October 9, 2020

Lisa Barton
Secretary of the Commission
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

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Re: Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries – Investigation No. 332-575 (85 Fed. Reg. 5704 (Jan. 31, 2020)).

Dear Ms. Barton:

The National Fisheries Institute ("NFI") hereby offers comments in the subject Investigation. NFI is the nation's largest and most diverse seafood trade association. NFI members include harvesters, vessel owners, processors, exporters, importers, distributors, retailers, and seafood restaurants. These companies and their employees work in locations stretching from the Bering Sea off the coast of Alaska to the Port of Miami, Florida; collectively provide hundreds of millions of safe, wholesome seafood meals every year; and comprise an industry that employs over 1.7 million American workers.

NFI has a long and consistent record of support for responsible federal regulations of commercial seafood businesses. Whether on food safety, economic integrity and labeling, sustainability, or deterring and punishing illegal fishing, NFI members have been in the vanguard of commercial seafood businesses in supporting legislative and regulatory action to address genuine problems affecting consumers, ocean life, U.S. trading partners, and others impacted by industry practices. NFI was an early supporter of the Port State Measures Agreement, legislation to implement the Agreement, and other steps to help governments address the IUU fishing challenge. Indeed, an NFI employee was detailed for portions of time over a three-year period to assist the United States Department of State team in drafting and negotiating the Port State Agreement.

The association and its member companies have an abiding commitment to seafood sustainability in particular, and NFI welcomes the opportunity to submit these views on their behalf, in connection with the investigation by the International Trade Commission ("ITC" or the "Commission") of illegal, unreported, and unregulated ("IUU") fishing.

Executive Summary.

The House of Representatives Ways & Means Committee in December 2019 asked the ITC to conduct an investigation of the nature and extent of IUU fishing and the impact of illegal fishing on the U.S. commercial seafood industry. More specifically, the Request Letter called for:

- A review of the existing data and literature on the prevalence of IUU products in the U.S. import market, and an overview of international mechanisms for monitoring and enforcement to address IUU fishing;
- A description of the size and structure of the U.S. commercial fishing industry;
- A description of major global producers of IUU products, including but not limited to China, and country practices related to IUU production and exports;
- An analysis of the extent to which IUU product is imported into the United States; and
- A quantitative analysis of the economic impact of IUU imports on U.S. commercial fishermen and U.S. commercial fishing production, trade, and prices.[1]

The Request Letter makes no mention of seafood fraud or other unlawful conduct.

IUU fishing is a legitimate challenge for governments, including the U.S. government, to take up. As NFI testimony in this Investigation noted, IUU fishing can undercut fishermen engaged in lawful fishing, penalizing them for operating lawfully in a given fishery. Illegal fishing also burdens the seafood processors, distributors, restaurants, and retailers those fishermen supply with wild-capture product, first with that same commercial disadvantage and second with an unfair obligation to enforce fishery management requirements.[2] Moreover, to the extent that IUU fishing operations support, and are supported by, organized crime entities – a connection the U.S. government has repeatedly emphasized – then illegal fishing can provide a foundation for other illegal activity that has nothing to do with fish. This is a law enforcement challenge only government can fully address.

That illegal fishing poses a potential threat to lawful harvesters, however, does not make it ubiquitous, nor does it demonstrate that American seafood companies routinely rely on IUU product to meet domestic demand. In preparing its report, the Commission should not be duped by wildly inflated estimates of global IUU fishing operations, or unfounded allegations of a river of illegal product brought in to the United States. In fact, there is virtually no reliable evidence of IUU catches of major seafood categories entering the United States in any significant quantities,

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[1] Request Letter from House Ways & Means Committee, Investigation No. 332-575 (Dec. 19, 2019) ("Ways & Means Committee Request Letter") (https://www.usitc.gov/research_and_analysis/u.s._fisheries_request_letter_12_20_2019_10_03_57_107_508.pdf.)

[2] *See* Attachment A.

and badly flawed studies to the contrary should be ignored. Even assuming widespread proliferation of illegal fishing operations globally, the economic impact of IUU fishing on domestic producers is in the vast majority of cases quite modest.

