

Attention: Mark Wildman

April 12, 2016

International Fisheries Division  
Office for International Affairs and Seafood Inspection  
NOAA Fisheries  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: NOAA-NMFS-2015-0122**

**Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program**

To the Members of the National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee):

Thank you for the opportunity to comment on the proposed rule on establishing filing and recordkeeping procedures relating to importation of certain fish and fish products. As a coalition of non-profit organizations and advocacy groups dedicated to the eradication of all forms of modern-day slavery and worker exploitation, including human trafficking, in the seafood industry we have a strong interest in the establishment of more robust, effective traceability mechanisms.

The following comments address the request for input issued by the National Marine Fisheries Service (NMFS) regarding the proposed rule on a seafood import monitoring program.

**General Comments**

The Presidential Task Force on Combatting IUU Fishing and Seafood Fraud (Task Force) identifies in its Action Plan for Implementing the Task Force Recommendations (Action Plan) several “factors that contribute to the unfair advantage that IUU fishing has over fishers who follow the rules and operate under the true costs of sustainable fishing practices.”<sup>1</sup> A significant factor that the Task Force acknowledges, and that we believe must be addressed in the seafood import monitoring program if the President’s Comprehensive Framework is to be effectively implemented, is that “operators of IUU fishing vessels also tend to deny to crew members fundamental rights concerning the terms and conditions of their labor.”<sup>2</sup>

Though neither human trafficking nor forced labor on fishing vessels are included explicitly in the mandate of the NOC Committee, we believe Congress has instructed the Committee through its amendment of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to take these human rights abuses into consideration when designing and implementing a seafood import monitoring program. Section 307(1)(Q) of the MSA, which the proposed rule is intended to implement, states, “It is unlawful for any person to import, export, transport, sell, receive, acquire,

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<sup>1</sup> Presidential Task Force on Combatting IUU Fishing and Seafood Fraud, Action Plan for Implementing the Task Force Recommendations, p. 5.

<sup>2</sup> Ibid. at pp. 4-5.

or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or *any treaty* or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party” (emphasis added).<sup>3</sup> The 2015 amendment to Section 307(1)(Q) inserted the last clause, “or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party,” to the original language of the Act.<sup>4</sup>

The legislative history of the amendment suggests that Congress expected all rules and programs designed to implement the amendment would address the myriad national security risks associated with IUU fishing, most notably human trafficking and slave labor.<sup>5</sup> The House of Representatives, in its Report on the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, emphasized, “Especially given that 91 percent of seafood consumed in the United States is imported, it is critical to ensure that the purchases of unsuspecting Americans are not supporting these activities.”<sup>6</sup> These activities, which are prohibited under international law as well as the laws of every country, are common on fishing vessels. The 2015 *Trafficking in Person (TIP) Report* identified 54 countries with instances of human trafficking in their fishing fleets.<sup>7</sup>

If the NMFS intends to implement Section 307(1)(Q) through the design and implementation of the seafood import monitoring program, it is essential that it consider the various treaties related to human trafficking and slave labor to which the United States is a party. These treaties include the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the 1926 Slavery Convention; and the 1956 Supplementary Convention on the Abolition of Slavery. The MSA as amended requires the U.S. government to prohibit the importation of any fish taken or possessed in violation of any treaty to which the United States is a party. The treaties noted above prohibit labor trafficking and slave labor which, as Congress recognized,<sup>8</sup> and we previously stressed,<sup>9</sup> are inextricably linked to illegally caught fish that enter into U.S. commerce.

It would be a grave oversight for the NMFS to not consider these human rights and national security issues when designing a program to eliminate illegal fish and seafood products from the U.S. market. While we understand the need to balance legal requirements with business

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<sup>3</sup> 16 U.S. Code § 1857 - Prohibited acts, <https://www.law.cornell.edu/uscode/text/16/1857> .

<sup>4</sup> H.R.774 - Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 114th Congress (2015-2016), <https://www.congress.gov/bill/114th-congress/house-bill/774/text> .

