September 3, 2015

To: Danielle Rioux
National Marine Fisheries Service
1315 East-West Highway, Suite 9511
Silver Spring, MD 20910

From: John Williams, Executive Director
Southern Shrimp Alliance

RE: NOAA-NMFS-2014-0090: Notice and Request for Comments from the National Ocean Council Committee on IUU Fishing and Seafood Fraud Regarding the Draft Principles for Determining Seafood Species At-Risk and Developing the Draft List of At-Risk Species. RIN 0648-XE078 August 3, 2015 at 80 FR 45955

The SSA appreciates the opportunity to provide further comments to the Committee on the species at-risk issues associated with the seafood traceability system initiative. We fully recognize the enormous complexity of this challenge and deeply appreciate the extraordinary effort being made by the NOC Committee and many others to develop an effective and efficient system that will improve the conservation and management of global fisheries, protect the financial interests of legitimate players in the seafood supply chain from anti-competitive fraud, and improve the safety of seafood for US consumers. Our goal is to be as helpful as possible and hope that you find the following comments useful.

Draft Principles

Enforcement Capability. As drafted, this Principle addresses only the capacity of nations to enforce "fisheries management laws and regulations". While we agree that a central focus of the efforts of this traceability system is to combat IUU fishing, the capacity of nations to enforce other laws and regulations intended to prevent other fraudulent activities in the seafood supply chain (including farmed-raised products such as shrimp), should also be expressly covered by this Principle.

In fact, the major sources of fraud associated with the largest seafood import – farm-raised shrimp – have nothing to do with fisheries management laws and regulations. Instead, for example, such fraud is with respect to laws and regulations pertaining to the use of antibiotics in the production of farm-raised shrimp as well as the transshipment and mislabeling of the country of origin, species and/or product and processing type in order to evade US antidumping duties and FDA Import Alerts.

Given the scale of such fraud identified under the current US enforcement regime, it is self-evident that other nations lack the capacity to enforce their own laws against such fraud. And, as SSA expressed in previous comments submitted pursuant to this initiative, we urge the US Government to develop and fund capacity building initiatives in exporting nations with a high risk of either IUU fishing and/or fraud in the supply chain.

Complexity of the Chain of Custody and Processing.

We note that this draft Principle appears to limit the definition of "transshipment" to the transfer of fish from one vessel to another. That may not be the intent, but we note that another very common form of transshipment – which is often used for purposes of committing fraud (such as misrepresenting the country of origin of seafood) – is the transfer of a seafood product across multiple national borders prior to export to the US. We ask that this principle be made clear to pertain to both forms of transshipment.

Human Health Risks.

This draft Principle specifically identifies "higher levels of harmful pathogens" as a source of human health concern for consumers. This is, of course, an extremely important element of this Principle. However, while this text does not appear to be exclusive of other sources of human health concerns, we suggest that given the number of instances where the FDA has tested farm-raised shrimp and other seafood imports and found them to be contaminated with banned antibiotics, and given the severe potential health risks associated with long-term exposure to such antibiotics, this Principle should expressly identify harmful antibiotics as well as pathogens.

List of Species At-Risk

SSA would like to specifically address the following excerpt taken from the section of the Notice addressing shrimp as part of the list of species at-risk.

"We are seeking additional public comment on possible ways to refine the scope of this species group, e.g., by limiting the scope based on product type, species, processing type, or other approaches. Shrimp is the largest seafood import into the United States, with the value of shrimp imports representing more than twice the value of any other seafood species group. Wild capture fisheries exist both in the United States and foreign nations. Due to the sheer volume of shrimp that enters U.S. markets, traceability for all shrimp may exceed the capacity of implementing agencies."

After much consideration, SSA does not believe that the scope of the proposed traceability system for shrimp should be limited based on product type, species or processing type.

We fully expect that any such exclusion will create a new incentive and opportunity for imported shrimp to be mislabeled or otherwise misrepresented for the purpose of evading the informational and operational requirements of the US traceability system. Such misrepresentation will be to identify the

shrimp as whatever product type, species or processing type is excluded from coverage by the US traceability system.

Our view is not theoretical. It has been our first-hand experience that the exemption or exclusion of a shrimp product type, species or processing type from any form of regulatory regime creates a loophole in the system that unscrupulous importers and others in the supply chain can and will exploit.

For example, in 2005, the US implemented anti-dumping duty orders on certain warm-water shrimp imports from 6 nations. Those orders exempted so-called "dusted shrimp", an obscure "processing type" not previously found in any significant quantity in US shrimp imports. The process of 'dusting' peeled shrimp with flour is an intermediate step in the breading process.