That is not to say that the IUU fishing challenge has no impact on U.S. seafood companies. Seafood processors, distributors, and the American workers these companies employ, in many cases, rely on globally sourced product to meet customer demand. These companies have real, documented costs associated with the National Oceanographic and Atmospheric Administration seafood import monitoring program ("SIMP"), a program that has not been effective at detecting and deterring either IUU fishing or seafood fraud, both of which the program was intended to police. It has created, however, a continuing compliance burden for scores of large and small seafood companies. Consistent with precedent from at least one recent Commission study, these costs should be incorporated as part of the economic impact of IUU fishing on U.S. commercial seafood firms.

Discussion.

A. Widely Cited Estimates Of The Extent Of Global IUU Fishing And The Amount Of Illegally Harvested Product In The U.S. Market Are Badly Flawed, And The Commission Should Reject Them.

The topic of illegal fishing is popular with researchers. Researchers in recent years have offered estimates of the aggregate value of IUU catches and the amount and type of those catches that allegedly find their way in to the U.S. market. Estimates of $23, $31, or even $50 billion in annual global IUU catch are commonly cited. These studies do not address the far more important question about the amount of IUU product that enters the U.S. market. In fact, the critical question posed to the Commission is the extent of IUU fish entering the U.S. market, not the level of the global IUU challenge.

The place to start is two similar studies in the journal *Marine Policy*, the first of which was the primary source document used to justify SIMP. But it makes sense to discuss the *second* of these two studies up front.

Researchers in 2017 published a study in *Marine Policy*, claiming that 22 percent of U.S.-harvested Alaska pollock in the Japan market is IUU product. The study's conclusions – including that one, were "largely based on confidential interviews with two undisclosed persons which skewed [its] estimate to convey that about 20% of surimi destined for Japan is produced from IUU fish.... US surimi is produced by vessels with 100% onboard observer coverage, or in plants that are meticulously inspected and required to pay tax on all fish landed in Alaska."[3]

[3] "Walton Foundation Flops As NOAA Demands an Outrageous Paper They Funded on IUU Fishing be Retracted," Saving Seafood (Oct. 17, 2017) (https://www.savingseafood.org/science/walton-foundation-flops-noaa-demands-outrageous-paper-funded-iuu-fishing-retracted/).

A group of seafood sustainability experts, including University of Washington Professor Dr. Ray Hilborn,[4] incumbent NOAA Fisheries administrator Chris Oliver, Dr. David Agnew, the author of the original paper on global IUU estimates, and other global sustainability experts blasted this approach in the same publication on two different occasions. First, in 2017, Chris Oliver submitted a letter to the editors, concluding that the "allegations made in the paper are absent of transparency regarding the data, and assumptions supporting them are irresponsible and call into question the authors' conclusions."[5]

Then, in a further response, in October 2019, the group of experts concluded:

> We have examined the estimates in Pramod et al. of IUU Alaskan Pollock imported into Japan. Based on extensive knowledge of this fishery we find that their estimates are not substantiated by any known facts from the fishery.... None of the citations provided in the Pramod et al. paper provide[s] any estimates of IUU, so their numerical estimates must therefore come from two confidential informants. No documentation of how the estimates are made is provided and the paper completely fails to meet normal standards of scientific replicability. *The deficiencies in the estimate of IUU in Alaskan Pollock must cast serious doubt on their approach for all fisheries*.[6]

The authors of the 2017 *Marine Policy* study with respect to Japan were compelled to withdraw that study. The journal published the following statement: "This article has been retracted at the request of the Editor-in-Chief and Author following concerns regarding the veracity of the data, *the methodology used in the study*, and the broader USA fisheries management framework."[7]

Two of the same authors, however, used the same approach in a prior, 2014 *Marine Policy* paper concerning global IUU catch found in the U.S. market.[8] In this study, they argued that up to 70 percent of certain catches are illegally harvested, that 20-32 percent of fish entering the U.S.

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[4] *See, e.g.,* University of Washington Press Release, "Ray Hilborn receives international fisheries science prize" (May 26, 2016) (https://www.washington.edu/news/2016/05/26/ray-hilborn-receives-international-fisheries-science-prize/).