<sup>5</sup> Rules of interpretation suggest that slave labor as referenced in the House Report includes all forms of modern-day slavery, including forced labor. Full House report (114-212) on Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 discussion on July 20, 2015, as Reported by the Natural Resources Committee, available at: <https://www.congress.gov/congressional-report/114th-congress/house-report/212>;

<sup>6</sup> Ibid.

<sup>7</sup> United States Department of State, Trafficking in Persons Report 2015, July 2015, <http://www.state.gov/documents/organization/245365.pdf>.

<sup>8</sup> House report (114-212), Ibid.

<sup>9</sup> Previous comments submitted to the NOC Committee on September 11, 2015, available at: <http://www.laborrights.org/publications/comments-national-ocean-council-committee-iuu-fishing-and-seafood-fraud-regarding>.

considerations, the NMFS will not be able to eliminate illegal fish and seafood products from U.S. commerce without addressing human trafficking and forced labor in the final rule. Indeed, Congress recognized the connection between these problems and expected the NMFS and other U.S. government agencies to design and implement rules and programs aimed at simultaneously eliminating illegal fish from entering into the U.S. market while ensuring the purchases of American consumers do not support human trafficking and forced labor in the seafood industry. To this end, we strongly urge the NMFS to fulfill its obligation and address human trafficking and forced labor when designing and implementing the seafood import monitoring program.

### **International Trade Data System (ITDS)**

While we commend the U.S. government's coordinated approach to excluding illegal goods from U.S. commerce, the current scope of the NMFS's coverage is too limited to effectively prevent illegal fish and seafood products from entering into the U.S. market. The Task Force is proposing to exclude highly processed fish products from the additional data requirements imposed on importers.

In order to fully stop seafood fraud, IUU fishing, and human rights abuses associated with IUU fishing, the proposed requirements need to apply to all seafood types and products. If the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the shipment of the product cannot be feasibly identified, the burden should be on the importer and its suppliers to prove that the products they wish to import into the U.S. do not contain any fish caught or handled by forced laborers.

The proliferation of "trash fish" in highly processed seafood products demonstrates how seemingly unidentifiable species of fish are captured through destructive IUU fishing practices and human rights abuses. Trash fish, usually ground up and used for products like fishmeal or pet food, consist primarily of juveniles of economically valuable species, robbing the oceans of breeding adults. Within the fleets of Thailand and other major harvesters of trash fish, rapid industrialization, weak oversight, and inadequate enforcement mechanisms have depleted national fisheries stocks and forced fishers to rely increasingly on trash fish to remain profitable.<sup>10</sup>

Low profit margins incentivize illegal fishing practices and reliance on illegally cheap, or unpaid, labor. The significant human, environmental, and economic damage caused by mass importation of seafood products containing trash fish into the U.S. is further evidence of the importance of establishing an enforceable time-bound plan for the NOAA and NOC Committee to expand its traceability requirements to all seafood species and products. We strongly urge the NOC Committee to not exempt heavily processed seafood products from the additional data requirements imposed on importers and establish an enforceable time-bound plan to expand the proposed traceability requirements to all seafood species and products.

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<sup>10</sup> Environmental Justice Foundation, "Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans," 2015, [http://ejfoundation.org/sites/default/files/public/EJF\\_Pirates\\_and\\_Slaves\\_2015.pdf](http://ejfoundation.org/sites/default/files/public/EJF_Pirates_and_Slaves_2015.pdf)

## **Data for Reporting and Recordkeeping**

In the proposed rule, the NMFS states that “the data to be reported for at-risk species would be in addition to the information required by CBP as part of normal entry processing via the ACE portal” and “to avoid duplication, the interagency working group considered data that are already collected by CBP on the entry/entry summary, and data that are, or will be, collected via ACE by NMFS and other ITDS partner government agencies.”

