



Southern Shrimp Alliance

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May 21, 2021

Dr. Melissa R. Bailey
Acting Deputy Administrator, Transportation and Marketing Program
Agricultural Marketing Service
U.S. Department of Agriculture
Room 2055-S, Stop 0201
1400 Independence Avenue, SW
Washington, DC 20250-0201

Re: Comments Regarding Supply Chains for the Production of Agricultural Commodities and Food Products (86 Fed. Reg. 20,652); Docket No. AMS-TM-21-0034

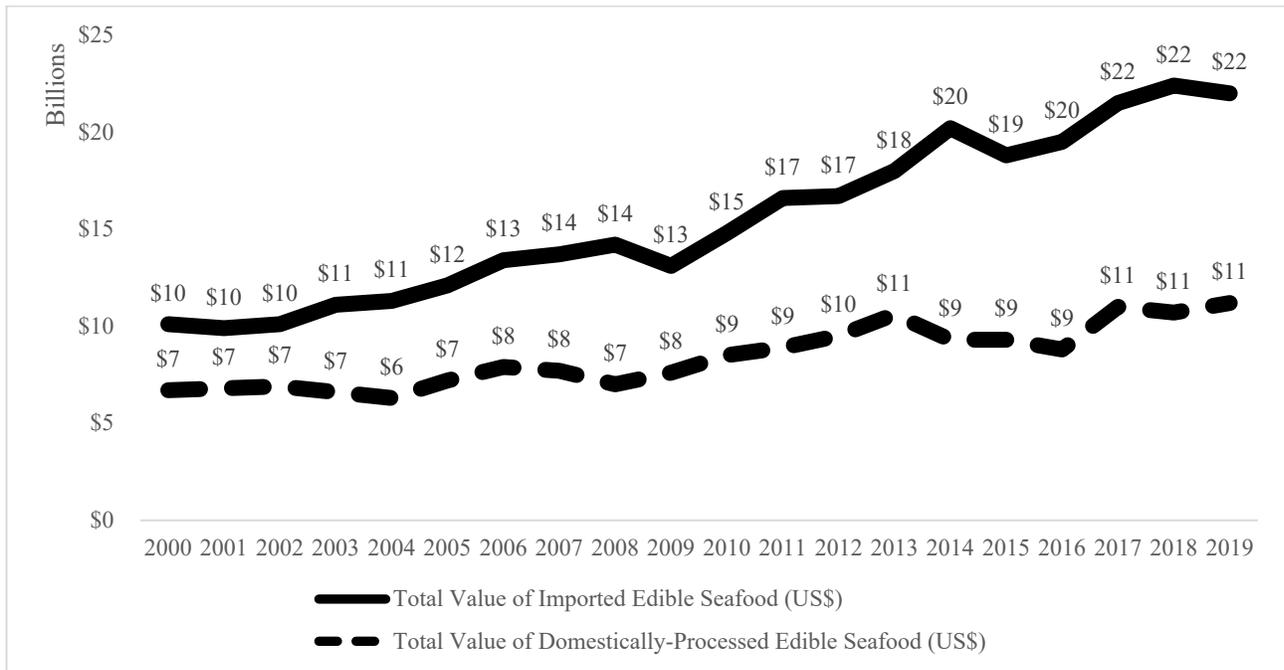
Dear Deputy Administrator Bailey,

On behalf of the Southern Shrimp Alliance, we hereby submit these comments intended to inform the U.S. Department of Agriculture's (USDA) thinking regarding how stimulus relief programs and spending related to food supply chain resilience authorized by the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021 can help to increase durability and resilience within the U.S. food supply, consistent with the agency's *Federal Register* notice published on April 21, 2021.¹ As the USDA explained in the *Federal Register* notice, Executive Order 14017, *America's Supply Chains* (86 Fed. Reg. 11,849 (Feb. 24, 2021)) focused on the need for resilient, diverse, and secure supply chains to ensure U.S. economic prosperity and national security. The agency has expressed particular interest in the policy objectives on Executive Order 14017 as they impact agricultural and food product supply chains.

The Southern Shrimp Alliance is grateful for the opportunity to comment on the contemporary state of seafood supply chains in the United States. The U.S. commercial seafood industry has witnessed substantial growth in our market's reliance on imported seafood while domestic commercial fishing and seafood processing industries have been declining. These observations are fully supported by the federal government's statistical reporting.

¹ See *Supply Chains for the Production of Agricultural Commodities and Food Products*, 86 Fed. Reg. 20,652 (USDA Apr. 21, 2021).

For example, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA Fisheries) publishes a report called *Fisheries of the United States* on an annual basis. This report details the supply of seafood in the U.S. market. NOAA Fisheries’ reporting shows a consistent – and troubling – trend regarding the supply of edible seafood to the U.S. over the last decade. As shown in the chart below, since 2000, the overall value of imported edible seafood has grown at nearly twice the rate of the overall value of domestically processed edible seafood. Specifically, as reported by NOAA Fisheries, while the total value of domestically processed edible seafood in 2019 was 67.2% higher than it was in 2000, the total value of imported edible seafood in 2019 had increased 117.8% over the same time period.



In 2000, the total value of domestically processed edible seafood was roughly two-thirds of the total value of imported edible seafood. However, with the disproportionate growth in imports compared to domestically processed edible seafood, by 2019, the total value of domestically processed edible seafood had fallen to a little more than half the total value of imported edible seafood.

These data reported by NOAA Fisheries establish that the U.S. market for seafood is robust and growing, but primarily for imported seafood, not domestically processed seafood. As this imbalance has increased over time, U.S. seafood supply chains have grown less secure, as long and complex supply chains for foreign-sourced food products have supplanted substantially shorter local supply chains. The Southern Shrimp Alliance believes that these trends are the result of the differential, discriminatory treatment of U.S. seafood producers as compared to foreign seafood producers by the U.S. government. Federal policies that have simultaneously increased regulatory control and oversight on U.S. commercial fishermen and domestic aquaculture producers while eliminating barriers to seafood imports entering our market have resulted in seafood supply chains that are overwhelmingly dependent on foreign sources.

Accordingly, the USDA's consideration of U.S. seafood supply chains should include an analysis of the factors that have encouraged the importation of seafood, as well as the factors that have discouraged U.S. seafood production and processing.

I. Executive Summary

As the USDA considers how stimulus relief programs and spending can be used to build and enhance more durable and resilient supply chains, it is vital that the agency recognize that shorter supply chains are more secure than long supply chains for food. For the agency's analytical purposes, this should lead to attempts to understand why, where true, domestic food production has stagnated and long, complex, and opaque supply chains have flourished. By investigating, identifying, and describing the conditions that have led to these circumstances, the USDA may assist policymakers, both within and outside of the agency, in determining how best to reverse the deterioration of domestic food production.

The durability and resilience of the U.S. seafood supply chain has been imperiled by a federal regulatory approach that has privileged imported seafood over domestic production of seafood. While the United States has adopted, and continually augments, unilateral standards regarding food safety, environmental impact, and working conditions, this regulatory oversight stops, with a handful of important exceptions, at the border. Predictably, the U.S. market has become increasingly dependent upon seafood produced under minimal government oversight in foreign countries while domestic seafood production has languished under greater restrictions. As imports have taken over the U.S. seafood market, the rationale for many of the regulations on domestic seafood production has been substantially undermined: migratory marine species, protected in U.S. waters, are slaughtered once they leave U.S. territorial waters; veterinary drugs promoting animal growth that are strictly prohibited in U.S. farmed seafood production are now routinely found in shrimp and fish sold in the United States; and good-paying jobs made possible by labor rules that allowed Americans to provide for their families are lost because desperate people can be forced to work in peeling sheds and on board fishing vessels outside of the United States.

Although this has never been articulated as an express goal of the federal government, supply chains for imported seafood have been favored over time because of the unwillingness to demand that foreign commercial seafood industries meet the standards imposed on U.S. producers. The long, complex, and opaque supply chains for imported seafood have also been preferred in the market over local seafood production because foreign government support for those industries has allowed imported seafood to be sold at artificially low prices in the United States.

A crucial problem that has increased the vulnerability of seafood supply chains in the U.S. is the absence of equivalent standards applied to the production of imported seafood compared to domestic seafood. The most visible example of this regards how domestic seafood producers and foreign seafood producers are held accountable when it comes to the use of banned and harmful antibiotics. In aquaculture, veterinary drugs are used to promote growth and prevent disease, in turn decreasing production costs for fish farmers by preventing loss and allowing fish and other aquacultural commodities to grow more quickly. The decline in production costs for

aquaculturists results in an increase of risk to consumers of seafood, both through exposure to banned antibiotics and the proliferation of bacteria that have developed resistance to microbials.

Because of the risk presented to consumers, an American farmed seafood producer would not be permitted to continue to operate if they used chloramphenicol or nitrofurans in their operations. That same approach is not mirrored with respect to the U.S. Food and Drug Administration's (FDA) treatment of imported shrimp. The FDA conducts minimal testing of imported seafood for banned antibiotics. The FDA barely inspects seafood imports, as 97.8 percent of imported seafood enters the country without any examination. In total, just 0.1 percent of imported seafood is sampled and tested for banned antibiotics, despite the fact that the agency found veterinary drug residues in over 12 percent of the shrimp it sampled. This policy approach, as a practical matter, substantially favors foreign seafood production over domestic, especially as it pertains to shrimp.

