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TESTIMONY OF
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TO THE
SOUTHERN SHRIMP ALLIANCE

BEFORE THE
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
OVERSIGHT OF NOAA'S REPORT ON
ILLEGAL, UNREPORTED, AND UNREGULATED FISHING

November 14, 2019

Mister Chairman and Members of the Subcommittee, thank you for inviting me to participate in this hearing. I am Nathan Rickard, a partner at the law firm of Picard Kentz & Rowe LLP and trade counsel to the Southern Shrimp Alliance.

The Southern Shrimp Alliance is a non-profit industry association comprised principally of small- and medium-sized family owned and operated businesses along our southern coastline. Its membership includes shrimp fishermen, unloading docks, shrimp processors, seafood retailers and wholesalers, and other shrimp related businesses ranging from south Texas to North Carolina.

The Southern Shrimp Alliance is committed to preserving the long-term viability of one of the country's most valuable commercial fisheries; a fishery that has acted as the economic and social foundation of scores of coastal communities around the Gulf of Mexico and South Atlantic. Its Board of Directors, staff, and membership work each and every day to improve vessel safety, enhance the industry's position in the U.S. market, and assist in the development of a fishery management regulatory structure that appropriately balances the commercial interests of fishermen and the need to preserve and protect the environment.

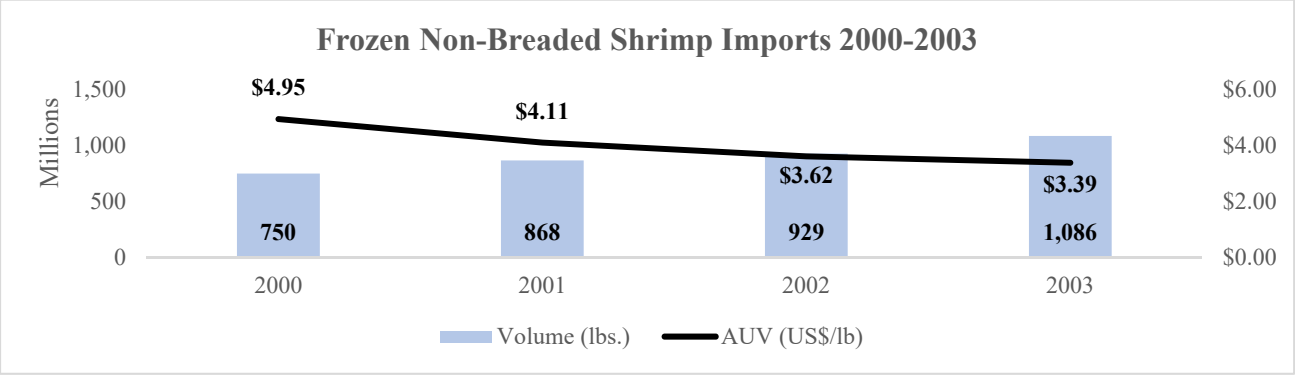
But the Southern Shrimp Alliance was initially organized in 2002 around one specific and narrow issue: shrimp imports. International trade in seafood has remained a priority focus for the organization throughout its existence.

In its *Improving International Fisheries Management* report, NOAA Fisheries recognizes that illegal, unreported, and unregulated (IUU) fishing is driven by the continued market demand for this seafood, as "[t]he reason IUU fishing continues despite decades of effort to curb the problem is the economic incentive that makes such activities cost-effective and financially viable for many fishermen and, indeed, investors."[1] The U.S. market plays a substantial role in the international trade of seafood, as it represents the second largest seafood importer in the world, and seafood imports "currently represent[] approximately 90 percent of U.S. seafood supplies . . ."[2]

The Southern Shrimp Alliance's experience in working on international trade issues demonstrates the importance of access to the U.S. market as essential leverage in the pursuit of policy objectives, including improved international fisheries management.

I. Border Measures Counter the Harmful Impact of Unfair Trade

When the Southern Shrimp Alliance was formed, the U.S. shrimp industry faced ever-increasing volumes of cheap shrimp imports that were leading to a massive decline in prices in the U.S. shrimp market. As the table below shows, between 2000 and 2003, the total volume of frozen non-breaded shrimp imports into the United States grew by 44.9 percent from 750 million pounds to 1.1 billion pounds, while the average unit value (AUV) of those imports fell by 31.6 percent from $4.95 per pound to $3.39 per pound.[3]



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1 NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 41.

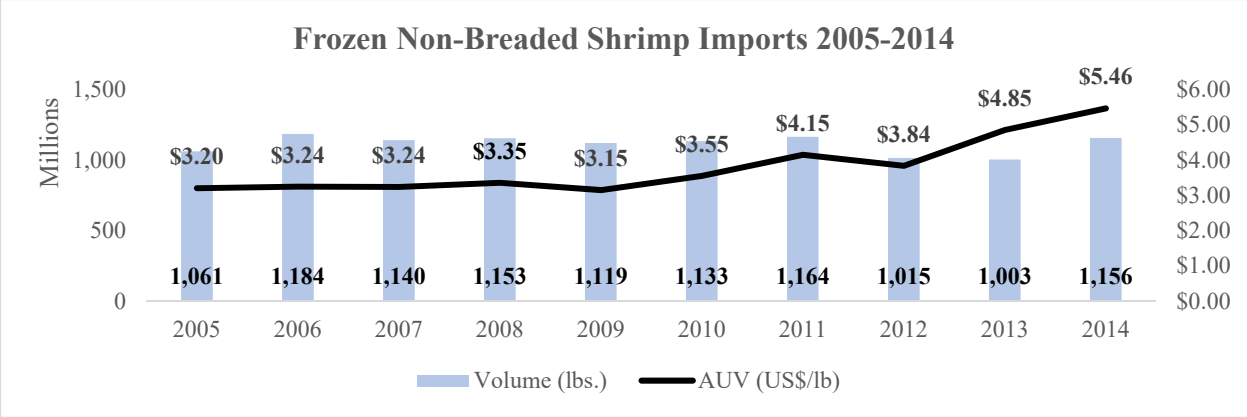
2 *Id.* at 41, 47, and 65.

3 All data regarding U.S. import volumes and values presented here was obtained and compiled through the U.S. International Trade Commission's *Dataweb*.

As a result of collapsing prices in the marketplace for both imported and domestic shrimp, hundreds of commercial fishermen were exiting the industry and the U.S. shrimp industry's infrastructure – built through decades of investment and work – faced an existential crisis.

In response, the industry created the Southern Shrimp Alliance to ask the federal government for relief against unfairly traded imports. As trade counsel to the organization, my colleagues and I filed formal petitions for antidumping duties with the U.S. International Trade Commission and the U.S. Department of Commerce in December of 2003. This initiative ultimately resulted in the imposition of antidumping duty orders on frozen warmwater shrimp imports from Brazil, China, Ecuador, India, Thailand, and Vietnam in February of 2005.

With trade relief in place, the next decade marked a remarkably stable period for shrimp imports in the U.S. market. In the ten years between 2005 to 2014, frozen non-breaded shrimp import volumes increased by a total of just 9.0 percent (growing from 1.1 billion pounds to 1.2 billion pounds). Over the same time period, the AUVs of these shrimp imports increased by an incredible 70.5 percent, from $3.20 per pound to $5.46 per pound.



Nevertheless, although trade relief brought needed stability to the U.S. shrimp market, it did nothing to alter the underlying reality that continues to handicap U.S. seafood producers in the international seafood market: while U.S. commercial fishermen are heavily regulated, much of the world's seafood is produced by foreign industries that are not subject to significant regulation. As a practical matter, this has meant that seafood purchasers in the United States reap massive financial benefits from pursuing sources of supply that are the cheapest not because they are more efficient or better seafood producers, but because these foreign producers are not required to internalize any of the environmental and societal costs created by their activities.

