



VASEP

Vietnam Association of Seafood Exporters and Producers

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Submitted electronically to <http://www.regulations.gov>

Danielle Rioux
Office of Sustainable Fisheries, National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan: Notice and Request for Public Comment (Docket No. NOAA-NMFS-2014-0090)

Dear Ms. Rioux:

On behalf of Vietnam Association of Seafood Exporters and Producers (“VASEP”), we provide comments related to the Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan, pursuant to the National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration request.¹ VASEP appreciates the opportunity to provide comments regarding the Working Group’s draft principles to determine species of fish or seafood currently subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing, as well as the draft “at risk” species list. As Vietnam is the sixth largest supplier of seafood to the United States, the Task Force and its requirements are of significant interest to VASEP and its members. Pursuant to the NOAA’s August 19, 2015 Notice, these comments are timely filed.²

I. The Working Group’s Draft of “At Risk” Species is Insufficiently Substantiated

The NOAA’s August 3 Federal Register notice identified thirteen species as “at risk”: Abalone, Atlantic Cod, Blue Crab, Dolphinfinh, Grouper, King Crab, Pacific Cod, Red Snapper, Sea Cucumber, Sharks, Shrimp, Swordfish, and Tuna. Although the Working Group was to have “identified appropriate data sources”, “used verifiable data”, and relied on “the knowledge of subject matter experts” to support its determination, there is little transparency or specificity into the data sources or procedures used to generate the preliminary list.

The list of “at risk” species will form the basis of an expensive and complex traceability mechanism that will present significant difficulties for both parties exporting to the United States as

¹See *Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan*, 80 Fed. Reg. 45,955 (Aug. 3, 2015).

²See *Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan; Extension of Comment Period*, 80 Fed. Reg. 50,270 (Aug. 19, 2015).

well as importers in the United States. It is therefore important for all stakeholders to fully understand the data and process that develop that program. Instead, the Working Group's conclusions are supported only by vague assertions that do not allow interested parties sufficient information to offer substantive comments. The Working Group is therefore making full and meaningful participation by interested stakeholders impossible, which harms the effectiveness and efficiency of the Working Group and Task Force's eventual programs. We request that the Working Group amend its "at risk" draft list, particularly by removing shrimp, unless the Working Group can provide full substantiation of its information and rationale. We further request that the Working Group more completely and accurately describe its specific data sources and processes for determining the "at risk" draft list.

II. The Working Group's Draft Principles Fail to Consider Existing Efforts and Success Combating IUU Fishing

Vietnamese farm products, especially aquaculture shrimp, already use strict traceability and certification protocols. Vietnam has adequately demonstrated that these protocols are sufficient to prevent Vietnamese aquacultured shrimp from species substitution and fraudulent labeling, which are two of the draft principles articulated by the Working Group. Further, the NOAA has never identified Vietnam as a country engaged in IUU fishing in its biennial report to Congress. Therefore, the draft principles as written are likely to lead to duplicative efforts that will waste the resources of all parties involved in future transactions of these products.

The Working Group should revise the draft principles to take into account the historical success of preventing IUU fishing before imposing costly measures on parties exporting products to the U.S. We therefore request that the draft principles specifically provide that products without a demonstrated history of IUU fishing from countries that would be affected by the Task Force's recommendations be excluded from the "at risk" list.

Further, although the August 3 notice asserts that existing traceability mechanisms will be used as part of the eventual Action Plan, there is no indication of what those may be, and the draft principles do not require their consideration. We therefore request that the draft principles be amended to ensure that the traceability mechanisms put in place by the Task Force do not unnecessarily duplicate existing efforts in the exporting countries.

III. The Task Force's Traceability Program may be Inconsistent with WTO Obligations

The Task Force has acknowledged that any traceability program it eventually develops must be consistent with all U.S. legal obligations, including those under the World Trade Organization ("WTO").³ However, what is publicly available about the Task Force's traceability program suggests that it will violate legal obligations under the WTO. The current version would likely cause significant compliance costs for foreign exporters by empowering at least Customs and Border Protection, the Food and Drug Administration, and the NOAA to enforce and oversee various aspects of the program. The program would impermissibly impose significant barriers on seafood and fish products' trade in the United States that U.S.-origin product would not face in violation of the national treatment principle.

Further, the traceability program will necessarily include testing, verification, and certification procedures enforced by several government agencies. It is therefore likely that such stringent measures could create unnecessary obstacles to trade in violation of the Agreement on Technical Barriers to Trade. Indeed, the United States itself has alleged that a similar traceability program for food products is an impermissible technical barrier to trade.⁴ Even more surprisingly, the United States

³ Presidential Task Force on Combating IUU Fishing and Seafood Fraud, *Action Plan for Implementing the Task Force Recommendations* at 36, available at http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf.

⁴ See United States Trade Representative, *2013 Report on Technical Barriers to Trade* at p. 82, available at

has suggested that a Vietnamese law requiring “numerous forms and certificates” to demonstrate food products’ conformity with Vietnamese standards may violate WTO obligations.⁵ It is also possible that the standards developed would fail to adequately consider and make use of available international standards as mandated by the Agreement on the Application of Sanitary and Phytosanitary Measures. We therefore urge the Working Group to amend the draft principles to include compliance with all applicable legal obligations.

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The draft principles and draft “at risk” list, as currently proposed, would cause significant and unnecessary difficulties for foreign exporters attempting to enter U.S. commerce. VASEP therefore appreciates the opportunity to comment on both drafts and looks forward to collaborating with other stakeholders to ensure that the draft principles and “at risk” list are substantiated, fair, and in compliance with international law. Please do not hesitate to contact the undersigned if you have questions or require further information regarding this submission.

Respectfully submitted,



/s/ Tr ng ình H òe
Tr ng ình H òe
Secretary General
VASEP

Dated: September 11, 2015

<https://ustr.gov/sites/default/files/2013%20TBT.pdf> (arguing that various aspects of Turkey’s Biosafety Law is inconsistent with WTO requirements regarding technical barriers).

⁵*Id.*