Federal agencies have further failed to meaningfully address weak environmental and labor standards in foreign countries, despite being provided the authority to do so by Congress. Neglecting to address these problems has provided another massive unfair advantage for imports over domestic seafood. Illegal, unreported, and unregulated (IUU) fishing continues to cause grave environmental and humanitarian harm throughout the world. IUU fishing threatens key marine species through use of devastating, prohibited fishing practices that have a detrimental impact on ocean ecosystems, while also generating reprehensible forced labor, child labor, and human trafficking practices. As it relates to seafood supply chains in the U.S., seafood produced through IUU fishing harms the domestic seafood industry by not only forcing commercial fishermen to compete for sales with this seafood, but also by undermining the achievements of the unilateral fishery management system administered by the federal government. In the shrimping industry specifically, the U.S. International Trade Commission (ITC) estimated that the presence of IUU shrimp imports reduced the landed value for domestic warmwater shrimp by 2.1 percent and led to a 10.3 percent decline in production of warmwater shrimp. In total, IUU shrimp imports cost shrimpers nearly \$4.4 million each year.

Importation of IUU seafood is largely possible because of opaque foreign supply chains. These supply chains present substantial vulnerabilities because of their length and complexity, allowing for opportunities wherein seafood, particularly shrimp, of unknown origin enters the U.S. market. In result, foreign seafood supply chains facilitate schemes that permit the illegal evasion of trade remedies as well as regulatory controls that would otherwise prevent contaminated shrimp imports from entering the United States. In the course of combatting this trade fraud, the Southern Shrimp Alliance has repeatedly identified circumstances in which foreign shrimp exporters fail to identify the source of shrimp packaged for export. Accordingly, the Southern Shrimp Alliance strongly supports legislative and regulatory initiatives that encourage transparency and traceability in foreign seafood supply chains.

The impact of the lack of meaningful federal regulatory oversight regarding imported seafood is compounded by the fact that foreign government support of seafood industries has encouraged seafood exports to the United States. Some foreign governments, particularly India, administer massive subsidy programs to encourage the exportation of seafood. These subsidy programs make it even more difficult for domestic commercial fishermen to compete for sales on

a level playing field. As seen in the Indian shrimp industry, the Indian government not only provides subsidies for exports, but also provides subsidies to the industry that explicitly boost farmed shrimp production for export through financial assistance for the development of new shrimp farms. India's subsidized shrimp industry has created artificially reduced prices for these goods, which, while theoretically benefitting American consumers, has done significant damage to U.S. commercial fishermen who operate without subsidies. In the long term, the cost of the low-prices from subsidized foreign seafood is the erosion of domestic food production and the expansion of vulnerabilities in our seafood supply chain.

While the policies of federal agencies have favored foreign supply chains for seafood, these agencies have, at the same time, worked to substantially inhibit domestic production of seafood. Domestic seafood supply chains are subject to a myriad of regulations and, because of limited country-of-origin labeling requirements, domestic seafood producers are unable to benefit from their compliance with more stringent regulatory requirements. The deterioration of domestic commercial fishing industries has, in turn, led to difficulties in encouraging a new generation of commercial fishermen.

A fundamental problem facing commercial fishermen in the United States is the complex, overlapping, and ever-tightening regulations imposed on the commercial fishing industry by the federal government. In contrast to the countries that promote their seafood industry with subsidies and light regulations, commercial fishermen in the U.S. face an abundance of regulatory hurdles that ultimately weaken the ability of domestic seafood to compete with imported seafood in the U.S. market. Moreover, rigid regulatory structures inhibit innovation within the industry. Innovation and technological developments are especially important in the domestic seafood industry because of changing market and environmental conditions. Coupled with the inflexibility of existing regulations, the federal agencies that oversee U.S. seafood production have no mechanism for considering how things like technological innovations, environmental changes, or industry restructuring affect how regulations are applied or whether existing regulatory controls hinder developments that would improve the industry. U.S. shrimp fishermen understand that, at base, there is no part of the federal government that is troubled by the prospect of the extinction of the commercial shrimp industry.

Commercial fishing industries in the United States are unable to take advantage of their compliance with stricter regulations because of the limited reach of country-of-origin labeling requirements. Because the U.S. Department of Agriculture's country-of-origin-labeling (COOL) regulations do not apply to processed (cooked) seafood, do not apply to most retail seafood markets, and do not apply to restaurants, American consumers face substantial challenges in making informed choices regarding the seafood they purchase. The expansive shutdowns caused by the COVID-19 pandemic have revealed that a considerable amount of domestic seafood is consumed in restaurants rather than bought at grocery stores. Accordingly, the Southern Shrimp Alliance strongly supports initiatives that would establish requirements regarding country-of-origin labeling in restaurants. U.S. commercial fishermen would be significantly benefitted by any such requirement, as American consumers would be able to make informed decisions at the restaurants they patron.

The current state of domestic seafood production must be met with policies that encourage the development of the next generation of commercial fishermen. The commercial fishing industry has been handed down from generation to generation, but, in recent decades, the average age of workers in the industry is getting older and older. Recruiting and training fishermen is crucial to the future viability of the industry. Thus, the Southern Shrimp Alliance advocates for investment in vocational training programs, such as Young Fishermen Development Programs taking place around the country. More policy initiatives like this will be vital to strengthening seafood supply chain resilience.

Through our comments on supply chains for both domestic and imported seafood, the Southern Shrimp Alliance hopes that the USDA's analysis will consider the seminal role played by federal government policies and practices in encouraging the proliferation of long, complex, and opaque supply chains for foreign seafood at the expense of local seafood production. Because of these policies, our seafood supply chains are more vulnerable and far less secure than they have ever been.

II. Supply Chains for Imported Seafood

As the Southern Shrimp Alliance has worked to strengthen regulatory oversight of imported seafood, federal policymakers have a predictable impulse response: will this violate our obligations under the agreements of the World Trade Organization (WTO)? These questions are rooted in an expansive understanding of "national treatment" principles, such that any regulation of imported goods that cannot be tied exactly to an equivalent regulation of domestic production of similar goods is assumed to make the United States vulnerable to a challenge under the WTO's dispute settlement system. The mere possibility of a challenge is sufficient to stymie any potential interest in meaningful oversight of imports.

There is, of course, no comparable legal protections for domestic seafood industries. U.S. commercial fishing industries have no ability to challenge regulations of domestic production that have no parallel amongst their foreign competitors. Thus, over time, as federal regulations over U.S. seafood production multiply and proliferate, the chasm between the operational realities of U.S. commercial seafood producers and their foreign competitors widens.

Under the current regulatory structure, U.S. commercial fishermen are subject to a dizzying array of overlapping, interwoven rules enforced by an alphabet soup of federal regulatory agencies. Imported seafood, which U.S. commercial fishermen must compete with for sales in the U.S. market, are, in contrast, subject to what is functionally a "best effort" standard imposed upon U.S. importers that asks them, on their scout's honor, to ensure that the food they offer for sale in the United States complies with American laws. Practices that would not be tolerated if undertaken by domestic producers – such as the extensive use of harmful and banned antibiotics in aquaculture – are largely ignored when done in ponds outside of U.S. borders.

Moreover, U.S. commercial fishermen comply with U.S. labor laws knowing full well that foreign processing operations will move to wherever vulnerable populations are available to work under horrific conditions, whether it be migrant Burmese and Cambodian laborers, landless Indian peasants, or North Koreans forced to earn foreign capital for their despotic regime. As foreign

shrimp flows to the lowest common denominator of regulatory oversight, the supply chains for imported shrimp become increasingly opaque. Although the U.S. has adopted a traceability program that should provide U.S. purchasers with confidence as to the provenance of the food they are buying, importers appear to have used the opacity of foreign supply chains to obtain accommodations that have gutted traceability requirements.

A. Limited Federal Regulatory Oversight of the Safety of Seafood Imports Has Made the United States a Magnet for Seafood that Are Inadmissible in Other Markets

Differences in the treatment of domestic seafood producers and foreign seafood producers are most evident in the federal approach to the use of banned and harmful antibiotics in aquaculture. If an American aquaculture producer were to utilize chloramphenicol or colistin or nitrofurans, that producer would be shut down by U.S. government officials and not be permitted to sell seafood in our market. However, if a foreign aquaculture industry has been proven, repeatedly and consistently, to ship seafood contaminated with banned antibiotics to the United States, the FDA has historically only exercised regulatory discretion to require affirmative demonstration of admissibility in an extremely limited number of cases.

Prohibited chemical substances, such as banned antibiotics prevalent in imported farmed seafood species, are utilized both to treat these animals for disease and also to promote growth and enhance yield, allowing foreign aquaculturists to reduce their production costs. The fact that antibiotics are used for growth promotion is so widely recognized that Chapter 22 of the National Seafood Alliance for Training and Education's *Compendium of Fish and Fishery Product Processes, Hazards, and Controls* explains:

Incentives for the use of animal drugs in aquatic animal species include the need to: 1) treat and prevent disease; 2) control parasites; 3) affect reproduction and growth; and, 4) tranquilization (e.g. during transit).²

For the domestic seafood industry, the use of banned substances to enhance growth and yields in foreign aquaculture creates an unfair competitive advantage and displaces domestic seafood products in restaurants and grocery stores. However, more importantly, the use of these drugs shifts costs to American consumers who are unwittingly exposed to chemicals that are barred from use in aquaculture in the United States because of the health risks posed by these antibiotics.

Accordingly, to make seafood supply chains more secure, it is crucial that the FDA increase inspections of imported seafood. Although the U.S. only imports about 15 percent of the food it consumes, there are sectors of the food supply that are overwhelmingly dominated by imports, seafood being one of them. The FDA estimates that 94 percent of the fish consumed in the U.S. is imported.³ Of that 94 percent, 97.8 percent of imported seafood enters the country

² Last updated August 28, 2007. Available at: <https://seafood.oregonstate.edu/sites/agscid7/files/snic/compendium/chapter-0-compendium-title-page.html>.