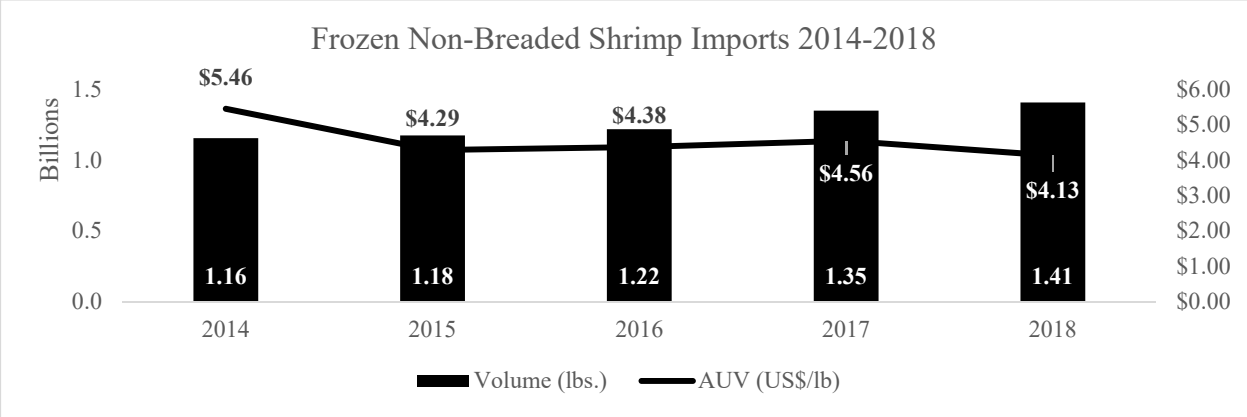
The antidumping duty orders meaningfully addressed the sale of shrimp in the U.S. market for less than fair value. But this trade remedy had no direct impact on other non-market factors that distort international trade in shrimp, including the unregulated use of antibiotics in seafood aquaculture; foreign governments' extensive grants of fishery and export subsidies; forced and child labor in seafood supply chains; IUU fishing; market access limitations in other major shrimp importing nations; and weak environmental standards in foreign nations.

Nevertheless, for the U.S. shrimp industry, the trade relief provided concrete evidence that border measures are capable of successfully countering an unfair trade practice with minimal

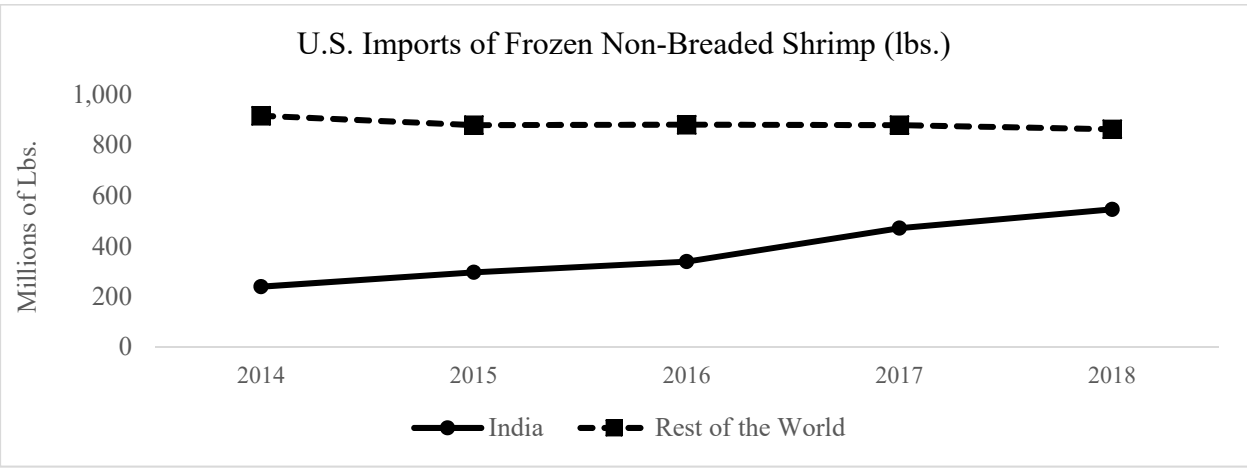
adverse impacts on U.S. consumers. More recent events have demonstrated that the willingness of other major seafood importing nations to use border measures as leverage to pursue policy goals also has major impacts on international trade in shrimp and on the U.S. shrimp market.

II. Weak Enforcement in the United States Re-Directs Problematic Seafood to this Market

Although the U.S. shrimp market enjoyed market stability in the decade after the imposition of the antidumping duty orders, since 2014, the market has once again been characterized by increasing volumes of imported shrimp that are declining in prices. By 2018, total frozen non-breaded shrimp imports had increased by 21.9 percent, growing from 1.2 billion pounds to 1.4 billion pounds, while the AUVs of these imports fell by 24.3 percent from $5.46 per pound to $4.13 per pound.



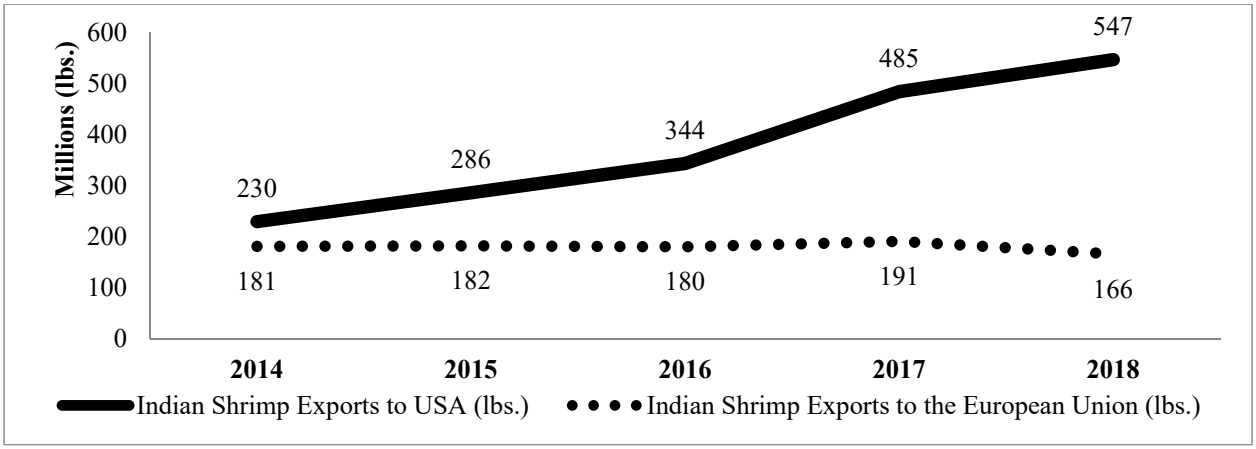
These market trends correspond to the massive growth in Indian shrimp imports in the U.S. market. The volume of frozen non-breaded shrimp imports from India has grown by 127.8 percent, from 239.6 million pounds in 2014 to 545.9 million pounds in 2018. At the same time, frozen non-breaded shrimp imports from all other sources have declined by 5.8 percent, falling from 916.6 million pounds in 2014 to 863.1 million pounds in 2018.



Last year, on its own, India accounted for 38.7 percent of the total volume of all frozen non-breaded shrimp imports into the United States. Through the first nine months of 2019, Indian shrimp import volume has grown another 12.9 percent compared to the same time period in 2018. This year, India accounts for 43.5 percent of total frozen warmwater shrimp import volume.

