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NMFS Webinar: Proposed Rule on a U.S. Seafood Traceability Program

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Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen only mode. During the question and answer session of today's call, you may press star followed by 1 to ask a question. Today's conference is being recorded. And at this time I'll turn the call over to Kerry Turner. You may begin.

Kerry Turner: Thanks, (Shirley), and welcome everyone. Thank you for joining us. My name is Kerry Turner and I am the Communications Specialist for NOAA Fisheries Office of International Affairs and Seafood Inspection.

And with me is John Henderschedt, Director of the Office of International Affairs and Seafood Inspection; and Christopher Rogers, Assistant Director for International Fisheries for the Office of International Affairs and Seafood Inspection.

We're here to discuss the proposed rule for a U.S. Seafood Traceability Program. John is going to be providing us a detailed overview of the proposed rule and some of his highlights.

And then we're going to be opening this up for some comments, as well as clarifying questions. But before I do that, I have just a couple of housekeeping notes.



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If anything goes wrong and you get disconnected from the Web or the audio portion, we'll be posting the transcript to our Web portal, as well as the PowerPoint that John will be delivering.

That Website is iuufishing.noaa.gov. We're going to be taking questions strictly from the conference line of today's call. So with that, I'll turn it over to John.

John Henderschedt: Kerry, Thank you very much. And good morning, good evening all depending on where you are. Thank you very much for joining this call. As Kerry mentioned, the purpose is to provide a basic review of the proposed rule to establish new import data requirements. We will then be accepting comments and addressing clarifying questions.

So an overview of today's presentation, I'm first going to provide some background and context. Followed by general description of the proposed system, discuss more specifically the proposed data elements for this traceability program, and then, finally, next steps.

I'm going to point out that my review will be high level and rather basic. And so I suggest that you take a close look at the proposed rule itself. You can find that at regulations.gov.

I'll also note that there are many details and specific requests for comments in the preamble of that proposed rule as well as an initial regulatory flexibility analysis. So with that, we'll start into the background and context.



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So established - the task force on IUU Fishing and Seafood Fraud was established under presidential memo in June of 2014. And that task force was co-chaired by leadership of NOAA and the State Department.

It involved senior level representatives from ten Federal agencies and five executive offices of the President. And as part of its work it had extensive public engagement through requests for comments via Federal Register notice, through public meetings, and international démarches.

That task force developed recommendations for the President, which were delivered in December of 2014. It's based on that task force's discussions and based on the comments that it received from the public.

And then in March 2015, nearly a year ago, that task force released an action plan for implementing the 15 recommendations that it provided to the President.

At the same time, leadership of this effort was transferred from a task force to a special committee of the National Ocean Council. As I mentioned, there were 15 recommendations. Recommendations 14 and 15 are specifically addressing the development of a traceability program.

So elements of those, of that mandate include a direction of the task force with input from U.S. industry and other stakeholders to identify and develop within six months a list of the types of information and operational standards needed for an effective seafood traceability program to combat seafood fraud and IUU Seafood in U.S. Commerce.



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And within 18 months, the first phase of a risk-based traceability program to track seafood from point of harvest to entering the U.S. Commerce. This second element contains two very important parameters of this traceability program.

First of all, that it is risk-based. Meaning the interagency working group that developed this program engaged the public to identify at-risk species and principles for identifying those at-risk species.

And this traceability program, and more specifically, this proposed regulation will apply to that list of at-risk species. Also, the parameters or the scope of the traceability program from point of harvest to entry into U.S. Commerce.

So that is very specific. It obviously does not include, for instance, traceability within U.S. Commerce. But instead is focused specifically from harvest to point of entry in the U.S. Commerce.

So elements of that traceability program and a development of it include, as I mentioned, principles for identifying at-risk species, a draft and final list of those species, the minimum standards and necessary data with another request for comments.

And those comments, and the recommendations of the interagency group that reviewed those comments are reflected in the design of this proposed rule. It also includes use of the International Trade Data System, which I'll talk about a little bit later.



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There is a separate working group that focused on species names and codes. Essentially, how HTS codes, as well as other naming conventions, help or hinder the development of a traceability program.