³ Steve Bittenbender, *FDA embarks on new strategy for imported food inspections*, SeafoodSource.com (Feb. 26, 2019) available at: <https://www.seafoodsource.com/news/food-safety->

without *any* examination and just 0.1 percent of imported seafood is tested for banned antibiotics.⁴ As the U.S. Government Accountability Office (GAO) explained, “[b]ased on this level of testing, seafood shipments from a foreign processing facility would have a roughly 1 in 1,000 chance of being selected by FDA for drug residue testing . . .”⁵ By way of comparison, the chances that the Internal Revenue Service (IRS) will audit your tax return are roughly six times higher for individuals and ten times higher for companies.⁶ Nevertheless, despite the minimal sampling and testing done of imported shrimp, the GAO reported that in fiscal year 2015, the FDA found that 12.2 percent of the samples tested contained unsafe drug residues.⁷ Thus, while there is only a 1 in 1,000 chance that a shipment of seafood will be tested for banned antibiotics, there is roughly a 1 in 8 chance that a shipment of shrimp sampled for testing will contain unsafe drug residues.

The GAO’s reporting implies that massive volumes of imported shrimp contaminated with banned drug residues enters the U.S. market. But this is not just because there is only a tiny likelihood that contaminated shrimp will be discovered at the border, it is also because other major seafood importing markets enforce their food safety laws against imports as well as domestic production. In result, the United States has become a dumping ground for contaminated seafood because lax standards act as a magnet for these goods while stringent standards in other markets divert such products to the United States.

The real-world impacts of the discrepancies in approach to imported seafood between the United States and other major seafood importing markets are most clearly seen with regard to shrimp sourced from India. India is at the forefront when it comes to the largest portion of entry lines of shrimp refused at the border by the FDA due to the presence of banned antibiotics. As shown in the table below, since 2016, India is, by far, the largest source of entry lines of shrimp refused by the FDA for reasons related to veterinary drug residues, accounting for 45% of all such refusals.



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⁴ See U.S. Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (Sept. 2017) at 20.

⁵ *Id.* at 19.

⁶ Internal Revenue Service, *2019 Data Book: October 1, 2018 to September 30, 2019* (June 2020) at 32 (“For all returns filed for Tax Years 2010 through 2018, the IRS examined 0.60 percent of individual returns filed and 0.97 percent of all corporation returns.”).

⁷ See U.S. Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (Sept. 2017) at 53.

Addressing this same chart of the FDA's refusals of Indian shrimp through March 2021, the Seafood Exporters Association of India (SEAI) sent a letter to the U.S. Trade Representative earlier this week arguing that these results were to be reasonably anticipated:

Contrary to SSA's claims, there is nothing abnormal about the number of rejections from India. Specifically, the chart that SSA relies on to argue that the rejections from India are abnormally high, in fact shows that they are just about normal. The 173 line item rejections for India out of total rejections of 380 constitute about 45 percent and India's share in the U.S. imports is also about the same.⁸

SEAI's claim, however, is inaccurate and underscores the extent to which India's shipments of contaminated shrimp are aberrational in the context of other significant suppliers of shrimp to the U.S. market. From 2016 through March 2021 (the last month for which official data are available), India exported 1.2 billion kilograms of shrimp to the United States. In total, the United States has imported 3.6 billion kilograms of shrimp over that timeframe, meaning that India has accounted for under 35 percent of the total volume of imported shrimp during the last five years. The next two largest suppliers to the U.S. market, Indonesia (703.3 million kilograms or ~ 20 percent of total import volume) and Ecuador (465.3 million kilograms or ~ 13 percent of total import volume) accounted for a grand total of *six (6)* entry line refusals of shrimp for reasons related to veterinary drug residues since 2016. Thus, while Indonesia and Ecuador accounted for roughly the same amount of the volume of shrimp imports as India since 2016, these two countries have constituted just 1.6 percent of the entry lines of shrimp refused for reasons related to veterinary drug residues.

Despite the fact that a shipment of Indian shrimp is nearly thirty times more likely to be found as contaminated with banned antibiotics than shipments from Indonesia and Ecuador, Indian shrimp dominates the U.S. market. While the FDA has issued country-specific Import Alerts in response to the widespread presence of antibiotics in farmed shrimp imported from China and peninsular Malaysia, no such action has been taken with regard to India. In contrast, the European Union (EU) has taken strong action to address the prevalent use of banned antibiotics in Indian aquaculture. The EU requires that 50 percent of all shipments of farmed seafood from India be tested for veterinary drug residues before being allowed into the EU market.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 Specifically, the EU requires that all shrimp exported out of India to the EU must be from an establishment approved by the Export Inspection Council (EIC),

⁸ Letter from the Seafood Exporters Association of India to the United States Trade Representative, *Post-hearing Comments in Section 301 Investigation of India's Digital Services Tax* (May 17, 2021), available at: <https://comments.ustr.gov/s/commentdetails?rid=FB3CM6PYQY>.

⁹ See Commission Implementing Decision 2016/1774 of 4 October 2016.

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.

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). In turn, MPEDA-registered shrimp farms are required to have shrimp batches sampled and tested for chloramphenicol and nitrofurans metabolites prior to harvest. Further, before export, staff from EIC laboratories visit the EIC-approved facility and take samples to test for chloramphenicol, tetracycline, oxytetracycline, chlortetracycline, and metabolites of nitrofurans. All shipments of shrimp to the EU from India must be accompanied by the results of this analytical test.

As the EU has imposed pre-shipment controls on the shipment of Indian farmed seafood to their market and increased its testing to prevent European consumers from being exposed to contaminated shrimp, massive volumes of Indian shrimp exports have been diverted to the U.S. market. Just one decade ago, India exported a larger volume of shrimp to the EU market than to the United States. However, since that time, India’s exports to the United States have increased nearly five-fold, while its exports to the EU have increased by roughly thirty percent and have been declining since 2017:



Thus, by failing to apply the same standards to foreign producers of shrimp as would be imposed on domestic aquaculture producers, the federal government has not only favored foreign production of shrimp over domestic production, but it has further encouraged the world’s worst producers to target this market. The inability – and unwillingness – of the Indian aquaculture industry to seriously address abuse of banned antibiotics has been aided and abetted by ease of access for contaminated seafood to this market. Moreover, the fact that shrimp posing a significant health risk routinely reaches American consumers exemplifies the vulnerabilities of supply chains that are overwhelmingly reliant on nations with weak internal regulatory controls.

B. The Failure of U.S. Regulatory Law to Address Weak Environmental Standards in Foreign Countries Provides an Unfair Advantage for Imports Over Domestic Seafood

IUU fishing poses a significant threat to marine ecosystems. IUU fishing subverts national and regional efforts to manage fisheries sustainably and undermines international initiatives to conserve marine biodiversity. In particular, IUU fishing threatens key marine species by using harmful, prohibited practices that have a detrimental impact on ocean ecosystems. IUU fishing threatens endangered species such as sharks, sea turtles, and seabirds – migratory species that are subject to special protections within U.S. territorial waters. Further, IUU fishing reroutes revenue from legitimate commercial fishing operations located in developing economies to illegal harvesters. This, in turn, jeopardizes the sustainability of local fish stocks and substantially curtails an essential food source for dependent coastal communities, exacerbating food insecurity in developing countries. Moreover, when introduced to international commerce, IUU seafood undercuts the competitiveness of seafood harvested through legal means.

In the United States, seafood harvested through IUU fishing directly adversely impacts the domestic shrimp industry in at least two distinct ways. First, shrimp harvested through IUU fishing that is imported into the United States competes directly for sales with domestically harvested shrimp. Second, fish products landed by IUU fishing that are subsequently used to produce feed for shrimp aquaculture are instrumental in the production of *farmed* shrimp imported into the United States that also compete directly for sales with domestically harvested shrimp.

Moreover, indirectly, the opaque supply chains that have developed in order to facilitate the importation of IUU seafood have also been utilized to evade the trade remedies on dumped imported shrimp as well as regulatory controls that would otherwise prevent contaminated shrimp imports from entering the United States.

In its recently conducted analysis of the impact of imports of IUU seafood on the U.S. commercial fishing industry, the ITC quantified the effect of IUU shrimp imports on U.S. shrimp producers. Based on the agency's review of the best available evidence, the ITC estimated that 20 percent of the value of imported wild-caught shrimp had been harvested through IUU fishing, such that, in 2019, the U.S. imported \$142.7 million in IUU wild-caught shrimp.¹¹ Further, the ITC estimated that 6.6 percent of the value of imported farm-raised shrimp were considered to be IUU products due to the extent of IUU-harvested fish in their feed inputs, such that, in 2019, the U.S. imported \$346.6 million in IUU farm-raised shrimp.¹²

The overall impact of a half-billion dollars worth of IUU shrimp imports on the U.S. commercial shrimp industry is, according to the ITC, significant. For shrimp fishermen, the presence of IUU shrimp imports was estimated by the agency to have reduced the landed value of domestic warmwater shrimp by 2.1 percent and led to a 10.3 percent decline in production of warmwater shrimp.¹³ In practical terms, this costs the domestic shrimp fishing industry nearly

¹¹ See U.S. International Trade Commission, *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, Inv. No. 332-575, USITC Pub. No. 5168 (Feb. 2021) at 113, Table 3.8.

¹² See *id.* at 118, Table 3.12.

¹³ See *id.* at 304, Table 7.9.