India has seen incredible increases in its production of shrimp through massive expansions of the nation's aquaculture. Indian shrimp exports have additionally been encouraged by the benefits obtained from heavy government subsidization, including the Merchandise Exports from India Scheme (MEIS), part of the export subsidy programs that were recently found to be non-compliant with India's obligations under the World Trade Organization (WTO) Agreements by a WTO Dispute Settlement Panel.[4] These subsidy programs have been augmented over time and, effective December 5, 2017, the government of India increased the bounty paid on shrimp exports under the MEIS export subsidy scheme from five to seven percent of the export value of the shipment. India's MEIS export subsidy scheme is so massive that income from just this one program accounted for significant parts of the total income of major Indian shrimp exporters, comprising 3.9% of Falcon Marine Exports Ltd.'s total revenue in fiscal year 2017-2018 and 4.9% of Asvini Fisheries Private Ltd.'s total revenue in fiscal year 2017-2018.

But India's augmentation of its shrimp aquaculture and export bounty programs do not appear to be the most significant factor in Indian shrimp's explosive growth in the U.S. market. As NOAA Fisheries' report observes, the United States and the European Union are "two of the three top seafood importers in the world . . ."[5] Yet, as shown in the table below, India's exports of shrimp to the European Union have declined at the same time as its exports to the United States have more than doubled.[6]



4 *See India-Export Related Measures*, Report of the Panel, WT/DS541/R (Oct. 31, 2019).

5 NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 41.

6 The data regarding Indian shrimp export volumes presented here was obtained and compiled through UN Comtrade.

The large discrepancy in trends is due to market access limitations imposed by the European Union on Indian shrimp imports. In July 2010, the EU issued a Commission decision declaring emergency measures with regard to imports of aquaculture products from India, including shrimp, intended for human consumption, mandating that at least ten percent of consignments of aquaculture products from India be tested for the presence of certain antibiotics.[7] In October 2016, the EU issued another Commission decision observing that "[t]he results of analytical tests undertaken by official control laboratories demonstrate that the level of compliance of aquaculture products from India intended for human consumption as regards the presence of residues of chloramphenicol, tetracycline, oxytetracycline, chlortetracycline and metabolites of nitrofurans is unsatisfactory."[8] The EU found that "[t]he obligation for [] mandatory testing should be strengthened to continue to deter producers in India from misusing the relevant substances and to minimise risks to human health in the European Union" and ordered that samples be taken from at least fifty percent of consignments of aquaculture products from India, including shrimp.[9]

This testing of import shipments is done in addition to the EU's requirements for pre-shipment controls on Indian exports of aquaculture products.[10] These pre-shipment controls mean that all shrimp exported out of India to the EU must be from an establishment approved by the Export Inspection Council (EIC), with each processor obligated to have samples taken from them every six months to test for the presence of antibiotics. EIC-approved shrimp exporters are only permitted to source shrimp from shrimp farms that are registered with India's Marine Product Export Development Agency (MPEDA). MPEDA registered shrimp farms are, in turn, required to have shrimp batches sampled and tested for certain antibiotics prior to harvest. EIC-approval also requires that a processing plant limit the number of farms/batches in one exported consignment to four. This limitation on sourcing allows for more accurate sampling, facilitates follow-up investigations, and ensures traceability. Further, prior to export, staff from EIC laboratories visit the EIC-approved facility and take samples to test for antibiotics. All shipments of shrimp to the EU from India must be accompanied by the results of this analytical test.

The EU's actions are not the result of findings unique to the European market. To the contrary, in the United States, over half (155 out of 302) of the total shrimp entry lines refused by the U.S. Food and Drug Administration (FDA) since 2016 for reasons related to veterinary drug residues have originated in India. As shown in the chart below, refusals of shrimp entry lines from India are almost three times the amount of the next largest country, China.

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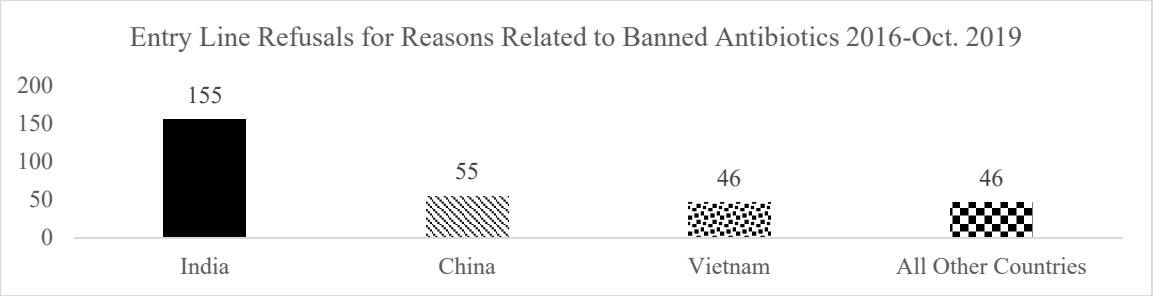
7 *See* Commission Decision 2010/381/EU of 8 July 2010.

8 Commission Implementing Decision 2016/1774 of 4 October 2016.

9 *Id.*

10 *See* European Commission's Directorate-General for Health and Food Safety's "Final Report of an Audit Carried Out in India from 20 November 2017 to 30 November 2017 in Order to Evaluate the Control Systems in Place Governing the Production of Fishery Products Intended for Export to the European Union," DG(SANTE) 2017-6161.



Thus, while the antidumping duty orders provide evidence that border measures can effectively counteract the unfair trade they were designed to address, the recent massive growth in Indian shrimp imports in this market provides a lesson as to the consequences of an unwillingness to use border measures to address other types of unfair trade practices. The EU's efforts to protect European consumers have worked to ensure that only non-contaminated Indian shrimp reaches their market. In contrast, the United States' *laissez faire* approach to the regulation of the safety of imported seafood has led to our market becoming a magnet for potentially contaminated, cheap Indian shrimp that could not be sold in the EU.

III. The Seafood Market Is Not Self-Regulating and Fraud Remains Extensive

As the Southern Shrimp Alliance has attempted to address other market distortions beyond dumping, its members have repeatedly been assured that no further government regulation or intervention is required. International negotiations and agreements, coupled with private industry responses to problems through schemes like certification systems, are believed to be sufficient to eliminate abuses. However, in the U.S. shrimp industry's experience, this has never proven true.

One area of consistent focus for the Southern Shrimp Alliance over the last two decades has been the inexplicable and indefensible continued tolerance for the presence of banned, harmful antibiotics in farmed shrimp imports sold to U.S. consumers. Beyond posing unnecessary health risks to Americans that purchase and eat seafood, continued sourcing of shrimp from countries that do not effectively control the use of antibiotics in shrimp farming has contributed to the further development of antimicrobial resistance through foreign aquaculture. Appropriately, as recognized in NOAA Fisheries' report, the spread of antimicrobial resistance through foreign aquaculture is of importance to the U.S. government.[11]

Although U.S. seafood importers have voiced concern regarding the continued use of veterinary drugs in shrimp aquaculture, they have argued that educational outreach to shrimp farmers around the world, rather than increased testing at the border, will eventually lead to the elimination of the problem. For example, twelve years ago, the President of the National Fisheries Institute testified before Congress that, in response to findings of antibiotics in

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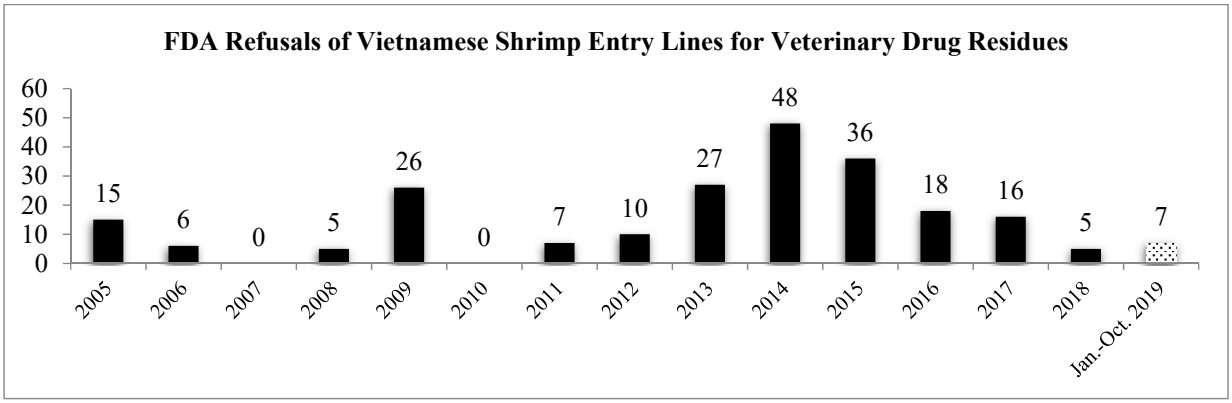
[11] *See* NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 76 ("Of importance to the United States was the focus on combatting IUU fishing and dealing with antimicrobial resistance in aquaculture.").