[5] *See* Attachment B.

[6] Hilborn, Ray M., and Christopher M. Anderson. "Pramod Et Al. Methods to Estimate IUU Are Not Credible," 108 *Marine Policy* No. 103632 (July 26, 2019) (emphasis supplied) (https://www.sciencedirect.com/science/article/abs/pii/S0308597X19303318).

[7] Pramod, G., Nakamura, K., Pitcher, T.J., Delagran, L., "RETRACTED: Estimates of illegal and unreported seafood imports to Japan," 84 Marine Policy 42 (Oct. 2017) (emphasis supplied) (viewed at https://www.sciencedirect.com/science/article/pii/S0308597X17300817).

[8] Pramod, G., Nakamura, K., Pitcher, T.J., Delagran, L., Estimates of illegal and unreported fish in seafood imports to the USA, 48 Marine Policy 102-113 (Sept. 2014) (viewed at https://www.sciencedirect.com/science/article/pii/S0308597X14000918).

market is IUU product, and that annual global illegal fishing, excluding U.S. fisheries, is worth $23.5 billion. Specific estimates of IUU in the U.S. market included:

- 30-45 percent of Alaska pollock from China;
- 45-70 percent of salmon from China;
- 25-40 percent of tuna from Thailand;
- 25-35 percent of wild shrimp from Ecuador; and
- 35-50 percent of octopus from India.

The study argues that "[r]ecent estimates of IUU extent by country and region have revealed substantial IUU world wide between 13% and 31% of reported catches, and over 50% in some regions. This illegal catch is valued at between $10 and $23.5 billion per year."

These conclusions rest primarily on 41 interviews with alleged experts in the countries of export, 32 of them "confidential." The authors of the study by their own admission relied on documentary evidence "of a non-public nature" supplied by these sources.[9] Confidential interviews with unknown persons and reliance on non-public information are highly questionable. The experiences and biases of these persons cannot be tested, use of their views in published research cannot be peer reviewed, and the secret nature of the underlying information deprives other interested parties of a fair opportunity to respond or utilize the published information for additional research.[10] Further, in concluding that the global IUU catch is 31 percent of the total, but that wild capture IUU product shipped to the U.S. accounts for 32 percent of total wild-capture exports to the U.S., the authors in effect argue that the United States is *more* vulnerable to IUU fishing abroad than other nations, including the flag nations of the offending vessels!

Professor Hilborn reportedly explained that the "approach [taken by these researchers] simply is not creditable when experts who know a specific fishery have a chance to look at their estimates, and if the same kind of errors are made in other fisheries then estimates of IUU may be significantly inflated."

Nor are criticisms of the 2014 *Marine Policy* paper confined to American sustainability experts. In 2016, the U.N. Food and Agriculture Organization developed a "study of studies," reviewing 44 studies estimating levels of IUU fishing. This research was intended to review the strengths and weakness of differing methodologies, with the objective of developing guidance as to how future studies should estimate IUU catch.[11]

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[9] *Id.* at section 2.3.

[10] The Commission's report will exclude all confidential business information. NFI notes the potential irony of a report reaching conclusions based on information held in secret by these authors, in a proceeding where sworn witnesses are barred from offering confidential information for ITC consideration.

[11] Macfadyen G., Caillart, B., Agnew, D., "Review of studies estimating levels of IUU fishing and the methodologies utilized," (June 3, 2016) (http://www.fao.org/3/a-bl765e.pdf).

FAO researchers determined the following:

- "A number of global (or regional) studies estimate 'missing or unknown catch' rather than catch that is specifically IUU. Doing so fails to recognize that IUU fishing is also an economic and social problem."

- "As the scale of a study increases, the level of uncertainty over its estimates increases. Global studies tend to either lose accuracy or granularity because of the assumptions that they must make for elements for which there are no data."

