

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE078**

**Presidential Task Force on Combating Illegal Unreported and Unregulated (IUU)  
Fishing and Seafood Fraud Action Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee) is seeking public input on draft principles for determining seafood species at risk of IUU fishing and seafood fraud (“at risk”) and a draft list of “at risk” species developed using the draft principles.

**DATES:** Comments must be received by [*insert date 30 days from date of publication in the FEDERAL REGISTER*]

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2014-0090, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Danielle Rioux, 1315 East-West Highway; Silver Spring, Maryland 20910.

- Webinar: A webinar will be held on August 25<sup>th</sup> 3:30-5pm Eastern time. Please go to <http://www.nmfs.noaa.gov/ia/iuu/taskforce.html> for information on how to join.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Working Group. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Working Group will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Danielle Rioux, Office of Sustainable Fisheries, National Marine Fisheries Service (phone 301-427-8516, or email *Danielle.Rioux@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** According to NOAA, in 2013, U.S. fishers landed 9.9 billion pounds of fish and shellfish worth \$5.5 billion. Illegal, unreported, and unregulated (IUU) fishing and seafood fraud undermine the sustainability of U.S. and global seafood stocks and negatively impact general ecosystem health. At the same time, IUU fishing and fraudulent seafood products distort legal markets and unfairly compete with the products of law-abiding fishers and seafood industries. On March 15, 2015, the Presidential Task Force on Combating IUU Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, took an historic step to address these

issues and published its Action Plan for Implementing Task Force Recommendations (Action Plan).

#### The Action Plan

([http://www.nmfs.noaa.gov/ia/iuu/noaa\\_taskforce\\_report\\_final.pdf](http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf)) articulates the proactive steps that Federal agencies will take to implement the recommendations the Task Force made to the President in December 2014 on a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud. The Action Plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental organizations, and create a risk-based traceability program to track seafood from harvest to entry into U.S. commerce, including through the use of existing traceability mechanisms. The work the Task Force began continues under the oversight of the National Ocean Council's Committee on IUU Fishing and Seafood Fraud (NOC Committee), established this past April, 2015.

This notice is one of several steps in the plan to implement Task Force Recommendations 14 and 15, identifying “species of fish or seafood that are presently of particular concern because they are currently subject to significant seafood fraud or because they are at significant risk of being caught by IUU fishing.” To begin implementing these recommendations, the NOC Committee created a Working Group (Working Group), led by NOAA and composed of members from partner agencies: Department of State, Food and Drug Administration, Department of Homeland Security, Customs and Border Protection, and the Office of the U.S. Trade Representative.

As the first step, the NOC Committee, through the Working Group, solicited public input through a **Federal Register** notice (80 FR 24246, April 30, 2015) on what

principles should be used to determine the seafood species “at risk” for IUU fishing or seafood fraud. Public input was received both in writing and through webinars. Taking into consideration comments received, the Working Group developed draft principles and a draft list of “at risk” species based on those principles. This notice seeks public comment on the draft principles and “at risk” species list. Following public comment, the Working Group will develop final principles and a final recommended list of at risk species. Once at risk species have been determined, the NOC Committee will transmit the list to agencies charged with implementing the Task Force recommendations for appropriate action. The list will be published by October 2015, in the **Federal Register**. The list will not impose any legal requirements, but will inform the first phase of the risk-based seafood traceability program, as described in the Action Plan for Implementing Task Force Recommendations. The traceability program itself will be developed through notice-and-comment rulemaking, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and that rulemaking will address data requirements, the design of the program, and the species to which the first phase of the program will be applied.

### **Draft Principles for Determining Species At Risk of IUU Fishing and Seafood Fraud**

To develop draft principles, the Working Group reviewed all public comments received and evaluated the strength and utility of various principles as indicators for potential risk of IUU fishing or seafood fraud as well as their measurability and the robustness of data available to assess them. The Working Group worked to minimize overlap of principles to ensure that alignment with several principles does not overstate associated risk, and also to distinguish between risk of IUU fishing and risk of seafood

fraud. The Working Group then applied the draft principles to a base list of species to determine a draft list of species at risk for IUU fishing or seafood fraud.

Based on the Working Group's evaluation and synthesis of comments received, the draft principles for which public comment is sought are listed below. Species and species groups were evaluated using these principles:

- **Enforcement Capability:** The enforcement capability of the United States and other countries, which includes both the existing legal authority to enforce fisheries management laws and regulations and the capacity (e.g., resources, infrastructure, etc.) to enforce those laws and regulations throughout the geographic range of fishing activity for a species.
- **Catch Documentation Scheme:** The existence of a catch documentation scheme throughout the geographic range of fishing activity for a species, and the effectiveness of that scheme if it exists, including whether a lack of proper documentation leads to discrepancies between total allowable catch and trade volume of a species.
- **Complexity of the Chain of Custody and Processing:** The transparency of chain-of-custody for a species, which includes the amount of transshipment (in this context, the transfer of fish from one vessel to another, either at sea or in port) for a species, as well as the complexity of the supply chain and extent of processing (e.g., fish that is commonly exported for processing or that is sold as fillet block vs. whole fish) as it pertains to comingling of species or catch.