\$4.4 million each year in lost sales and foregone revenue. For American shrimp processors, prices for their shrimp were diminished by 1.8 percent because of the prevalence of IUU shrimp in the market, while their production volume was reduced by 9.2 percent, costing the processing industry over \$8.6 million in annual revenue.¹⁴

Accordingly, the ITC's analysis establishes that the importation of IUU shrimp has significantly reduced domestic production of shrimp. The ITC similarly found significant volume impacts on a wide variety of domestically produced seafood products, estimating that imports of king crab harvested through IUU fishing had reduced domestic production by 11.5 percent,¹⁵ imports of snow crab harvested by IUU fishing had reduced domestic production by 9.0 percent,¹⁶ imports of IUU warmwater lobster had reduced the amount of warmwater lobster landed by U.S. fishermen by 17.7 percent,¹⁷ and that imports of IUU swimming crab had cost U.S. commercial fishermen 21.5 percent of their domestic production of blue crabs.¹⁸ The ITC further estimated that the presence of IUU tuna in the U.S. market reduced the volume of bluefin tuna landed by U.S. fishermen by 17.5 percent, of skipjack tuna by 10.5 percent, of bonito by 9.3 percent, of bigeye tuna by 8.4 percent, and of yellowfin tuna by 4.8 percent,¹⁹ while IUU seafood imports led to declines in the volume of landings by domestic commercial fishermen of herring by 3.4 percent, of sardines by 4.8 percent, of mackerel by 6.1 percent, and of anchovy by 10.0 percent.²⁰ The ITC additionally concluded that IUU seafood imports were having a substantial impact on U.S. farmed production of seafood, estimating that IUU seafood imports had reduced domestic production of farmed Atlantic salmon by 9.6 percent, costing U.S. salmon farmers roughly \$1.7 million each year.²¹

The ITC's analysis established that the inability of the U.S. federal regulatory structure to effectively prevent IUU seafood from entering this market has tangible harmful impacts on domestic seafood production. The implementation of the Seafood Import Monitoring Program (SIMP) by the NOAA Fisheries instilled tremendous hope amongst U.S. commercial fishing industries that the problem of IUU seafood imports could be meaningfully confronted. However, limited allocation of agency resources to SIMP coupled with the administration of the program in a manner that appears to have substantially weakened enforcement to accommodate corrupted supply chains has undermined expectations that imported seafood will be held to anything remotely resembling the enforcement regime that the U.S. commercial fishing industry operates under with respect to fishing regulations in this country. The resources allocated by NOAA Fisheries to enforcement of U.S. fisheries law dwarfs the resources that the agency has committed to enforcement of SIMP, despite imported seafood's dominance in the U.S. market.

¹⁴ *See id.*

¹⁵ *See id.* at 299, Table 7.6.

¹⁶ *See id.* at 316, Table 7.16.

¹⁷ *See id.* at 315, Table 7.15.

¹⁸ *See id.* at 317, Table 7.17.

¹⁹ *See id.* at 311, Table 7.12.

²⁰ *See id.* at 312, Table 7.13.

²¹ *See id.* at 313, Table 7.14.

This is, unfortunately, consistent with NOAA Fisheries' historical approach to imported seafood. For example, in 1972, Congress enacted the Marine Mammal Protection Act, Public Law No. 92-522 (Oct. 21, 1972), including the statutory provision found at 16 U.S.C. § 1371(a)(2) "that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate."²² The same provision instructed that the federal government "shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards."²³ Nevertheless, for over thirty-five years, this provision of the law was not implemented.²⁴ In response to a petition from an environmental organization in 2008, NOAA Fisheries issued an advanced notice of proposed rulemaking in 2010, but took no further action until a lawsuit was filed against the agency at the U.S. Court of International Trade in 2014.²⁵ A settlement of that suit led to promulgation of regulations, at 50 C.F.R. Part 216, implementing the import ban portion of 16 U.S.C. § 1371(a)(2).²⁶ These regulations established a "one-time, five-year [exemption] period that commences January 1, 2017,"²⁷ such that any import ban would not be imposed until 2022. In short, it will have taken *fifty years* after the passage of the Marine Mammal Protection Act for NOAA Fisheries to consider holding imported seafood to anything remotely approaching the standards imposed on U.S. commercial fishermen. Similarly, other Congressionally-created tools that require NOAA Fisheries to leverage access to the U.S. market to improve conservation measures implemented by foreign governments, such as the authorities granted under 16 U.S.C. § 1826j and 16 U.S.C. § 1826k, have largely gone unused.

For this reason, the Southern Shrimp Alliance advocates for improvements in oversight of imported seafood, particularly in the area of environmental impact where IUU fishing runs rampant. This includes advocating for the adoption of legislative initiatives that would strengthen regulatory control of seafood imports, such as the *Legal Fishing and Forced Labor Prevention Act* (H.R. 3075), a bipartisan initiative introduced by Representative Jared Huffman (D-CA) and Representative Garret Graves (R-LA) earlier this month. If adopted, that legislation would provide federal agencies with information regarding supply chains for seafood produced overseas

²² See *NRDC, Inc. v. Ross*, 331 F. Supp. 3d 1381, 1383 (Ct. Int'l Tr. 2018).

²³ 16 U.S.C. § 1371(a)(2). "Primary responsibility for the implementation of the MMPA rests with NOAA Fisheries, which is within the Department of Commerce." *Sea Shepherd N.Z. & Sea Shepherd Conservation Soc'y v. United States*, 2020 Ct. Intl. Trade LEXIS 120 at *5-6 (citing 16 U.S.C. § 1362(12)(A)(i)).

²⁴ See *NRDC, Inc. v. Ross*, 331 F. Supp. 3d 1338, 1347 (Ct. Int'l Tr. 2018) (citing *Fish and Fish Product Import Provisions of the Marine Mammal Protection Act*, 81 Fed. Reg. 54,390 (NOAA Aug. 15, 2016)).

²⁵ See *id.* (citing *Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act*, 75 Fed. Reg. 22,731 (NOAA Apr. 30, 2010) and Complaint, *Ctr. for Biological Diversity v. Pritzker*, No. 14-157-MAB (Ct. Int'l Tr. July 2, 2014)).

²⁶ See *id.*

²⁷ 50 C.F.R. § 216.3.

sufficient to evaluate the risks presented by these food products offered for sale in the United States.

A full accounting of the supply chain for seafood imported into the United States is particularly important because of the substantial role played by farmed shrimp from overseas as a conduit for IUU seafood to the U.S. market. Every year, an estimated 15 million tons of wild fish are used to produce fishmeal and fish oil.²⁸ “Almost one-fifth of the world’s annual wild-fish catch is taken out of the ocean for this purpose.”²⁹ Although several industries consume the fishmeal and fish oil produced from this wild-caught seafood, aquaculture is the dominant use, with feed for farmed seafood including salmon, sea bass, and shrimp accounting for 70 percent of fishmeal and fish oil consumption.³⁰ Aquaculture’s consumption of fishmeal has seen a massive increase over the last thirty-five years, as aquaculture’s “fishmeal consumption share [rose] from 10% in 1980 to 73% in 2016 . . .”³¹

Shrimp farming accounts for a significant amount of the fishmeal consumed in aquaculture: “While shrimp aquaculture consumed 16% (approximately 6.18 million MT) of the global aquafeed production (approximately 39.62 million MT) in 2012, it consumed 31% (approximately 1 million MT) of the fishmeal in aquaculture.”³² Using this figure, the Changing Markets Foundation and Feedback compared these data to global shrimp aquaculture production in 2012 (4 million MT) and estimated that four pounds of farmed shrimp may be produced from every one pound of fishmeal used in shrimp feed.³³

Summarizing the findings of their investigation into the harvesting of seafood used in the production of fishmeal and fish oil in India, Vietnam, and The Gambia, the Changing Markets Foundation reported:

²⁸ See Changing Markets Foundation and Feedback, *Caught Out: How UK Retailers Are Tackling the Use of Wild Fish in Their Aquaculture Supply Chains* (Mar. 2020) at 9 (citing Food and Agricultural Organization of the United Nations, *The State of World Fisheries and Aquaculture, 2018: Meeting the Sustainable Development Goals*, Licence: CC BY-NC-SA 3.0 IGO. ROME: FAO).

²⁹ Changing Markets Foundation, *Fishing for Catastrophe: How Global Aquaculture Supply Chains Are Leading to the Destruction of Wild Fish Stocks and Depriving People of Food in India, Vietnam, and The Gambia* (Oct. 2019) at 5 (citing Cashion T., Le Manach, F., Zeller, D. and Pauly, D. (2017), *Most Fish Destined for Fishmeal Are Food-Grade Fish*, *Fish and Fisheries*, 18(5): 1-8).

³⁰ See Changing Markets Foundation and Feedback, *Caught Out: How UK Retailers Are Tackling the Use of Wild Fish in Their Aquaculture Supply Chains* (Mar. 2020) at 9 (citing Bachis, E. (2017), *Fishmeal and Fish Oil: A Summary of Global Trends*, Washington 57th IFFO Annual Conference).

³¹ Wesley Malcorps, Bjorn Kok, Mike van’t Land, Maarten Fritz, Davy van Doren, Kurt Servin, Paul van der Heijden, Roy Palmer, Neil A. Auchterlonie, Max Rietkerk, Maria J. Santos, and Simon J. Davies, *The Sustainability Conundrum of Fishmeal Substitution by Plant Ingredients in Shrimp Feeds*, *Sustainability* (Feb. 2019) 11, 1212, at 2 (citing Shepherd, C.J.; Jackson, A.J., *Global Fishmeal and Fish-Oil Supply: Inputs, Outputs and Markets*, *J. Fish Biol.* 2013, 83, 1046-1066).

³² *Id.* at 2-3 (footnotes omitted).

³³ See Changing Markets Foundation and Feedback, *Caught Out: How UK Retailers Are Tackling the Use of Wild Fish in Their Aquaculture Supply Chains* (Mar. 2020) at 46-47.

Our research finds that aquafeed companies with unsustainable and illegal sourcing practices are supplying seafood farms exporting to the global market – and, in turn, many of the biggest seafood processors and retailers in the world. **This means that aquafeed companies, aquaculture producers, seafood processors and major retailers are complicit by association in the socioeconomic and ecological damage our investigators encountered.**³⁴

The Changing Markets Foundation observed that fishmeal and fish oil production, “driven by demand from the global aquaculture sector is visibly accelerating the decline of fish stocks in India, Vietnam and The Gambia, which marine fisheries for consumption have already pushed to the breaking point.”³⁵ In each of these three countries, the Changing Markets Foundation concluded that “localised decline or collapse of local target fish stocks [is] fuelled by rampant illegal, unregulated and unreported (IUU) fishing . . .”³⁶ To support this conclusion, the organization’s comprehensive report detailed specific examples of the supply of IUU seafood to fishmeal and fish oil producers.

