



June 27, 2016

Melissa Beaudry,
Quality Officer,
Office of International Affairs and Seafood Inspection,
1315 East-West Highway,
Silver Spring, MD 20910

Re: NOAA—NMFS—2014—0090

Dear Ms. Beaudry:

We respectfully submit these comments on behalf of the American Shrimp Processors Association (ASPA) regarding the Proposed Rule issued by the National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA) for the implementation of a Commerce Trusted Trader Program as part of a seafood traceability process to combat illegal, unreported and unregulated (IUU) fishing and seafood fraud. ASPA is a domestic, non-profit organization dedicated to the promotion of the US domestic shrimp industry, with members accounting for a majority of domestic shrimp production.¹

ASPA strongly supports the efforts of President Obama’s Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud (Task Force) to address IUU fishing and seafood fraud both domestically and abroad, including the proposed IUU traceability program. Indeed, the traceability program and its data reporting and recordkeeping requirements are the cornerstone of the Task Force’s work product, and are vital to the accomplishment of the Task Force’s mission.² ASPA submits these comments to address its concerns regarding the implementation of any proposed Trusted Trader Program that may excuse compliance with the task force’s traceability requirements, and thus jeopardize the efficacy of the proposed IUU traceability program.

As an initial matter, ASPA understands that one of the main components of the proposed Trusted Trader Program is that participants will be subject to “reduced targeting and inspection.”³ Given the extremely low overall level of imported seafood inspection, however, ASPA does not believe that it is appropriate to take any measures which may reduce these rates any further. As the GAO pointed out in

¹ See www.americanshrimp.com

² ASPA timely submitted comments regarding the traceability program rulemaking. See Comment submitted on April 12, 2016, RIN 0648-BFO9, available at <https://www.regulations.gov/document?D=NOAA-NMFS-2015-0122-0068>.

³ Presidential Task Force of Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan for Implementing Recommendations 14/15; Commerce Trusted Trader Program, 81 Fed. Reg. 83,25646 (April 29, 2016).

its April 2011 report on seafood safety, the Food and Drug Administration (FDA) tests only about 0.1 percent of all imported seafood products for drug residues,⁴ and overall inspection rates are estimated at one to two percent.⁵ By contrast, Canada routinely tests at least 5 percent of all seafood imports, and Japan tested about 11 percent of seafood imports in fiscal year 2009.⁶ In light of the extremely low baseline inspection rate, ASPA does not believe that it is appropriate to take any actions to reduce this rate further, even for importers who qualify as “trusted traders.” As evidenced by documented instances in which so called “trusted traders” have been caught violating U.S. import laws,⁷ an importer’s fulfillment of the requirements for such status is by no means an assurance that they will comply with applicable laws, and no Trusted Trader Program can serve as a replacement for product inspection in insuring that products imported into the United States are safe for consumption.

Indeed, the vital importance of seafood inspections to the protection of the American public was recently highlighted when two catfish shipments from China retreated to sea upon learning that they would be subject to USDA inspection, rather than submit to inspection.⁸ But for these inspections, the American public would have almost certainly been subjected to imported seafood tainted with any number of banned substances. This merely underscores the fact that the significance of the proposed Trusted Trader Program, and that it goes beyond merely jeopardizing the efficacy of the seafood traceability program, but potentially impacts the safety of all imported seafood consumed in the United States. Without a rigorous system of inspection in place there is simply no way to ensure the safety of imported seafood, and any proposal which limits such inspections jeopardizes the American public.

Additionally, it appears from the Proposed Rule’s comments on the criteria for evaluation of potential “trusted traders,” that little is to be required of the so called “trusted traders” beyond compliance with the rules that the Task Force and NOAA have already determined should be applied to all importers of at-risk species. Specifically, the Proposed Rule lists as a criterion for Trusted Trader status “the extent to which the certified permit holder has measures in place to verify the source and chain of custody of imported fish and fish products.”⁹ The Proposed Rule with respect to implementation of the traceability program as a whole, however, explained that:

⁴ See GAO Report entitled FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources, available at <http://www.gao.gov/new.items/d11286.pdf>

⁵ See, e.g., With Imported Seafood Flooding U.S., are Inspections Enough?, available at <https://thefern.org/2014/07/imported-seafood-flooding-us-inspections-enough/>; Why is FDA Inspecting So Little Imported Seafood, available at <http://www.motherjones.com/tom-philpott/2012/10/fda-barely-inspects-imported-seafood>; U.S. rejecting imported fish from China and Vietnam at record rates – Fish contaminated with formaldehyde, other harmful chemicals, available at <http://www.cochran.senate.gov/public/index.cfm/2015/7/u-s-rejecting-fish-imported-from-china-and-vietnam-at-record-rates-fish-contaminated-with-formaldehyde-other-harmful-chemicals>; FDA Enhanced Aquaculture and Seafood Inspection – Report to Congress, available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Seafood/ucm150954.htm>

⁶ See GAO Report entitled FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources, available at <http://www.gao.gov/new.items/d11286.pdf>

⁷ See, e.g., 76 Pounds of Marijuana Seized From ‘Trusted Trader’ at Ambassador Bridge, available at <http://detroit.cbslocal.com/2016/01/30/76-pounds-of-marijuana-seized-from-trusted-trader-at-ambassador-bridge/>

⁸ See, e.g., Curious Catfish Shipments Highlight Need to Stop the TPP, available at

<http://www.foodandwaterwatch.org/news/curious-catfish-shipments-highlight-need-stop-tpp>

⁹ Presidential Task Force of Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan for Implementing Recommendations 14/15; Commerce Trusted Trader Program, 81 Fed. Reg. 83,25646 (April 29, 2016).