- **Species Substitution:** The history of known species substitution for a species, focused on mislabeling or other forms of misrepresentation of seafood products regarding the species contained therein.
- **Mislabeling:** The history of mislabeling other than mislabeling related to species substitution, *e.g.*, customs misclassification or misrepresentation related to country of origin, whether product is wild vs. aquaculture, or product weight.
- **History of Violations:** The history of fisheries violations in the United States and abroad for a species, particularly those related to IUU fishing.
- **Human Health Risks:** History of mislabeling, other forms of misrepresentation, or species substitution leading to human health concerns for consumers, including in particular, incidents when misrepresentation of product introduced human health concerns due to different production, harvest or handling standards, or when higher levels of harmful pathogens were introduced directly from the substituted species.

### **Application of Draft Principles**

Given the large number of seafood species domestically landed and imported, it was not feasible to analyze all species that enter U.S. commerce under the principles listed above. Therefore, the Working Group created a base list of species for evaluation using several factors: (1) the value of domestic landings and imports (all seafood species with an imported or domestically landed value over \$100 million USD in 2014 were included on the base list); (2) species identified by the Working Group due to a high cost

of product per pound (which was considered to potentially increase the incentive for IUU fishing and fraud); and (3) species proposed based on the expertise of representatives from the Working Group agencies. In some cases, the Working Group combined related species (e.g., shrimp), together in its analysis because the supporting data utilized nomenclature which made further analytical breakouts (e.g., by scientific name) unworkable. The resulting list of species and groups analyzed is set forth below:

Abalone; Billfish (Marlins, Spearfishes, and Sailfishes); Catfish (Ictaluridae); Cod, Atlantic; Cod, Pacific; Crab, Blue; Crab, Dungeness; Crab, King; Crab, Snow; Dolphinfish (Mahi Mahi); Oyster; Grouper; Haddock; Halibut, Atlantic; Halibut, Pacific; Lake or Yellow Perch; Lobster; Mackerel; Menhaden; Opah; Orange Roughy; Red Drum; Red Snapper; Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallop; Sea bass; Sea cucumber; Shrimp; Sharks; Sole; Squid; Sturgeon caviar; Swordfish; Tilapia; Toothfish; Tunas (Albacore, Bigeye, Bluefin, Skipjack, Yellowfin); Wahoo; Walleye (Alaskan) Pollock; Pacific Whiting.

Both imported and domestically landed species were evaluated using the same data sources and methodology, as described below.

The Working Group identified appropriate data sources for analyzing the base list of species using the principles to determine species at risk of IUU fishing and seafood fraud. The Working Group used verifiable data, including information from Customs and Border Protection (CBP), Food and Drug Administration (FDA), and NOAA databases, published reports, or data gathered by Regional Fisheries Management Organizations to which the United States is a member and whose scientific data is developed and reviewed

with active U.S. government participation, and the knowledge of subject matter experts, including members of the Working Group and other personnel from represented agencies. The Working Group decided to analyze data from the past five years as the appropriate timeframe for decision-making because a longer timeframe might not reflect improvements that have been made in some fisheries over time and a shorter timeframe might not include sufficient data to identify risks to certain species.

Sub-working groups based on subject matter expertise were created to complete the analyses under each individual principle. The Working Group then used the analyses done by the sub-working groups to determine which species were most at risk of IUU fishing and seafood fraud.

The Working Group then had in-depth discussions regarding the application of the draft principles to the base list of species, and noted that the suite of risks posed to species varied not only in terms of what risks affected which species, but also in terms of the scale of the risks. For example, a single documented case of species substitution for a species that is sold in high volumes was considered differently than one case for a species rarely found in U.S. markets.

Additionally, as the Working Group discussed the suite of risks associated with the principles, a relationship became evident between the enforcement capability associated with a species and the history of violations. In many cases a history of violations was indicative of a strong enforcement capability for a species. Conversely, for some species, a lack of violations history may have been due to a lack of ability to detect or prosecute violations.

### **Draft Species At Risk of IUU Fishing and Seafood Fraud**

The Working Group recognizes that all species of fish can be susceptible to some risk of IUU fishing or seafood fraud due to the inherent complexities in the fishing industry and supply chain. However, the draft species list was developed to identify species for which the current risks for IUU fishing or seafood fraud warrant prioritization for the first phase of the traceability program. Pursuant to the Action Plan, implementation of the first phase of the traceability program will be regularly evaluated, beginning with a report to be issued by December 2016, in order to determine “whether it is meeting the intended objectives and how it can be expanded to provide more information to prevent seafood fraud and combat IUU fishing.”

Based on its evaluation, the Working Group identified the following draft list of species or species groups at risk for IUU fishing and seafood fraud, in alphabetical order:

**Abalone:** Abalone is considered to be at risk due to enforcement concerns. The fishery has a history of poaching, and there is a known black market for this expensive seafood. The fishery is primarily conducted by small vessels close to shore, and does not require specialized gear, which makes it difficult to detect illegal harvest, despite some enforcement capability. In addition to the IUU fishing risks for abalone, there is a history of species substitution where topshell is marketed as abalone.

**Atlantic Cod:** Atlantic cod have been targets of global IUU fishing operators. Despite a moderate amount of enforcement capability, there has been concern that adequate resources have not been dedicated to law enforcement for this species globally. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. In addition, there is a history of

species substitution with other white fish, as well as concerns over mislabeling related to over-glazing (ice coating), and short-weighting.