And they made recommendations as well, which are reflected in this proposed rule. There's the rule making itself, which as you know is the focus of this discussion today.

Also includes information sharing. Looking at what information can be shared with other agencies to ensure that enforcement cases can be prosecuted by the appropriate agencies. The development of a Trusted Trader Program, which I will talk about as well.

And finally, evaluation and expansion. Evaluating the operational function of the traceability program, the implementation issues and challenges, as well as what are the hurdles for expanding this system to all seafood, which is the stated intent of the administration.

International Trade Data system is a single window data portal for all important export data collected by the 40-some agencies that require data relative to imports and exports.

NOAA recently closed the public comment period on its implementation of the International Trade Data System for existing paper-based Catch Certification Programs. That includes programs for tuna, for swordfish, and for Chilean sea bass.



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That ITDS proposed rule would establish the international fisheries trade permit to consolidate all of those existing permit programs. And use of that permit is extended then to this traceability program.

Traceability proposed rule would extend to the international fisheries trade permit to include importers of record of species covered by the rule. So it's a good opportunity to just emphasize that the proposed rule applies to imported seafood.

And the affected parties, the parties responsible for compliance with this rule are the importers of record or those companies in the U.S. that are responsible for the import of these products.

I'll note that the seafood traceability program itself applies to both imports and domestic fisheries and seafood. In its analysis of available data for domestic seafood, domestic harvest, NOAA Fisheries is confident that it currently has access to all the necessary data through existing state and federal authorities

So moving on then to the list of principles. What principles were applied to identify the list of species at particular risk of IUU fishing and seafood fraud in the development of a risk-based traceability program?

Those principles include enforcement capability, the existence of a catch documentation scheme, the complexity in the chain of custody in processing, occurrences of species misrepresentation, mislabeling or other misrepresentation, a history of violations, and the extent to which mislabeling of species substitution could result in risks to human health.



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Applying those principles to a broader universe of candidate species, the final list of at-risk species to be included, or to which this proposed rule would be applied include abalone, Atlantic cod, blue crab, Mahi Mahi, grouper, king crab, Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and species of tuna including albacore, bigeye, skipjack, and yellowfin tuna.

I will note that while bluefin tuna is not considered to be at the same level of risk as these other species, it is risk of IUU fishing and seafood fraud. And it is not on the list of those at-risk species due to concerns of like treatment of all tuna species within the marketplace.

NOAA has elected to include HTS codes that apply to Bluefin tuna in addition to the species that I've provided in this list. So now I'm going to just spend a little bit of time delving into the specific data elements of the program.

The first three slides I share are data elements that will be reported through the International Trade Data system at the time of entry into U.S. Commerce, at the time of import.

I'll then address data elements that are part of the post first landing chain of custody. And those are record keeping requirements as opposed to reporting requirements.

So first looking at harvesting or producing entity data. Those include the name in the flag state of harvesting vessels, the evidence of authorization to fish, the unique vessel identifier when available, the type of fishing gear used in the name of farm or aquaculture facility.



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I'll note that model forms that include all of these data elements as well as the draft International Trade Data System message sets are posted at regulations.gov in the docket folder for this proposed rule.

So moving on then from harvesting or producing entity data to information on the fish harvested or produced. Those include the species of fish, including the scientific name and acceptable market name, and the FAO Fisheries & Aquaculture number.

Also the product description, any name of product, and the quantity and/or weight of the product. And finally, among those data elements that are reported at the time of entry, applying to information on where and when the fish was harvested, produced and landed.

So that includes harvest dates, the area of wild capture or aquaculture harvest, the point of first landing, the name of entities to which the fish was landed. And then finally are the chain of custody record keeping data elements. And I'm going to read directly from the preamble to the proposed rule so that I can be very clear about this element of the proposed rule.

“Additional information on each point of the chain of custody regarding the shipment of the fish or fish product to point of entry into U.S. Commerce would be established as a record keeping requirement on the part of the importer of record to insure that information is readily available to NMFS to allow it to trace the fish or fish product from the point of entry into U.S. Commerce back to the point of harvest to verify the information that is reported upon entry.”



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So that covers both the reported and the record keeping data elements. I'll just address a few additional issues and then go to your comments and clarifying questions.