To ensure the data collected by the NMFS is used by the Department of Homeland Security (DHS) to exclude illegal fish and seafood products from the U.S. market, we believe that more clarification is needed on what data is already or will be collected by CBP, NMFS, and other ITDS partner government agencies. In addition to the necessary information listed in the proposed rule such as name and identifying details of the vessel and/or farm or aquaculture facility, location of point of harvest, and records regarding chain of custody, we encourage the NMFS to consider collection of additional data related to conditions of employment, including ownership information, records of previous labor law violations, and, where possible, employment contracts and crew manifests. The recent amendment of the Tariff Act of 1930 provides DHS with another tool to prevent illegal goods from entering into U.S. commerce.<sup>11</sup> However, effective enforcement of the Act requires timely sharing of data on illegal fish and seafood products, and on forced and trafficked labor, between the government agencies that use ITDS.

Effective enforcement of the Act also requires the participation of the Department of Labor (DOL) in the interagency working group. DOL’s expertise on forced labor and its strong interest in excluding forced labor products from U.S. commerce makes it an important partner for DHS and NMFS. If DOL is not already involved in the working group, we strongly recommend the Committee include it in future discussions about the seafood import monitoring program.

## **Verification of Entries**

Effective verification of entries is critical to the success of the seafood import monitoring program. According to the proposed rule, NMFS would work with CBP to develop a specific program within ITDS to screen information for the covered commodities based on risk criteria. While categorizing the entries by volume and certain attributes could be a good approach to systematizing the selection process, the procedure as described will inevitably allow some illegal fish and seafood products to slip into the U.S. market unidentified unless attributes related to trafficking and forced labor on the high seas are included among the attributes NMFS will consider when verifying entries. Additional attributes the NMFS should consider are flags of convenience,<sup>12</sup> transshipment, vessels

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<sup>11</sup> Gottwald, Eric, “Tariff Act Strengthened, But Will Enforcement Follow,” February 18, 2016, <http://www.laborrights.org/blog/201602/tariff-act-strengthened-will-enforcement-follow>.

<sup>12</sup> International Transport Workers Federation, “Flags of convenience: avoiding the rules by flying a convenient flag,” <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/>.

with a prior history of environmental or human rights violations, vessels with opaque ownership structures, and vessels with opaque labor practices.<sup>13</sup>

In addition, the NMFS should consider expansion of the program to include a process by which civil society and other knowledgeable stakeholders who are aware of illegal activities that took place during the production of specific seafood products being imported into the U.S. can request shipments be placed on hold pending verification. Transparent access to import data is critical for effective oversight.

While we recognize NMFS's concerns about commercial sensitivity of information gathered, we believe the government and public's interest in preventing illegal fish and seafood products from entering into U.S. commerce outweigh proprietary considerations. Increased transparency of suppliers has been an important and effective tool used in other sectors to uncover illegal labor practices and public access to chain of custody data will advance effective enforcement of the rule.<sup>14</sup> We also acknowledge limitations in collecting and providing chain of custody information in real time, but we strongly urge the NMFS to provide timely public access to this information through a searchable database and archive of information as that would strengthen enforcement efforts and further the goals of the U.S. government.<sup>15</sup> In sum, we believe there are many compelling reasons for NMFS to make chain of custody information accessible not only to relevant government agencies, but also to the general public.

### **Voluntary Third Party Certifications and Trusted Trader Programs**

While voluntary third party certifications in the seafood industry could simplify entry filing or reduce the industry's burden of meeting reporting requirements, we are extremely concerned that permitting importers to bypass reporting requirements through these systems could create an unintended loophole through which illegal fish and seafood products enter into the U.S. market.

There is currently no third party certification program that adequately protects against human and labor rights violations in the seafood supply chain. As such, we strongly urge NMFS to not exempt importers from reporting requirements under any circumstance. If the NMFS wishes to consider third party certification programs again in the future, we believe these programs must, at a minimum, monitor and verify compliance with the ILO core labor standards, especially the prohibitions against forced and child labor. To further Congress's goal of eliminating forced labor caught fish from entering into the U.S. market, they also must monitor and verify compliance with the treaties related to human trafficking and slavery to which the United States is a party. Finally, the programs must require genuine worker consultation and participation in the monitoring and verification process.

