the labor provisions, SIMP expansion and risk targeting; and
- Uses the information to issue a *new* revised or supplemental rule to implement SIMP more effectively and evolve the Program into a more successful tool to combat IUU fishing, seafood fraud and forced labor in seafood supply chains.

PROGRAM SCOPE

Global fishing is big business. It is estimated that at least 20 percent of global seafood trade is caught through Illegal Unreported and Unregulated (IUU) fishing, with annual losses estimated at over \$25 billion. It is also estimated that 1 in 5 fish harvested globally are mislabeled. IUU fishing threatens the economic, food and environmental security of coastal communities by undermining fisheries management efforts and distorting trade. Seafood mislabeling and misrepresentation can harm the health of consumers and undercut the value of legal fish on the market. With the U.S. importing 85 percent of the seafood it consumes, it has much at stake to get it right, not only for consumers, but also for our seafood industry and fishers.

This proposed rule could be much stronger, as drafted it only proposes to expand SIMP traceability requirements to eight species groups - representing a five to 10 percent increase in the program's current coverage. This amounts to just over half of all seafood imports covered by SIMP, and therefore the door remains open for billions of dollars of IUU fish and mislabeled seafood products to flood the U.S. market.

According to a 2021 report of the U.S. International Trade Commission, the U.S. imports over \$2 Billion of IUU-caught seafood annually.² To meet the expectations of domestic consumers and protect industry from unfair competition, it is in the best interest of the nation for SIMP to eventually cover all seafood as soon as practicable. This rule provides a great opportunity to continue to phase-in and expand SIMP to species which are clearly part of the IUU fishing and seafood mislabeling industry and which meet the criteria outlined in this SIMP rule. However, this rule has missed the mark. Further expansion will need to be added as a greater deterrence layer to prevent IUU fish and mislabeled or fraudulent fish from entering the United States. Seven years ago, the 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," and, that the species listed in the rule of December 2016 are a "first step" in a comprehensive program of reporting on imported seafood. Now in 2023 a further and more ambitious expansion is still needed to reach that goal.

Include Blue Swimming Crab, Pollock, and Salmon species in this SIMP Expansion

The proposed rule offers a short list of new species to be included under SIMP. Of the seven original criteria for inclusion under SIMP, only four appear to be selectively applied. For example, the justifications provided for proposed new species includes an extensive discussion

² https://www.usitc.gov/press_room/news_release/2021/er0318ll1740.htm

of violations history and misrepresentation, yet discussions of catch documentation schemes and supply chain complexity in the rule are brief or absent. It is also unclear how or if the “goals” outlined were factored into NMFS decision-making. The explanations provided raise many more questions regarding the internal process of selecting these species, which we hope NMFS will clarify.

The inclusion of squid and cuttlefish is commendable, as these species are targeted by the Chinese distant water fleet which are known to engage in IUU fishing and unsustainable squid fishing practices in the Yellow Sea and off South America. The addition of tuna and tuna-like species are also well justified, given the complexity of market names for these species and the documented history of IUU fishing. However, other species that are known to be harvested and processed through illegal means, co-mingled with other IUU fish species, mislabeled and with forced labor were excluded from the proposed list of expanded species with little justification, notably the Blue Swimming Crab, Pollock, and Salmon.

The case for including the blue swimming crab is particularly strong, as discussed in NOAA’s 2022 Report to Congress on SIMP.³ The report cites continued problems with IUU fishing and misrepresentation of the species in U.S. commerce, and states that inclusion of these species in SIMP would “reduce economic harm to the American fishing industry” and “protect American consumers from seafood fraud.” The report further notes that “Blue Swimming crab is subject to IUU fishing in Indonesia and Vietnam where there is little management in place. Species substitution of swimming crab for Atlantic Blue Crab remains common.” Stimson agrees and does not see a reason for NMFS to have removed these species from inclusion in this proposed rule. Without inclusion it continues to undermine the economic security of hardworking fishers along the Atlantic coast and Chesapeake Bay. It is the only species discussed at length in the NMFS 2022 report to Congress that was not included in this proposed rule. Blue swimming crab species clearly fit within NOAA’s principles for inclusion. Implementing SIMP for blue swimming crab would be comparable in burden to other species currently covered under the program.