Vietnamese farmed seafood, U.S. importers worked with that country's industry to enhance educational outreach and that the outcome of this initiative was encouraging:

> *As an example of how industry and government can work together, in 2005, Vietnam had--the FDA had found out that Vietnam had a number of companies using fluoroquinolone, an unauthorized antibiotic. NFI travelled to Vietnam to encourage both the companies and government to take action. Subsequently, Vietnam banned that product, conducted a significant educational system out in their farm communities. They began 100 percent testing for fluoroquinolones and had swift and sure punishment for anyone misusing that product.*
>
> *The results have been impressive. In 2006 and 2007, to date, there have been zero shrimp imports from Vietnam with testing positive for antibiotics. There have been zero basa or tra, a kind of Chinese--excuse me--Vietnamese catfish, testing positive for antibiotics. That is a good example of industry and government working together.*[12]

In 2007 the FDA did not refuse any shrimp entry lines from Vietnam for reasons related to veterinary drug residues, but that year did not portend the effective elimination of the problem. As shown in the chart below, since 2008, the FDA has reported refusing 205 entry lines of shrimp exported from Vietnam for reasons related to banned antibiotics, averaging over seventeen a year. In fact, while NFI's activities in Vietnam came in response to the FDA's refusal of fifteen shrimp entry lines from Vietnam in 2005 after the detection of banned antibiotics, the agency has refused a greater number of Vietnamese shrimp entry lines in six of the eleven years since 2007:



Moreover, these detections reflect a testing regimen administered by the FDA wherein just ***0.1 percent*** of seafood entry lines are sampled to test for the presence of veterinary drugs.[13]

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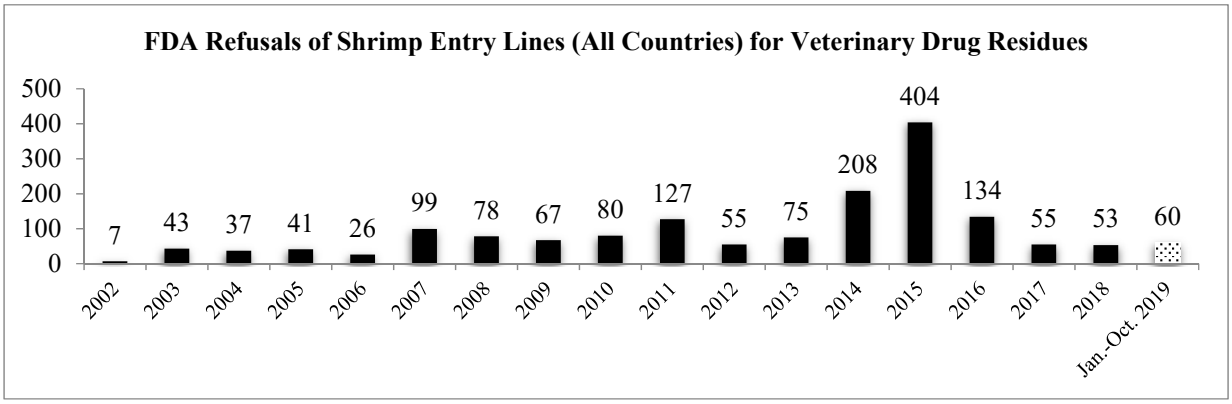
12 Testimony of John Connelly, President, National Fisheries Institute, "Joint Hearing on Import Safety," Subcommittee on Trade, Committee on Ways and Means (Oct. 4, 2007).

13 *See* Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (Sept. 2017) at p. 20, Figure 3 (reporting that just 1,065 seafood entry lines out of a total of 1,010,148 entry lines of seafood imported in fiscal year 2015 were sampled for drugs).

Nevertheless, despite this minimal testing, the FDA confirmed the presence of unsafe drug residues in an astonishing ***12.2 percent*** of the shrimp that the agency sampled.[14]

As of today, there is no indication of any significant decline in the use of banned antibiotics in shrimp aquaculture. While the volume of shrimp supplied by one country infamous for tolerating indiscriminate antibiotic use in shrimp ponds has declined substantially (China) following actions taken by the FDA to limit the access of Chinese shrimp exporters to the U.S. market, another nation equally infamous for the same practices is now the United States' largest supplier of shrimp imports (India). In fact, the FDA's refusals of shrimp entry lines for reasons related to the presence of banned veterinary drug residues have remained remarkably high, reflecting a continued tolerance for contaminated farmed shrimp amongst U.S. seafood importers:



These data highlight another important element in the U.S. seafood market: the general lack of regulation of seafood imports makes the market susceptible to wide-scale fraud.

The incredible spike in the FDA's refusals of shrimp entry lines for banned antibiotics in 2014 and 2015 was overwhelmingly attributable to shrimp exported from Malaysia. Of the 612 entry lines refused by the federal agency in those two years, 421 of them were of Malaysian shrimp (68.8 percent). For several years prior to the FDA's actions, the Southern Shrimp Alliance decried the large presence of purportedly "Malaysian"-origin shrimp in the U.S. market, explaining that this shrimp was almost entirely comprised of Chinese-origin shrimp transhipped through Malaysia to evade the FDA's Import Alert and the antidumping duties that had been imposed on Chinese shrimp. Federal agencies confirmed the illegal evasion activities and their enforcement efforts were reported publicly by the U.S. Government Accountability Office (GAO) in 2009:

> In June 2007, FDA announced a countrywide import alert on five Chinese-farmed seafood products, including shrimp. This import alert required that all Chinese shrimp be detained and refused entry, unless the importer could prove the absence of unapproved drugs in the shrimp. On the basis of industry information and CBP and ICE investigations, CBP determined that Chinese shrimp was being

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[14] *See id.* at p. 53, Appendix II (unsafe drug residues found in 67 of 550 shrimp samples taken in fiscal year 2015).

transshipped to the United States through Malaysia. Due to this illegal transshipment, importers of Chinese shrimp were able to circumvent not only the 2005 antidumping duty but also FDA's recent import alert. In September 2007, CBP tested shipments of suspected Chinese shrimp illegally transshipped through Malaysia for the presence of unapproved drugs and found some contaminated shrimp. On the basis of CBP's information, in March 2008, FDA issued a new import alert requiring importers of shrimp from one Malaysian manufacturer to prove the absence of unapproved drugs prior to entering future shipments of shrimp into U.S. commerce.[15]

Nevertheless, as shown in the table below, U.S. seafood importers continued to source hundreds of millions of dollars worth of shrimp from Malaysian suppliers every year for another six years after the GAO's report. After importing an annual average of just over $12 million worth of frozen shrimp from Malaysia between 2000 and 2003, Malaysia exported roughly $137 million worth of frozen shrimp to the United States, on average, between 2004 and 2015. Before even more significant enforcement actions were taken to finally stop this illegal evasion scheme, U.S. seafood importers brought over $1.6 billion worth of purportedly Malaysian shrimp into our market, significant portions of which were contaminated with banned antibiotics.