- "Many of the studies are insufficiently transparent about the sources of information and weaknesses in the methods used and make a large number of assumptions which lead to inevitable questions over the accuracy of the estimates produced."[12]

Reviewing the 2014 *Marine Policy* study in particular, FAO noted that it relied on "41 interviews (32 confidential)," and concluded that the study suffers from a "lack of transparency on some estimates, low/quality/reliability of some sources (press, anecdotal)[,] and combination of estimates with differing quality."[13]

Despite these flaws, the 2014 *Marine Policy* study was the single most important research document justifying the creation of SIMP. Official Administration documents cited it at least 59 times in defense of the program, including in the Regulatory Impact Review and Final Regulatory Flexibility Analysis that accompanied the final rulemaking. The Request Letter prompting this Investigation appears to do likewise, quoting the upper bound estimate of global IUU landings of "more than $23 billion per year." ***The Commission should not base any of its analysis or recommendations on a study that FAO and the world's leading marine scientists consider fundamentally flawed.*** And the federal government should not base important policy decisions – such as whether to expand SIMP – on a study with these deficiencies. But if the Commission embraces this estimate or a similarly flawed estimate in its report, that may happen.

The truth is that IUU seafood is not widely found in the U.S. market. Consider these facts:

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[12] *Id.* at i-ii.

[13] Macfadyen G., Caillart, B., Agnew, D. (2016). Review of studies estimating levels of IUU fishing and the methodologies utilized. Poseidon Aquatic Resource Management Ltd., at 72 (http://www.fao.org/3/a-bl765e.pdf).

- First, more than half of globally sourced seafood sold in the U.S. is farmed and therefore not fished at all.[14] The vast majority of shrimp – the largest seafood category in the domestic market – that comes to the U.S. is farmed.[15] For some major categories, such as pangasius, no wild-capture commercial fishery exists at all.

- Second, major wild-capture categories like imported cod come overwhelmingly from nations such as Iceland and Norway with stringent fishery management requirements and enforcement regimes that rival those of their U.S. fishery counterparts.

- Third, of what remains, imported product is verified as lawfully harvested pursuant to existing federal legal and regulatory requirements applicable to imports. Tuna *shipped to the United States*, for instance, is subject to the NOAA Tuna Tracking and Verification Program; NOAA dolphin-safe tuna regulations and reporting; and restrictions arising out of treaty obligations (such as the Antigua Convention). The International Seafood Sustainability Foundation, a group established by major U.S. and European branded tuna companies and large NGOs, enforces its own rigorous management protocols for all major tuna products in the U.S. Those protocols apply to many tuna fleets the world over, whether they fish in EEZs or distant waters.

- When these products are removed from consideration, finally, what remains are small categories that account for a sliver of the domestic market. Indeed, the top ten species account for 86 percent of total U.S. consumption (and the top 20 probably account for 99 percent). Even if all the products in these small categories are hotter than a Texas cattle brand upon reaching U.S. ports – and that is of course not the case – the commercial impact of that sourcing in the U.S. market is by definition very slight.[16]

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[14] "U.S. Aquaculture," NMFS aquaculture webpage, at http://www.fisheries.noaa.gov/national/aquaculture/us-aquaculture.

[15] NFI rejects the allegation that wild-capture harvesters engage in widespread mislabeling of their product as farmed. Most American consumers regard wild-caught seafood of all types, including shrimp, as preferable to the same species when farmed, and therefore wild-capture products fetch a substantial premium in the marketplace. Mislabeling occurs where there is a financial incentive – not a financial *disincentive* – to do so.

[16] *See* NFI Press Release, "Shrimp Continues Its Reign On Top 10 List" (Feb. 24, 2020) (https://www.aboutseafood.com/press_release/shrimp-continues-its-reign-on-top-10-list/) (data derived from National Marine Fisheries Service Fisheries of the United States, 2018, (https://www.fisheries.noaa.gov/national/commercial-fishing/fisheries-united-states-2018)). Adding in scallops, oysters, and mussels – which rank 11, 12, and 13 – the top 13 species account for 89 percent of U.S. consumption.

An estimate that about 1/3 of the value of all globally sourced wild-caught products in the U.S. market – valued at billions of dollars every year – is unlawfully harvested looks even less credible when placed in this context.

