

October 8, 2021

The Honorable Raúl M. Grijalva  
Chair  
Committee on Natural Resources  
United States House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Bruce Westerman  
Ranking Member  
Committee on Natural Resources  
United States House of Representatives  
1329 Longworth House Office Building  
Washington, D.C. 20515

Dear Chair Grijalva and Ranking Member Westerman:

We write in connection with H.R. 3075, the Illegal Fishing and Forced Labor Prevention Act (the “Act”). This legislation if enacted will expand the NOAA Seafood Import Monitoring Program (SIMP) in multiple ways and work other changes to federal laws applicable to the commercial seafood industry, from harvest to point of final sale. In attempting to respond to the challenge of Illegal, Unreported and Unregulated (“IUU”) fishing, the bill imposes unworkable regulatory mandates on industry, raises the costs and risks for American fishermen to sell their catch in the United States, and exposes U.S. exporters to retaliation in overseas markets, all without addressing the existing program’s lack of demonstrated success in deterring illegally harvested products from reaching U.S. ports.

Collectively, we represent every facet of the nation’s commercial seafood supply chain, including the harvesters, processors, exporters, importers, cold chain operators, distributors, retailers, and seafood restaurants that employ the 1.25 million Americans employed in commercial seafood. We share a commitment to seafood sustainability, effective fishery management, and respect for workers. Although that commitment takes many different forms – such as support for overseas fishery improvement projects, collaborative engagement in the United States’ world-class fishery management system, participation in 3rd party certification schemes, and advocacy for responsible regulation – the common thread running through our work is a genuine respect for the unique marine resource that defines our industry.

Regrettably, H.R. 3075 will neither address IUU fishing and human rights challenges in meaningful fashion nor fruitfully augment the many ongoing government and private sector initiatives that are seeking to address these challenges. Because of this – and because the Act will create severe cost and administrative burdens for the entire value chain, thus costing U.S. jobs and raising prices for American consumers – we respectfully urge wholesale reconsideration of the legislation. Permit us to explain in greater detail below.

## **Title I.**

Title I of the legislation would expand SIMP from its present 13 categories to all seafood;<sup>1</sup> add seven new data elements for seafood for submission at time of entry;<sup>2</sup> mandate submission of all required data elements at least three days prior to presentation for entry;<sup>3</sup> and require certification of

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<sup>1</sup> The Act, § 102.

<sup>2</sup> *Id.*, § 104(a)(1).

<sup>3</sup> *Id.*, § 104(a)(2).

harvest information by competent authorities “at all major transfer points in the supply chain, including harvest, landing, processing, and transshipment.”<sup>4</sup> Title I further directs NOAA to establish additional key data elements that “collect information about labor conditions in the harvest, transshipment, and processing of imported fish and fish product.”<sup>5</sup>

This dramatic expansion of SIMP presents multiple problems. First, the existing program has not deterred IUU fishing products from entry. In a report issued earlier this year, NOAA stated that “SIMP does not prevent or stop IUU fish and fish products from entering U.S. commerce” and concluded that the program should be deployed in a “risk-based” manner.<sup>6</sup> We are informed that NOAA has issued only a small number of civil penalties and in over three years has not made a single referral to DOJ arising out of SIMP violations. Though its reach might appear modest, SIMP already covers approximately 1,100 individual species. Expansion to all seafood would broaden SIMP to a total of roughly 13,000 species, forcing an agency already struggling to enforce program requirements to assess vastly more International Trade Data System (“ITDS”) submissions, conduct far more audits, and understand the applicable fishery management requirements for thousands of exporter nation/species pairs.