**Blue Crab:** Blue crab is sold in a number of different forms from live animals to significantly processed crab meat. In the highly processed form, species identification is only possible through DNA testing. There is a strong history of both species substitution and mislabeling. Blue crab has been substituted with swimming crab, which is native to Southeast Asia. The mislabeling history is largely associated with misidentification of product origin, with crab from other locations sold as “Maryland crab,” although there have also been incidents of short-weighting in the sale of crab meat.

**Dolphinfish:** Dolphinfish (also known as Mahi Mahi) is associated with a lack of enforcement capability and a lack of a catch documentation scheme throughout the geographic range of fishing activity, which makes it vulnerable to the risk of IUU fishing. Some dolphinfish is transshipped prior to entry into the U.S, and there is concern over mislabeling associated with product origin. In addition, there is a history of species substitution, in which yellowtail flounder has been sold as dolphinfish.

**Grouper:** Grouper refers to a group of species legally fished and sold under the names grouper and spotted grouper. Grouper, as a species group, has history of fisheries violations, and a lack of a catch documentation scheme throughout the geographic range of fishing activity for the species group. Additionally, this global species is transshipped, and processed both at the local level and at regionally located or third country processing plants. Grouper has a strong history of species substitution, including substitution using seafood that is of human health concern, such as escolar (which has a Gemplytoxin hazard).

**King Crab:** King crab has a significant history of fisheries violations, despite insufficient enforcement capability in some parts of the world. Additional IUU fishing risk is tied to the lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. Further, King crab is often transshipped before entering the United States, which increases the IUU fishing and seafood fraud risks. King crab is at risk for seafood fraud, mostly due to mislabeling of product origin, as well as some species substitution.

**Pacific cod:** Pacific cod is proposed as a species at risk despite significant enforcement capability associated with this fishery. Pacific cod is a target of global IUU fishing operators and has a clear a history of fishing violations. It is also subject to highly globalized processing and transshipment. Additional IUU fishing risk is tied to a lack of an effective catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. In addition, as with Atlantic cod, there is a history of species substitution using other white fish and concerns over mislabeling associated with over-glazing (ice coating) and short-weighting.

**Red Snapper:** Red Snapper is at risk for IUU fishing, based upon the history of fisheries violations, as well as the lack of a catch documentation scheme throughout the geographic range of fishing activity, despite rigorous reporting requirements in some areas, including the United States. There are also enforcement capability concerns for red snapper throughout the full geographic range of fishing activity for the species. Additionally, there is a strong history of species substitution with some of the substituted

species (e.g. rockfish, porgy, other snappers) presenting a risk to human health due to parasites and natural toxins.

**Sea Cucumber:** Sea cucumber is an IUU fishing concern, due to the lack of enforcement capability and known illegal harvesting and smuggling associated with this species. There is also a lack of a catch documentation scheme throughout the geographic range of fishing activity and a significant amount of transshipment. Although sea cucumber is often sold live, it can also be processed into a dried product for preservation. There are mislabeling concerns for sea cucumber, often tied to falsification of shipping and export documentation to conceal illegally harvested product.

**Sharks:** “Sharks,” as included on the draft at risk species list, refers to a group of species that are often sold as fins with some species also sold as steaks or filets. Depending upon the product form, differentiating between species in this broad group is a challenge without identification guides or DNA testing. This led the Working Group to group all shark species together to assess risks. Sharks as a species group have a history of fishing violations because they are processed and transshipped and there is a lack of enforcement capability throughout the geographic range of fishing activity. There is a global trade in shark fins that is a known enforcement concern. In addition to the IUU fishing risks associated with sharks, there are fraud concerns tied to the sale of imitation shark fin, which has been labeled as wild caught product.

We are seeking additional public comment on whether this broader grouping is appropriate, potential ways to refine how sharks are addressed on the list, and any exclusions from the group that should be considered. Any refinements would need to be enforceable without the need for DNA testing, and should not unintentionally shift the

risk of IUU fishing or seafood fraud to other species or introduce new IUU fishing or seafood fraud risks.

**Shrimp:** Shrimp is produced through both aquaculture and wild harvest. The Working Group found that shrimp is at risk for IUU fishing activity due to the history of fishery violations, as well as the level of processing often associated with shrimp products. Shrimp is also at risk for seafood fraud. There is a significant amount of mislabeling and/or misrepresentation of shrimp, tied largely to misrepresentation of weight, including where product has been treated with Sodium Tripolyphosphate to increase water retention. Mislabeling is also a concern regarding wild versus aquacultured labeling and product origin. Additionally, there is a history of substitution of one species of shrimp for another when imports cross the border into the United States.

We are seeking additional public comment on possible ways to refine the scope of this species group, e.g., by limiting the scope based on product type, species, processing type, or other approaches. Shrimp is the largest seafood import into the United States, with the value of shrimp imports representing more than twice the value of any other seafood species group. Wild capture fisheries exist both in the United States and foreign nations. Due to the sheer volume of shrimp that enters U.S. markets, traceability for all shrimp may exceed the capacity of implementing agencies.

**Swordfish:** Swordfish are at risk in terms of both IUU fishing and seafood fraud. Swordfish are a highly migratory species and their range crosses numerous jurisdictions, including into the high seas. There has been a history of fisheries violations in certain swordfish fisheries and regions, in addition to a lack of enforcement capability. The United States does, however, implement a statistical document program for swordfish

pursuant to the International Commission for the Conservation of Atlantic Tunas (ICCAT) to help mitigate IUU fishing and seafood fraud risk. This document is required for all swordfish product entering the United States, regardless of the product form or ocean area where it was harvested, although it does not provide the full range of information that would be expected in a traceability program, particularly for fish harvested outside the Atlantic. Swordfish is commonly transshipped and is also at risk in terms of species substitution with mako shark.

