



Ports 2.0 – West Coast Ports Project Combatting IUU Seafood Initiative
Follow-up Interview by Mike Cenci

Section A - CBP Interview Questions:

One field supervisor each from the Contraband and Trade Divisions of CBP were interviewed on behalf of NRDC: [REDACTED] (Port of Seattle), and [REDACTED] (Port of Seattle). [REDACTED] area of focus is the marine port and container shipments (contraband) whereas [REDACTED] focus is air cargo at the SeaTac Airport (trade). These personnel have operational oversight and involvement. In other words, they are physically directing and conducting inspections.

1. Overall – what is the process flow for seafood destined for import to the United States?

This question proved to be challenging. While I understood “process flow” to mean.....”the steps required to import seafood”, the response from CBP was more relevant to the “inspection” process. Given that multiple agencies are involved in controlling the flow of seafood throughout the market place, mapping the regulatory process could be a useful exercise in better understanding everyone’s role, where responsibilities overlap and provide opportunities for collaboration, and gaps in the system.

In the Trade Section, CBP seemed to rely on a guide or manual that was described as containing a list of marking, labeling, and declaration requirements for certain kinds of commodities, including fish. Of course, there is always an identified consignee and shipper and minimum required information. I was told that if the information on the manifest is vague, they will generally inspect the shipment.

The Contraband Section of CBP is similar to the Trade Section in regard to authority and area of operations, but has a different orientation. Inspections are more targeted toward smuggled items, such as drugs, cash, and firearms, though there was an understanding that elements of the seafood trade and other criminal activity are often connected. CBP was aware that legal seafood is used as a cover for contraband, or illegal seafood may be one aspect of a larger trafficking network. With respect to the latter, there was specific awareness over the illegal trade in Totoaba swim bladders and the involvement of Mexican drug cartels.

2. Difference in process between a SIMP species and those that are not?

The Officials I spoke to were not aware of the Seafood Import Monitoring Program.

Pending question: I should have asked the if CBP at the operational levels has access to the International Trade Data System ITDS, which houses the documentation of the SIMP species.

The CBP officials interviewed were not aware of a customized process related to IUU, though SIMP requires specific information before any one of the 13 species under that program can be imported. According to CBP, “Seafood and related products are generally treated like any other commodity (absent specific intelligence).” The Official from the Trade Section described CBP as “good for finding things” in support of those other agencies and interests with broad authority to conduct inspections to that end. While CBP may be given direction in terms of locating specific species or shipments, it appeared to come in the form of a flag versus direct interactions with investigators. Except for some localized examples

where special relationships exist, inspectors are generally not provided the bigger picture; i.e. the reason behind the need, where the discovery may have led investigators, or outcomes of cases.

Of the agencies and programs that CBP activities support, FDA (focused on food or consumer safety), USDA (focused on plant and organic goods), USFWS and NOAA, NOAA had the least interaction with CBP.

██████████ explained that the bill of lading gets you to the front door (characterized as “the whole passport”), but then if you actually come in (to the U.S.), you need a visa, which is where the detail is (manifest). That detail, if required, must be exact, and if they sense an anomaly, they will physically inspect the cargo. That said, ██████████ explained that if he had a shipment of protected tuna A, but it was marked as protected tuna B, then he is not going to know the difference unless he was provided specific information from NOAA OLE, USFWS, USFDA or a state authority.

3. What data reporting requirements are in place for seafood that is imported but not a SIMP species?

From conversations with CPB, the reporting elements for most seafood are broad. ██████████ stated that the FDA has a number of requirements associated with labeling or marking of seafood, however, no USFDA officials were interviewed.

The USFDA does have a fairly comprehensive list of acceptable common and market names for fish and shellfish species, but whether that list is suggestive or a requirement is not yet known. Regardless, the State of Washington has a number of regulations that likely fill any gaps, especially when the fish /shellfish enter the state market place.

Even though the FDA is responsible for, and focused on the human food safety aspect of all fish and fishery products entering the United States, it seems logical that some FDA data reporting requirements for imports can be leveraged for IUU detection. Unfortunately, none of the officials from NOAA, or Washington State appeared to know (at least off the cuff) what those requirements were. However, CBP did have a manual, or reference tool that described certain data elements required for certain imports. Exulans was unable to determine the depth of the information available to CBP.

What Do You Do When Your Good At Finding Things, But You Don't Know What To Look For: You form a partnership. To say that the regulatory landscape for fisheries and imported seafood is complex would be an understatement. Keeping abreast of your own agencies regulatory scheme is tough enough, let alone some other agencies requirements. Poachers and traffickers know this, and understand that the further they get the product away from the harvest grounds, the chances of getting caught get slimmer. The West Coast States have long known that Together, Each can Achieve More if your aim is to extend your jurisdictional reach. Through their participation as members of an advisory body assigned to the Pacific Fishery Management Council (PFMC) process, law enforcement leadership from NOAA, Washington, Oregon, and California take those opportunities to embark on regional approaches to addressing fisheries compliance matters. Through that process, multiple tri-state emphasis patrols have been designed and executed in the market place in partnership with NOAA, USFWS inspectors, and USDA. Representatives from each agency formed a team deployed in each of the three states to act as a subject matter expert should fisheries resources from their respective jurisdictions be found. For example, a team in California included WDFW Police, Oregon State Police, CDFW Enforcement, and NOAA OLE. The positive results spoke for themselves with numerous criminal violations detected. It also sent a message – law enforcement doesn't stop at the border. But ultimately, law enforcement agencies do have to work together to transcend jurisdictional lines.