So, again, as I mentioned earlier there are no new data reporting requirements for U.S. domestic wild capture fisheries. NOAA Fisheries is confident that it currently has access to the data that are comparable to those being requested of importers of record.

Second, I will note that while we are confident in our access to those data with respect to wild capture fisheries, data gaps do exist for shrimp and abalone aquaculture in the U.S. NOAA Fisheries and its partner agencies are currently working to identify potential methods for gaining access to equivalent data.

As well, NOAA Fisheries is reaching out to its state partners to again identify means to gain access to those data. To the extent that we are unable to close the data gaps for those species, implementation of the traceability program for shrimp and/or abalone could be delayed until those data gaps are fully addressed.

Also, we are mindful of the fact that while we are intending to publish the final rule late this fall, September or October, most likely, the trade community will require some time to come into compliance with this rule.

We have therefore, asked for comments on the timing of the import data implementation. And we've offered a suggested range of 90 days to 12 months following the publication of the final rule.



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The comment period on the proposed rule closes on April 5, so in several weeks. As I mentioned, the final rule will be published this fall. And in the coming weeks we will be requesting comments on a trusted trader program.

This is a program that's intended to streamline the process, ensure a smooth flow of commerce. It is identified as a key element of the traceability program in the task force action plan.

NOAA Fisheries, again, will be publishing a request for comments seeking your input on approaches and elements to a trusted trader program to achieve the state of objectives.

So a review of opportunities that the public has had to provide input to this process. It includes comment on species at-risk principles and, as well as the development of the draft principles and the species at-risk, comments on data standards, data end standards.

And then, as I mentioned, those comments and the responses to those comments is reflected in the development of this proposed rule. We're now at the stage of collecting public comment on the proposed rule on traceability.

And as I mentioned, in a few weeks we will seeking comments on the trusted trader program. So finally, we are looking for detailed comments from all interested stakeholders.

You can find the proposed rule docket on www.regulations.gov. And you can find information on all activities of the National Ocean Council Committee on IUU Fishing and Seafood Fraud at www.iuufishing.noaa.gov.



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So again, thank you very much for joining us and I welcome your comments. And we'll do our best to respond to any clarifying questions regarding the proposed rule that you may have.

Kerry Turner: Thanks, John. We're now in the question and answer portion of the presentation. This is your opportunity to ask any questions you have about the presentation and also to give any input regarding the presentation. Operator, would you tell us how to get into the queue?

Coordinator: Thank you. We will now begin the question and answer session. If you would like to ask a question, please press star followed by 1. You will be prompted to record your name. Again, press star followed by 1 to ask a question. And one moment please for our first question.

We do have a question coming in. One moment, please. The first question comes from Beth Lowell. You may ask your question. Please state your affiliation.

Beth Lowell: Good morning, John and others. This is Beth Lowell from Oceana. This is kind of a detailed question, a clarifying question. So apologies to others on the line that this may be in the (unintelligible). But as I was preparing my comment, I was looking at the import data for the proposed at-risk, for the at-risk species.

And it's a sort of a two-part question. One, does the commodity description listed in the HTS codes match the commodity description in the import data? My guess is yes, because it's almost a one-to-one. But just wanted to check that before I asked my next question.



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John Henderschedt: Good morning, Beth. I'm going to ask Chris Rogers to address that question.

Christopher Rogers: In some cases, yes, there is a one-to-one match. When the Harmonized Tariff Schedule codes are very specific to an individual species, as we have for certain tunas, it is a one-to-one match.

In other cases, it is not a one-to-one match. For example, groupers or snappers would include all genus and species, or perhaps even all fish in a particular family. Sharks, as well, shrimp.

So we do have situation where, as John indicated in the presentation, we will ask additional information based on the tariff code to clarify which species is in the shipment. That being the scientific name or the ASFIS number.

So based on that additional information, we would decide whether it is within the scope of the real making and we are collecting the harvest data at the point of entry. Or whether that particular shipment is not within the scope of the rule.

So in some cases, it's evident immediately from the tariff code that is used to make the entry filing that additional data are required on that harvest event that reporting requirement that John spoke of.