There is also a compelling case for including pollock and salmon species in SIMP, both listed as under consideration by NMFS in 2022. Russian seafood is banned from import to the US, yet despite this, Russian-caught pollock and salmon⁴ still enters U.S. commerce. Russian-caught pollock and salmon are known to be co-mingled and mislabeled in Chinese processing facilities alongside legally harvested pollock and salmon from the U.S. and other harvesting countries. These fish are re-exported to the U.S. as a product of China as frozen blocks, fish sticks and canned products.⁵ Further, Pacific Salmon is often mislabeled and sold as Atlantic Salmon.

Begin a transparent public process to evaluate additional species.

³ <https://media.fisheries.noaa.gov/2022-03/NOAA%20NMFS-Seafood%20Import%20Monitoring%20Program%20Priority%20List%20Report.pdf>

⁴ Frank Asche, et al., “China’s seafood imports – Not for domestic consumption?” *Science*. January 27, 2022. 375: 6579, 386-388, <https://www.sciencemag.org/doi/10.1126/science.ab14756> (Accessed March 23, 2023).

⁵ <https://www.wsj.com/amp/articles/russian-fish-find-way-onto-american-tables-despite-import-ban-11649329202>

The 2022 Report to Congress on SIMP identifies 44 priority species and species groups under consideration for inclusion in a potential risk-based expansion of SIMP that were ultimately not included in this proposed rule:

1. Mackerel
2. Menhaden
3. Mussels
4. Opah (Sunfish, Moonfish)
5. Oyster
6. Orange Roughy
7. Anchovies
8. Billfish (Marlins, Spearfishes, Sailfishes)
9. Catfish (Family *Ictaluridae*)
10. Crabs, Atlantic Blue (and other)
11. Crab, Dungeness
12. Crab, Blue King
13. Crab, Brown King
14. Crab, Golden King
15. Crab, Snow
16. Red Drum
17. Sablefish
18. Salmon, Atlantic
19. Salmon, Chinook
20. Salmon, Chum
21. Salmon, Coho
22. Salmon, Pink
23. Salmon, Sockeye
24. Scallops
25. Sea bass
26. Seaweed (Algae)
27. Shellfish (Class *Bivalvia*)
28. Skates and Rays
29. Sole
30. Sturgeon caviar
31. Tilapia
32. Toothfish
33. Trout
34. Flounder, Southern
35. Flounder, Summer
36. Haddock
37. Halibut, Atlantic
38. Halibut, Pacific
39. Perch, Lake (Yellow)
40. Lobster, American
41. Wahoo
42. Walleye (Alaskan) Pollock
43. Weakfish
44. Whiting, Pacific

The failure to provide justification for excluding these species does a disservice to the public who seeks to provide supporting evidence for their inclusion. For species proposed for expansion in this rulemaking, NMFS cites new information released in the years after SIMP was established in 2016 as the justification for the inclusion of the proposed additional species. It is unclear how NMFS applied its principles and goals in a way that led to the exclusion of these species, as evidence exists for most if not all to be included. NMFS should provide a detailed explanation as to how each of the species listed above were considered, and why they were excluded from this proposed expansion of SIMP. In response, the public can offer supporting evidence to either substantiate or refute NMFS assessment.

Add data reporting requirements to address forced labor.

This proposed rule references the 2016 SIMP rulemaking perspective on labor as the agency's current stance. This is misaligned with the Biden Administration and NOAA's stated priorities and ongoing efforts to include labor in its work to counter IUU fishing. The Biden Administration has begun to integrate fisheries trade regulations and labor under the National Security Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses (NSM-11), and NOAA has proposed amending the definition of IUU fishing to include labor in the proposed Implementation of Provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, and the High Seas Driftnet Fishing

Moratorium Protection Act (RIN 0648-BG11). NOAA’s new public-private initiative—the Collaborative Accelerator for Lawful Maritime Conditions in Seafood (CALM-CS) seeks to support implementation of best practices in labor across the seafood industry.

