



March 23, 2023

Rachael Confair
Office of International Affairs, Trade, and Commerce
National Marine Fisheries Service
1315 East-West Highway (F/IS5)
Silver Spring, MD 20910

Re: FR 79836 – Proposed Rule to add species or groups of species to the Seafood Import Monitoring Program (SIMP)

Dear Ms. Confair,

Please accept the following comments on behalf of FishWise on the Seafood Import Monitoring Program proposed rule ([Docket No. 221215-0273](#)).

[FishWise](#) is a non-profit organization focused on sustaining ocean ecosystems and the people who depend on them by transforming global seafood supply chains. For 20 years, we have acted as trusted advisors to individual companies and their suppliers, as well as leaders in coalitions that drive change across groups of supply chain actors. Since the inception of the Seafood Import Monitoring Program (SIMP), FishWise has been actively working to encourage NOAA and the supply chains subject to SIMP to adopt existing traceability and counter-IUU fishing best practices that would improve not only the program’s effectiveness, but efficiency of the program’s implementation. Our [recommendations](#) to NOAA are rooted in a multi-year project soliciting feedback from businesses that sell and import seafood into the U.S., including fishermen, processors, exporters, importers, brokers, and government representatives.

[SIMP is intended to combat IUU fishing](#) and “provide additional protections for the United States’ national economy, global food security, and the sustainability of our shared ocean resources.” However, as currently implemented, SIMP is falling short of these goals due to its lack of coverage for *all* imported seafood products and because NOAA has so far not addressed the numerous implementation and transparency improvements the seafood industry and NGO communities have requested. **Unfortunately, this proposed rule is far too limited in scope, and we are concerned NMFS may be unable to consider new issues at this rulemaking stage. Thus, we strongly urge NMFS to issue a revised proposed rule that comprehensively addresses the objectives of the National Security Memorandum ([NSM-11](#)), integrates the necessary modifications to SIMP outlined in the National Defense Authorization Act (NDAA) ([H.R. 7776 Subtitle E](#)), and includes greater transparency around the criteria and process for determining species inclusion *and* exclusion from the program.**

FishWise partners with companies to implement a variety of traceability and due diligence processes within their seafood supply chains, so we recognize how much the traceability



landscape has [shifted](#) over the last decade. Product sourcing data is the backbone underpinning a range of NMFS's regulatory programs including SIMP and those of other agencies (e.g., CBP, FDA, USDA, DOL, etc.). Many companies have been working diligently to adopt more robust data collection practices and traceability systems and leverage that data for risk identification and regulatory compliance. However, both companies and NGOs perceive that the data collected for SIMP are not being used to their full potential to detect and deter IUU fishing, and that the perspectives and criteria that generated this latest proposed rule are opaque.

This proposed rule is another missed opportunity to meaningfully improve the coverage and efficiency of the program and we strongly urge NMFS to consider the following revisions:

1. Clarify, update, and justify species criteria for expansion

NMFS has not been transparent about the criteria or methodology employed to determine which species to include or exclude from SIMP. Previously, NMFS shared a list of species under consideration for inclusion in the program and requested comments related to new criteria it could use to evaluate those species (e.g., labor risk). However, NMFS did not share details of their rationale for species that were considered but not included in the proposed rule. Species commonly known to be associated with IUU fishing, mislabeling, and species substitution (e.g., blue swimming crab and pollock) remain untouched by SIMP requirements, despite the initial intent of SIMP's architects for the program to cover *all* seafood imports. NMFS's species selection process has left the program with significant loopholes that allow bad actors to exploit gaps in coverage.

With the latest proposed rule only considering the addition of species amounting to five to ten percent of seafood imports by volume, nearly half of seafood imported into the U.S. still remain without sufficient import controls. No one but NMFS seems to understand how some species (or tariff codes) were included, while so many others were not.

2. Include labor risk as criteria

FishWise appreciates that NMFS has previously expressed curiosity about integrating labor risk information within SIMP, but sadly the proposed rule falls short by adhering to the agency's [2016 position](#) that labor abuse is outside its jurisdiction. This stance runs counter to the 2022 National Security Memorandum, which instructs agencies to strengthen their existing authorities to combat forced labor practices in seafood supply chains. It also does not appear to align with the thinking that went into the creation of NOAA's [CALM-Cs initiative](#) or their [National 5-Year Strategy](#), which aim to ensure that only legally harvested, sustainable, and responsible seafood enters the U.S. market.



FishWise recommends that NMFS incorporate credible intelligence about forced labor when determining IUU fishing risk. This proposed rule should clarify how NOAA plans to use the full range of tools available to identify seafood products illegally produced with forced labor as mandated by the 2022 National Security Memorandum (NSM-11). It should also outline how NOAA intends to collaborate with other agencies, such as the DOL, CBP, and interagency fora like the Forced Labor Enforcement Task Force. By incorporating these elements and groups, NMFS can take a more comprehensive approach to combating IUU fishing in seafood supply chains.

