National Customs Brokers and Forwarders Association of America

Testimony before the

House Committee on Natural Resources

Hearing on

"Russian Seafood Ban Implementation and Seafood Traceability"

April 7, 2022

Mr. Chairman, members of the committee - I wish to thank you for this opportunity to present testimony on behalf of the National Customs Brokers and Forwarders Association of America (NCBFAA).I am Mike Lahar, a customs broker from A.N. Deringer in Vermont. I ask that my full written comments be considered as I am summarizing my points in this testimony.

NCBFAA represents over 1,100 licensed customs brokers, filing over 95% of all customs entries and are at the frontlines for merchandise entering the US. Licensed by CBP, customs brokers provide the important and unique perspective of intermediaries who serve as the interface between importers, CBP and other government agencies.

NCBFAA wholeheartedly supports the ban on Russian seafood and see it as an important measure to demonstrate our solidarity with the Ukrainian people following the unprovoked attack on Ukraine sovereignty by Russia. We are working closely with our clients, U.S. seafood importers, to ensure full compliance with the ban.

We are surprised and concerned, however, that some of the other witnesses are using this occasion to call for the immediate and significant expansion of the Seafood Import Monitoring Program (SIMP) – a provision contained in H.R. 4521, the America COMPETES Act. They boldly claim the Russian ban is meaningless unless the SIMP program is immediately expanded. Yet, SIMP expansion would take years to implement. It would have no impact on the Russian ban. And, before rushing headlong into SIMP expansion, we need to ask: is the H.R. 4521 SIMP provision really the best way forward to deter Illegal, Unreported and Unregulated (IUU) seafood imports?

No one wants illegal or fraudulent seafood, or seafood produced by forced labor, to enter U.S. commerce. Certainly, our industry is strongly committed to safe and legally compliant supply chains. Compliance is what we do. SIMP expansion is not the answer to effectively ban Russian seafood.

As customs brokers, we also understand how supply chains work. And, we know it is critical to the well-being of the U.S. economy and individual consumers that supply chains are efficient and reliable.

Any discussion of seafood trade must recognize that seafood supply chains are long. They are complex. Many are a maze of cross-border movements and interdependencies designed to achieve maximum efficiencies. These supply chains flow in all directions. It is routine and common for seafood caught and landed in one country to be shipped to a third country for processing. In fact, this is the case for U.S.-caught seafood. Large quantities (an estimated $695 million by value) of seafood harvested in the U.S. by U.S. commercial fisheries are exported to foreign countries for further processing before being imported back into the U.S. market.[1] This is the way supply chains work.

The International Trade Commission estimates that 11% of imported seafood consists of IUU seafood. This means 89% of the seafood imports are compliant. The challenge for regulators is: how to stop the 11% without disrupting the vast majority of legal, compliant imports. We need effective enforcement. But we also need efficient enforcement.

And that is where the current Seafood Import Monitoring Program falls short. It is a well-intentioned program to deter IUU seafood imports. Yet, SIMP already collects more data at entry than just about any other agency. For 1,100 species of seafood, we provide the vessel name, the vessel country flag, the location of the harvest, the gear used, the place of first off-load and the entity receiving the fish, among other details. The 15 required data elements may not seem like a big deal – until you consider the complexity of seafood supply chains and the reality of the entry process.

Consider what this means in the commercial world. A single fishing vessel may be out at sea for six to eight weeks at a time catching up to 350 tons of fish from 20 to 30 different locations. When a typical shipment of canned seafood arrives in the U.S., it may consist of 20 containers holding 60,000 tins. The seafood in these products may easily have originated from 10 or 12 different vessels catching fish from over a hundred different locations. So, for this one typical customs entry, 15 additional data elements explode into thousands of data elements at entry, as all these variations are accounted for.

Every one of these 1,000+ data elements must be manually keyed in by a customs broker, making this is a labor intensive and costly process for the trade. But perhaps even worse, all this work and all this data does not necessarily lead to compliant supply chains. Tracking supply chain data on a shipment-by-shipment basis is the least efficient and effective means to identify products that use forced labor or violate IUU fishing laws.

Now, the America COMPETES legislation doubles down on this approach, calling for a significant expansion of SIMP by requiring *72 hours in advance of entry* complete chain of custody data, with verification/certification by a competent third party of all major transfer points. The bill also expands the scope of SIMP by including all species of seafood and seafood products and widens NOAA's mission by requiring data on labor conditions in the harvest and processing of seafood products.

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[1] *See* USITC, Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S.Imports and Economic Impact on U.S. Commercial Fisheries, Inv. 332-575, Publ.5168 (February 2021).

The other witnesses deem this legislation as essential for enforcing the Russian ban and apparently envision this legislation, if passed, taking effect immediately. Yet, many if not most of these provisions would be impossible to implement for years, at best. For example, they call for certification of all parties in a seafood supply chain. Yet, no country has such a certification program in place. Designing and implementing a meaningful certification program with controls in place to prevent fraud is difficult. It is never an overnight process. Nor has any thought been given to how those multiple certifications per supply chains would move through the supply chain. Are we talking dozens of paper certificates accompanying each shipment? Or will there be electronic certificates? And what system would be used and how would each government system interconnect globally?