**Tunas:** Tunas are a high volume and high visibility species group that includes five main species: albacore, bigeye, bluefin, skipjack, and yellowfin. There has been a history of fisheries violations in certain tuna fisheries and in certain regions. Further, harvesting, transshipment, and trade patterns for tunas can be complex, in particular for certain value-added products. While there are multilateral management and reporting measures in place for many stocks within the tuna species group, these management and reporting mechanisms vary in terms of information standards and requirements and do not all provide a complete catch documentation scheme. Tunas are also subject to complicated processing that includes comingling of species and transshipments. Further, there has been a history of some species substitutions, with most instances involving substitution of one tuna species for another. However, there have also been instances of escolar, which can contain a toxin, being substituted for albacore tuna.

The Working Group is asking for public comment on possible ways to refine the scope of this species group possibly by limiting to certain product types, species, processing types, or other approaches.

### **Programs to Mitigate Risk**

Through the application of the draft principles, the Working Group identified two species – toothfish and catfish – that had a number of risk factors for IUU fishing or seafood fraud, but due to mechanisms to address those risks are not being proposed as at risk species in this Notice.

Toothfish has been known, historically, as a species with IUU fishing concerns, which led to the development, by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of a number of monitoring tools including a comprehensive catch documentation scheme. Without the existing level of reporting, documentation, and enforcement capability, including through measures adopted by CCAMLR, for this species, the Working Group would have found it to be at risk.

The Working Group found that while existing measures do not eliminate risk for toothfish, they mitigate the IUU fishing and seafood fraud risks to such a level that the Working Group does not propose toothfish as an at risk species for the first phase of the traceability program.

In the United States, seafood sold as catfish must be from the family *Ictaluridae* (per section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t) Regarding the Use of the Term "Catfish"). As such, there is a strong history of species substitution, in which non-*Ictaluridae* species are sold as catfish. Some of this species substitution has been tied to Siluriformes species, which could have a drug hazard associated with them, as well as other species that have been found contaminated with prohibited chemicals and pharmaceuticals. In addition to species substitution, there is a history of other mislabeling issues, including product origin and failure to accurately label product that has been treated with carbon monoxide.

These risks were discussed and are fully recognized by the Working Group. However, there is a rulemaking on catfish inspection (<http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=0583-AD36>) under development, separate from the NOC Committee and Working Group actions. Once in effect, this pending rulemaking may mitigate risks identified by the Working Group. Taking into consideration the underlying principle of the Task Force to maximize existing resources and expertise from across the federal government through increased federal agency collaboration, the Working Group did not include catfish on the draft list of at risk species. In the absence of this pending rulemaking, or if the pending rulemaking has not progressed when a final list of at risk species is determined, the decision to exclude catfish from the list of at risk species can be revisited.

#### **Summary of Comments in Response to 80 FR 24246 (April 30, 2015)**

In response to the April 30, 2015, notice (described above), U.S. fishing industry groups, non-governmental organizations, foreign nations, and interested citizens submitted comments on a wide breadth of topics related to the development of the draft principles and the draft at risk species list. A total of 155 written comments, and 26 oral comments received via webinars, were provided. The comments included 66 unique comments and 115 comments that were substantially the same and therefore are treated as one unified comment supporting implementation of a seafood traceability program for imported Dolphinfish (noted as “Dorado” in public comments, also known as Mahi Mahi, *Coryphaena hippurus*) from Mexico. The Working Group considered all public comments, and has provided responses to all relevant issues raised by comments below. We have not responded to comments that are outside the scope of this request and that

may be more relevant to future steps in the process, i.e., the pending rulemaking on the design of the traceability system.

### *1. Enforcement Capability*

*Comment:* Many public comments noted that a species will be at risk when there is a lack of enforcement capability for managing the species. Comments addressed two different aspects of enforcement capability: enforcement authority for a species (i.e., if there is an existing legal framework that gives authority to enforce fisheries management regulations), and enforcement capacity (i.e., if the resources and infrastructure necessary for effective enforcement, such as patrol vessels and personnel, exists).

*Response:* The Working Group agrees that this is an important factor to consider in determining whether a species is at risk for IUU fishing and used enforcement capability (i.e., both enforcement authority and enforcement capacity) as one of the draft principles for its analysis.

### *2. Catch Documentation Scheme*

*Comment:* We received multiple comments regarding the importance of a catch documentation scheme to reduce a species' risk for IUU fishing and seafood fraud. Example comments: "A lack of effective catch documentation systems: thorough, up-to-date catch documentation and consistent cross-checks of those records helps to reduce opportunities to funnel illegally-caught fish into legal market streams, especially for complicated trade routes," and "the presence of relevant and reliable catch records in an easily stored and shared format (such as electronic) would be considered an indicator for degree of risk."

*Response:* The Working Group agrees and has made the existence of a catch documentation scheme for a species, and the effectiveness of the scheme if one exists, one of the draft principles for determining at risk species. An effective catch documentation scheme is a tool that enhances seafood traceability and helps decrease the opportunity for IUU fishing and seafood fraud.