Addressing forced labor in IUU fishing is a priority area for other agencies including the Department of Labor, the Department of State, and the Department of the Treasury. The 2022 Trafficking in Persons report identifies the fishing industry as a known source of forced and child labor around the world.⁶ The Department of Labor's Bureau of International Labor Affairs reports the List of Goods Produced by Child Labor or Forced Labor. In 2022, the list included 19 countries which use child or forced labor in the production of fish and shellfish.⁷ Several of the countries included on the list, notably China, Indonesia, and Thailand, are major exporters to the US. In December 2022, the Department of the Treasury’s Office of Foreign Asset Controls (OFAC) sanctioned two individuals, Li Zhenyu and Xinrong Zhuo and their network of assets, including Dalian Ocean Fishing Co., Ltd. and Pingtan Marine Enterprise, Ltd. for serious labor and human rights violations committed onboard company vessels. Other agencies take labor and human rights violations in the seafood sector seriously, and NOAA claims to do the same, yet its failure to include labor in the proposed rule not only undermines their own initiatives, but those of other sister agencies as well.

Efforts to identify data elements that could be used to detect risk of labor violations continue to evolve, but an initial step could be the addition of an attestation that the seafood to be imported was harvested in accordance with applicable labor laws. The attestation itself could be a simple checkbox, but its presence will help elevate the issue of and accountability for responsible labor practices in fisheries with industry and provide a new resource for risk targeting and enforcement to NOAA and partner agencies. NMFS should also work with the Department of Labor to identify new data elements that would support the implementation of the Moratorium Protection Act such that it could identify transshipment, trip duration, proof of vessel tracking information and beneficial ownership of vessels.

DATA HARMONIZATION AND RISK TARGETTING

Align Key Data Elements globally.

The US, EU, and Japanese markets import over \$65 billion of seafood each year. As much as 85% of seafood consumed in the U.S. each year is imported.⁸ Several countries will soon adopt seafood import controls, including Canada and Australia. Greater harmonization of key data elements and traceability requirements would help eliminate loopholes that allow IUU-caught and mislabeled seafood to enter U.S. and global markets. These loopholes create a huge disadvantage for honest fishers and the best practices of industry actors who try to follow the law.

Align data reporting requirements across NOAA’s trade monitoring programs.

⁶ <https://www.state.gov/reports/2022-trafficking-in-persons-report/>

⁷ https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPRA-List-of-Goods-v3.pdf

⁸ <https://www.fisheries.noaa.gov/national/aquaculture/us-aquaculture#:~:text=The%20United%20States%20imports%2070,is%20produced%20via%20foreign%20aquaculture.>

We commend NMFS for consolidating its seafood trade monitoring programs under the Office of International Affairs and Trade Commerce with the stated goal to better serve industry through this reorganization. Alignment of these requirements is an excellent opportunity to serve this mission. Standardized data requirements will minimize confusion across the industry caused by multiple programs that require different documentation and digitized information during entry filing. This proposed rule mentions that NMFS is working on an update to its Implementation Guide but does not provide any further details. The efficacy of SIMP as a deterrent to importing illegally harvested and misrepresented seafood is directly tied to the quality and quantity of data input in the Automated Commercial Environment (ACE) system managed by U.S. Customs and Border Protection. We urge NMFS to provide an update to its Implementation Guide as a supplementary document for public comment associated with this rulemaking.

Table: Variability in ACE message set across NMFS trade monitoring programs as compared to the Certification of Admissibility form.

Data element	COA form	TTVP ACE message set	HMS ACE message set	AMLR ACE message set	SIMP ACE message set
Species	X	X (partial)	X (partial)		X
Harvest Type					X
Country Code		X	X		X
Harvest Location		X	X		X
Harvest Date					X
Fishing Gear	X	X			X
Vessel information	X	X (limited)	X (limited)		X (name, flag, ID)
Product Form at landing	X				X
Product Weight at landing	X				X
Signed Attestation (upload)	X	X	X	X	

Programs identified are the Tuna Tracking and Verification Program (TTVP), Highly Migratory Species Program (HMS), Antarctic Living Marine Resources Program (AMLR), and Seafood Import Monitoring Program (SIMP).