██████████ did say that country of origin is required.

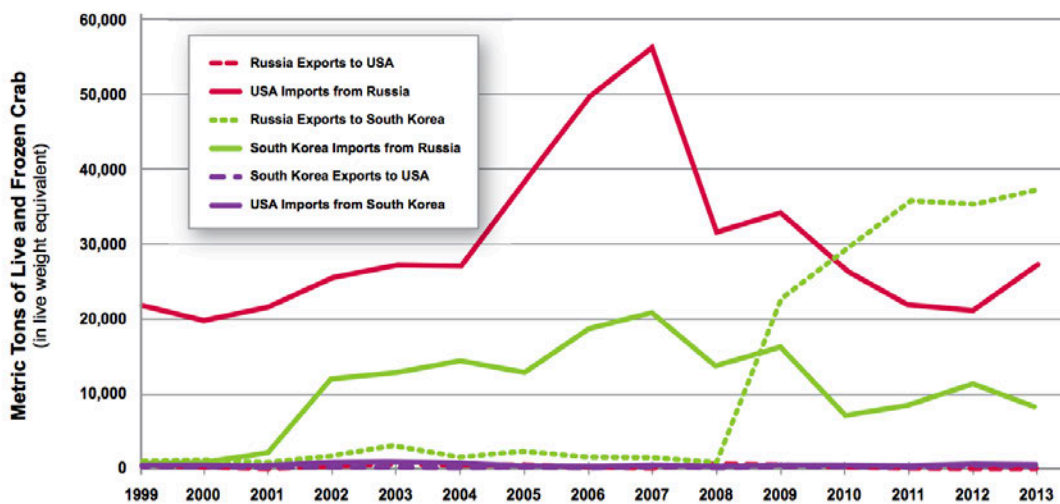
NOTE: The Country of Origin requirement for imports can be found in the Tariff Act and can be a very important tool in IUU enforcement, though there are different views regarding it's meaning. The U.S. Customs Service defines country of origin as the country where an article was wholly grown, manufactured or produced, or, if not wholly grown, cultivated or produced in one country, the last country in which the article underwent a substantial transformation. Duty rates vary according to the country of origin.

In speaking with ██████████ (NOAA Agent with IUU responsibility), I learned that country of origin may not necessarily mean country of "harvest". I also spoke to a WDFW Police Captain who related a recent situation he is facing involving country of origin. Local crab buyers are complaining about Canadian fish buyers coming South to purchase crab caught in Washington State waters, transporting them back to Canada, and exporting the product to China as a "product of Canada." Because Canada only faces an 8% tariff rate compared to crab labeled as "product of U.S.", which is taxed at 14%, there is a significant market advantage for non-resident fish buyers who can purchase from fishermen at a higher rate, sell to China at a lower rate, and still out-perform the U.S. based business. I was unable to ascertain if the product carries a dual declaration.....such as "harvested in the U.S., processed in Canada".

From a seafood traceability perspective, county (and area) of harvest is critical information. A table I am familiar with (provided by ██████████, a private contractor who focuses on trade patterns and taken from a WWF report on IUU King Crab) is helpful in illustrating the potential effect of vagueness associated with this requirement. South Korea does not have a King Crab fishery, they merely accept, and store (process?) crab product taken from Russian waters. The graph depicts little Russian import activity into the U.S., yet Washington State has received significant crab imports known to be from Russia, with as much as 80% of all Russian crab coming into the U.S. entering Washington State Ports.

More analysis regarding the value of the country of origin requirement is needed, and if it is porous relative how it applies to declaring harvest area, perhaps an avenue worth pursuing.

RUSSIAN EXPORTS AND KOREAN AND U.S. IMPORTS OF RUSSIAN CRAB, 1999–2013



Data source: Global Trade Atlas (2014)

██████████ also stated that in the fish importation program, everything is manifested. If it is not manifested, then it is assumed to be smuggled. He added that CBP reviews every manifest, and reiterated that while CBP is good at finding things, without guidance with respect to what they are looking for, and why, it is not physically inspected unless they believe it is suspicious for another reason.

CBP is well aware of the concerns over shark fin and Totoaba swim bladders and the connection between the trade of that endangered species and organized drug cartels. ██████████ related an example of where they seized shark fin manifested as fish maw which was in transit to Asia.

It is believed that this example was initially a WDFW Police discovery during an air cargo inspection operation. WDFW Police recognized that because the product was in-transit (waiting for a connecting flight), their ability to leverage a local shark fin trafficking law was not legally appropriate. State officers notified NOAA OLE and requested that CBP put a hold on the shipment because of the mislabeling, however, some confusion existed and the product was allowed to pass through. Whether the fact that it was mis-labeled alone was enough to seize the shark fin is unclear. WDFW (and California) have a reporting obligation to NOAA OLE regarding findings when involved in activities related to the Joint Enforcement Agreement and the exercise of their federal law enforcement commissions. This incident was reported and resulted in some renewed awareness / interest in shark fin shipments.