### 3. *Complexity of the Chain of Custody and Processing*

*Comment:* A number of comments were received that were related to the complexity and transparency of the chain of custody for seafood. In the more complex chains of custody there are more opportunities for mixing illegally caught fish with legally caught fish, or for mislabeling. Multiple comments noted that transshipments make tracking the chain of custody harder and present an opportunity to commingle legally and illegally caught fish. Similarly, the complexity of the processing a species undergoes is also important. It is much more difficult to mislabel whole fish, because the identification of the species is easier. Conversely, highly processed seafood (such as fillet block or surimi) could have a number of species mixed into it, either legally, or fraudulently, and without DNA testing it is impossible to identify the constituent parts. Example comments include: “Prioritize mixed products that are composed of more than one species ... numerous species in a single product can increase IUU risk.” “Seafood products that have been co-mingled, processed, transshipped, or transported throughout multiple jurisdictions.” “Monitoring and control of transshipments; Does the supply chain actor (i.e. retailer, importer, etc.) request/have a list of vessels involved in transshipments including carrier vessel (basic level information, flag State, registration number, license, unique vessel identifier).”

*Response:* The Working Group agrees that the transparency in the supply chain is important to detecting and discouraging IUU fishing and seafood fraud. Accordingly, we have made the transparency of chain of custody for a species a draft principle. This draft principle includes an assessment of how common transshipment is for each species, the complexity of processing, and the resulting final product (e.g., fillet block vs. whole fish).

#### 4. *Species Substitution*

*Comment:* The Working Group received many comments highlighting the problems associated with mislabeling and other forms of misrepresentation of seafood. Due to the magnitude of comments concerned with the substitution of one species for another, the Working Group addressed species substitutions separately from other forms of mislabeling fraud (see next comment). Commenters highlighted some reasons species substitutions might occur: avoiding tariffs, increasing value (i.e., a less valuable species sold as a higher value species), and masking illegal fishing. Example comments include: “operators intentionally mislabel species to avoid tariffs or regulations or to pass off lower value fish as higher value product.” “Low value species whose products ‘resemble’ those from higher value species. Even if the species itself is plentiful, economic incentive then exists for seafood fraud and substitution.”

*Response:* The Working Group agrees that substituting one species for another species can be harmful to the seafood industry and to the consumer, regardless of the reason for species substitution. Therefore, the Working Group has included a draft principle that takes into account the history of seafood substitutions for a species.

#### 5. *Seafood Mislabeling*

*Comment:* In addition to species substitutions, there are many other types of seafood mislabeling that can be considered fraud, including, but not limited to: improper weighting, unlabeled chemical additives, added water, mislabeled harvest location, misrepresentation of farmed vs. wild product, and misclassification of import codes. Example comments include: “Net weight is the most widespread fraudulent activity and the hardest to fix. It is very tempting to sell and ice glaze for \$10 to \$25 a pound.” “Lower value farm raised species that are substituted for higher value wild species...[is] economically motivated adulteration or fraud.”

*Response:* The Working Group agrees. Seafood mislabeling and other forms of misrepresentation create an unfair market for law-abiding members of the seafood industry and directly impacts consumers. The motive for mislabeling and other forms of misrepresentation are more difficult to ascertain and in some instances mislabeling can be unintentional. Therefore, the Working Group chose to analyze instances of mislabeling unrelated to species substitution to determine species most at risk, and did not attempt to address intent.

## 6. *History of Violations*

*Comment:* A number of comments received highlighted fisheries with prior IUU fishing violations as being at risk fisheries. Without additional controls or management and monitoring systems, continued IUU fishing activity would be expected for species that have a history as a target for IUU fishing. Example comments: “We encourage the Task Force to identify and review the cases for those companies and individuals, both domestic and foreign, convicted for incidents of misreporting.”

*Response:* The Working Group agrees with public comments that a history of violations is a risk factor. The Working Group therefore included the history of violations for a species as a draft principle for identifying risk of IUU fishing for a species. It should be noted that the history of fisheries violations within a fishery is separate from the draft principles concerning mislabeling and species substitution.

#### 7. *Human Health Risks*

*Comment:* The Working Group received comments that species at risk of seafood fraud should also be reviewed and prioritized according to potential human health impacts. When species are substituted or mislabeled, in addition to defrauding the customer, there can be an introduced or increased human health risk. An example comment includes: “Farmed fish from developing countries with little or no health standards are increasingly being found to contain toxins that pose health threats to consumers. These fish are often substituted for fish with local names, and passed off to the American consumer as domestic wild caught [sic].”

*Response:* The Working Group agrees that human health risk should be considered. As such, the Working Group has made history of mislabeling impacting human health a draft principle for determining at risk species.

#### 8. *Species Health and Vulnerability*

*Comment:* The Working Group received numerous comments regarding the importance of sustainable seafood, and requesting that the biological health of the species, or associated bycatch levels, gear impacts and other environmental impacts be considered. Example comments include: “[Species] [k]nown or projected to be biologically vulnerable, including low intrinsic rates of population increase or highly

migratory (subject to fishing from multiple jurisdictions).” “Unfortunately, as a species’ numbers decline the market value of the species often rises. This could boost the incentive for illegal fishers to chase those species.”

*Response:* The Working Group acknowledges that the sustainability of fishing resources is an important goal and is a priority for NOAA under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Some vulnerable species identified in the comments such as sharks, sturgeon, and abalone were added to the base list and analyzed by the Working Group. However, the main focus of this process is to identify species at risk for IUU fishing or seafood fraud and a species’ vulnerability is not, in and of itself, indicative of such risk, and thus is beyond the scope of this process.