Second, program expansion will make it costlier and more difficult for *American* fishermen to sell fish in the United States. Substantial amounts of U.S.-caught salmon, lobster, crabs, flounder, flatfish, and other categories go overseas for secondary processing before being re-imported for sale to a U.S. customer. SIMP will apply fully to these cross-border products, just as it now does to the U.S.-caught Pacific cod that is processed overseas (and that lies within the program’s current ambit). Experience with Pacific cod suggests that companies sourcing these items will spend large amounts of time and money sharing with a U.S. government agency documents issued by a U.S. government agency (in some cases the *same* agency), and fly-specking hundreds of pages of documentation for typographical or administrative errors bearing no relation to actual illegal fishing by the responsible U.S. harvester. There can be no question that widening the scope of SIMP will raise prices for Americans to enjoy seafood caught in their own country. This, in connection with fishery management requirements widely acknowledged to be among the world’s best.

Third, expansion of the data elements as proposed will convert SIMP from a burdensome regulation into something truly Byzantine, magnifying program complexity and compliance costs at entry, via agency audits, and everywhere in between. Mandating that ITDS uploads capture all chain of custody documents, even in isolation, will increase compliance costs substantially; but those costs will increase *exponentially* when married to the existing requirement for an individual ITDS submission for every harvest event in a 44,000 kg container.<sup>7</sup> In some instances the new requirements have nothing to do with illegal fishing or seafood fraud. For instance, reporting the FAO areas in which harvesting occurred does nothing to identify illegal fishing activities unless NOAA first has unfettered access to, and comprehensive understanding of, the exporting nation’s management requirements applicable to the waters fished by the vessels represented in the container presented for

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<sup>4</sup> *Id.*, § 104(a)(3).

<sup>5</sup> *Id.*, § 104(b).

<sup>6</sup> Report on the Implementation of the U.S Seafood Import Monitoring Program, NOAA Fisheries, at 6 (May 2021) (<https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>).

<sup>7</sup> The Act, 104(a)(1)(B).

entry.<sup>8</sup> Other information is simply not feasible to collect. How, for example, should a U.S. seafood processor obtain Transport Canada confirmation that a truck driver hauling seafood into the U.S. has been afforded sufficient opportunity to unionize, in accordance with Canadian labor law? How will that processor determine “beneficial ownership,” under each applicable country’s law, of every small, family-owned fishing boat for every shipment of seafood purchased?<sup>9</sup>

In short, Section 104 and Title I more generally will establish impossible mandates, severely increasing the burdens and costs associated with ITDS uploads and subsequent audits without detecting and deterring illegally harvested products at any greater rate than SIMP does in its present form.

## **Title II.**

Title II of the Act directs NOAA to issue a new regulation concerning data elements for products “imported into the United States or otherwise distributed or offered for sale in interstate commerce.”<sup>10</sup> Section 202(a)(1) applies the existing SIMP data elements to the post-importation supply chain “through processing and distribution,” and Section 202(a)(2) requires seafood labels to reflect all of the Section 202(a)(1) information, plus certain additional information “through processing, distribution, and final sale.” In effect, Title II establishes a separate regulation aimed at seafood processors and distributors.

As some of us have long argued, certain existing SIMP data elements have nothing to do with either IUU fishing or seafood fraud. Knowing the gear type that was used to harvest a given product does not aid NOAA in determining whether the fish in question was illegally caught.<sup>11</sup> Indeed, we do not understand why gear type expressly allowed under federal fisheries law is even included within the scope of the legislation. The same can be said for “whether the seafood has been frozen or treated with any substance other than water,” a data element that has nothing to do with illegal fishing or NOAA.<sup>12</sup> Application of such requirements to processors and distributors, of course, does not change these facts.

Title II’s fundamental flaw, however, is its impracticability. Current SIMP data reporting requirements do not match specific harvest data with specific individual packages or fish, but rather collectively report the data represented by all harvest events in a given shipment. Under Section 202, however, that would change. Distributors would be required to match all listed data elements to the specific packages to which those reports apply, and to ensure that the reported data travels with the appropriate fish “through processing, distribution, and final sale,” regardless of whether the product in question is imported or not. This will be an insurmountable task for distributors.