Not long after these anti-dumping duty orders were issued, there was a shift in shrimp imports from processing types subject to the duties – peeled shrimp – to product fraudulently claimed to be dusted shrimp. This necessitated an investigation by CBP which confirmed that shipments of frozen shrimp containing flour not attached to the shrimp was being called "dusted" shrimp to evade payment of antidumping duties. Throughout the industry, it became common knowledge that this flour was then simply washed-off after entry into the US and the shrimp sold as its original product form.

Similarly, after Chinese shrimp was subjected to both the US antidumping duty order and an FDA country-wide Import Alert, there was a substantial reduction in US imports of Chinese shrimp and a commensurate surge in shrimp imports from Malaysia which are not subject to either an antidumping duty order or an FDA country-wide Import Alert. This too has prompted an ongoing investigation which confirms that Chinese shrimp is being transshipped through Malaysia and exported to the US as a product of Malaysia in order to evade both the US antidumping duty order and the FDA Import Alert on Chinese shrimp.

Such investigations are extremely difficult, time consuming and expensive. That reality is, in fact, one of the main reasons why the new, more efficient and effective US traceability system is being developed.

Further, we believe that implementing the new traceability system for some or most shrimp species, product types and processing types while exempting others will present enforcement personnel with a new and even more challenging problem at the border. The proposed traceability system will be largely if not entirely electronic and, therefore, audits will be conducted within this realm of electronic traceability data (such as the proposed ITDS system). At the same time, information on products and species that are expressly exempted from the traceability system will not even appear on that data screen. Consequently, enforcement personnel will be faced with trying to enforce two different sets of requirements with two different sets of data and enforcement tools. In our view, this would be worse than status quo.

In reality, if all shrimp species, product and processing types are covered by the new system, then the importer knows that all shrimp is potentially subject to audit and has no way to know what will be audited, when or where. There would be no new incentive or opportunity to misrepresent the product.

If, however, some species, product types or processing types are expressly exempted, then the importer knows exactly what to do to evade the new system.

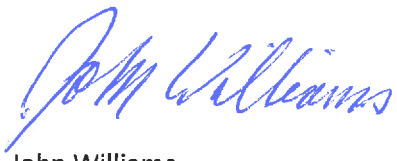
To reiterate, as both a general principle and a specific comment regarding the statement in the Notice cited above, we believe that anything less than the uniform application of US import requirements provides both an incentive and opportunity for fraud designed to evade such requirements. The application of US antidumping duties and FDA Import Alerts are, by necessity, already applied in a non-uniform manner and this has presented both an incentive and opportunity for fraud and serious challenges to enforcement. Specifically exempting some species, product types or processing types from the traceability system will simply add to the current lack of uniformity and thereby create yet another incentive and opportunity for fraud. Shrimp is the highest-value seafood import to the US and is among the largest sources of fraud. The US Government should not concede that such fraud is simply too big a problem to solve.

That said, we fully appreciate the reality that the federal government does not have the resources to monitor (audit) every seafood import. It does, however, have the ability and resources to develop a strategy for targeted auditing that incorporates both risk-based and random elements that cannot be easily deciphered by importers. We believe that such a system that requires secure and verifiable electronic information on all species, product types and processing types (no loopholes), that is audited in a manner that cannot be predicted by an importer, and that is subject to meaningful fines and penalties (including forfeiture of product) would present a substantial disincentive and barrier to fraud, and major improvement from the status quo.

As a final note, it is our understanding that the EU presently requires the identification of all shrimp imports by scientific name, with this information provided not just at the border but also to the ultimate consumer. Article 35 of Regulation (EU) No 1379/2013 of the European Parliament and of the Council (Dec. 11, 2013) requires that, effective December 13, 2014, "fishery and aquaculture products . . . be offered for sale to the final consumer or to a mass caterer" with labeling identifying, among other things, "the commercial designation of the species and its scientific name." Article 37 of the Regulation requires Member States to "draw up and publish a list of the commercial designations accepted in their territory, together with their scientific names." Article 37 further specifies that the list published by a Member State shall include "the scientific name of each species in accordance with the FishBase Information System or the ASFIS database of the Food and Agriculture Organization (FAO), where relevant . . . ."

Like the US, the EU also imports a very large volume of shrimp each year, This includes the same species, product types and processing types as are imported to the US. With that in mind, we respectfully suggest that the Committee investigate what the EU's experience has been in implementing their requirements for imported shrimp. Has the EU experienced any particular problems? If so, what solutions have they developed to address those problems? And, whether the EU has experienced problems with shrimp imports or not, have there been specific 'lessons learned' that the US could benefit from in implementing an effective traceability system for all US shrimp imports?

Thank you again for the opportunity to provide these comments.



John Williams,
Executive Director