#### 9. *Economic Importance of a Species (Volume and Value)*

*Comment:* Multiple comments encouraged the Working Group to include information about the volume and value of the species traded or landed when determining risk. The comments note that high volume and high value species are more likely at risk for IUU fishing and seafood fraud. Example comments include: “ IUU fishing is often associated with highly valuable species that are prized in the global marketplace, including large apex predators, such as tunas or sharks and specialty products such as eel”, and “Value and volume of species: initial focus on species of significant value and volume, both aspects that increase motivation for IUU and seafood fraud.”

*Response:* To ensure that the economic importance of a species was taken into account, the Working Group ensured that all species or groups of species, either domestically landed or imported, with an annual value of \$100 million USD or more for

2014 were included in the base list of species evaluated to determine whether they are at risk for IUU fishing or seafood fraud. This encompassed both the demand for a product, as well as the value, and, in most cases, also the volume (most high volume species also have an annual value of over \$100 million). Recognizing, however, that value or volume is only one measurement, the Working Group also identified species that are known to have high prices per pound, but do not meet the threshold of annual landings or import value of over \$100 million, and added them for evaluation (e.g., sturgeon caviar, sea cucumber), as well as species identified by subject matter experts from the Working Group agencies.

#### *10. Bycatch Concern*

*Comment:* In addition to comments about target species' sustainability, comments were received regarding the level of bycatch associated with the harvest of a species. These comments generally were in agreement that a high level of bycatch would make the target species more likely to be at risk." Example comments: "It must adequately address bycatch." "Harvested from fisheries with a high frequency of destructive fishing methods ... and fishing methods that result in significant bycatch are more likely to be threatened by IUU fishing."

*Response:* The Working Group acknowledges the importance of reducing incidental bycatch of marine species to the sustainability of global fisheries. The selection of species to which the principles were applied as described in this notice includes species harvested both as targeted catch and bycatch. Despite the importance of minimizing bycatch in sustainable fisheries management, the level of bycatch associated with harvest of a target species is not, in and of itself, determinative of the level of risk

for IUU fishing or seafood fraud for the target species. Thus, the Working Group did not include this consideration as a draft principle.

#### *11. Marine Mammal Protection Act Ties to Risk*

*Comment:* One commenter stated: “in addition to concerns about the seafood products themselves, the Marine Mammal Protection Act (MMPA) at 16 U.S.C. 1371(a)(2) requires the government to insure that seafood products imported into the United States must be caught in a manner that does not result in the killing or serious injury of ocean mammals in excess of U.S. standards.”

*Response:* MMPA section 101(a)(2) (16 U.S.C. 1371(a)(2)) concerns the level of marine mammal bycatch in the course of commercial fishing operations. As stated above, the level of bycatch associated with harvest of a target species is not, in and of itself, determinative of the level of risk for IUU fishing or seafood fraud for the target species. In a separate rulemaking, NOAA intends to publish a proposed rule to implement MMPA section 101(a)(2).

#### *12. Country-Specific Risk*

*Comment:* A large number of public comments requested that we look at the country of origin as a critical principle for determining a species’ risk of IUU fishing or seafood fraud. For example, comments received include: “The Task Force should start with the existing report NOAA provides to Congress every two years that identifies nations that have vessels engaging in IUU fishing. Imported seafood from nations identified in this report should be categorized as high risk” and “[k]nown or established history of illegal fishing or fisheries product coming from a nation identified as having documented IUU fishing.”

*Response:* The Working Group has already identified as draft principles enforcement capability and history of fisheries violations. These principles will allow the Working Group to take into account fisheries identified in NOAA’s biennial report to Congress as engaging in IUU fishing (*see* 16 U.S.C. 1826(h)). The Working Group does not believe it is useful or appropriate to establish a principle based on country of origin.

### *13. European Union (EU) IUU Seafood Certification*

*Comment:* A number of comments included discussion of the EU approach to combatting IUU fishing, which is country-of-origin based, rather than species-based. Example comments: “Ideally the United States could also use the well-researched ‘red and yellow card’ system of the European Union to assess the likelihood of IUU products coming out of a country’s fishery or processing operations” and “[p]rioritize products imported from countries already issued IUU yellow or red cards by the EU.”

*Response:* The Working Group is implementing the recommendations of the Presidential Task Force on Combatting IUU fishing and Seafood Fraud, which outlines a species specific approach as the basis for a risk-based traceability scheme. As noted above, the Working Group does not believe it is appropriate to establish a principle based on country of origin. In addition, the U.S. government does not have active involvement with the EU country-based IUU fishing risk identification system. Therefore, the Working Group did not include a principle that would identify species at risk based on whether they are associated with nations that have been issued a yellow and red card under the EU system. However, to the extent available, information generated or collected pursuant to the EU system that could be relevant to other principles used by the Working Group, such as enforcement capability and history of fisheries violations for specific species.

#### *14. Vessel-Specific Risk and Flags of Convenience*

*Comment:* A comment was received that a principle for determining risk should be: “Presence of flags of convenience in a fishery: Flags of convenience (FOCs) are a well-known challenge to effective fisheries management... Therefore, the Working Group should pay special attention to species caught in fisheries with large numbers of vessels registered to known FOCs).”