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<sup>8</sup> *Id.*, 104(a)(1)(iv). The agency concedes it does not understand many of the foreign fishery management requirements upon which SIMP relies. The agency states that “gaining such detailed knowledge has been challenging.” NOAA Fisheries Report, at 13. But without such an understanding, much of the information International Fisheries Trade Permit holders submit cannot be used to determine if the product was illegally harvested.

<sup>9</sup> *Id.*, § 104(a)(1)(D) and § 104(b); *see id.*, § 303(c)(1) (directing NOAA to construe “IUU fishing” to include the right to collective bargaining).

<sup>10</sup> *Id.*, § 202(a). Section 202(a)(1)(I) in fact creates a new obligation to report the “source and type of feed” used in aquaculture products.

<sup>11</sup> *Id.*, § 202(a)(1)(D).

<sup>12</sup> *Id.*, § 202(a)(2)(B).

If Title II requirements pertaining to legality of harvest, worker treatment, or seafood fraud are applied to processors and distributors when they handle products harvested overseas but not when they handle products harvested domestically, such discriminatory treatment will expose U.S. seafood exporters to retaliation in overseas markets.<sup>13</sup> To meet WTO national treatment obligations, U.S. producers will have to track and report data elements associated with domestic seafood harvests similar to those the Act mandates, in effect forcing federal and state fishery management agencies to impose new data requirements on their harvesters, thus raising production costs. U.S. exporters in recent years have repeatedly suffered loss of competitive access to important global markets because of tariff and non-tariff barriers alike. Seafood exporting nations will be certain to monitor not only legislative and regulatory language put into effect but also agency enforcement of that language. Discrepancies between the treatment of like products may prompt U.S. trading partners to create new regulatory barriers to U.S. exports, at a time when the value of our seafood exports has fallen to a level not seen since 2010.

### **Title III.**

In Title III, three sections in particular concern us. To begin, Section 302 would authorize NGOs and the public to submit actionable data for identification of alleged IUU fishing activity. This process is ripe for abuse and could establish a precedent for use against U.S. producers in overseas markets. Other Section 302 requisites are extremely broad and raise *prima facie* concerns, pending more thorough review and expert input from the administration.

Section 303 for the first time would expand the Magnuson-Stevens Act to formally encompass worker treatment in large part by incorporating international standards established by United Nations groups such as the International Labor Organization. We strongly support efforts to eliminate abuses such as child and forced labor from any part of the production of seafood globally. The specific provisions of Section 303, however, raise serious questions. For instance, the references in Section 303(c) to collective bargaining, hours of work, and child labor could be interpreted to make the U.S. fleet and U.S. processing plants entirely “closed shop”; outlaw the long workdays utilized for logistical and sustainability reasons in many domestic fisheries; and eliminate a longstanding tradition of family fishing, especially in Alaska. This provision essentially outsources U.S. requirements in this area to unaccountable international organizations – whose standards may shift over time – and deputizes NOAA as the organizations’ enforcement arm for U.S.-connected products of any origin. Rather than mandate such an approach, we should seek to support and enhance the many government and private-sector efforts to address labor abuses that are already underway.

Finally, Section 304 appears to duplicate existing U.S. statutory requirements regarding bycatch of marine mammals, sharks, and turtles, with no showing as to why an entirely separate regulatory regime must now be established.

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<sup>13</sup> Even in SIMP’s short history, a disparity of this nature has already developed. Although Congress directed NOAA by December 31, 2018 to develop a traceability regulation comparable to SIMP for application to the domestic farmed shrimp and abalone supply chain, the agency has never put such a rule in place. Public Law No. 115-141, Consolidated Appropriations Act, 2018, § 539 (Mar. 23, 2018).