Working to counteract the extensive fraud involved in the transshipment of Chinese shrimp through Malaysia taught the Southern Shrimp Alliance two important lessons regarding the U.S. shrimp market.

First, in the absence of enforcement measures, U.S. seafood importers and their customers, in the main, are indifferent as to where they source their shrimp. The Southern Shrimp Alliance met repeatedly with U.S. seafood importers regarding the domestic shrimp industry's concerns regarding the actual origins of Malaysian shrimp. The Southern Shrimp Alliance was repeatedly assured that such shrimp was not being purchased by large seafood distributors, restaurants, or retailers and was instead dedicated to niche, ethnic markets that operated outside of the private, sophisticated supply chain traceability measures adopted by large industry participants. These claims were inaccurate.

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[15] Government Accountability Office, *Seafood Fraud: FDA Program Changes and Better Collaboration Among Key Federal Agencies Could Improve Detection and Prevention*, GAO-09-258 (Feb. 2009) at p. 15.

For example, in a deposition related to a civil court case involving problems with the sale of purportedly Malaysian shrimp, a major U.S. seafood importer and distributor was asked to explain inaccuracies placed on a large purchase order for Malaysian shrimp, including an error in the purchase order's listing of the country of origin of the shrimp as China rather than Malaysia. In response, the seafood executive explained: "I was ordering 51/60 P&Ds. I didn't care the brand. I didn't care the country."[16] The seafood executive further explained that although the "Malaysian" shrimp purchased had been found to be short-weighted, it could not be returned, because his company's customer was a "big restaurant chain that had a commercial that was running on TV and, you know, this was all purchased for that ad that was coming out. It was zero hour and I was – I had a situation."[17]

Second, even where regulatory measures exist that are intended to establish traceability for seafood products, these measures are meaningless in the absence of enforcement. NOAA Fisheries' report explains that "the Shrimp-Turtle Law (Section 609 of P.L. 101-162) requires other nations to take comparable regulatory measures to reduce sea turtle bycatch in their wild-caught shrimp fisheries if they want to import their product to the United States."[18] In conformance with Section 609 of Public Law 101-162, all imports of shrimp into the United States must be accompanied by a declaration that the shrimp was not harvested in a manner harmful to sea turtles. This declaration, the "Shrimp Exporter's/Importer's Declaration,"[19] is submitted to the U.S. Department of State and, for farmed shrimp, requires the declarant to identify the name and address of the aquaculture facility in which the shrimp was harvested.

Although the form and its requirements should have provided some measure of traceability for shrimp imports, there appear to be no consequences if they are completed with false information. In another civil court case involving a commercial dispute over "Malaysian" shrimp, the parties placed on the docket of the proceeding the declarations that accompanied certain shipments of "Malaysian" shrimp imported in 2011. Two of these forms are attached here at the **Appendix**. As these forms show, the exporter and importer involved made declarations identifying two separate aquaculture facilities – Aiman Aquatic Sdn. Bhd. and Chai Kee Aquatic – with one single address that corresponded to the same business address in the Chinatown of Sitiawan, Malaysia (No. 492, Lorong Satu, Kampung Cina, 32000 Sitiawan, Perak). No commercial shrimp farm could possibly have been located at this Chinatown address.

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16 Defendant/Counter-Plaintiff American Seafood Imports Inc.'s Memorandum in Response to Plaintiff/Counter-Defendant National Commodities Company's Motion for Summary Judgment, *National Commodities Company v. American Seafood Imports Inc.*, Civil Action No. 4:11-cv-0716 (United States District Court, Southern District of Texas, Nov. 12, 2012) at Exhibit 3, p. 11 of Exhibit/p. 62 of Transcript.

17 *Id.* at Exhibit 3, p. 23 of Exhibit/p. 116 of Transcript.

18 NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 62.

19 *See* U.S. Department of State, DS-2031 (formerly DSP-121), available at: https://eforms.state.gov/Forms/ds2031.PDF.

Despite the obvious facial inaccuracy of the claim, the importer faced no difficulties in importing this shrimp into the U.S. market.

These lessons led the Southern Shrimp Alliance to strongly advocate for the inclusion of shrimp as a species encompassed within NOAA Fisheries' Seafood Import Monitoring Program (SIMP). Further, the Southern Shrimp Alliance has kept in close contact with the agency to encourage effective enforcement of SIMP and has worked to educate other partner federal government agencies regarding the information collected through SIMP, as well as the additional information requested and reviewed by NOAA Fisheries in the agency's audits of seafood entry packages.

The organization's efforts to date have underscored the need to enhance and formalize the sharing of information regarding the traceability of imported seafood between and amongst federal agencies. The data collected by NOAA Fisheries through SIMP should play a vital enforcement role in ensuring that foreign producers found by the FDA to have failed to abide by minimum food safety standards do not circumvent that agency's regulatory controls by shipping their products through other exporters and that seafood interdicted by U.S. Customs and Border Protection (CBP) through its § 1307 mandate to prohibit the importation of merchandise produced by forced or slave labor does not continue to enter U.S. commerce. Formal sharing of SIMP information with other partner federal agencies would be fully consistent with the declaration in NOAA Fisheries' report that the agency "support[s] the agencies tasked with implementing criminal, labor, and immigration laws in whatever ways we can, including informing the appropriate authorities of any observed violations or concerns regarding those laws."[20]

Further, the Southern Shrimp Alliance believes that the current administration of SIMP is vulnerable to abuse through the utilization of paper or shell companies as the holders of International Fisheries Trade Permits (IFTP) and that, in fact, the statement in NOAA Fisheries' report that "{i}mporters of regulated species and products must obtain an {IFTP} from NMFS and provide a NMFS-specific message set as a part of the entry filing process in the automated commercial environment maintained by {CBP}"[21] is not technically accurate. Rather, NOAA Fisheries does not require that an importer (or, for that matter, a consignee) be an IFTP holder as the IFTP number of an entirely different party may be provided along with the NMFS-specific message set. Because there is no requirement for a unity of identity between the importer, on the one hand, and the IFTP holder providing the SIMP data, on the other hand, the current approach invites abuse from the unscrupulous parties that are likely to participate in IUU fishing activities in the first instance.

The Southern Shrimp Alliance believes that meaningful traceability requirements are essential to effective deterrence of IUU fishing. Serious traceability requirements supported by enforcement measures, at a minimum, are likely to make it far more difficult for U.S. seafood importers to engage in anything to the scale of what the U.S. market experienced with regard to

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20 NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 78.

21 *Id.* at 47.

the transshipment of Chinese shrimp through Malaysia. Further, NOAA Fisheries' regulatory infrastructure for administering traceability requirements will determine the efficacy of the agency's implementation of all other border measures, including the import provisions currently being developed for the Marine Mammal Protection Act.[22]

IV. Congressional Oversight Is Essential

Careful oversight by Congress of NOAA Fisheries' administration of SIMP will be essential in ensuring that the program effectively eliminates seafood harvested through IUU fishing from the U.S. market. This observation is equally true with regard to the agency's broad efforts to improve international fisheries management. In order to facilitate this oversight, NOAA Fisheries must be asked to establish and report objective metrics regarding its operations.