*Response:* The Working Group used history of fisheries violations as a principle, which covers incidents from all vessels. Although the Working Group recognizes the challenges associated with FOCs, the Working Group decided to use a metric of documented offenses rather than a flag- or vessel-specific approach.

#### *15. Wildlife Trafficking Connections*

*Comment:* There is an existing President’s Advisory Council on Wildlife Trafficking that is working to implement the National Strategy for Combatting Wildlife Trafficking, released by the White House on February 11, 2014. Public comments encouraged the Working Group to connect with the Wildlife Trafficking Advisory Council to ensure we do not duplicate efforts, and to work to synergize activity where appropriate. Additionally, comments requested: “In continuing to fulfill its mission, we encourage the Working Group to continue reaching out to the Presidential Task Force on Wildlife Trafficking, especially on illegal trade in marine species, particularly sharks, rays, and marine turtles.” “Seafood products that are known to be involved in wildlife trafficking. Illegally harvested seafood products, many of which are depleted or highly depleted, are sometimes involved with underground wildlife trade.”

*Response:* The Working Group is coordinating with the President’s Advisory Council on Wildlife Trafficking as some members participate in both groups. The Working Group has not used wildlife trafficking as a principle for any determination of a species’ risk of IUU fishing or seafood fraud, but did consider the history of fisheries violations, species substitution and mislabeling violations associated with a species.

#### *16. Sport vs. Commercial IUU fishing*

*Comment:* One comment stated: “The Task Force should differentiate between sport and commercial fishing when determining IUU fishing activities.”

*Response:* While the Working Group acknowledges that illegal sport fishing can have adverse impacts on fishery resources, the traceability program will only include products that enter into U.S. commerce. Landings from sport fishing trips, for the most part, do not enter the United States in commercially significant quantities and thus, the Working Group used data based on commercial fisheries for all at risk determinations.

#### *17. Market Price Versus Catch Price*

*Comment:* A comment was received noting: “Another indicator of whether IUU products are present in the market are [sic] if there are price discrepancies such that the catch price is significantly lower than the average price on the market. Where the market price is significantly higher than the catch price this may be an indication that the product was derived from IUU fishing.”

*Response:* The Working Group did not review price discrepancies in its at risk analysis. Data on price in the market versus off the boat is not robust or consistently collected. In addition, the connection between market price and risk of IUU fishing and

seafood fraud has not been clearly established, and there are many variables that could cause a discrepancy in price other than IUU fishing.

*18. Risk from World Customs Organization Harmonized Schedule (New HS Codes)*

*Comment:* One comment was received regarding the increased risks associated with species for which there are new import codes that will go into effect in 2017: “imports of species that originate in countries that have failed to implement the seafood-related amendments to the 2012 [World Customs Organization Harmonized Schedule (HS)] HS Codes should be considered ‘at risk.’ As of March 20, 2015 only 115 out of 151 Contracting parties to the World Customs Organization had implemented the current HS Code Schedule. As the new HS Codes for seafood products come into force in January of 2017, we believe that there will be a heightened risk of fraud and mislabeling (whether inadvertent, as people adjust to the new codes, or intentional so as to avoid tariffs). Consequently, we believe that those species for which new codes have been added should be ‘at risk.’”

*Response:* There is another working group addressing the Action Plan for Implementing Task Force Recommendation 10 (Enforcement: Species Name and Code) that is currently assessing ways to enhance the identification of products through the use of the HS and the Harmonized Tariff Schedule of the United States (HTSUS). Though the outcomes of this assessment may not influence other countries’ actions with regards to adopting the 2012 or 2017 HS changes, the Working Group may propose changes to the HTSUS and make other recommendations relative to naming and identification that could impact certain seafood imports into the United States, as well as changing the potential associated risks highlighted.

### *19. Highly Migratory Species (HMS)*

*Comment:* Highly migratory species were noted in public comments as being more susceptible to IUU fishing and seafood fraud. Because of the transient and pelagic nature of these species, they are fished outside of or across multiple Exclusive Economic Zones (EEZs), as well as on the high seas, making regulatory development and enforcement more difficult. Example comments: “Highly migratory stocks, particularly those that travel through and between national boundaries, may be more susceptible to IUU fishing activities” and “The life history of certain species can lead to IUU vulnerability. For instance, fisheries for highly migratory species are difficult to monitor and enforce, which can make illegal behavior harder to detect and deter (e.g. tuna).”

*Response:* The Working Group concluded that a separate principle for HMS was not necessary. HMS at a high risk for IUU fishing should be identified through a combination of other principles such as enforcement capability and the absence of a catch documentation scheme or an ineffective scheme. In addition, to alleviate potential risk associated with the migratory nature of these species, many HMS are managed internationally through Regional Fishery Management Organizations that adopt harvest limits, data collection requirements, and enforcement measures. The Working Group applied the drafted principles to HMS along with non-HMS, and those determined to be at risk are on the draft list of species (e.g., sharks and tunas).

### *20. Species-Based Approach*

*Comment:* Many comments requested that the Working Group not take a species-based approach, and rather employ a larger scaled approach and begin the traceability program with all seafood products. Example comments: “any legitimate approach to

identifying IUU risk in seafood will inevitably produce a much broader and larger set of products than could be achieved through the selection of “species at risk” and “[w]hile we understand the need to prioritize resources on high risk problems, we do not believe that a species-by-species approach is an effective long-term solution to the challenges of IUU fishing and seafood fraud, which are global in nature, occur at all levels, from harvest through final sale, and are influence by changing market demands and other factors.”