The information to be collected and retained will help authorities verify that the fish or fish products were lawfully acquired by providing information that traces each import shipment from point of harvest to entry-into commerce. The rule will also decrease the incidence of seafood fraud by collecting information at import and requiring retention of documentation so that the information reported (*e.g.*, regarding species and harvest location) can be verified.¹⁰

As such, what the National Ocean Counsel Committee on IUU Fishing and Seafood Fraud (the “Committee”) is now proposing as a criterion for admission into the Trusted Trader Program should in fact be considered a minimum baseline for any importers of seafood products subject to the proposed traceability program. Similarly, the Proposed Rule also lists as a criterion “the compliance record of the applicant for other federal programs.”¹¹ Again, an importer’s compliance with all import related laws and regulations should be a baseline requirement to even apply to be a “trusted trader,” not a criteria upon which such application would be evaluated.

The only criterion mentioned in the Proposed Rule that suggests a plausible basis for differentiating importers for whom Trusted Trader status may be appropriate is “the nature and complexity of the supply chains from which the permit holder sources their imports.”¹² This is because many of the developing countries from which the United States imports seafood lack a fully functioning internal traceability program. Importers who import at-risk seafood products from countries without a strong internal program for ensuring the traceability of their seafood exports should not be eligible for consideration as Trusted Traders. Only where there is a functioning system in place to verify seafood traceability in the seafood’s country of origin, as well as along every step of that product’s supply chain, should an importer be considered eligible for trusted trader status.

Given that the supply chain traceability program is the Task Force’s primary method for combatting IUU fishing and seafood fraud, any preferential treatment provided under a “trusted trader” program should be awarded only on a supply chain basis, not an importer basis. Indeed, the Proposed Rule appears to recognize this fact, stating:

The Committee also seeks comment on which attributes of a supply chain covered by the scope of the Seafood Import Monitoring Program (harvest, landing, shipment, processing, import entry, etc.), if any, can be considered as criteria for inclusion in a Trusted Trader Program.¹³

Nonetheless, the Proposed Rule appears to contemplate that Trusted Trader status, and the attendant reduction in targeting and inspections, will be awarded on an importer basis – *i.e.*, an award of “trusted trader” status would apply to all of an importer’s operations. Any determination that the products imported by a particular importer posed a reduced risk of IUU fishing and seafood fraud, however,

¹⁰ See Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, 81 Fed. Reg. 24,6210 (Feb. 5, 2016); *see also* p. 6215 (“At-risk species entering the U.S. commerce will be traced to their harvest and its authorization. Information on each point of transshipment and processing throughout the fish or fish product’s chain of custody culminating at the point of entry into U.S. commerce can also be used to trace the product back to point of harvest.”).

¹¹ Presidential Task Force of Combating Illegal Unreported and Unregulated (IUU) Fishing and Seafood Fraud Action Plan for Implementing Recommendations 14/15; Commerce Trusted Trader Program, 81 Fed. Reg. 83,25646 (April 29, 2016).

¹² *Id.*

¹³ *Id.*

would necessarily be based on an analysis of the importer's supply chain for every product imported. If an importer could simply switch suppliers or otherwise alter their supply chain after obtaining Trusted Trader status, the entire purpose of such certification would be defeated. As such, any determination of Trusted Trader status should be awarded on a supply chain basis, and should be conditioned on the importer maintaining the same supply chain upon which the determination was based.

With respect to the Committee's request for "comment on the potential impacts and benefits of implementing the Commerce Trusted Trader Program some weeks or months following the implementation of the Seafood Import Monitoring Program,"¹⁴ as opposed to implementing these programs simultaneously, ASPA respectfully submits that simultaneous implementation is not appropriate. NOAA's primary concern in implementing the Seafood Import Monitoring Program should be the combatting of IUU fishing and seafood fraud and the protecting of American consumers. Only after NOAA has had the time and opportunity to evaluate the efficacy of the Seafood Import Monitoring Program should it consider whether there are means – such as the proposed Trusted Trader Programs – by which the regulatory burden of this program might be reduced without jeopardizing its efficacy. Any reduction in the monitoring of importers to ensure that all traceability requirements are fully complied with may threaten the health and safety of U.S. consumers, who will continue to be placed at risk by imports of unknown and untraceable origin. As acknowledged by the Task Force, "rules that can be flouted by IUU fishers include those associated with food safety and aquatic animal health, potentially putting consumers and fish populations at risk."¹⁵

Based on the concerns expressed above, ASPA strongly urges you to reconsider whether a Trusted Trader Program is necessary or appropriate in connection with the implementation of the Seafood Import Monitoring Program. These reporting and recordkeeping requirements are the cornerstone of the Task Force's efforts to combat IUU fishing and seafood fraud, and should be applied to all seafood producers, without exception. Any trusted trader program which is adopted must be narrowly tailored to ensure that it cannot be used as a means to avoid the traceability requirements which are fundamental to the Task Force's efforts.

Very truly yours,



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¹⁴ *Id.*

¹⁵ Task Force Action Plan, p. 5.