At present, the lack of such metrics is a major deficiency in NOAA Fisheries' reporting to Congress. Annex 2 of NOAA Fisheries' report identifies a number of U.S. laws that either prohibit the importation of certain products or give federal agencies discretionary authority to implement border measures to achieve the relevant statutes' goals. Consistent with Congress' design, regulating access to the U.S. market is an important tool in NOAA Fisheries' tool box for improving international fisheries management. For example, in regard to the report's discussion of concerns regarding multiple issues arising from China's distant water fishing vessel fleet, the agency states that "[w]e will also continue to take steps to ensure that the United States is not importing seafood derived from this type of IUU fishing activity."[23] But this leaves unsaid what steps NOAA Fisheries will be taking and how Congress may evaluate whether this goal has been achieved.

Notably, although the agency stresses the importance of U.S. imports of seafood in the context of improving international fisheries management,[24] there is a general lack of discussion of trade statistics in NOAA Fisheries' report. In consequence, the report does not indicate whether certain species of seafood from particular countries of origin sold in the U.S. market present American consumers with the risk that they may be unwittingly encouraging IUU fishing through their seafood purchases. The sole exception in the report relates to the United States' imports of fresh and frozen snapper from Mexico. As the report explains, "the United States imported 4,796,693 kilograms of fresh and frozen snapper (*lutjanidae* spp.) from Mexico in 2018 (with a declared value of $33,036,108 USD), raising concerns that these imports may include fish harvested illegally in U.S. waters."[25] Although NOAA Fisheries makes a positive certification determination for Mexico based on the country's enforcement response to

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22 *See id.* at 65-66.

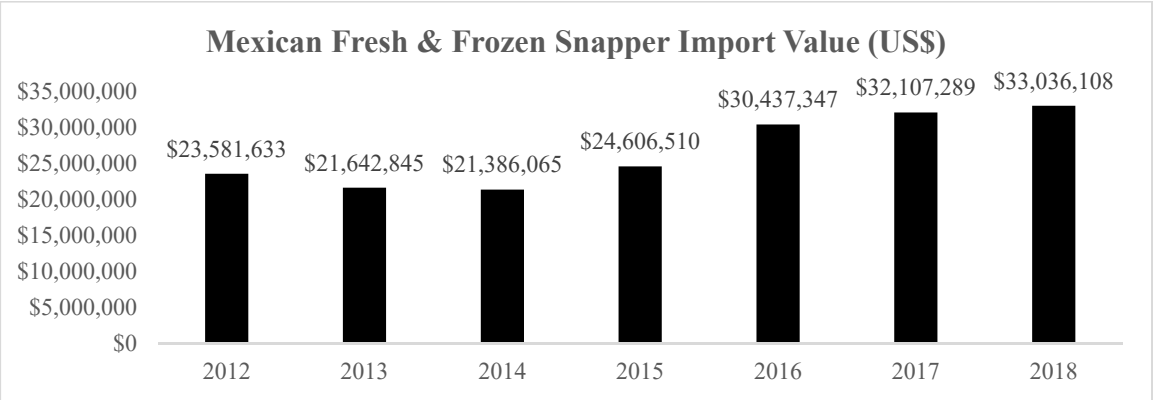
23 *Id.* at 38.

24 *See*, *e.g.*, *id.* at 71 ("More fundamentally, the dependence of the U.S. market on imports of wild-harvested and farmed seafood, and the growing demands of American consumers for assurance that fish are not the product of illegal or unsustainable practices, require the United States to address the lack of fisheries management and enforcement capacity in many developing countries.").

25 *Id.* at 28.

individuals involved in *lancha* (open-hulled vessels) operations and the overfishing of red snapper identified in 2014 and 2015,[26] the agency also explains that the United States Coast Guard (USCG) continued to apprehend *lanchas* found to be fishing in the U.S. Exclusive Economic Zone (EEZ) in 2016, 2017, and 2018.[27] The agency further explains that despite any enforcement efforts by the Mexican government regarding 2014 and 2015 incidents, the United States routinely finds the same people committing the same IUU fishing: "The USCG reports having apprehended a large number of Mexican nationals who are repeat offenders, some having been interdicted more than 20 times since 2014."[28]

Although it provides import volume and value figures regarding snapper imports from Mexico in 2018, the *Improving International Fisheries Management* report does not indicate, as shown in the chart below, that the agency's continued findings of violations correspond to a significant increase in the value of snapper we are importing from Mexico.



This trend is going to continue, as our fresh and frozen snapper imports from Mexico through the first nine months of this year are roughly 30 percent higher than they were over the same time period in 2018:

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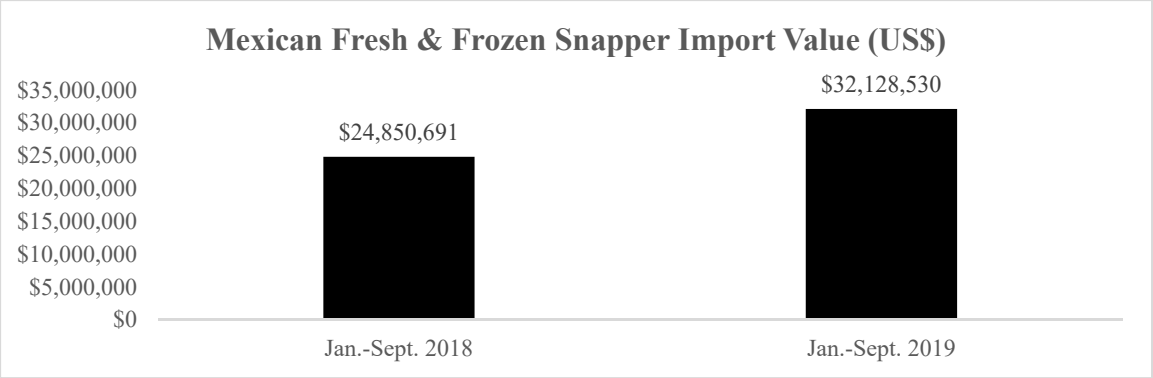
26 *See id.* at 33-35.

27 *See id.* at 28 (reporting that USCG apprehended 35 *lanchas* in 2016 and 33 more in 2017, with NOAA Fisheries analyzing an additional 51 case packages compiled by USCG regarding *lanchas* apprehended in 2018).

28 *Id.*



The volume of fresh and frozen snapper imported from Mexico over the first nine months of this year, at 9.5 million pounds, was 16.8 percent higher than the volume imported over the same time period last year (8.1 million pounds). With this growth, Mexico now accounts for 30 percent of the volume and 31 percent of the value of *all* U.S. imports of fresh and frozen snapper, up from 25 percent of both total volume and value last year.

Thus, it appears that at the same time as NOAA Fisheries is raising concerns regarding the continued IUU fishing of red snapper in U.S. waters by Mexican vessels, U.S. seafood importers are enhancing the incentives to do so by purchasing even more snapper from Mexico. Because NOAA Fisheries itself observes that U.S. imports of Mexican fresh and frozen snapped "may include fish harvested illegally in U.S. waters," significant growth in our imports of fresh and frozen snapper from Mexico is an outcome that is fundamentally inconsistent with the agency's objective of improving international fisheries management.

Moreover, in this instance, Mexico's IUU fishing activities adversely impact the U.S. shrimp industry. As the report explains, "[t]he gear type used by these lanchas is longline (monofilament with no wire leaders)" and "NOAA, the National Parks Service, and the Texas Parks and Wildlife Department have reported significant strandings of turtles on beaches in Texas, likely the result of bycatch by Mexican vessels illegally fishing in U.S. waters."[29] Accordingly, the continued IUU fishing operations of *lanchas* are undermining any benefit obtained from the regulatory restrictions imposed on U.S. commercial shrimpers operating in the Gulf to mitigate and limit the industry's impact on red snapper and Kemp's ridley sea turtle populations.