## **Title V.**

Title V directs NOAA to require that Automatic Identification Systems (AIS) be used “in the exclusive economic zone of the United States and on the high seas in order to manage shared use the ocean, improve fisheries and natural resource management, and deter and interdict illegal, unreported, or unregulated fishing and associated human trafficking.”<sup>14</sup> Title V mandates use of AIS on U.S. fishing vessels and requires archived fishing location information to be shared publicly.

Requiring NOAA to use AIS systems to track fishing activities is unnecessary and misguided, for many reasons.

First, NOAA already requires substantial information from vessel owner/operators and shore side processors – information that is more than adequate to detect domestic IUU fishing activities. These requirements vary by region but in general include the following: Vessel Monitoring Systems (VMS); at-sea fisheries observer coverage (in some fisheries 100 percent coverage); at-sea marine mammal observer coverage; shore side processing plant observers and weekly reporting; increased electronic monitoring coverage; trip-level vessel reporting (VTRs); call in/out requirements for vessel operators participating in some fisheries; and periodic shoreside call-in reporting mandates for some fisheries operating on limited quotas to avoid overages – in some fisheries every 24 hours.

Second, H.R. 3075 would make AIS data available to the public. Amending federal law in this fashion would have severe adverse consequences for many domestic seafood companies. Primary fishing locations for a greater number of fishing operations would become common knowledge, thereby undermining the efforts of commercial and charter fishermen who have spent years developing a knowledge base of seasonal fishing productivity and opportunity. These areas would likely become subject to unchecked fishing pressure, as the information spreads throughout the recreational fishing community.

Some industry participants have expressed concern that NGOs would use newly acquired vessel-specific AIS data to harass vessel operators and seafood companies based on location and gear type being used to harvest seafood products. We are already aware of incidents in which such harassment has occurred in international contexts where location data has been made publicly available. There is significant concern that Section 501 would invite similar incidents in domestic fisheries.

Third, industry participants have confidentiality concerns even if NOAA is not mandated to make this data public. AIS uses high frequency radio signals that can be easily hacked or altered by unauthorized operators, including high-seas pirates. AIS is an open-source system, and as such can be accessed by anyone with an AIS receiver (in contrast with VMS, which cannot). U.S. harvesters should not have to compromise data security for their vessels or their crews as a price for fishing in our nation’s waters.

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<sup>14</sup> The Act, § 501(b).

We agree with NOAA Assistant Administrator Janet Coit, who put it this way:

Section 501 is duplicative of existing VMS requirements, since it would require those vessels already equipped with VMS to carry AIS without significant benefits. AIS is primarily a collision avoidance system, but VMS are more effective for tracking fishing vessel movement and effort, are less susceptible to tampering, and have better tools for two-way communications with vessels.<sup>15</sup>

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Participants in our industry strongly support efforts to combat IUU fishing. That includes support for the many federal initiatives underway to ensure that the United States is a strong leader in promoting sustainable fisheries management and identifying measures that can reduce the rate of IUU fishing activity globally. For example, U.S. leadership has been integral to advancement of the Port State Measures Agreement. Similarly, NOAA Fisheries engages in numerous bilateral and multilateral efforts to combat IUU – as reflected in the agency’s most recent biennial IUU fishing report, which identified 31 nations and entities with vessels engaged in illegal, unreported, or unregulated fishing activities or bycatch of protected species on the high seas.<sup>16</sup> These are the kinds of direct actions by governments that can produce concrete improvements.

Unfortunately, H.R. 3075 will not add to those improvements. Rather, the Act would pose insuperable compliance challenges for U.S. and non-U.S. companies alike, raising costs across the board, undercutting the competitiveness of seafood against other proteins, and incentivizing overseas *and* U.S. harvesters to sell away from the United States. If enacted, the legislation would create a seafood regulatory *Bleak House*, generating a never-ending stream of data reporting, audits, document collection and tracking, and risk management and logistics nightmares for thousands of companies that have never been associated with illegal fishing or seafood fraud in any way – all in service of a program that does not block IUU fish from entering the United States. Respectfully, we urge thorough reconsideration of this legislation.