4. How do you know if a shipment is of interest to another agency? I've heard of "flags" being placed in ACE for certain HTS codes -- can you explain this to me further?

██████ – the National Targeting System will flag certain things. The "flags" come from upstairs, are more commonly related to FDA concerns, and are not necessarily linked to anything specific – in other words, there is little background as to the "why" behind the concern.

I spoke to ██████, a private contractor familiar to me through my former work in addressing IUU King Crab, and someone experienced with the applicability and utility of the HTS. He mentioned that there has long been a strong desire from the environmental community to modify the entire system to apply to species specific determinants, however, he characterized this as a monumental task. While Simeone was successful in applying to the International Trade Commission for a 484 revision request in order to identify Red King Crab, HTS hasn't been as useful as he had hoped in identifying trade patterns. He added that there are a lot of "basket provisions" and if somethings not specified, it could all be "fish."

5. What would cause CBP to add a flag to a shipment or type of shipment?

Intelligence, local targeting, first time shipper, local operation involving local authorities (WDFW Police interest in Russian king crab)

6. Is NOAA typically the agency that flags shipments? Or, does CBP also flag seafood shipments?

Both, CBP is looking for fish and narcotics

7. Does anything other than an HTS code trigger a PGA message set to be required within the ACE system?

██████: A lot of things might trigger this, like weights of containers. Every container with a commodity has a seal Number, normally it would be the FDA – if your growing coco beans in chili, you have to identify where it was grown, roasted, etc. – must satisfy an FDA pin, NOAA not able to directly have influence over the automated cargo system, but customs would.

8. What would cause CBP to flag a shipment?

██████: Quite a number of things – value or weight doesn't look right, specific intelligence from another law enforcement agency, etc.

██████: Intelligence from other agencies. He mentioned several operations led by WDFW Police where exports of geoduck clams were examined using tools for detecting other contraband, and entire

containers of King Crab from Russia were unloaded to ensure proper speciation and adherence to marking / labeling laws. It is unclear if ITDS or some other system was leveraged to identify King Crab imports.

9. What laws relating to seafood fraud and IUU is the product being checked for compliance with?

Both [REDACTED] and [REDACTED] stated that they relied on the local state officers, USFDA, USDA, NOAA and US Fish and Wildlife Inspectors to provide that level of expertise.

The value of Lacey Act marking provisions as a tool? One obvious law that would apply is the Lacey Act, and to get a better sense of its utility in combatting IUU by applying the marking provisions, I conferred with [REDACTED], [REDACTED] Special Agent in Charge of the West Coast for NOAA OLE (includes California). According to [REDACTED], CBP relies heavily on the paperwork to detect problems, however, for many species, the paperwork is still generically marked, which is not helpful in tracing seafood back to origin. [REDACTED] believed that the Lacey Act had too many flaws to address poor marking. I also contacted an Assistant Special Agent in Charge of field operations who is still actively serving with NOAA. He was sensitive to using his name, but was willing to discuss the application of marking requirements in the Lacey Act. An excerpt from the marking requirement led me to ask whether the law required speciating seafood:

16 U.S. Code § 3372. Prohibited acts

Conspicuously marking the outside of each container or package containing fish or wildlife with the word "fish" or "wildlife" as appropriate for its contents, or with the common name of its contents by species, and...

The ASAC advised that the marking and labeling provisions within the Lacey Act are rarely, if ever, used by NOAA Agents. He agreed that the provision as stated seemed to provide an option: you could avoid common name specificity, provided that you marked either "fish" or "wildlife" on the exterior of the container. In other words, this could be viewed as an "either / or" versus an "and" requirement. He added that generally there is some underlying violation related to the failure to properly mark, and the preference is to address the problem from other angles. This might be a good question for either the US Attorneys Office (who handle criminal Lacey violations) or NOAA General Council (who handle civil Lacey violations).

When I asked WDFW Police [REDACTED] the same question, he advised that has been unable to influence NOAA's enforcement of marking requirements, and thus relies on state law. Given that enough resources do not exist to physically inspect all of the import cargo, officers rely on manifests to trace seafood back to origin. While Washington law requires specificity on the paperwork, Alaska Airlines claimed they were in compliance with the Lacey Act and would only require the "container" to be marked and refused to comply with Washington State law. All of the other airlines were complying with State law stores and a state requirement that the trucker ensure the receiver was at least 18 years old through an ID check. In that case, the court (federal) determined that the state was in violation of the Act which stated that no state could interfere with the service of the shipping entity.

The Washington Attorney Generals Office disagreed with Alaska Airlines and pointed out that the customer actually completes the manifest, not the shipper, and thus there is no service loss to Alaska Airlines. Ultimately AA agreed to require customers to be more specific related to seafood shipments on manifests, but refused to hold cargo should someone be vague on the paperwork. The Washington law that Officer [REDACTED] relies on is pasted below: RCW [77.15.568](#)

Secondary commercial fish receiver's failure to account for commercial harvest—Penalty.