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<sup>13</sup> Previous comments submitted to the NOC Committee, *Ibid*.

<sup>14</sup> International Labor Rights Forum, "Deadly Secrets: How apparel brands cover up safety hazards," December 18, 2012, pp. 9 & 45, <http://laborrights.org/publications/deadly-secrets-how-apparel-brands-cover-safety-hazards>

<sup>15</sup> For example, services such as Panjiva and Import Genius have allowed the public to access information collected by CBP and assist the U.S. government in preventing illegal goods from entering into U.S. commerce.

We urge the NOC Committee to consider the adverse effects the proposed third party certifications and trusted trader programs could have on human rights in the seafood industry. If these programs are accepted, the seafood import monitoring program may exacerbate the plight of fishers and seafood processing workers rather than contribute to the eradication of human trafficking and forced labor in the industry as intended by Congress. Fish and seafood products that meet the substandard certification requirements of existing programs would enter into U.S. commerce *en masse* and the unintended loophole would be exploited by criminal enterprises, unscrupulous businesses, and companies that do not consider human rights in their compliance assessment procedures. More forced labor produced goods would enter into in the U.S. and human rights abuses in the seafood industry would continue or even worsen. For these reasons, we strongly recommend the NOC Committee to not allow third party certifications and trusted trader programs to exempt importers from the reporting requirements that would otherwise be imposed.

### **Consideration of the European Union Catch Certification Scheme**

We applaud the NOAA's efforts to establish a more cohesive global framework for eliminating IUU fishing and forced labor in the seafood industry. To ensure illegal fish does not enter into U.S. commerce and American consumers do not unwittingly contribute to human rights abuses through their purchases, we recommend the NOAA adopt the EU's approach to determining whether certain States should be warned and, if they fail to comply with international obligations, blacklisted and thus prevented from exporting their fish and seafood products into the U.S. market.<sup>16</sup>

In practice, the EU has considered human trafficking and forced labor in its assessment of States' compliance with their regulations on IUU fishing, recognizing that illegal labor conditions almost always coincide with a similar disregard for fisheries laws.<sup>17</sup> This has led to promising legislative and policy changes in Thailand and contributed significantly to civil society's efforts to eradicate forced labor and trafficking in the Thai seafood industry. We fully expect that a similar approach by the U.S. government would significantly reduce the amount of illegal fish and seafood products that enter into the U.S. market while contributing immensely to global efforts to eliminate trafficking and forced labor in the seafood industry.

Furthermore, adopting such an approach would facilitate compliance by making requirements across regions consistent and predictable. It would also ensure there are no gaps in the global framework to combat IUU fishing and forced labor in the seafood industry that exporters and importers can exploit at the expense of workers, consumers, and compliant businesses.

We thank the NOC Committee for the opportunity to provide input on the proposed rule on establishing filing and recordkeeping procedures relating to importation of certain fish and fish

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<sup>16</sup> European Union Directorate-General for Maritime Affairs and Fisheries, "The EU Rules to Combat Illegal, Unreported and Unregulated Fishing," [http://ec.europa.eu/fisheries/cfp/illegal\\_fishing/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/illegal_fishing/index_en.htm).

<sup>17</sup> Casert, Raf, "EU demands Thailand address slavery in its seafood industry," *Associated Press*, Dec. 18, 2015, <http://bigstory.ap.org/article/98bff6da2e6d4906bfbf41fd8f2140ca/eu-demands-thailand-address-slavery-its-seafood-industry>.

products. Please contact Abby McGill at the International Labor Rights Forum at [abby@ilrf.org](mailto:abby@ilrf.org), or (202) 347-4100, ext. 113, if you have any questions about our comments. We welcome further dialogue on the Task Force recommendations and look forward to working with you toward effective implementation of the President's Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.

Sincerely,



Environmental Justice Foundation



Green America



Greenpeace



International Labor Rights Forum



National Guestworker Alliance