A final point related to a discussion during the September 3 hearing: Seafood fraud is not IUU fishing, and vice versa. Species substitution is a specific form of seafood fraud, which violates the Federal Food, Drug, and Cosmetic Act and which in some instances is a felony. Seafood fraud occurs in the United States, and is committed by persons seeking to reap illicit benefits from mark-ups that can be had for domestic wild-capture items through sales by U.S. distributors to unwitting restaurateurs or intentional menu mislabeling – but without the connivance of foreign suppliers.[17]

This, too, is a legitimate but narrow problem – and one that the Request Letter in this Investigation does not mention. The FDA's own Fish SCALE (Seafood Compliance And Labeling Enforcement) testing program conducted a sampling program focused on imported and domestic seafood, testing 741 DNA samples of products in the wholesale distribution chain. Even though the agency "specifically targeted product codes that have been reported to be at the highest risk for mislabeling and/or substitution," the seafood was labeled correctly 85 percent of the time at U.S. wholesale, with all but two species labeled correctly 100 percent of the time.[18] Just as targeting the overseas supply chain for a practice committed by Americans in the United States wastes law enforcement resources, including seafood fraud within the scope of an assessment of IUU fishing will distort the Commission's findings and needlessly confuse two separate challenges.

B. Any Effort To Locate IUU Catch In The United States Market Should Center On The NMFS Report That Is Supposed To Be The Foundation For U.S. Government Efforts To Combat IUU Operations.

Federal law directs NMFS, in consultation with the Department of State, "to produce a biennial Report to Congress that lists nations the United States has identified for IUU fishing and/or bycatch of protected species and shark catches on the high seas for nations that do not have regulatory measures comparable to the United States."[19] The agency is directed to identify IUU fishing wherever it occurs, and need not establish a commercial nexus to the United States in order

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[17] Recent federal prosecutions for seafood mislabeling involving globally sourced products follow these fact patterns. The Department of Justice on the same day as the Commission's hearing announced a guilty plea in the Eastern District of North Carolina from the owner of a North Carolina seafood company, for falsely labeling "hundreds of thousands dollars' worth of foreign crabmeat as 'Product of USA.'" "Seafood Processor Pleads Guilty to Selling Foreign Crabmeat Falsely Labeled as Blue Crab from USA," United States Department of Justice Press Release, (Sept. 3, 2020) (https://www.justice.gov/opa/pr/seafood-processor-pleads-guilty-selling-foreign-crabmeat-falsely-labeled-blue-crab-usa).

[18] FDA Memorandum summarizing CFSAN seafood labeling in wholesale and imported seafood (April 2012-September 2013) (https://www.fda.gov/media/89937/download).

[19] NOAA Fisheries webpage at https://www.fisheries.noaa.gov/topic/laws-policies.

to include a country and fishery in the agency's report. Pursuant to this directive, NMFS has produced six studies identifying nations determined to have permitted IUU operations in named fisheries. A chart summarizes the agency's findings since 2009.

NMFS Biennial Reports Identifying Nations For Reported IUU Fishing Activities, 2009-19