(1) A person is guilty of a secondary commercial fish receiver's failure to account for commercial harvest if:

(a) The person sells fish or shellfish at retail, stores, holds, or processes fish or shellfish in exchange for valuable consideration, or **brokers or ships fish or shellfish in exchange for valuable consideration;**

(b)(i) The fish or shellfish were required to be entered on a Washington fish-receiving ticket or a Washington aquatic farm production annual report; or

(ii) The fish or shellfish are classified as fish or shellfish by the department; and

(c) The person fails to maintain records of each receipt of fish or shellfish, as required under subsections (3) through (5) of this section, at:

(i) The location where the fish or shellfish are being sold or at the location where the fish or shellfish are being stored or held; or

(ii) The principal place of business of the shipper or broker if the fish or shellfish are not in possession.

(2) Wholesale fish buyers, limited fish sellers, and registered aquatic farmers are not required to comply with this section for fish or shellfish documented on fish tickets or aquatic farm production reports.

(3) Records of the receipt of fish or shellfish required to be kept under this section must be in the English language and be maintained for three years from the date fish or shellfish are received, shipped, or brokered.

(4) Records maintained by persons that retail or broker fish or shellfish, or that store, hold, or ship fish or shellfish for others must **include the following:**

(a) The name, address, and phone number of the person from whom the fish or shellfish were purchased or received;

(b) The date of purchase or receipt;

(c) The state or country of origin if received from interstate or foreign commerce; and

(d) The amount and species of fish or shellfish purchased or received.

(5) A secondary commercial fish receiver's failure to account for commercial harvest is a misdemeanor.

10. What is the process when suspicious seafood is detected?

CBP takes a lot of photos and sends a message to NOAA or USFWS and waits for a response back. USFWS is more responsive given that they have an inspector class assigned to many ports of entry. In Washington, a WDFW Police Detective and K-9 unit is assigned to the USFWS Office at the SeaTac Airport (a relatively new program). CBP has become more familiar with that resource through joint state – CBP operations. Given that the state officer also holds law enforcement commissions from NOAA and USFWS, she is familiar with IUU and can locate federal resources or pursue the case herself.

11. What triggers CBP to request that NOAA inspect a specific seafood shipment?

██████████ - The Trade Division would have more involvement with NOAA as his unit is solely contraband. Having said that, local officers from the State agency Washington Department of Fish and Wildlife Police have worked closely with him on exports of local wild harvested seafood, and imports of King Crab and shark products. ██████████ mentioned that he has had almost no contact with NOAA, where ██████████ had occasional contact.

12. What happens if there is no one at NOAA to inspect a shipment that CBP is holding?

██████████ – CPB will take photos and send them the agency the information. CBP has the ability to secure the cargo in cold storage for a period of time while they await a response.

13. Are there ways that ITDS could more proactively identify potentially IUU or fraudulent seafood shipments?

Neither ██████████ nor ██████████ offered anything of substance in this regard. Additional interviews, particularly with analysts assigned to the targeting center, would be helpful.

14. What tools do inspectors have at their disposal to make their job easier (job aids, automated data systems with alerts, training, etc.)?

██████████ - flags are the primary tool. The internet is heavily used for information.

Are There Other Data Tools That Can Assist Law Enforcement?

Whether it's consumer safety, controlling imports, or collecting tariffs, there are numerous data collection and procedural systems in place by a number of federal agencies that could be used to gain actionable intelligence related to trafficking in seafood. Investigators merely need to be aware of the tool, and agencies need to be willing to collaborate.

Take for example, the WDFW Police use of a USDA National Shellfish Sanitation Program (NSSP) to ensure consumers do not become ill from tainted product. As part of the NSSP, imported and locally harvested bi-valve shellfish are required to be accompanied by a certificate of health which follows the product from harvest grounds all the way to the end consumer. A unique number allows tainted product to be traced back to a specific harvest location and harvester. While not a flawless program, WDFW Police have been successful in utilizing this stand-alone certification process to address large scale poaching of native and private sector product, with numerous notable cases (Doug Tobin – 7 year prison sentence; Rodney Clark – 60 month prison sentence).

In 2017, the FDA was in the process of implementing a new screening system for imports, the Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting (PREDICT), which was intended to improve the current electronic screening system by targeting higher risk products for exam and sampling and minimizing the delays of shipments of lower risk products. PREDICT was sold as an ability to improve the agency's ability to detect trends and investigate patterns, and make more efficient use of FDA's import resources. It seems that the information collected for consumer safety might be useful in exposing IUU.

15. Does ITDS have features that enable it to proactively identify suspicious seafood shipments (for example, can you apply machine learning or certain filters to the system)?

██████ – No. CPB has a heavy reliance on flags, experience, and gut intuition (Cenci interpretation, not his exact words).

16. Do you specifically seek out shipments of certain characteristics for inspection (i.e. species from a certain location)?

██████ – If fish Maw or shark fin are manifested, they will try and physically inspect the shipments. Outside of that, unless they get direction from another agency, they look for anomalies such as: the value statement doesn't seem to match, the weight is off, the information on the manifest is incomplete, etc.