Alignment of data elements across NMFS programs is a critical first step, as it opens the door to improved interagency data sharing and collaborative enforcement while simultaneously reducing the burden on law-abiding industry. This will be critical to the success of SIMP as the program continues to expand.

Fully digitize entry filing in ACE.

After seven years, in many ways SIMP has become an administrative data reporting program that is not meeting the goals and objectives that were set out in 2016. This proposed rule does not include improvements to the recordkeeping provisions of SIMP. Industry and government are best served by fully digitized traceability systems. To that end, we suggest that the program should consider the merits of full digitization and design a system which incorporates full digitization throughout the seafood supply chain. Unlike electronic data, paper records are difficult to review in large volumes, easily falsified and damaged, and burdensome to maintain. Other countries, including the EU, UK, Australia, and Japan mandate the use of electronic catch documentation in their import monitoring programs. NMFS should leverage this rulemaking to phase in the mandated use of standardized electronic catch documentation to reduce the falsification of supply chain records and support ACE submission of full supply chain recordkeeping if requested by NMFS.

Furthermore, harmonizing key data elements globally and mandating the use of electronic catch documentation would reduce the burden on industry, who currently have to use an entirely different catch documentation system to import to the US.

Commit to risk-based import screening and improve risk analytics.

NMFS states in the recently released Initial Regulatory Flexibility Analysis that SIMP is “just one” of the agency’s tools to combat IUU fishing and seafood fraud. While it is true that other programs exist to combat IUU fishing, SIMP is NOAA’s main asset. It has a unique value as the only U.S. trade monitoring program developed specifically to detect, target, and deter imports of illegally harvested and misrepresented seafood. Unlike any program of its kind in the world, SIMP requires fully digitized data on harvest and landing information prior to import, which allows all imports to be screened in real time. Since its inception, industry has worked to comply with the requirements of SIMP, including digitizing and reporting data from fisheries to the U.S. Customs and Border without disrupting trade. However, NOAA still has not fulfilled its part of implementation to use the reported data to protect the seafood industry and U.S. consumers.

NOAA has the authority to keep illegal seafood out of the U.S. by fully utilizing SIMP data through pre-import screening, post-import auditing, and working continuously with the interagency community. This proposed expansion of SIMP must be accompanied by a robust commitment from NMFS to better implementation of this program.

NOAA, and other agencies, receive a wealth of data and information on IUU fishing and seafood fraud around the world. The global data and information available provide a good picture as to which species are IUU caught, where forced labor occurs, which vessels and flag states engage in IUU fishing, where questionable transshipment takes place, the ports where IUU catch is landed, and where it is processed, and mislabeled and subsequently exported to the U.S. Through the SIMP program, NOAA collects key data elements from the harvest event to the point of entry into U.S. commerce. This data and information should be used to improve SIMP’s risk targeting capabilities. However, less than 1% of seafood imports under SIMP are audited, and too often fail. The improved use of the available data and information through the adoption of risk targeting and machine learning could improve the efficiency and efficacy of audits and help NOAA fulfill its mandate to keep illegal and mislabeled seafood out of U.S. commerce.

There is no need to reinvent the wheel. NMFS should take advantage of risk analytic systems already utilized by other federal agencies. For example, the Food and Drug Administration (FDA) screens up to 50 million imports a year for health and safety, including seafood. The FDA uses the PREDICT⁹ system, which electronically reviews trade data and targets risk screening for fraudulent and adulterated products. There is no reason for NMFS, which does not have a trade risk targeting background, to create its own system when other existing federal programs could be customized for SIMP.

TRANSPARENCY

Extend the public comment period and issue a new revised proposed rule with extended public comment.