In other cases, the species identifier will be used to determine whether the commodity is within the scope of the rule and additional data are required, or no additional data are required.



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Beth Lowell: Okay, thank you. And the second part of my question, so this will likely go in our comments, is that it looks like for some of the species, some of the descriptions are not listed in the proposed rule.

For example, for abalone, you've included product prepared dinners and abalone prepared preserves. But then abalone live fresh and abalone frozen, dried, salted, brined are not on that list, which I think might be - I wanted to see if there was a one-to-one because it seems like that may have been an oversight.

So I found a few of those cases where, you know, if you look at the import data and you look at the HTS code list in the proposed rule, there's a couple missing. For example, like all the swordfish codes are included except swordfish fillet frozen, which I think also was an oversight.

So we'll include those in the Oceana comments, but I just wanted to make sure if I was going to include all those it was - I was actually going down the right road.

Christopher Rogers: Yes, that's correct, Beth. Thanks for looking over that list so carefully. The Harmonized Tariff Schedule, as you may realize, has about 17,000 codes. We want to include all the codes necessary for effective implementation of the rule for all of the species within scope, those at-risk species. So if we've missed some, we certainly will appreciate you flagging that for us in your comments.

Beth Lowell: Thank you.



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Coordinator: Thank you. Again, if you have a question, press star followed by 1. Our next question comes from (David Glodkey). You may ask your question and please state your affiliation.

(David Glodkey): (Seaport Products). Can you hear me okay?

John Henderschedt: Yes, good morning, (David).

(David Glodkey): Hey, how are you? Thanks for holding this. I've got - I should know this. But on the blue crab, is there more than one genus species on that? Sorry, I probably should have looked at the tariff list but then I just wondered. Did you know that? Is there only one species there - genus species?

Christopher Rogers: Good morning, (David). This is Chris Rogers. Yes, in the - within the scope of the rule making we are referred to one species, *Callinectes sapidus*, which would be requiring - within the scope of the rule and requiring at import the additional data on the harvest event and the record keeping requirement for the supply chain information on the part of the importer of record.

But as you may have noticed, similar to what Beth had asked about, there is not a specific Harmonized Tariff Schedule code for blue crab *Callinectes sapidus*.

So that would be one case where if the tariff code for crab, in a generic sense, is being used, the additional information on species would be used to discriminate whether the individual shipment is subject to the reporting and record keeping requirements or not.



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So if it's something other than *Callinectes sapidus*, that would be the extent of the report required. If it is *Callinectes sapidus*, then we would need the harvest event information reported at entry and the record keeping maintained on the part of the importer of record.

(David Glodkey): Yes, just specifically, *Portunus* is a genus that we import. And (unintelligible) understand right that that would not be under this rule. Incorrect?

Christopher Rogers: That's correct. And John alluded before - or I shouldn't say alluded to - he referred to one of the other working groups on names and codes. That was Recommendation 10 from the task force.

And these are exactly the kinds of situations that that working group has been looking at where the modifications to acceptable market names or modifications to the Harmonized Tariff Schedule can help differentiate the product in trade so we have a better idea of what is covered within the scope of the rule and what is excluded.

(David Glodkey): Well, good start, you guys. I think this is going to be a really good work we need with these at-risk species and beyond. So I think we're going to be in a good direction going forward. And I appreciate you guys' efforts. Thank you.

Christopher Rogers: Thank you, (David).

Coordinator: Thank you. At this time, I'm showing no further questions. Again, if you'd like to ask a question, just press star 1 at this time and record your name clearly. Again, that is star 1 and please stand by for our next question.



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We do have another question coming in. One moment, please. I believe our next question comes from Rachel Zedeck. You may ask your question. Please state your affiliation.

Rachel Zedeck: Hello, my name is Rachel Zedeck. I'm the Director for Sustainable Programs for Peterson Control Union. I'm based in Thailand. We are a commercial certification and COC traceability. That's registered company. We have a lot of clients, obviously, that are importing seafood into the EU.

And now we've been starting to receive inquiries through our network of laboratories of the potential requirement for DNA data and the future for the trusted - or the scoping of the trusted vendor program for the validation of imported seafood.

And what would be a threshold at which DNA data could be required. And if yes, what database will the U.S. Customs actually reference as an accredited source?