Country	Product/Reason
2009, France	Bluefin Tuna
2009, Italy	Bluefin Tuna
2009, Libya	Bluefin Tuna
2009, Panama	Tuna
2009, People's Republic of China	Toothfish and Tuna
2009, Tunisia	Bluefin Tuna
2011, Colombia	Tuna
2011, Ecuador	Tuna
2011, Italy	Swordfish
2011, Panama	Yellowfin Tuna, Bigeye Tuna, Skipjack Tuna
2011, Portugal	No fish specifically; "mesh in the cod end of net was obstructed"
2011, Venezuela	No fish specifically; Unregistered and fished after season
2013 Colombia	Shark fins and Tuna
2013, Ecuador	Shark fins and Sea Turtles
2013,Ghana	Bigeye Tuna
2013, Italy	No specific fish, use of driftnets
2013, Republic of Korea	Toothfish and Tropical Tunas
2013, Mexico	Shark fins and discarded carcasses, Loggerhead Turtle Bycatch release
2013, Panama	Tuna
2013, Colombia	Skipjack tuna
2013, Tanzania	No specific fish, flagging issues
2013, Venezuela	Shark fins and discarded carcasses
2015, Colombia	Tuna
2015, Ecuador	Tuna discards; improper turtle rescues, Sharks, Whitetip Shark,
2015, Mexico	Red Snapper, Gag Grouper, Gray Triggerfish
2015, Nicaragua	Bigeye, Skipjack, and Yellowfin Tuna; Mishandling of Turtle bycatch
2015, Nigeria	No specific fish; flagging and fishing for CCAMLR species
2015, Portugal	Seals, Groundfish
2017, Ecuador	Yellowfin, Skipjack, and Bigeye Tuna; improper turtle rescue
2017, Mexico	Red Snapper and other unmentioned species
2017, Russian Federation	No specific fish; Gear and sorting issues
2019, Ecuador	Tunas
2019, Mexico	Red Snapper, Turtle bycatch
2019, Republic of Korea	Toothfish

The agency is to be commended for making these determinations and for engaging with its counterparts abroad to insist on robust enforcement in the relevant fisheries. It should do more.[20] Note, however, that NMFS identified fewer IUU scofflaws in its most recent report than it did in its 2017 edition, which itself identified fewer IUU fishing violations than did the 2015 report. According to the responsible agency, the trend line for IUU fishing appears to be one of modest decline. Fundamentally, this description of the nature and extent of illegal fishing in the global industry cannot be reconciled with estimates of $23, $31, even $50 billion of dollars of annual

[20] As widely reported, several hundred China-flagged fishing vessels allegedly have been fishing near the Galapagos Islands off Ecuador. If allegations that these vessels are fishing illegally are borne out, then the agency has an excellent opportunity to work with aligned nations, the regional fishery management organization, and law enforcement agencies to combat IUU operations in a significant way.

IUU landings. If, however, these determinations by NMFS are incomplete or turn a blind eye towards known IUU fishing operations in fisheries not identified above, then that raises serious questions about the value of the biennial reports.

Further, the commercial nexus between the named fisheries and U.S. consumers is less than meets the eye. Of the named countries, France, Italy, Portugal, Ghana, Libya, Tunisia, Nigeria, and Tanzania do not export to the United States appreciable amounts of seafood, and certainly not from the fisheries identified by NMFS. For instance, per capita U.S. consumption of Bluefin tuna amounts to about the weight of a paper clip. Again, on the critical question of the amount of illegal catches *that reaches the U.S. market*, evidence of a river of illegal product is badly wanting.

C. The NOAA Seafood Import Monitoring Program Has Imposed Substantial Costs On American Seafood Companies, And The Commission Should Recognize Those Costs In Its Report.

Several seafood companies in the September 3 hearing provided significant detail as to the costs they have borne arising out of the NOAA seafood import monitoring program. These costs pertain to the international trade database system reporting that is a prerequisite for release of any container that includes fish covered by SIMP. But this burden goes further, and includes the costs of:

- Maintaining required chain of custody documents;
- Responding to comprehensive audits of ITDS reporting, including production of chain of custody documents for NOAA auditors and remediation of any administrative errors identified by such production;
- Training staff to handle the ITDS reporting and auditory process;
- Procuring additional insurance to manage SIMP litigation/enforcement risk;
- Working with suppliers to correct administrative errors (such as a misspelled fishing vessel name); and
- Absorbing higher costs of goods sold, from suppliers unwilling to directly absorb their own SIMP compliance costs as to products those suppliers could sell to a non-U.S. buyer.