As the Committee is aware, pursuant to the Magnuson-Stevens Act, NOAA Fisheries continues to implement the red snapper rebuilding plan developed by the Gulf of Mexico Fishery Management Council in 2008.[30] Because of this successful and ongoing rebuilding plan, the red snapper stock is no longer overfished and is no longer subject to overfishing. The commercial shrimp fishery in the Gulf of Mexico, the commercial red snapper fishery in the Gulf of Mexico,

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29 *Id.*

30 *See* Gulf of Mexico Fishery Management Council and NOAA Fisheries, *Final: Amendment 27 to the Reef Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan (Including Supplemental Environmental Impact Statement, Regulatory Impact Review, and Regulatory Flexibility Analysis)* (June 28, 2007).

and the recreational fishing industry each accepted significant limitations in furtherance of the rebuilding plan and remain heavily invested in the continued success of these efforts. The significant red snapper mortality associated with continued, and apparently increasing, illegal *lanchas*' activities directly undermines these substantial conservation achievements, threatens the efficacy of the Gulf of Mexico Fishery Management Council's extensive initiatives to protect and preserve this species stock,[31] and is contrary to Congressional intent as reflected in the objectives of the Magnuson-Stevens Act.

Moreover, in furtherance of protection of Kemp's ridley sea turtle populations, the U.S. commercial shrimp fishery has adopted turtle-excluder devices (TEDs), as well as strict provisions governing the use of TEDs in their nets. Independent of federal regulatory requirements, the industry – particularly members of the Texas Shrimp Association in association with the Gladys Porter Zoo – have continuously made substantial financial and in-kind contributions to the Kemp's ridley sea turtle recovery efforts on nesting beaches in Mexico.[32] These efforts are essential and pivotal elements of the *Bi-National Recovery Plan for the Kemp's Ridley Sea Turtle (Lepidochelys Kempii)* as agreed to by the governments of the United States and Mexico.[33] Yet, while these two governments are collaborating on the restoration of this endangered species, Mexican fishermen continue to contribute to the elimination of the species through IUU fishing activities. Nevertheless, NOAA Fisheries has failed to respond to this continuing problem with a negative certification.

For these reasons, the Southern Shrimp Alliance believes that NOAA Fisheries should, in subsequent reports to Congress, provide information and analysis of the volume and value of U.S. imports of the seafood implicated. In this context, NOAA Fisheries should also be tasked with providing an explanation as to why the access of industries involved in IUU fishing to the U.S. market has not been curtailed or, if it has, what affirmative steps have been taken to prevent U.S. consumers from unwittingly supporting IUU fishing practices through their seafood purchases.

V. Forced and Slave Labor Constitutes IUU Fishing

In its report, NOAA Fisheries explains:

> In the course of researching illegal fishing activity for this report, NOAA came across numerous reports of alleged incidents of illegal fishing that fell outside the scope of IUU fishing, as defined by NOAA's regulations implementing the Moratorium Protection Act (MPA) (50 C.F.R. § 300.201). Because they fell outside the regulatory definition of IUU fishing, these alleged incidents could not serve as the basis of a formal identification during this review period. However,

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31 *See generally* http://gulfcouncil.org/fishery-management/implemented-plans/reef-fish/.

32 *See*, *e.g.*, http://gpz.org/kemps-ridley-turtle-project/; Melissa Gaskill, *Conservation Effort in Texas Pays Off*, Texas Sea Grant (Apr. 18, 2019); and Steve Clark, *Les Hodgson Brought Industry and Conservationists Together*, The Brownsville Herald (Aug. 16, 2016).

33 *See* https://www.fws.gov/kempsridley/.

> NOAA has determined that IUU fishing, as used in the MPA (16 U.S.C. § 1826j(e)), is potentially broader than the current definition set out in NOAA's implementing regulations. Therefore, NOAA will undertake a regulatory action to broaden, consistent with the statute, its regulatory definition of IUU fishing for the purposes of identification under the MPA to include situations where there is a clear pattern of vessels flagged to a nation conducting fishing activities in the EEZ of other nations without authorization of the respective coastal state. This will enable us, in future reports to Congress, to identify any nation that meets those criteria.[34]

The regulatory definition of IUU fishing promulgated by the agency at 50 C.F.R. § 300.201 may be broadened because the statutory provision, 16 U.S.C. § 1826j(e), directing the agency to publish a definition of IUU fishing only establishes minimum standards for what should be in that definition. Congress left to the agency the discretion to determine what encompasses IUU fishing. However, NOAA Fisheries' report addresses the problem of forced labor and human trafficking in the fishing sector while implying that the use of slave labor aboard fishing vessels does not fall within the ambit of IUU fishing:

> A growing body of evidence documenting severe labor rights abuses and exploitation on board fishing vessels has led to calls for greater international attention to labor and other social welfare concerns in the fishing sector. These reports document that some fishermen, many of them migrant workers, are subjected to labor rights abuses, including forced labor, on board fishing vessels. These issues are beyond the scope of this Report; however, such abuses and exploitation are known to occur in conjunction with IUU fishing activities, and therefore warrant attention here. These issues have garnered widespread domestic and international attention, and NMFS is engaging with our Federal interagency partners on both fronts.[35]

The report explains that "[t]he welfare and safety of personnel on fishing vessels, both domestically and abroad, is an important concern to NOAA,"[36] but leaves unaddressed why the agency is not considering amending the definition of IUU fishing to encompass slave labor at the same time as it undertakes regulatory action to broaden that regulatory definition.

In accordance with the Presidential Task Force on Combating IUU Fishing and Seafood Fraud's *Action Plan for Implementing the Task Force Recommendations*,[37] the IUU fishing page on NOAA Fisheries' website explains that "[t]he United States also takes an active role in negotiating international guidelines and standards through the United Nations General Assembly

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34 NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 22.

35 *Id.* at 77.

36 *Id.* at 78.

37 *See* Presidential Task Force on Combating IUU Fishing and Seafood Fraud's *Action Plan for Implementing the Task Force Recommendations* at 6.

and the FAO."[38] The agency's website reports that these international guidelines and standards for IUU fishing "include the FAO International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing, international guidelines on flag state responsibility, and standards to support the establishment of a Global Record of fishing vessels." The Food and Agriculture Organization of the United Nations' (FAO) *International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing*, in turn, defines "illegal" fishing as inclusive of the following activities:

> 3.1 Illegal fishing refers to activities:
>
> 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
>
> 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
>
> 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.[39]

The United States explicitly accepted this definition of illegal fishing when it adopted and implemented the FAO's *International Plan of Action* through the adoption of a *National Plan of Action* in 2004.[40] Moreover, in the *Port State Measures Agreement Act of 2015*, Congress defined the term IUU fishing as meaning "any activity set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing."[41]

As NOAA Fisheries has expressed an intention to take regulatory action to broaden the regulatory definition of IUU fishing, the agency should be encouraged to adopt a definition of the term that is consistent with the parameters of the internationally agreed upon definition of IUU fishing, as enshrined by Congress in the *Port State Measures Agreement Act of 2015*. Because the use of slave and forced labor in seafood harvesting activities violates national laws,

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38 National Oceanic Committee on IUU Fishing and Seafood Fraud, *About: International Framework*, available at: https://www.iuufishing.noaa.gov/About/InternationalFramework.aspx

39 Food and Agriculture Organization of the United Nations, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001) at 2.

40 *See* United States, *National Plan of Action of the United States to Prevent, Deter, and Eliminate Illegal, Unregulated, and Unreported Fishing* (2004).

41 Pub. L. 114-81, title III, § 301, Nov. 5, 2015, 129 Stat. 664 at § 7402(2).

the adoption of such a definition would align the scope of the agency's reporting to Congress with the need for a greater focus on slave labor as a component of IUU fishing.