Between 2014 and 2016, NOAA held at least four public meetings on the proposed SIMP rulemaking at the time. This issue continues to be a high interest topic and warrants the public engagement which NOAA normally provides in their rulemaking process. In this case, NOAA has not held any public webinars or listening sessions, or provided opportunities to the public to better understand the rule. Today, NMFS has an opportunity to improve this SIMP rulemaking in two ways: First, we recommend that NOAA extend the proposed rulemaking *only* if they actively engages the public through meetings and webinars on the rule and SIMP related improvements that include an open dialogue so that interested stakeholders can better understand the proposed rule, ask clarifying questions, and offer suggestions for improvements. Second, we recommend that NOAA issue a revised proposed rule to accommodate a more thorough public process on SIMP expansion and recent requirements in the NDAA with extended public comment.

In both cases NOAA should:

- Conduct an interagency review process with partner Federal agencies who work with NMFS on the Maritime Safe Working Groups or CALM-CS;
- Use the extended comment period to solicit public comments on implementation of the NDAA requirements related to the labor provisions, SIMP expansion and risk targeting; and
- Treat this proposed rule as a first step toward issuing a revised or supplemental rule to more effectively implement SIMP and evolve the Program into a more successful tool to combat IUU fishing, seafood fraud, and forced labor in seafood supply chains.

The recently passed National Defense Authorization Act included a number of actions to strengthen SIMP. In summary, the NDAA directs NMFS to:

1. Develop a strategy to improve the quality and verifiability of already collected SIMP data elements in the Automated Commercial Environment (ACE) system.
2. Harmonize ACE data standards and entry fields.
3. Implement sufficient SIMP auditing to ensure representative sample of all entries.

⁹ <https://www.fda.gov/industry/fda-import-process/entry-screening-systems-and-tools#predict>

4. Establish sufficient capacity for the development and deployment of rapid, and follow-up, analysis of field-based tests focused on identifying Seafood Import Monitoring Program species.
5. In concert with CBP, develop and implement predictive analytics based on a number of specified risk criteria for forced labor.
6. Stop allowing aggregated harvest report for Northern red snapper.

A number of these actions, specifically items 1, 2 and 6, may require regulatory action to implement.

In conclusion, because the proposed rule is narrow in scope, at this stage of rulemaking the agency is limited in its ability to incorporate new issues for consideration. To address this, we recommend NOAA issue a revised proposed rule by July 2023. This would allow the agency to consult further with the public and other involved Federal agencies on the scope of the proposal referenced above, as well as address important outstanding issues with NDAA implementation. This could lead to a vastly improved final rule by August 2024.

In summary, we urge NOAA to:

1. Extend the Public Comment Period on this rule and issue a new revised proposed rule with extended public comment.
2. Expand to more species including Blue Swimming crab, salmon and pollock species.
3. Begin a transparent public process to evaluate additional species.
4. Add Data Reporting Requirements to address Forced Labor.
5. Improve data harmonization and alignment across NOAA's trade monitoring programs and globally.
6. Fully digitize entry filing in ACE.
7. Commit to risk-based import screening and improve risk analytics.

Despite its challenges in implementation, SIMP remains the U.S. government's best tool to keep illegal seafood out of domestic commerce and thereby protect both U.S. industry as well as consumers and improve the sustainability of our global ocean resources. 85 percent of seafood consumed in the U.S. is imported, and with this rule only half of that is subject to SIMP reporting requirements.

At the end of the day, consumers want to know that the seafood they are purchasing is legal, caught without using forced labor, and is accurately labelled.

NMFS should use this rulemaking to begin a transparent public process to evaluate the best method to expand the program to all seafood.

The Stimson Center looks forward to continuing to work with NMFS on the development and implementation of seafood trade policies that protect the environment, vital revenue and the food security, economic security, and national security of coastal states around the world.

Sincerely,

A handwritten signature in cursive script that reads "Sally Yozell". The signature is written in black ink and is positioned below the word "Sincerely,".

Sally Yozell
Director, Environmental Security Program
The Stimson Center