3. Clarify and harmonize program requirements

To comply with SIMP effectively, the industry needs tools and resources that enable operational consistency and standardized processes. Seventy-five percent of importers and brokers we reached out to wanted a more standardized reporting process. Efforts by U.S. government agencies to harmonize import data requirements with those of other major market states (e.g., EU, Japan, Canada, Australia) would allow us to move towards a standard, uniform format for the data submitted by importers. A standardized data format that incorporates data for multiple programs would enable importers and brokers to better automate traceability processes and minimize non-substantive input errors.

Further, [the feedback FishWise collected was aligned](#) in asking for greater clarity related to what records and document formats were acceptable to comply with SIMP audits. For SIMP, NMFS requires both supply chain records and government-issued documents from the harvest and exporting countries. Given the global nature and complexity of seafood supply chains, transaction and chain of custody (CoC) records can vary widely in their content, structure, language, and necessity for trade. We understand some SIMP auditors already provide lists of required documents to companies at the outset of an audit. Standardizing the list of CoC records needed for each SIMP species and making it available would increase program clarity and improve the capacity of supply chains to expediently produce needed documents.

There is also variation by country in terms of what documentation is issued for specific national, regional, and local fisheries. The companies that FishWise spoke to indicated that importers and those in their supply chains would greatly benefit from efforts by NOAA to work government-to-government with producer countries to create a database of relevant licenses, permits, and other forms those nations issue for SIMP species. Gaining access to a database of example forms would help SIMP importers understand the types of documents they should have available for a given shipment, and would aid them in determining if the documents they were given by suppliers are appropriate.



The seafood importers we spoke to that primarily import SIMP products (i.e., >75% of their business) [expressed](#) a substantial need for capacity building efforts. These efforts include: published guidance on the chain of custody record requirements and audit compliance; training for company staff and suppliers; more significant assistance in developing appropriate traceability documentation; and help navigating government processes.

4. Reduce redundancy across import programs

Streamlining data needs and reducing the paperwork burden across numerous import programs (including the new [FDA Traceability Rule](#)) would support efficient traceability practices and address NMFS's commonly-cited capacity challenges. Reducing redundancy in data requests and better leveraging already-collected data would also lower the burden and cost placed on seafood importers, particularly small companies with limited resources. While compliance with SIMP is, for many, a high-cost effort, it is seen as worthwhile if the data being collected and analyzed is not only streamlined, but used to screen and prevent at-risk seafood imports.

NOAA must work with other government agencies to ensure that seafood import regulations are complementary and not duplicative, and that data being captured is of high quality and actionable in the fight against IUU fishing. Doing so would significantly lower compliance costs for industry and likely encourage better data collection practices upstream.

5. Meet NDAA requirements

The proposed rule also fails to address requirements for combatting IUU fishing that were passed as part of the [NDAA](#) in December, 2022. These new requirements include a prohibition on SIMP aggregated harvest reports for imports of northern red snapper and targeted improvements to SIMP's audit procedures. It's crucial that NMFS issue a revised proposed rule that addresses these NDAA requirements, as it would provide a workable solution to addressing both the shortcomings in the proposed rule and eliminate the need for an additional rulemaking. This would save time and resources for the U.S. government and industry stakeholders, leading to more effective import controls and greater seafood traceability.

6. Rapidly expand AI risk flagging pilot

At Seafood Expo North America NMFS described a pilot they are conducting on Mexican snapper with an AI-driven risk assessment methodology. Under the proposed rule, we would like to see NMFS commit to expanding the risk flagging pilot to cover all newly added species and existing SIMP species in less than 3 years. Given the data review



capacity of NOAA's personnel is limited, risk assessment tools utilizing AI will likely greatly improve targeting and efficiency.

7. Increase program transparency

Five years of research and outreach have demonstrated that seafood stakeholders share a common interest in transparency around SIMP. Both industry and the NGO community desire regular, substantive communications about new or updated guidance materials, enforcement actions, non-confidential statistics or risk trends, efforts to verify supply chain information, and overall program efficacy. Such communications would not only help the industry understand the program's benefits, but would also help ensure that SIMP is implemented more effectively and consistently across the industry.

Many of the challenges laid out above undermine SIMP's effectiveness as they compromise NMFS's ability to successfully keep illegal products out of the U.S. market. The proposed rule also does not go far enough to support companies' day-to-day challenges in complying with SIMP or *their* efforts to keep illegal products out of their supply chains. **To address this, we recommend that NMFS issue a revised proposed rule by July 2023 with an extended public comment period.** By doing so, NMFS can gather additional feedback from the public and other involved federal agencies (e.g., FDA, DOL, CBP) on the proposal's scope and address the new requirements for combatting IUU fishing passed in the NDAA. This approach would allow for a more thorough and collaborative scoping process, ultimately leading to a vastly improved final rule by Fall 2024.

Given NMFS's intent to change the scope of the program to include new species, new companies will have to come online and comply with the program once a final rule is passed. This is an opportune time for NMFS to evaluate if the existing program works, as other companies will undoubtedly have to undergo a large traceability effort to comply. We strongly urge NMFS to consider all revisions to SIMP above. We are confident that they will support a program that is effective, transparent, and sustainable for all stakeholders involved.

We appreciate NOAA's efforts to address IUU fishing and forced labor in seafood supply chains, and for allowing the opportunity to provide input.

Sincerely,

A handwritten signature in black ink that reads "Sara Lewis".

Sara Lewis
Traceability Division Director
FishWise