17. What percentage of seafood is inspected each year, how many inspections are conducted by each agency?

██████ – CBP personnel look at all the manifests related to seafood, and then choose what to physically exam

NOTE: related statistics do not appear to be collected, though further research would need to occur to confirm this. In terms of other agencies, the question was not specifically asked. Based on first hand working knowledge, NOAA rarely conducts actual inspections, though State Officers operating under a JEA with NOAA do report Lacey Act or IUU enforcement efforts in the form of hours worked, numbers of inspections or contacts, arrests, and federal referrals. USFWS, USDA, and USFDA may require inspectors to categorize time accounting similarly.

18. Why there is a lower percentage of seafood entering the Ports of LA/LB over the past ten years?

Not asked – however, this would be a question for the NOAA analysts

19. What other ports are absorbing the imports?

Not asked – however, this would be a question for the NOAA analysts.

20. What features would a more proactive risk-based detection system for IUU seafood have?

██████ :

- web site focused on seafood related information / import / export processes and regulations to be used as a resource for CBP and the public. The regulatory landscape is complex, and given all of the competing responsibilities, officers struggle under information over-load.
- a functioning intelligence sharing network related to fish and wildlife poaching / trafficking / smuggling
- training related to what to look for and why. Formal training related to fishery issues is presently non-existent
- intelligence notices with enough detail.

Section B - Questions for NOAA (or other relevant officials):

██████████ – NOAA Agent stationed in Silver Springs, MD, ██████████

1. What aspects of the TTVP and CCAMLR Patagonian Toothfish program are most effective?

██████████: The fact that it functions as a Regional fisheries management program – a mini-United Nations of sorts, with plenty of rules. The parties meet every year and discuss issues. NOAA Office for Law Enforcement attends, and law enforcement officials even have a classified meeting for intelligence sharing.

██████████: The most effective “tool” is the purple notice filed on the vessels that are operating outside the CCAMLR area of control. These vessels catch as much as they can, too dangerous to pursue, often cut the net and run, then go to Africa and offload, get fuel, re-provision, etc. Say, for instance, the vessel “Thunder”, a known IUU vessel, attempts to offload fish or take on supplies in the Southern portion of Africa, the Interpol Purple Notice identifies the vessel as a pirate ship and recommends an inspection and boarding. Any information gained from the inspection is then shared with Interpol – who would share it with CCAMLR and all Interpol countries. When in international waters, these vessels are often safe from detection, and scrutiny, but when they come into the territorial waters of participating countries, they are subject to inspection.

██████████: The intelligence gathering through inspections motivated via the Purple Notice program is valuable as investigators can better pattern the IUU vessel.

2. What sort of information about seafood comes from the Commercial Targeting and Analysis Center? Which way does that information flow?

██████████: Three NOAA analysts, one is ex-customs, assigned to the targeting center. Depending on what is coming into the country, they get a list – each item on the lists have HTS. For instance, one code is tuna, another for frozen tuna, another for tuna in a can. The targeting center can flag containers, or if they have an individual target, they can flag the bad guy.

██████████: Monthly reports and other products are produced by the NOAA analysts. An analyst may pick five IUU species, look for trends, and share the information with the field. For example, an analyst may notice a spike in Sea Cucumber imports into San Diego and pass that information to an Agent in that area in hopes that an inspection or review will occur. For the West Coast, there were few requests from the field, and very little feedback regarding whether the reports from the analysts were either helpful, or could be constructed in a way to be useful.

██████████: The NOAA analysts assigned to the Targeting Center have the ability to enter “tags” for specific imports; i.e. NOAA has an Agent in California interested in tuna, and all imports of that species into the port of interest will be tagged (or essentially flagged). Opportunities for inspections and import data are available. A significant problem shared across the West Coast was the lack of personnel on the ground. If CBP did make a detection, there was often no NOAA OLE resource to respond.

3. What information about seafood comes from the National Seafood Inspection Laboratory?

QUESTION NOT ASKED, but can do so if NRDC wishes follow-up

WDFW has had extensive interaction with the National Seafood Inspection Program (not the lab), and based on previous experiences, those interactions produced little to zero information of value to federal or local law enforcement in detecting poached or trafficked fish or shellfish.

One example of involved the export of geoduck, a high value, frequently poached native clam. China requires an export certificate, which is essentially a federal rubber stamp of a state shellfish health certification program (which can be – and often is - manipulated). When China banned West Coast shellfish exports because of (reported) high levels of PSP, WDFW Police thought the NSIP would have a role, or a desire to be a part of the investigation, which turned out to be a false assumption. We learned that the programs existence is heavily reliant on inspection fees or would likely not exist. In fact, at the time, NSIP preferred the White Hat approach, with 24 hour inspection notices given before they make an appearance. Export permits from NSIP can cost as much as 30K, and the loss of that revenue seemed to be the greatest concern. Granted, the move by China was viewed as politically motivated, and testing protocols by Chinese authorities differed than the U.S. methodology, but given the porous nature of the shellfish certification process, there was potential to launder toxic clams.