Further, the Changing Markets Foundation also discussed the close ties (and proximity) between fishmeal producers and shrimp farming and exporting operations. For example, their investigation looked into seafood landed at Song Duc port within a province of substantial importance to Vietnam’s shrimp farming, processing, and exporting industry. The Foundation observed that Song Duc port’s industrial zone, in the Ca Mau province of Vietnam, includes three seafood-processing plants and nine fishmeal factories, and is known to be an environmental ‘black spot’ owing to air and water pollution from the factories.³⁷

Absent sophisticated, resource-intensive investigations like the one conducted by the Changing Markets Foundation, it is not possible to trace seafood harvested through IUU fishing through the process by which it is converted into fishmeal, used to produce shrimp feed, fed to shrimp in shrimp farms, with the shrimp then harvested, processed, and exported to the United States. Nevertheless, the work of the Changing Markets Foundation conclusively demonstrates that the market for IUU seafood is driven in significant part by shrimp aquaculture production and, moreover, that IUU seafood enters the U.S. market through farmed shrimp imports. These farmed shrimp imports have, as verified by the ITC, had significant adverse impacts on the U.S. commercial warmwater shrimp industry.

³⁴ Changing Markets Foundation, *Fishing for Catastrophe: How Global Aquaculture Supply Chains Are Leading to the Destruction of Wild Fish Stocks and Depriving People of Food in India, Vietnam, and The Gambia* (Oct. 2019) at 6 (emphasis in original).

³⁵ *Id.* at 12.

³⁶ *Id.*

³⁷ *Id.* at 33 (footnotes omitted).

C. The Failure of U.S. Regulatory Law to Address Weak Labor Standards in Foreign Countries Provides an Unfair Advantage for Imports Over Domestic Seafood

One particularly disturbing aspect of IUU fishing that has given seafood exports to the United States a significant competitive advantage over domestically produced seafood is forced labor, child labor, and human trafficking in foreign seafood supply chains. Changes in utilizing laborers from high-income to lower-income countries and overfishing are just some of the recent shifts made within the fishing industry that have led to an increased amount of low-cost migrant workers who are employed in the fisheries sector. Poor enforcement of safety and labor standards, along with insufficient training and substandard language skills make these fishermen particularly vulnerable to forced labor practices.

Moreover, weak labor standards infect more than just the harvesting sector of seafood overseas. The opportunity to exploit vulnerable populations to dramatically reduce labor costs is a significant factor determining where seafood is processed. With regard to shrimp, nowhere is this more evident than with respect to the sourcing of peeled shrimp imports, now dominated by India.

At the outset, U.S. purchasers willing to source any kind of shrimp from India signify a willingness to operate in a country notorious for pervasive child and forced labor conditions across a wide swath of industries. India has twenty-five (25) products identified by the U.S. Department of Labor as being made with child labor and/or forced labor – the highest of any country listed.³⁸ The 2020 Trafficking in Persons (TIP) report published by the U.S. Department of State stated that “internal forced labor constitutes India’s largest trafficking problem,” and observed that non-governmental organizations estimate there are “at least eight million trafficking victims in India, the majority of which are bonded laborers.”³⁹

Many country-wide issues and employment practices that have been found to be red flag indicators of labor abuse are present in India’s shrimp industry, particularly in the pre-processing segment of the industry. Pre-processing is a labor-intensive task that, in countries that tolerate the practice, tends to be carried out by smaller-scale contractors. In particular, workers in the pre-processing sector are responsible for sorting, grading, peeling, cutting, slicing, deveining, and washing shrimp. In contrast, processing activities for shrimp after these steps (cooking, freezing, packaging) tend to be capital intensive and are usually done by larger-scale businesses in modern factory settings. Throughout Asia, the pre-processing sector plays a central role in shrimp export industries, as it “absorbs much of the risks associated with fluctuations in raw material prices and also bears the fixed and variable costs associated with pre-processing, insulating the processing centres from such issues.”⁴⁰

In India, the majority of workers in the pre-processing sector are women, who often are internal migrants from poor communities and are employed on an informal, contract basis through

³⁸ See U.S. Department of Labor, “2020 List of Goods Produced by Child Labor or Forced Labor,” Table 1, at pp. 20-24. In comparison, China is identified as having just seventeen (17) products made with child labor and/or forced labor.

³⁹ U.S. Department of State, “2020 Trafficking in Persons Report,” at 250, 256.

⁴⁰ See Society for Labor & Development et. al., “Precarious Work in the Asian Seafood Global Value Chain—A Report to the ILO 2016,” 34 (2016).

middlemen or recruitment agencies. A labor rights organization has observed that “[t]he interactions between these contractors and migrant workers tend to be informal and marked by low wages, pay discrimination, excessive overtime, non-payment of social benefits, and other workplace issues.”⁴¹ One study found that 90 percent of the workers in the shrimp industry in south-western India are casual workers.⁴²

One published study was based on a detailed examination of forty (40) pre-processing facilities (or peeling sheds) in Kerala, a state in India responsible for a substantial amount of frozen shrimp processing.⁴³ The study found numerous conditions that highlight the vulnerability of the pre-processing industry’s workforce including the fact that at least 25 percent of the pre-processing facilities exist without registration. Just 10 percent of the units were registered with the Marine Product Export Development Authority. In addition, interviews with 701 workers in these peeling sheds found that nearly 50% of the workers are parts of families living below the poverty line.

These findings help explain the fact that wage expenditures in India’s pre-processing sector are stunningly low compared to other shrimp producing countries. Continued exploitation of labor in the pre-processing sector allows Indian producers to export shrimp at comparatively lower prices than other foreign industries and sell in the U.S market at prices below what the domestic industry can match. Perversely, this has also meant that as other foreign producers of shrimp move to improve the rights and protections for labor in their supply chains, India has developed a significant comparative advantage over its competitors because of the lack of scrutiny applied to the pre-processing sector operating in the country. In particular, the ability of U.S. importers to take advantage of the massive, unregulated pre-processing sector in India has almost entirely undermined efforts to improve the supply chain for shrimp sourced from countries like Thailand.

Peeling sheds formed the locus of concern regarding forced labor in the processing segment of the Thai shrimp industry.⁴⁴ Accordingly, investigations into the Thai shrimp supply chain tended to emphasize the risks presented by the use of peeling sheds. Fishwise, for example, explained that “{u}ndocumented steps in the supply chain, such as shrimp peeling sheds or fishing boats, often lack adequate oversight and regulation which at times allows severe abuses to

⁴¹ Verité, “Contract Labor in India,” (Apr. 24, 2018).

⁴² See Fairfood International, “Caught in A Trap—The story of poverty wages behind Asian Shrimp sold in European supermarkets” at 16 (2015).

⁴³ See Naveen Sathyan, Afsal V. V. and Joice V Thomas, “The Present Status of Seafood Pre-Processing Facilities in Kerala with Reference to Alleppey District,” Vol. 4 International Journal of Research in Fisheries and Aquaculture 39, 39 (Feb. 2014).

⁴⁴ See, e.g., *Shrimp Sold by Global Supermarkets Is Peeled by Slave Labourers in Thailand*, The Guardian (Dec. 14, 2015); Nattasuda Anusonadisai, *Thai Government Says It’s Not Ignoring Shrimp Sheds Slavery*, Associated Press (Dec. 21, 2015); Alisa Tang, *Migrants Risk Being “Sold” as Thai Shrimp Industry Cleans Supply Chain – Activist*, Reuters (Jan. 21, 2016); *Slavery Still a Problem in Thai Shrimp Industry Despite Scrutiny*, CBC.ca (Sept. 23, 2016).

occur.”⁴⁵ These searching reviews led the Thai shrimp industry to adopt practices to address the vulnerability of workers in peeling sheds.⁴⁶

The end result of these efforts was the collapse of the presence of Thai peeled shrimp in the U.S. market as U.S. importers switched over to take advantage of substantially lower labor costs in the unregulated shrimp pre-processing sector in India. As shown in the chart below, in 2006, Thailand accounted for one out of every three pounds of peeled warmwater shrimp imported into the United States. India, in contrast, comprised just one out of every thirteen pounds of imported peeled warmwater shrimp. As greater scrutiny was applied to the Thai industry’s reliance on migrant labor in peeling sheds, Thailand’s exports of peeled warmwater shrimp plummeted such that, last year, Thailand accounted for just one out of every forty pounds of imported peeled warmwater shrimp.



India, with equally vast access to vulnerable people to populate its peeling sheds, flooded in to fill the void left by the Thai industry and, by 2020 comprised over one out of every two pounds of peeled shrimp imported into the United States.

U.S. law (19 U.S.C. § 1307) prohibits the importation of goods produced through forced and child labor, including shrimp. The Southern Shrimp Alliance believes that U.S. Customs and Border Protection (CBP) has done a remarkable job, in the face of heavy opposition from U.S. importing interests, in developing the capacity to meaningfully enforce this law. Moreover, the Southern Shrimp Alliance believes that as greater scrutiny is applied to the operations of the pre-processing sector in India, Americans will develop a better understanding of the conditions under which the imported shrimp offered for sale in the U.S. market is produced. However, in the interim, the opaque nature of foreign shrimp supply chains has facilitated the purchase of cheap imported shrimp to the detriment of domestically produced shrimp.

⁴⁵ Fishwise, *Update: Briefing on Human Trafficking and Abuse in Thailand’s Shrimp Supply Chains* (July 19, 2017) at 3 (unnumbered).

⁴⁶ See, e.g., International Labour Organization, Thai Tuna Industry Association, and Thai Frozen Foods Association, *GLP Annual Report 2019: Good Labour Practices 2019*, Thai Frozen Foods Association, Thai Tuna Industry Association.