John Henderschedt: Rachel, thank you for your question. There is no such language in the proposed rule with respect to DNA testing of imports. I'll note as well that, as I mentioned, the trusted trader program is still in the development stage. And so I can't speak to any specifics, obviously, of that program.

I'll note that, again, it is intended to streamline the import and reporting process. So not much more to say, but I thank you for your comments regarding DNA testing.

Christopher Rogers: Hi, this is Chris Rogers. Just to clarify, John's absolutely correct that the proposed rule hasn't proposed any requirements for DNA testing, but that is



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certainly available as a forensic test in the event that we would, perhaps, suspect fraud.

And the prior case that Mr. (Glodkey) talked about, blue crab versus other species of crab, if it was misreported at entry in order to avoid the information collection and we had suspicions, we could use DNA testing to confirm that it was for - in that example, *Callinectes sapidus*, was subject to the reporting requirements and those were evaded because of misreporting of species.

So there's no requirement insofar as a proactive DNA test to be accompanying any shipment. But it certainly could, and would likely, be used in the event of any fraud investigation.

Man: (Unintelligible).

Christopher Rogers: Right, as it would now.

John Henderschedt: Thank you.

Coordinator: Thank you. At this time, I'm showing no further questions. Again, if you do have a question, just press star followed by 1 at this time. And one moment please. And at this time, I'm showing no further questions.

Kerry Turner: We're going to give some more time. Again, this is an opportunity to ask any clarifying questions or provide any input you - you want to put forth in reference to this proposed rule.



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Coordinator: And again, if you have a question just press star followed by 1. And one moment please. And we do have a question again from Rachel Zedeck. Your line is open. State your affiliation.

Rachel Zedeck: It's Rachel Zedeck again from Control Union. I'm just wondering if we can get a copy of the proposal with all of the relevant points. Because some of the numbers and referencing that I would like to be able to look up are off the screen. And I'm not used to this platform.

Christopher Rogers: So hi, Rachel. And yes, if you go to www.regulations.gov, and I think I have on the screen right now the I.D. number for this docket. It's NOAA-NMFS-2015-0122-0001. And that docket includes the proposed rule, the IRFA, the model forms, the draft message sets, and - as well as comments received to date.

Rachel Zedeck: Thank you.

Christopher Rogers: Thank you.

Coordinator: Thank you. We do have a question again from Beth Lowell. You may ask your question. Please state your affiliation.

Beth Lowell: Hi, this is Beth Lowell again from Oceana. I clearly spent way too much time with the import data this week. I had a long conference call that wasn't exciting.

But in the one - the overall import data, there is - there's a lot of listed of non-specified marine fish, as well as just non-specified fish, listed with a



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considerable amount of imports in that sort of general category. And I know this may not be the scope of this rule, but maybe of the main working group.

Is there an intention in the future to sort of get more specific in that Harmonized Tariff code block? And is that part of this or a project down - out of this proposed rule but further down the road?

John Henderschedt: Beth, thank you for your question. As you noted, the Recommendation 10 working group has provided a number of comments and recommendations. Those that are implementable and achievable in the near term are reflected in this proposed rule.

It has, as well, pointed out the value in reducing - or improving the clarity of the Harmonized Tariff System codes. And it is currently sort of developing a strategy for engaging in that domain.

However, I'll just note that that is a very long process. It is, at the U.S. level, an interagency process as well as for the longer codes an international process that is really addressed once every several years. And so I will only describe those processes and note that those were some of the considerations that - and observations provided by that working group.

Beth Lowell: Thank you, that's helpful and kind of what I thought.

John Henderschedt: Thanks, Beth.

Coordinator: Thank you. At this time, I'm showing no further questions.



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Kerry Turner: We're just going to give it a few more minutes. Again, we welcome your questions. We welcome your input.

Coordinator: And again, just press star followed by 1 if you have a question or comment.

John Henderschedt: Well, this is John. I just want to thank everyone again for joining this morning or this evening. And we look forward to your detailed comments - your written comments and have a good day.

Coordinator: Thank you. And this does conclude today's conference. Thank you for your participation. At this time, you may disconnect your line.

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