*Response:* The Action Plan for Implementing Task Force Recommendations specifies that the traceability program will be implemented by first targeting high risk species, while preserving the opportunity to leverage the value and effectiveness of other traceability efforts. By December 2016, the NOC will issue a report, taking into careful consideration input from stakeholders, evaluating implementation of the first phase of the traceability program and recommending how and under what timeframe it should be expanded.

#### *21. Data for Analyzing Principles Identified*

*Comment:* There were multiple public comments expressing concerns with the data that would be used to analyze the base list of species using the draft principles to identify species at risk. One commenter noted that species at risk shift over time as changes in management occur, and therefore, the Working Group should use current information when identifying at risk species. Conflicting comments were submitted regarding the appropriate data to use: some comments suggested use of government data only, while others supported use of non-governmental information submitted through public comment.

*Response:* To develop the draft list the Working Group used verifiable data, including information from Customs and Border Protection (CBP), Food and Drug Administration (FDA), and NOAA databases, published reports, or data gathered by Regional Fisheries Management Organizations to which the United States is a member and whose scientific data is developed and reviewed with active U.S. government participation, and the knowledge of subject matter experts, including members of the Working Group and other personnel from represented agencies. The Working Group determined that including data from the past five years was appropriate, as a longer timeframe may not recognize improvements that have been made in some fisheries over time, and a shorter timeframe may not include enough data to identify the species at risk.

*22. Convention on International Trade in Endangered Species (CITES) and International Union for Conservation of Nature (IUCN) Lists as Basis for Determining Risk*

*Comment:* A number of public comments requested that species listed with CITES or that are on IUCN red lists be determined as species at risk. Example comments: “A species listed on one of the CITES appendices: A number of commercially exploited species, including shark and ray species, are included in the appendices of CITES” and “Of the more than 1200 described species, one quarter have been designated as threatened under the IUCN Red List, and 500 species are so data deficient that their conservation status cannot be determined, putting them at even greater risk.”

*Response:* CITES is an international agreement between governments that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The IUCN red list of threatened species is an approach for evaluating the conservation status of plant and animal species on a global scale. As mentioned in

response to a prior comment, the Working Group affirms that sustainability of fishing resources is an important goal. However, the main focus here is to identify species at risk for IUU fishing and seafood fraud. Thus, the draft principles do not include consideration of the conservation status of species.

### *23. Science-based Fishery Management*

*Comment:* Public comments requested that species not managed using science-based fisheries management be considered at risk. This commentary was often tied to a country, rather than a species, but the premise of science-based fishery management was consistent in both approaches. For example, a comment stated that at risk species should include species “[t]aken in managed fisheries but without science-based or precautionary (where population assessments are not available) catch limits; where limits exceed scientific advice; or where catch limits are routinely exceeded.”

*Response:* The Working Group agrees that fishery management must be science-based to be effective. Under the Magnuson-Stevens Fishery Conservation and Management Act, conservation and management measures for federal fisheries managed in the U.S. EEZ “shall be based upon the best scientific information available” (16 U.S.C. 1851(a)(2)). As noted earlier, the Working Group considered in its analysis scientific information from Regional Fisheries Management Organizations to which the United States is a member. Beyond this, the Working Group does not, as a general matter, have sufficient information or the ability to evaluate the science used by foreign nations in the management of their fishing resources. Thus, whether or not a species is subject to a management regime using best available scientific information was not included as a draft principle for determining at risk species. Rather, the NOC will seek to address this

concern through other approaches aimed at international stewardship (*e.g.*, capacity building, diplomatic outreach, etc.)

#### *24. Magnitude of the Violations*

*Comment:* One public comment requested: “The Task Force should weigh the magnitude of labeling violations and impact on U.S. consumer prior to deeming a species at risk. The following are examples of mislabeling that should represent lower concern and should NOT be the sole basis from an at risk determination: Species that are mislabeled within the same genus or within the same acceptable market name grouping.”

*Response:* The Working Group took known violations from the past five years into account in evaluating species for at risk” determination. Adding a value judgment on the magnitude of the violations was beyond the capacity of the Working Group.

#### *25. Poor Species Identification in the Catch and/or Trade Data*

*Comment:* One public comment noted that the lack of species identification in catch and trade data can increase a species’ vulnerability to IUU fishing.

*Response:* This issue will be captured under the draft principles concerning any history of species mislabeling and the existence of a catch documentation scheme. In addition, the Working Group recognizes the concern regarding import codes. This issue will be discussed through the work on Task Force Recommendation 10 “to standardize and clarify rules on identifying the species, common name, and origin of seafood.”

#### *26. Existing Traceability System*

*Comment:* Multiple comments recommended that the Working Group review and take into account whether there is already a certification system or traceability system for

a species. Example comment: “Some private industry sectors have initiated traceability requirements.”

*Response:* The Working Group commends organizations and fishing groups that have initiated traceability programs on their own and recognizes the investment by the private sector in developing improved traceability. For species with a recently implemented traceability program, the number of enforcement violations over the past five years can be used as a measure of the effectiveness of the program and will allow us to either remove these species from our list of at risk species or, where appropriate, include existing catch documentation provisions into a traceability program to further address risk of IUU fishing and seafood fraud.

Dated: July 28, 2015

A handwritten signature in black ink, appearing to read 'Samuel D. Rauch III', written over a horizontal line.

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.