D. The Lack of Enforcement of Meaningful Traceability Requirements Has Allowed Questionable Supply Chains to Flourish

It is axiomatic that shorter supply chains are more secure supply chains. Shrimp landed by American shrimpers is made available to U.S. consumers through direct sales, through unloading facilities throughout the coastal south, and through domestic processors. Because of the regulatory structure that sits over these operations, it is impossible for significant volumes of illegally harvested domestic shrimp to enter the U.S. market. The American shrimp industry, as a whole, spends an inordinate amount of time and resources ensuring compliance with U.S. laws, recognizing that there is no long-term viable means to operate outside of the well-developed federal regulatory structure that oversees U.S. seafood production.

This is, however, not true for foreign seafood supply chains. The length and complexity of these supply chains provide ample opportunities for shrimp of dubious provenance to be introduced into the U.S. market. Importers have emphasized the complexity of foreign seafood supply chains in their opposition to greater traceability requirements, such as when the National Fisheries Institute (NFI) recently argued to the FDA that traceability back to the pond was impractical for farmed shrimp because of the various points in the production process in which this shrimp was commingled.⁴⁷ To support their argument, NFI submitted the table reproduced below of a “complex” aquaculture scenario where a purchaser of farmed shrimp would first aggregate shrimp from five to ten different farms before that shrimp had been subject to any processing.⁴⁸ Thereafter, the farmed shrimp would be further commingled before being delivered to a peeling shed and then commingled again after delivery to the processing facility once the shrimp has been individually quick frozen.⁴⁹

⁴⁷ See Letter from the National Fisheries Institute to the U.S. Food and Drug Administration, *Docket No. FDA-2014-N-0053; Requirements for Additional Traceability Records for Certain Foods*; 85 FR 59984 (Feb. 22, 2021), at 48, available here: <https://www.regulations.gov/comment/FDA-2014-N-0053-1225>.

⁴⁸ See *id.*

⁴⁹ See *id.*

Complex Aquaculture Scenario Product: Shrimp

A harvest aggregator will collect fish from 5-10 farms (farmed imports) and commingle after documenting the weight harvested

Step	CTE	Owns	Has Possession
Harvests shrimp from aquaculture pond	Harvest/Originator	Aquaculture Farmer	Farm Team Broker or Processor
Weigh and Some size grading may be done at harvest site	First Receiver?	Broker or Processor Farm Team	Farm Team
Transport to pre-processing site	Commingling from multiple farms may occur	Broker or Processor Farm Team	Farm Team
Pre Process - peeling	Receive /Transform/ Ship	Broker or Processor Farm Team	Broker or Processor Farm Team
Optional Step: Product sold via Auction by Buyer if not already owned by Processor	Receive/ Hold/Ship	If Broker owned may go through an Auction	Auction First receiver KDEs passed from broker via a movement document through auction house
Processor Receives pre - processed shrimp	Receive - better place to manage KDEs if destined for USA	Processor	Processor
Processor - deveins/freezes (IQF)	Transforms (note: not considered substantial transformation by US CBP	Processor	Processing Facility(s) Some steps may be May be outsourced
Processor sorts IQF Shrimp by size -	Commingles (grand lot). May hold IQF in Bulk as Work in Progress to fill specific orders later	Processor	Processor
Processor packages	Transforms	Processor	Processor
Sells to US Importer	Ships	Processor	In transit to port
Import	n/a	Importer	Container ship
US Importer sends to 3 rd Party Cold storage	n/a	Importer	Truck
Cold Storage	Receive/Hold	Importer	Cold Storage
US Importer sells directly to Food service customer	Ships	Importer	In transit
Distribution Center receives	Receiver/ Hold /Ship	Food service	Food Service
Delivers to Restaurant	Receive	Restaurant	Restaurant

However, there is nothing in the NFI’s production model that necessitates commingling such that full traceability of shrimp exported to the United States is not possible. Rather, the process described by NFI underscores how complex and opaque supply chains for foreign seafood present several opportunities for shrimp that fails to comply with U.S. laws and standards to slip into the American stream of commerce.

Accordingly, it is of particular concern that, despite the federal regulations in place, imported seafood supply chains remain convoluted and often opaque, veiling the exact origins of seafood. In order to improve the security of seafood supply chains in the United States, it is important to warrant that all seafood sold in the U.S. is safe, legally caught, and correctly labeled. Besides improving food safety, enforcing imported seafood traceability effectively thwarts IUU fishing by requiring that fish be traced back to a legal source. Seafood traceability can also help to counteract seafood fraud. Such fraud can take on a variety of forms, including, for example, species substitution in which one type of fish is swapped out for another species. This substitution includes selling fish of lesser value as a higher-priced species, hiding illegally caught fish by disguising its identity, and concealing health and safety risks.

Concerning shrimp, as the organization has investigated shrimp trade fraud, the Southern Shrimp Alliance has repeatedly identified circumstances wherein a foreign shrimp exporter is simply incapable of identifying the source of shrimp packaged for export. These foreign businesses may purchase shrimp not only from a large number of aquaculture farms and/or fishing vessels in their own country, but may also import substantial quantities of shrimp from other countries to be used as raw material for further processing. This imported shrimp feedstock may, in turn, be commingled with shrimp supplied by domestic sources, eliminating the ability of the food to be traced to its source of harvest.

As just one recent example, CBP recently completed an investigation under the Enforce and Protect Act (EAPA) of a Vietnamese shrimp processor and exporter in response to allegations that the company was transshipping Indian-origin shrimp to the United States, evading payment of antidumping duties on these goods.⁵⁰ CBP originally found that the company did not have a system in place to trace imported shrimp feedstock through its processing to its sale.⁵¹ Responding to the company's arguments that it met its obligations to track the origins of its seafood under SIMP, CBP observed:

SIMP requires traceability back to point of harvest of the shrimp, with records regarding the movement among and between each custodian of the shrimp up to the point of entry into U.S. customs territory. However, the accuracy of Minh Phu's SIMP documents are in question if they are unable to trace imported shrimp that has been processed through its production documents.⁵²

Although the company claimed that it could demonstrate its ability to ensure that imported shrimp feedstock was not used for shrimp exported to the United States through its compliance with SIMP, NOAA Fisheries' audit system does not appear to, in fact, require traceability of imported shrimp back to the source of harvest.

⁵⁰ See Letter from U.S. Customs and Border Protection to MSeafood Corporation and the Ad Hoc Shrimp Trade Enforcement Committee, *Notice of Determination as to Evasion*, EAPA Case Number 7356 (Oct. 13, 2020), public version available at: <https://www.cbp.gov/document/guidance/eapa-case-7356-mseafood-corporation-notice-determination-evasion-october-13-2020>.

⁵¹ See *id.*

⁵² *Id.* at 8.

The inability – or unwillingness – of participants in the supply chain for imported seafood to maintain the ability to trace foreign seafood back to its source in a meaningful, accurate manner has been identified by the FDA as a significant threat to the health of American consumers.⁵³ Cheap, tainted foreign shrimp is routinely traded from one country to another before ultimately being exported to the United States. Overall, the lack of enforcement through traceability requirements, such as through SIMP, leaves the United States' seafood supply chain vulnerable to foreign seafood that endangers consumer health and safety, deceives consumers when they pay higher prices for a mislabeled product of lesser value, and covers up detrimental practices like IUU fishing, inadequately regulated aquaculture, and human rights abuses.

As the United States becomes increasingly reliant on seafood imported from overseas and federal policy continues to disfavor domestic seafood production, unwieldy, complex, and opaque supply chains further cement themselves in our market. Dependence on these unwieldy, complex, and opaque supply chains, in turn, establishes obstacles to the traceability of these food items, increasing the vulnerability of our food supply chains as a whole.

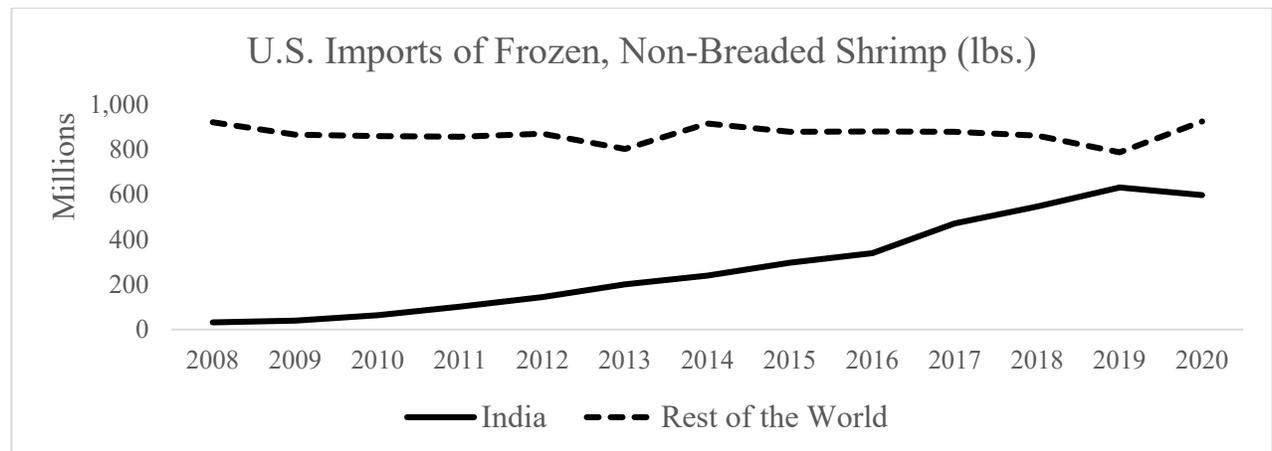
E. Foreign Government Support of Seafood Industries Have Encouraged Seafood Exports to the United States

In contrast to other areas of food production, the federal government has dedicated minimal resources to promote the supply of domestically harvested and processed seafood in our market. At the same time, foreign government support of their seafood industries has encouraged exportation to the United States. These subsidy programs create additional challenges for domestic commercial fishermen in competing for sales in their own market.