During the SIMP rulemaking process in 2016, NFI estimated the start-up regulatory burden on affected seafood companies to be over $53 million, with ongoing annualized costs at least that high, depending on the frequency of audits. Multiple factors, however, have shown that number to be too low. A tight labor market on both coasts makes hiring and training staff qualified to handle SIMP reporting an even more expensive proposition than originally anticipated. NOAA audits of reporting companies have been more frequent than predicted. Ancillary costs, such as

increased insurance premiums, were not included. The agency's recent decision to eliminate a "trusted trader" program that would have afforded participants relief from some SIMP reporting will place more upward pressure on program compliance costs.[21]

Because SIMP fully applies to domestically harvested products that are shipped out of the country for processing and re-exportation to the U.S. market, the program requires American Pacific cod harvesters to comply fully with program requirements. Auditors of P. Cod "imports" are thus required to verify information, supplied by audited companies, that was issued by the agency the auditors serve – on top of the U.S. fishery management requirements that apply directly to P. cod producers. This only exacerbates the compliance burden the program imposes.

There is recent direct precedent for Commission consideration of regulatory compliance costs in a Section 332 investigation. ITC Investigation No. 332-573, the Global Economic Impact of Maximum Residue Levels ("MRLs"), finished in July 2020. The Investigation was aimed at gaining a "greater understanding of existing and emerging challenges to the current international and country-specific frameworks for pesticide maximum residue levels."[22]

Regarding MRL compliance, ITC described its conclusions: "The case studies in this report describe costs and effects that growers and exporters face as a result of missing and low MRLs and illustrate the ways that compliance and noncompliance with export market MRLs affect farmers in countries." The Commission found that:

> Complying with MRLs creates costs for farmers, importers, exporters, and regulatory agencies throughout the supply chain. One industry expert estimated the cost of traceability and MRL compliance efforts as 20 percent of the cost of production.[23]

In this case, the Commission should incorporate into its report the type of compliance costs described above. Such costs form part of an "analysis of the economic impact of IUU fishing on U.S. commercial fishermen and U.S. commercial fishing production, trade, and prices," especially because SIMP applies to certain U.S.-harvested fish shipped out of the country for processing and re-exportation to the United States.[24] The Commission should document the regulatory burden associated with this major regulatory program.

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[21] *See* Attachments C-E for details as to the compliance costs SIMP imposes on regulated companies.

[22] Request Letter, Investigation No. 332-573 (https://usitc.gov/research_and_analysis/official_request_letter_-_global_economic_impact_of_national_maximum_residue_levels.pdf).

[23] Global Economic Impact of Missing and Low Pesticide Maximum Residue Levels, Investigation No. 332-573, Publication No. 5071, vol. 1, at 239.

[24] Ways & Means Committee Request Letter.

For all its costs, SIMP has not been effective at deterring IUU product presented for entry at U.S. ports. The program took effect on January 1, 2018, and now includes all 13 species at which it was initially targeted. Over nearly three years, industry has filed tens of thousands of ITDS uploads, NOAA auditors have completed 1,000+ audits, and federal officials have been given access to terabytes of industry data. Yet, as of June 30, 2020, NOAA enforcement officials had levied a total of four fines for a collective $4,250, barred a total of .2 kg of seafood from the United States, and made zero referrals to the Department of Justice.

As noted at the September 3 hearing, if, despite SIMP, IUU catches continue to enter the United States, then that lays waste to the argument that this program has been effective. But if the program has detected and stopped significant amounts of such catches at U.S. ports, then the unfair competitive effect of IUU fishing on domestic fishermen posited by the Request Letter must necessarily have dwindled substantially for the species the program covers. Both cannot be true.

Conclusion.

Combatting IUU fishing operations is a worthy goal, and a fuller understanding of the nature of this challenge would be welcome. But relying on wildly inflated estimates of the amount and destination of IUU landings will ultimately confuse, not enhance, such an understanding. The Commission should produce its report in this Investigation with that caution in mind.

NFI once more appreciates the opportunity to share these comments.

Respectfully submitted,

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President
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Attachments

A. Statement of Robert DeHaan before the International Trade Commission September 3, 2020
B. Letter from The Hon. Chris Oliver, Assistant Administrator for Fisheries, NOAA, to Dr. Hance D. Smith, Editor-in-Chief, Marine Policy (Oct. 11, 2017)
C. Statement of Katherine Alvarez before the International Trade Commission September 3, 2020
D. Statement of Todd Clark before the International Trade Commission September 3, 2020
E. Statement of Matthew Fass before the International Trade Commission September 3, 2020