During the ban, we observed a large portion of Alaska harvested geoduck being imported into WA. WA is an export State, not an import State, with 99% of the local harvest being flown to Asia within 24 hours of harvest. After surveillance, WDFW Police determined that the Alaska harvest was being driven across the border to Canada intended to be exported to China as a product of Canada since that country was exempted from the ban. After stopping the cargo at the border, WDFW Police found a number of geoduck with suspicious state certification tags, and through further investigation, were found to have come from an area closed to harvest in Alaska. The bottom line is that at least in the case of sanitary shellfish, the NSIP doesn't offer any additional layer of public safety given the paperwork fraud that can occur before export certificates are issued. NOAA Agents were also disinterested in addressing the findings by applying the Lacey Act, so WDFW and Alaska Troopers pursued criminal action and seizures through the local judicial system.

4. Are there ways that ITDS could more proactively ID potentially IUU or fraudulent seafood shipments?

██████: NOAA OLE is supposed to have access, but the information may not be shared. The NOAA analysts have access to ACE, but analytical team works primarily on requests from the field, and may not be passing unrelated intelligence or assumptions downstream.

5. What features would a more proactive risk-based detection system for IUU seafood have?

██████: The biggest problem is that we cannot control what happens when it's caught at sea – IUU and legal fish are often mixed, and it all comes down to a paper trail to trace origin, etc. By the time law enforcement sees the paper documentation, the product has been in commerce for awhile.

According to ████████, in terms of paperwork (in the US) were in pretty good shape. Port state measures were a good start, and once fully implemented and functional, it will be an effective way to control illegal

product from entering the market place. But the requests for training on port state measures by other countries has been massive, and NOAA doesn't have the capacity to fulfill it. According to [REDACTED], NOAA leadership was for some reason reluctant to use outside assets to provide that training, however, he believed that a number of solid complimentary resources familiar with the topic exist (retired employees, etc).

Section C - Questions for [REDACTED] WA Fish and one other official from WA DFW:

Contributors to this section were: [REDACTED] (WDFW Police Operations [REDACTED] WDFW Police Detective [REDACTED] and WDFW Police Sergeant [REDACTED]

1. Does the WA seafood labeling law give WA DFW officials the power to conduct their own seafood inspections at the ports? If not, is there a bottleneck problem at the ports where you're waiting for federal officials to delegate responsibility to you?

The labeling law does not confer any inspection authority, rather the authority to inspect all levels of the market place, to include shippers and ports, comes from other local statutes and federal law that conveys specific authority to state officials (see below). With respect to the ports, there has been some historical confusion over what authority the state had to operate in the bonded area. In the wake of 9-11, a number of security measures were put into place by TSA that effected access to sensitive areas, such as requiring all law enforcement to undergo a security clearance process to include procurement of a Customs Seal. While the security badge is still required, the customs seal on the badges are no longer required.

Imported product or cargo typically moves into a "bonded area", which is a warehouse, or other secure area in which dutiable good may be stored, manipulated, or undergo manufacturing operations without payment of duty. Tariffs do not have to be paid for up to five years, however, the goods are not allowed to leave the bonded area until tariff payment is satisfied. Many of these warehouses are privately owned, and according to the Washington State Attorney General's Office, WDFW Police have authority to go there regardless of ownership or control. In addition, a federal law exists that conveys state authority in the bonding area provided that the official is a sworn law enforcement officer in uniform.

While operating in air-cargo bays, and bonded areas associated with air cargo is routine for WDFW Police, logistical challenges exist when conducting inspections at the seaport. Moving and inspecting containers is costly, but if CBP requires the inspection, the cost is passed onto the receiver as prescribed by federal law. If WDFW requires the inspection, movement, and unloading of a container, then the state agency incurs the cost, which can be exorbitant.

2. Has the WA seafood labeling law helped to deter IUU and/or fraudulent seafood shipments from entering WA state? If yes, how? ■

Likely yes. While there is no direct evidence that labeling laws at the local level have had a measurable deterrence effect on IUU, anecdotal information suggests a positive impact. WDFW Police operate at all levels of the market place where federal law enforcement officials do not have premise or record

inspection authority beyond the importer (cold storage, fish brokers and dealers, retail markets, restaurants). State regulations fill gaps in traceability between the importer and the end-consumer.

Many species of imported seafood are still generally labeled. Being able to speciate is critical in traceability. In 2013, HB 1200 passed both the Washington State House of Representatives and the Senate unanimously. The law required any fresh, frozen or processed fish and shellfish to be labeled by the common name so buyers can make an informed purchasing decision. The common names of fish are defined by the director of the Washington Department of Agriculture. If a species' common name is not already defined by the director, then the market name becomes the acceptable common name as provided in the U.S. Food and Drug Administration's guidelines.

The bill also specifically addressed halibut mislabeling by requiring that only the species *Hippoglossus hippoglossus* (Atlantic halibut) or *Hippoglossus stenolepis* (Pacific halibut) can be labeled as halibut. Another feature of the law was a graduated penalty system depending on the value of the fraud or mislabeling, which includes a Class C felony provision.