Just to give you an idea of the challenges in devising an import certificate, consider that the US Department of Agriculture has been working on an electronic Organics certificate for several years and only now is moving towards implementation in another year or so. And that is only after working diligently with the organics industry and brokers and importers for over a year to develop a process that can actually work in the real world.

NCBFAA encourages you to step back and reconsider the options before going forward with SIMP expansion. It will not impact implementation of the Russian ban on seafood. Nor is it the best way to deter IUU fishing. We offer the following perspectives:

- **You cannot "data" your way out of IUU fishing**. Another 10, 20 or 50 data elements per seafood provider at entry will not lead to more compliant seafood chains or enable NOAA to stop illegal imports – especially if the data is not put to good use. The existing data requirements at entry are already detailed and demanding. More is not necessarily better. Greater targeted use of existing data elements is essential.

- **SIMP Envisioned A Balanced Approach**: SIMP was designed to balance IUU fishing deterrence while limiting the burden on lawful trade. The aim was to minimize the impact on legitimate trade. The SIMP Expansion Act runs directly contrary to this goal.

- **The SIMP Expansion Reflects a Poor Understanding of Supply Chains**: The additional data will be crushing to the entry process. Complete supply chain information, with certifications for *each and every* entry, provided 72 hours before entry is wildly unrealistic. And it is without precedent. Other agencies, such as the Food and Drug Administration (FDA), require importers to establish food supplier verification programs for imported food products, --the detailed data on the food supply chain is *not provided as part of the entry process*. Most of the detailed supply chain records are reviewed post-entry through regular audits.

- **The Limits of ACE**: The Automated Commercial Environment (ACE) is a sophisticated system with robust capabilities but is not capable of accepting all this additional data., it is not a magic wand. The data for each shipment that arrives at the border must be manually keyed in at entry. And, because no two shipments are exactly alike, this process must be repeated for each and every entry (and for each line in an entry). Given the complexity of a typical seafood shipment, there is a cost, in time and money, associated with every data collection requirement -- both in gathering the necessary data and manually entering each keystroke.

ACE cannot handle such massive amounts of data. There is already a limitation on the number of "records" that can be reported per entry. And the system shuts down for maintenance all too frequently. For these very reasons, CBP is looking at ACE 2.0 because the current system cannot function as originally designed in today's trade environment. The system cannot handle the data requested.

- **Avoid Duplication of Effort**: There are numerous overlapping initiatives in this space. NOAA alone has four separate import programs (including SIMP), requiring the very same data to be input separately at entry for certain species of fish. In addition, the Food and Drug Administration is conducting innovative pilots involving Artificial Intelligence to target unsafe seafood products and looking at ways to trace food through the supply chain. Also, CBP has launched a robust program to combat forced labor, with a focus on forced labor in the seafood industry. Other agencies are already addressing issues such as forced labor. Before adding a new SIMP program, we need to take stock of existing resources.

- **Single Window Not Intended To Be A Data Dump**: ACE/ITDS was never meant to serve as the conduit for a massive data dump from the trade. As the various Partner Government Agencies have implemented ACE requirements, each agency has carefully weighed what are the most critical data elements for enforcement, often paring down an initial "wish list" to a handful of key data elements (with the rest available as part of post-entry audits).

- **Lessons Learned From Other Agencies**: Other agencies with stringent import requirements have mastered this process, requiring a limited number of data elements and effectively utilizing that data to target problem shipments works better. Enforcement is strong, yet efficient. This includes the Food and Drug Administration, the Environmental Protection Agency, the Animal and Plant Health Inspection Service, the Fish & Wildlife Service, among others. Many of these agencies relied on NCBFAA members to help them overcome challenges in designing and implementing their programs to ensure they were realistic, efficient and effective. We are willing to do the same with NOAA.

- **Assess the Current SIMP**: Before expanding or changing SIMP, we need to better evaluate the operation of the existing program:

  - **Confusing SIMP Forms:** The format for SIMP forms is confusing and lacks clear guidelines. For example, the SIMP forms apply to ocean caught fish, but do not reflect the circumstances for aquaculture moving from the pond to the processing plant. This leads to confused, nonresponsive data at entry.
  - **SIMP Audits – Form Over Substance**: SIMP audits tend to be overly focused on minor non-substantive errors and are beset with a "gotcha" mentality. For example, an auditor cited an importer for noncompliance when an "a" was substituted for an "i" in "Khatulistiwa" on entry documents. This fixation on minutiae detracts from the overall goal of identifying the producers and supply chains responsible for IUU abuses.
  - **NOAA Report**: A recent report from NOAA reveals that nearly 60% of audited shipments were compliant. Of the 40% noncompliant shipments that only a small

number warranted enforcement action. Most "noncompliant" involved inadvertent misspellings or similar errors.

Ultimately, smarter use of 21st century technology will provide far more streamlined, effective results than relying on voluminous data entry on a shipment-by-shipment basis at the time of entry. Artificial Intelligence, predictive analytics, blockchain – all offer exciting and innovative opportunities that should be explored. Rather than expanding the current ineffective process, Congress should encourage regulators, industry and NGOs to reimagine the process with a tech-enabled approach.

NCBFAA stands ready to help in this effort. Thank you again for allowing me to present NCBFAA's perspectives.