While the Southern Shrimp Alliance appreciates the efforts taken by NOAA Fisheries to combat forced labor in the fishing sector, as set forth in its report,[42] the organization believes that there is much more that the agency can do within the context of SIMP and its other existing regulatory authorities to bring about the elimination of slavery in the seafood supply chain.

Thank you again for inviting me to share the U.S. shrimp industry's experience with trade in seafood with the Committee and I look forward to answering any questions you might have.

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[42] NOAA Fisheries, *Improving International Fisheries Management: 2019 Report to Congress* (Sept. 2019) at 77-78.

APPENDIX

U.S. Department of State

SHRIMP EXPORTER'S/IMPORTER'S DECLARATION

(SEE INSTRUCTIONS ON REVERSE)

OMB APPROVAL NO. 1405-0095
EXPIRATION DATE: 07/31/2004
ESTIMATED BURDEN: 10 minutes*

1. HARVESTING NATION	2. AQUACULTURE FACILITY *(If applicable)* *(Name and Address)*
MALAYSIA	AIMAN AQUATIC SDN. BHD. NO.492, LORONG SATU, KAMPUNG CINA, 32000 SITIAWAN, PERAK
3. EXPORTER *(Name, address, and Tel./Fax)* OCEAN PIONEER FOOD SDN. BHD. 12P, JALAN PELANTAR, 34900 PANTAI REMIS, PERAK, MALAYSIA. TEL (60)5-677 3293 FAX (60)5-677 4759	4. U.S. IMPORTER/ULTIMATE CONSIGNEE *(Name, address, and Tel./Fax)* YZ MARINE INC 5905 SOVEREIGN DR M-053, HOUSTON, TX 77036 TEL: 8325125176 FAX: 7134563615

5. DATE OF EXPORT *(mm-dd-yyyy)* 07-02-2011

6. DESCRIPTION OF PRODUCT

U.S. HTS Tariff Schedule Number	Number of Units	Net Weight in Kilograms
0306.13.00	FROZEN SHRIMPS 1000 CARTONS	22,700.00KGS

7. EXPORTER'S DECLARATION *(To be completed by a responsible agent of the exporter of the product.)*

I hereby declare that the shipment of shrimp accompanying this declaration *(check one)*:

A. [X] Harvested in a manner not harmful to sea turtles. Check the condition of harvest which applies:

1. X Harvested by aquaculture
2. ___ Harvested using TEDs
3. ___ Harvested using non-mechanical net retrieval or by special gear (see the Instructions)
4. ___ Shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles

B. [ ] Harvested in the waters of a nation currently certified pursuant to Section 609 of P.L. 101-162.

EXPORTER *(Name and title)*	SIGNATURE	DATE *(mm-dd-yyyy)*
MR. NG BAK HWA	OCEAN PIONEER FOOD SDN. BHD. (Company No. 217320-D)	07-02-2011

8. GOVERNMENT CERTIFICATION *(Necessary only if box 7a above is checked; to be signed by a responsible Government official of the harvesting nation)*

I hereby declare that the statements signed above by the exporter of this shipment of shrimp are true and accurate to the best of my knowledge.

NAME/AGENCY/ TITLE	ADDRESS/TEL/FAX	SIGNATURE	DATE *(mm-dd-yyyy)*
ABDUL RAHIM BIN ISA *Penolong Pegawai Perikanan G27* Cawangan Kesihatan Awam Unit Biosekuriti Perikanan Negeri Pulau Pinang FISHERIES OFFICER FISHERIES DEPARTMENT	FISH HEALTH & QUARANTINE CENTRE, 11960 BATU MAUNG, PENANG, MALAYSIA. TEL: 04-6263002 FAX: 04-6262981	FISH HEALTH AND QUARANTINE CENTRE PENANG, MALAYSIA	07-02-2011

9. IMPORT INFORMATION *(To be completed by U.S. importer or Certified Agent)*

DATE OF ENTRY *(mm-dd-yyyy)*	PORT OF ENTRY	ENTRY NUMBER	SIGNATURE

THIS FORM MUST ACCOMPANY ALL SHIPMENTS OF SHRIMP AND SHRIMP PRODUCTS INTO THE UNITED STATES

*Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Persons are not required to respond to the collection of this information in the absence of a valid OMB approval number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/RPS/DIR) Washington, D.C. 20520.

DS-3911

U.S. Department of State

SHRIMP EXPORTER'S/IMPORTER'S DECLARATION

(SEE INSTRUCTIONS ON REVERSE)

OMB APPROVAL NO. 1405-0096
EXPIRATION DATE: 09/30/2010
ESTIMATED BURDEN: 10 minutes*

1. Harvesting Nation	2. Aquaculture Facility *(If applicable)* *(Name and Address)*
MALAYSIA	CHAI KEE AQUATIC NO.492, LORONG SATU, KAMPUNG CINA, 32000 SITIAWAN, PERAK
3. Exporter *(Name, Address, and Telephone/Fax)*	**4. U.S Importer/Ultimate Consignee** *(Name, Address, and Telephone/Fax)*
OCEAN PIONEER FOOD SDN BHD 12P, JALAN PELANTAR, 34900 PANTAI REMIS, PERAK, MALAYSIA TEL: (60)5-677 3293 FAX:(60)5-6774759	YZ MARINE INC 5905 SOVEREIGN DR M-053, HOUSTON, TX 77036 TEL: 8325125176 FAX:7134563615

5. Date of Export *(mm-dd-yyyy)* 10-03-2011

6. Description of Product

U.S. HTS Tariff Schedule Number	Number of Units	Net Weight in Kilograms
0306 13.00	FROZEN SHRIMPS 1250 CARTONS	20,430.00KGS

7 Exporter's Declaration *(To be completed by a responsible agent of the exporter of the product)*

I hereby declare that the shipment of shrimp accompanying this declaration *(check one)*:

A. [X] Harvested in a manner not harmful to sea turtles. Check the condition of harvest which applies:

1 [X] Harvested by aquaculture
2 [ ] Harvested using TEDs
3 [ ] Harvested using non-mechanical net retrieval or by special gear (see the Instructions)
4 [ ] Shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles

B. [ ] Harvested in the waters of a nation currently certified pursuant to Section 609 of P.L. 101-162.

Exporter *(Name and Title)*	Signature	Date *(mm-dd-yyyy)*
MR. OOI FOO KIM	OCEAN PIONEER FOOD SDN. BHD. (Company No. 217320-D)	10-03-2011

8. Government Certification *(Necessary only if box 7a above is checked; to be signed by a responsible Government official of the harvesting nation)*

I hereby declare that the statements signed above by the exporter of this shipment of shrimp are true and accurate to the best of my knowledge.

Name/Agency/Title	Address/Telephone/Fax	Signature	Date *(mm-dd-yyyy)*
AZIZAN BIN AHMAD *Penolong Pegawai Perikanan G27* Cawangan Kesihatan Haiwan Akuatik Unit Biosekuriti Perikanan Negeri Pulau Pinang FISHERIES OFFICER FISHERIES DEPARTMENT	FISH HEALTH & QUARANTINE CENTRE, 11960 BATU MAUNG, PENANG, MALAYSIA. TEL: 04-6263002 FAX: 04-6262981	FISH HEALTH AND QUARANTINE CENTRE PENANG, MALAYSIA	10-03-2011

9. Import Information *(To be completed by U.S. importer or Customs broker)*

Date of Entry *(mm-dd-yyyy)*	Port of Entry	Entry Number	Signature

THIS FORM MUST ACCOMPANY ALL SHIPMENTS OF SHRIMP AND SHRIMP PRODUCTS INTO THE UNITED STATES

*Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Persons are not required to respond to the collection of this information in the absence of a valid OMB approval number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/ISS/DIR) Washington, D.C. 20520

DS-2031
09-2007 *(Formerly DSP-121)*