Again, the country that most exemplifies how this issue impacts the U.S. market is India. In the last decade, India has provided at least five discrete export subsidy programs to exporters. Through one program in particular, the Merchandise Exports from India Scheme (MEIS), exporters were paid a bounty, granted through import duty credit scrips, for shipments of eligible products to eligible markets. The MEIS duty scrip could then be transferred or used for payment of several duties or taxes including the customs/excise duty/service tax. Scrips and inputs imported under the scrips were also fully transferable, providing flexibility to Indian exporters.

Shrimp and prawn products were eligible for benefits under MEIS. At the outset of the program, the bounty rate was set at five percent, but effective December 5, 2017, the MEIS rates for all but two shrimp products (03062600 and 03062700) were increased to seven percent. The augmentation of India's export subsidy program through MEIS coincided with record levels of Indian shrimp imported into the United States in 2018 and 2019. Moreover, between 2008 and 2020, U.S. imports of frozen, non-breaded warmwater shrimp from India exploded from 33 million pounds to 598 million pounds. While the volume of Indian shrimp imports has increased by eighteen-fold, the volume of shrimp imports from every other country in the world has remained at roughly the same level over the last thirteen years:

⁵³ See 85 Fed. Reg. 59,989 (FDA Sept. 23, 2020).



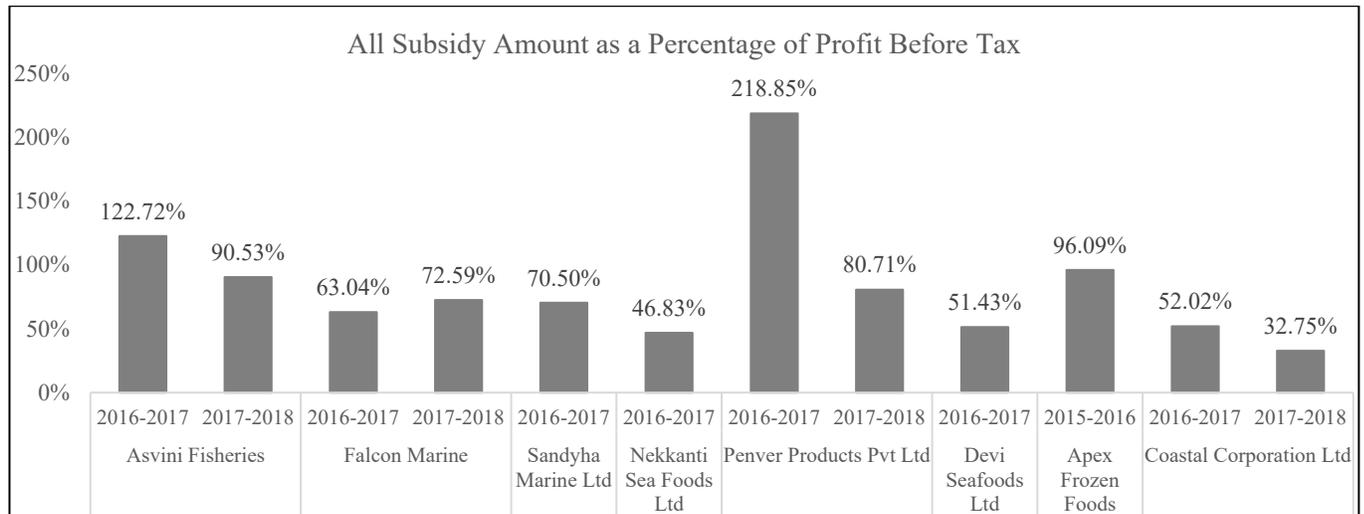
As is evident when Indian shrimp export volume to the United States declined in 2020 coincident with the end of the MEIS export subsidy program, our other trading partners stand ready to supply our market whenever the adverse effects of India’s unfair trade practices are ameliorated. In fact, the total volume of shrimp imports actually increased as Indian participation in the market was reduced.

The Indian government’s support for its shrimp industry extends beyond its export bounties. The government of India identifies and reports additional subsidies granted by the federal government to the shrimp industry in notifications to the WTO, including subsidy programs expressly to boost farmed shrimp production for export through financial assistance for the development of new shrimp farms.⁵⁴ Within the federal government, the Marine Products Exports Development Authority (MPEDA) awards and administers subsidy programs to the Indian shrimp industry. Along with these federal programs, individual states in India also operate state-specific subsidy programs.⁵⁵ Coastal Corporation, a shrimp exporter, reports in its 2017-2018 annual report that in addition to receiving scrips through the MEIS program, the company received sales tax incentives and had power costs reimbursed by the state of Andhra Pradesh. Pursuant to Andhra Pradesh’s Industrial Investment Promotion Policy 2010-2015, new industrial enterprises and those engaged in expansion or diversification projects can receive tax breaks and reimbursement of all power costs, in addition to other benefits. Two other Indian shrimp exporters, Devi Seafoods Ltd. and Penver Products Ltd., reported in financial prospectuses published in 2018 that Andhra Pradesh had granted “subsidies for setting up processing units and aquaculture farms” in the state.

When these subsidy programs are combined, as shown in the table below, publicly available financial reports from some of the largest shrimp exporting companies in India demonstrate that a substantial portion of the industry’s profit before taxes is comprised of grants from the Indian government.

⁵⁴ See G/SCM/N/343/IND (July 19, 2019).

⁵⁵ See *id.*



Notably, two major shrimp exporting companies (Asvini Fisheries and Penver Products) would have operated at losses but for India’s subsidy programs. These figures establish that harvesting government funds is often more important than the processing and export of harvested seafood for Indian shrimp companies.

As a practical matter, the government of India’s subsidization programs have done a phenomenal job of encouraging production of seafood in that country. Had these initiatives been undertaken to increase India’s food security or to promote local food production within India, these subsidization programs might have even been laudable. However, India’s shrimp industry is dedicated for export and the principal market targeted for those exports has been the United States. Working in conjunction with federal policies that encourage seafood imports over domestic seafood, Indian government support of its own seafood industry has allowed for an incredible influx of foreign seafood into the United States.

For its part, the United States has accepted subsidized foreign seafood as a gift, transferring income from developing countries to the United States in the form of artificially reduced prices for these goods. While this theoretically benefits American consumers, the impact on U.S. commercial fishermen, who operate without subsidies, is devastating. As such, the short-term benefits to consumers of lower prices must be weighed against the long-term erosion of domestic food production and the vulnerabilities introduced into our seafood supply chain.

III. Supply Chains for Domestically Produced Seafood

Across commercial fishing industries in the United States there is a shared concern regarding the future of commercial fishermen. Beyond worries about the long-term financial viability of commercial fishing in the United States, commercial fishermen confront well-organized, heavily-resourced domestic political advocacy groups that actively pursue further restrictions and regulations on the commercial fishing industry. Recreational fishing interests would, with some notable exceptions, prefer to see the industry entirely eliminated from U.S. coastal waters. As one academic noted thirty years ago, American shrimpers are forced to routinely litigate the question of “whether the Gulf of Mexico will be a recreational lake for the

rich or a place to make a living . . .”⁵⁶ Similarly, environmental groups have frequently sought a complete shutdown of the U.S. warmwater shrimp fishery based on varying theories.

Despite these efforts, neither of these two groups prioritize or advocate for the elimination of seafood from the U.S. market altogether. This leaves open the question of the value of their campaigns should their profit on ultimate success be seafood supply chains that are exclusively reliant on countries with weak or non-existent environmental regulations. If nothing else, the vast discrepancy between federal regulatory oversight of domestic seafood production and that of imported seafood means that when an American consumer purchases domestic shrimp, they do so with confidence that the shrimp was harvested under conditions dictated by a regulatory process intended to mitigate any potential adverse impact on the environment. These regulatory requirements have consistently become more – never less – onerous as new concerns are identified. As explained in detail in the preceding section, it would not be reasonable to conclude that imported shrimp were harvested under similar conditions.

The Southern Shrimp Alliance believes that the U.S. commercial shrimping industry stands on its own merits and, moreover, that the thousands of American families that make their living as independent fishermen are invaluable and essential contributors to this country’s economy and culture. But, even for those that would take issue with these simple observations, any “but-for” analysis of what the world would look like without commercial seafood production under the regulatory control of the federal government demonstrates that this alternative is not to be preferred. Beyond the massive environmental consequences, the long, complex, and opaque supply chains make the American food market more vulnerable and less secure.

For these reasons, the Southern Shrimp Alliance identifies below important issues confronting the domestic commercial fishing industry that we believe have inhibited the development of the industry and threaten its future viability. Unless these issues are addressed, the United States will continue to become even more reliant on foreign sources of seafood, with the minimal amounts of domestically-harvested seafood increasingly sent overseas for processing before being re-introduced to the American market.

⁵⁶ E. Paul Durrenberger, *Policy, Power and Science: The Implementation of Turtle Excluder Device Regulations in the U.S. Gulf of Mexico Shrimp Fishery*, *Maritime Anthropological Studies* 3 (1): 69-86 (1990).

Professor Durrenberger has separately submitted comments to the USDA in response to the *Federal Register* notice in which he observes that “[o]ne of the problems of producing healthy food for local production is the necessity to charge prices higher than imported products,” that “[t]he shorter the links in the chain, the more secure the supply of food,” and “an even more salient dimension of the problem is the long and complex supply chain between the producers of food and the retail markets. This depends on a complex system that contains myriad of brokers, middle-persons and fragile transportation systems.” Letter from E. Paul Durrenberger to the U.S. Department of Agriculture, *Supply Chain Comments 5/3/2021* (May 3, 2021). The Southern Shrimp Alliance agrees with these observations and believes that they are equally applicable to the market for seafood in the United States.