Finally, the legislation required that salmon species be labeled by their scientific or accepted common name, which is especially important in the Pacific Northwest and Alaska, where consumers face the possibility of farmed Atlantic salmon being substituted for species of wild caught Pacific salmon.

In 2017, revisions to the state labeling statutes were signed into law. The bill moved the seafood mislabeling laws from the Department of Agriculture's Code to the Fish and Wildlife Code (Title 77). This effectively moved rule making authority from the DOA to WDFW in terms of species classification and gave the latter agency exclusive control and linked labeling to WDFW's fish and shellfish classification.

<https://app.leg.wa.gov/rcw/default.aspx?cite=77.140>

<https://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/House%20Passed%20Legislature/1200-S.PL.pdf>

<https://app.leg.wa.gov/rcw/default.aspx?cite=77.140.030>

3. What authorities does the law provide WA DFW law enforcement officials?

Background: Similar to Game Wardens of the California Department of Fish and Wildlife, WDFW Officers possess statewide jurisdiction under a general authority law enforcement commission. That means that they can enforce any criminal law anywhere in Washington Territory (RCW 77.15.075). They are one of only two local law enforcement agencies with that designation (Washington State Patrol is the other agency). As conferred by the Magnuson-Stevens Fishery Conservation Act, WDFW Police also have jurisdiction in offshore waters (2-200 miles) over registered vessels of the state that fish in the United States Exclusive Economic Zone between the borders of Mexico and Canada (RCW 77,15.040).

As the primary guardian of this state's great outdoors, Washington fish and wildlife police officers perform a wide range of duties that directly benefit the protection of natural resources, the communities that rely

on them, and the public at large. Fish and Wildlife Officers have a long list of responsibilities. First and foremost is the enforcement of all fish and wildlife laws under Title 77 RCW. The number of applicable activities is extensive, such as combatting closed season big game poaching, protecting endangered fish and wildlife, investigating fish and traffickers, responding to damage to fish habitat, ensuring commercial fisheries are orderly and in compliance, enforcing seafood labeling and branding laws, and addressing illegal imports and exports.

A core duty of the Fish and Wildlife Officer is to protect public safety in the outdoors. Examples of the responsibilities of our officers include: boating safety enforcement, eradicating marijuana plantations from public land, search and rescue, serving as the primary enforcer of sanitary shellfish laws for the Department of Health, responding to potentially dangerous wildlife interactions, or being the first responder to crimes against people, vehicle collisions, and natural disasters.

WDFW officers also hold federal law enforcement commissions from the United States Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration's Office of Law Enforcement (NOAA-OLE). Under a Joint Enforcement Agreement (JEA), WDFW Officers enforce the provisions of several natural resource related acts, such as the Lacey Act, Magnuson-Stevens Fishery Conservation Act (MSFCA), and the Marine Mammal Protection Act. Washington State also has a history of adopting federal regulations under state law, providing officers two separate jurisdictions in which to pursue natural resource crime, sometimes at the same time without the issue of double jeopardy.

In addition, WDFW Officers have the ability to enforce Washington law into Oregon territory in the concurrent waters of the Columbia River. An agreement between WDFW Police and Oregon State Police also authorizes either state to enforce laws in either states territorial sea and offshore waters up to 50 miles.

Specific Authorities: Much like CDFW Game Wardens, WDFW Officers have authorities that are unique compared to other law jurisdictions. For example, WDFW Officers have warrantless search and inspection powers while enforcing natural resource laws. These authorities evolved out of a U.S. Supreme Court ruling that commercial fishing is a pervasively regulated industry, which means that the ordinary privacy concerns and restrictions related to police actions do not generally apply when someone is participating in that regulated activity.

RCW [77.15.080](#)

Fish and wildlife officers and ex officio fish and wildlife officers—Inspection authority.

Based upon articulable facts that a person is engaged in fishing, harvesting, or hunting activities, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish, shellfish, seaweed, and wildlife in possession as well as the equipment being used to ensure compliance

with the requirements of this title. Fish and wildlife officers and ex officio fish and wildlife officers also may request that the person write his or her signature for comparison with the signature on his or her fishing, harvesting, or hunting license. Failure to comply with the request is prima facie evidence that the person is not the person named on the license. Fish and wildlife officers and ex officio fish and wildlife officers may require the person, if age sixteen or older, to exhibit a driver's license or other photo identification.

RCW [77.15.094](#)

Search without warrant—Seizure of evidence, property—Limitation.

Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of a vessel, conveyances, vehicles, containers, packages, or other receptacles for fish, seaweed, shellfish, and wildlife which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title and seize evidence as needed for law enforcement. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. Seizure of property as evidence of a crime does not preclude seizure of the property for forfeiture as authorized by law.

RCW [77.15.096](#)

Inspection without warrant—Commercial fish and wildlife entities—Limitations.

(1) Fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner:

(a) The premises, containers, fishing equipment, fish, seaweed, shellfish, and wildlife of any commercial fisher or wholesale dealer or fish dealer; and

(b) Records required by the department of any commercial fisher or wholesale fish buyer or fish dealer.