Sincerely,

**FMI – the Food Industry Association**  
**International Food Distributors Association**  
**National Council of Chain Restaurants**

**National Fisheries Institute**  
**National Restaurant Association**  
**National Retail Federation**  
**Retail Industry Leaders Association**

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<sup>15</sup> Testimony by Janet Coit at the Committee on Natural Resources Subcommittee on Water, Ocean and Wildlife, at 5 (July 29, 2021) (<https://naturalresources.house.gov/imo/media/doc/Coit%20Testimony%20WOW%20Leg%20Hrg%2007.29.21.pdf>).

<sup>16</sup> 2021 Report to Congress on Improving International Fisheries Management, NOAA Fisheries (Aug. 12, 2021) (<https://media.fisheries.noaa.gov/2021-08/2021ReporttoCongressonImprovingInternationalFisheriesManagement.pdf>).

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FV Adventuress, LLC (NJ)  
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FV Atlantic Bounty (NJ)  
Atlantic Harvesters LLC (NJ)  
Atlantic Capes Fisheries (NJ)  
FV Barbara Anne, LLC (NJ)  
Bornstein Seafoods (OR)  
FV Cape May LLC (NJ)  
Cape May Foods (NJ)  
Cape May Ice Co., Inc. (NJ)  
Cape Trawlers, Inc. (NJ)  
F/V Charisma LLC (NJ)  
CEB Consulting (MS)  
Cumberland Freezers, LLC (NJ)  
Danny and Michael NOAA, LLC (NJ)  
DPL, Niagara ITQ's, LLC (NJ)  
DPL ITQ's, LLC (NJ)  
Elise G, LLC (NJ)  
FV Enterprise, LLC (NJ)  
FV Erin Renee LLC (NJ)  
Evening Star LLC (NJ)  
Galilean Properties LLC (NJ)  
Galilean Seafoods LLC (NJ)  
Illex One, LLC (NJ)  
Jensen Tuna (LA)  
FV Jersey Girl, LLC (NJ)  
Jolly Rogers II Fisheries, Inc (FL)  
FV Lady Evelyn, LLC (NJ)  
FV Lady Roslyn, LLC (NJ)  
LaMonica Fine Foods (NJ)  
La Vecchia and La Vecchia, LLC (NJ)  
FV Lori Ann, LLC (NJ)  
Lund's Fisheries, Inc (NJ)  
Lund's Export Sales Co., Inc (NJ)  
Lund-Marr Trawlers, LLC (NJ)  
FV Miss Betty LLC (NJ)  
FV Miss Madeline, LLC (NJ)  
FV Miss Sue Ann, LLC (NJ)  
Morey's Fish and Seafood (MN)  
Nancy Elizabeth, LLC (NJ)  
FV Norreen Marie, LLC (NJ)  
Oceanside Marine, LLC (NJ)



FV Pacific Capes, LLC (NJ)  
Panama City Boatmen Association (FL)  
Point Pleasant Fishermen's Co-Op (NJ)  
Point Pleasant Packing Inc. (NJ)  
FV Pontos, LLC (NJ)  
Scombrus One, LLC (NJ)  
Seafreeze, Ltd (RI)  
Seafreeze Shoreside (RI)  
FV Second Wind, LLC (NJ)  
Sea Harvest, Inc. (NJ)  
Shakari, LLC (NJ)  
SHIP I LLC (NJ)  
FV Shuck One, LLC (NJ)  
FV Silver Sea, LLC (NJ)  
South Jersey Surf Clam Company (NJ)  
Southern Offshore Fishermen's Association,  
Inc. (FL)  
FV Synergy LLC (NJ)  
Tides Up Fisheries, LLC (FL)  
TMT Clams, Atlantic City, NJ  
FV Travis & Natalie, LLC (NJ)  
Viking Village (NJ)  
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