A. Heavy Regulation of U.S. Commercial Seafood Production Inhibits Innovation

As described above, before imported seafood enters the U.S. market, its producers have been subsidized by their governments and have been subject to minimal regulations regarding their operations. Once the seafood hits a U.S. port, it receives little federal oversight and will generally reach American consumers unimpeded.

In contrast, the domestic commercial seafood industry is heavily regulated. The plethora of NOAA Fisheries and FDA regulations governing the sale and production of domestic seafood establish a tangled web of rules of operation for the commercial fishing industry for which there is nothing analogous with respect to imported seafood. From size limits to seasons, commercial fishermen operate under a long list of rules. Although the regulations and policies that govern the commercial fishing industry can protect and benefit fishermen, as well as marine animals and the environment, these regulations come at a cost that makes domestic seafood less competitive in the U.S. market when competing with foreign producers not burdened with similar costs. Overall, heavy domestic regulations coupled with weak import regulations have decreased the supply of domestically harvested and processed seafood, and, in turn, have jeopardized the security of the seafood supply chain.

Commercial seafood production in the United States is governed by many laws backed up by mature enforcement mechanisms, including the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Marine Mammal Protection Act, and the Endangered Species Act. Regulatory mechanisms under the MSA are particularly notable because it was not until its enactment that the federal government began actively managing fisheries. The MSA includes ten national standards for management, some of which include preventing overfishing while achieving optimum yield and, at the same time, minimizing bycatch or mortality from bycatch. The MSA has been reauthorized in 1996 and 2006, with each reauthorization fortifying the conservation rules of the law, including stringent stock rebuilding timelines, utilization of the best available science, and obligations to comply with annual catch limits.

Moreover, the FDA administers laws and regulations regarding the production and sale of domestic seafood. As noted above, the FDA has recently proposed a new rule: Requirements for Additional Traceability Records for Certain Foods. The proposed rule introduces new and rigorous traceability requirements for foods on a food traceability list, a list of high-risk foods that includes virtually all seafood. Such requirements involve identifying and reporting critical tracking events and key data elements. Although the FDA's requirements will apply to both domestic and imported seafood, past experience with the agency indicates that while there is little doubt that domestic seafood will be held to exacting standards and routine compliance checks, the same expectation cannot reasonably be applied to imported seafood.

Regardless, the existing regulatory structure administered by both NOAA Fisheries and the FDA, as currently constructed, significantly inhibits innovation in commercial fisheries and the ability of the domestic seafood industry to adjust to changes in the market and environmental conditions. The adoption of emerging technology, whether with respect to harvesting or processing, presents challenging issues in the context of relatively inflexible management regimes. For example, advances in technology have increased the options for American shrimpers as to

how to bring landed shrimp to market. These technological advances on small vessels are not contemplated by existing regulatory structures and there is no one within the respective governing federal agencies tasked with determining how to modify enforcement approaches to address evolving practices that constitute improvements both from the perspective of the industry and with respect to the goals of the governing law.

The domestic shrimp industry cannot afford the luxury of operating under a fantasy that the regulations governing commercial fishing and domestic seafood production will somehow disappear or be significantly lessened. Instead, the Southern Shrimp Alliance has sought to meet federal regulation with strategies and approaches that satisfy the intentions of that regulation in a manner that limits, to the extent possible, the adverse impacts on the operations of individual fishermen. At the end of every day, it is the livelihoods of Americans and their families that are consistently at risk. While the Southern Shrimp Alliance has been fortunate to find areas of common ground with empathetic federal officials, institutionally, there is no presence within federal agencies tasked with considering how things like technological innovations, environmental changes, or industry restructuring impact the way that federal regulations are applied or whether existing approaches are unintentionally inhibiting developments that would improve the industry. In the absence of any federal regulatory investment *in* the domestic industry, the federal agencies charged with regulating our industry appear to be unconcerned as to whether there will be any industry to regulate twenty years from today.

B. Weak Country-of-Origin Labelling Rules Put Domestic Seafood at a Disadvantage in the U.S. Market

In 2005, the USDA's country-of-origin labeling (COOL) regulations (7 C.F.R. Part 60) became effective for fish and shellfish. The USDA's regulations, particularly 7 C.F.R. § 60.200 and 7 C.F.R. § 60.300, have provided Americans with the ability to make intelligent choices regarding their seafood purchases in grocery stores throughout the country. Nevertheless, significant exemptions to USDA's COOL rules for seafood apply to retail sales. For example, the exclusion of "processed food items," defined under 7 C.F.R. § 60.119, from COOL rules has limited the utility of the rules with regard to many seafood product forms offered for sale in grocery stores. Moreover, retail markets are not required to comply with COOL obligations unless the business purchases more than \$230,000 worth of fresh or frozen agricultural produce in a calendar year. This means that, in reality, labeling rules are inapplicable in many retail establishments where seafood is sold, particularly in coastal areas of the country. As the USDA explains on its website "Retail firms such as fish markets and butcher shops, as well as small stores that do not [sell] the threshold amount of fresh produce, are exempt from country-of-origin labeling requirements."⁵⁷ Addressing these loopholes in the regulation would substantially enhance the ability of American consumers to make informed choices regarding their seafood purchases.

Additionally, closures of broad parts of the American economy in response to COVID-19 revealed that a significant amount of our domestic seafood is consumed in restaurants rather than

⁵⁷ See USDA, *Country of Origin Labeling (COOL) Frequently Asked Questions*, available at: <https://www.ams.usda.gov/rules-regulations/cool/questions-answers-consumers>

purchased at grocery stores to be prepared at home.⁵⁸ Although country-of-origin labeling for seafood is required in grocery stores, no similar federal requirements exist for sales of seafood in restaurants. As consumers have become more conscientious about the source of their food, interest in purchasing domestic wild caught seafood has increased. Unfortunately, consumers have no way of knowing the source (*i.e.*, country-of-origin) of what they are served at a restaurant. The Southern Shrimp Alliance therefore supports initiatives to establish a requirement for restaurants to provide consumers with information regarding the origin of seafood menu items. Such a requirement would ensure that Americans are able to make informed decisions about their seafood purchases. Notifying American restaurant-goers of the origin of their seafood in turn would benefit U.S. commercial fishermen who already sell into the market at a massive disadvantage to foreign sources of supply.

In 2019, Louisiana enacted a law within the state that requires restaurants to display the country-of-origin for all shrimp and crawfish.⁵⁹ This law is no more stringent than any other legal requirement that restaurants must provide specific information on their menus, like warnings against consuming raw shellfish. The Southern Shrimp Alliance believes that Louisiana's law is a good start. While those who rely on imported seafood will likely oppose the expansion of such a law, experience with the state of Louisiana's law indicates that this policy objective may be achieved with minimal adverse effects on the operations of restaurants, while delivering substantial benefits to American consumers.

C. The Federal Government Should Help to Encourage the Development of the Next Generation of Commercial Fishermen

Historically, commercial fishing has been a generational pursuit, with the children of fishermen often following in their parents' footsteps. However, for some time, the average age of participants in U.S. domestic fisheries has been increasing while labor recruitment into domestic fisheries has been waning, a phenomenon dubbed "the graying of the fleet" by those within the commercial fishing industry. This has created challenges in recruiting and training fishermen that will be the future for supplying domestic seafood to the U.S. marketplace. For the long-term future of the commercial fishing industry, it is vital for Americans potentially interested in an independent career on the water to believe that commercial fishing is a viable profession. This goal could be achieved, in part, by the inclusion of this career path in vocational training programs.

Consistent with this objective, Young Fishermen Development Programs are being established around the country. Such a program is under development in the Gulf of Mexico and merits close monitoring. The success (or failure) of Young Fishermen Development Programs will likely play a seminal role in the future of commercial fishing in the United

⁵⁸ "Americans spend more than twice as much on seafood in restaurants as they do at home." Laura Reiley, *Commercial Fishing Industry in Free Fall as Restaurants Close, Consumers Hunker Down and Vessels Tie Up*, Washington Post (Apr. 8, 2020), available at: <https://www.washingtonpost.com/business/2020/04/08/commercial-fishing-coronavirus/>

⁵⁹ See <https://legiscan.com/LA/bill/HB335/2019>

States. Broad initiatives to support the professionalization of the industry are actively under consideration. For example, the Young Fishermen's Development Act,⁶⁰ legislation recently introduced in Congress, proposes to provide grants to support both established and new local and regional training programs for young fishermen. The Southern Shrimp Alliance believes that initiatives like the proposed legislation will be vital to maintaining secure supply chains for food in the United States.

IV. Conclusion

As the USDA assesses the supply chains for the production of food products, including seafood processing, the agency should consider the extent to which seafood supply chains in the United States have been weakened by federal policy over the last several decades, resulting in circumstances wherein imports are favored over domestic production. Seafood supply chains can be made more secure by increasing the supply of domestically harvested and processed seafood, rather than allowing the country's seafood demand to be entirely met by imports. Supply chains that are entirely dependent on foreign seafood production present substantial risks of contamination, of corruption through IUU fishing, and of supporting slave labor practices. For domestic seafood producers, increasing competition with imports means that the playing field is tilted further and further in favor of our foreign competitors, as these industries overseas benefit from foreign government support and subsidies, while we are met with escalating regulations.

For the reasons set forth above, the Southern Shrimp Alliance believes that there is a vital need to change the way the federal government approaches the domestic production of seafood, as well as the way it oversees, or fails to oversee, our laws, regulations, and standards with regard to imported seafood.

Thank you for any consideration you are able to give to this written input. I am available to address any questions you might have regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams". The signature is fluid and cursive, written over a light blue horizontal line.

John Williams
Executive Director

⁶⁰ See <https://www.congress.gov/bill/116th-congress/senate-bill/496>