(2) Fish and wildlife officers and ex officio fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner:

(a) The premises, containers, fishing equipment, fish, shellfish, wildlife, or covered animal species of any person trafficking or otherwise distributing or receiving fish, shellfish, wildlife, or covered animal species;

(b) Records required by the department of any person trafficking or otherwise distributing or receiving fish, shellfish, wildlife, or covered animal species;

(c) Any cold storage plant that a fish and wildlife officer has probable cause to believe contains fish, shellfish, or wildlife;

(d) The premises, containers, fish, shellfish, wildlife, or covered animal species of any taxidermist or fur buyer; or

(e) The records required by the department of any taxidermist or fur buyer.

(3) Fish and wildlife officers may inspect without warrant, at reasonable times and in a reasonable manner, the records required by the department of any retail outlet selling fish, shellfish, or wildlife, and,

if the officers have probable cause to believe a violation of this title or rules of the commission has occurred, they may inspect without warrant the premises, containers, and fish, shellfish, and wildlife of any retail outlet selling fish, shellfish, or wildlife.

(4) Authority granted under this section does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution.

4. What are the most important features of the seafood labeling law? What does the law accomplish?

I interviewed [REDACTED] with WDFW Police. [REDACTED] patrol detachment has responsibilities in the King, Snohomish, and Peirce County areas of Washington State, to include Seattle and major seaports, airports, and seafood market places. [REDACTED] detachment is familiar with IUU and routinely uses their inspection authority at all levels of seafood commerce to trace seafood.

[REDACTED]:

First, the law addresses consumer fraud:

Without those laws, would not have the ability to hold people accountable for fraud. Consumer confidence can be destroyed if you are not getting what your paying for. For example, someone that pays a premium for wild spring chinook salmon and gets farmed Atlantic – this can negatively affect the fishing communities integrity, etc.

Second, the law provides another angle to trace seafood back to origin.

If you know the species, you can trace back to the original landing document, which in Washington State is signed under penalty of perjury that the information within it is truthful and accurate. If the documents just say fish, or shellfish, that doesn't help, but with more specificity, it then it ties to other record keeping requirements, particularly for wild harvest. Seafood labeling is sort of the third leg in a three legged stool.

5. Would a WA state seafood traceability program be effective in preventing IUU and fraudulent seafood from entering into the state's commerce stream? How about in California?

[REDACTED]: Yes – because of the federal limitations on labeling in the Lacey Act, the requirement is that the "box" or container be labeled, but not the airbill or the manifests - in other words, the Lacey Act has limited leverage with respect to identifying seafood and being species specific.

6. What is needed from federal agencies for states to be able to prevent IUU and fraudulent seafood from entering into states' commerce streams?

[REDACTED]: In-depth study of IUU fisheries regarding the "problem", updated study...what's the level of the problem?

█: A gap analysis relative current regulations, and development of regulations that actually work.

█: NOAA has moved away from their historical role in controlling cross border seafood movement by deploying uniformed officers focused on local fisheries instead of investing in investigative agents. The expertise doesn't seem to exist in understanding when you see something suspicious, and the investigative ability and capacity is lacking when something is found. We need a federal counterpart that is competent, interested, and available to address complex, large scale, cross border fisheries crimes.

█: More engagements with other states would help address the lack of federal presence, however, when your talking about international issues, they really are best suited to be involved.

NOAA-OLE █ Director █: California just hired some agents, but with training, etc, it will be quite some time before they are deployed to the field.

█: Other than the individual states taking the initiative, there is virtually no operational planning or guidance from NOAA. Operations are almost exclusively planned by the states. While staffing is an issue to a degree, I don't see NOAA accomplishing as much as they could with the resources that they do have. Why not bring FDA, CBP and WDFW together and conduct training and lead joint operations with some targets in mind? I think they are so far removed from what is actually happening in the field that they don't know what to do. Except for the cases that we hand them after all the investigation is done by us, we don't see much of NOAA.

█: Use the regional fisheries platforms to encourage more joint training and operations since leadership from all the affected federal and state agencies are already together.

█: I have asked a lot of questions of NOAA related to seafood import regulations, intelligence sharing, conducting joint operations with other federal agencies, asked them where they think the focus should be. I recognize that there are a bunch of regulations we are unaware of that could be useful while we are inspecting shipments. While I get lots of promises, at the end of the day, NOAA you don't hear from them again unless you initiate the phone call.

7. What features would a more proactive risk-based detection system for IUU seafood have?

█: From a federal perspective the problem is having enough people, or lacking that, have only certain places where fish can be landed. The Federal Government cannot lobby, but organizations like NRDC can – personnel resources is the #1 issue.

█: I see a serious lack of coordination. NOAA misses opportunities to coordinate a lot of local and other federal resources to focus on IUU.

Possible Follow-Up Questions:

The Automated Commercial Environment (ACE) is the system through which the trade community reports imports and exports and the government determines admissibility. Assume the original documents related to SIMP maintained by the importer are not scanned, only raw information provided to ACE – assume CBP and NOAA have access?

Is the declaration requirement based on the HTS code of the complete product being imported and not its component parts?

If your product does not fall on the implementation schedule, you do not have to submit a declaration?