NRDC IUU West Coast Ports Initiative – Exulans, Inc. Investigation Document

1. Introduction

The Natural Resources Defense Council (NRDC) is currently engaged in the scoping phase of an IUU West Coast Ports Initiative. Their preliminary research revealed three major obstacles that enable fraudulent and IUU seafood to enter the U.S.; 1) seafood inspections do not adequately target IUU and fraudulent seafood, 2) there is poor interagency collaboration, and 3) there is poor detection and investigatory in-port capacity. The NOAA Seafood Import Monitoring Program (SIMP), set to be fully implemented January 1, 2018, has been established to create reporting and recordkeeping requirements to enable seafood inspections to better target IUU and fraudulent seafood. The Ports of Los Angeles and Long Beach are the largest ports in the United States, and account for 45% of the nation's maritime cargo shipments. Given the potential of the SIMP and for these ports to influence the U.S. seafood market, NRDC seeks to develop a West Coast-specific strategy to improve IUU seafood detection at the point of entry to the United States.

Focusing on the Ports of LA and Long Beach, NRDC will:

- Advocate for proactive, risk-based detection systems to systematize IUU detection
- Foster improved federal and state cooperation as seafood enters the ports
- Seek to build a model of IUU detection and enforcement in the Ports of LA and Long Beach

Exulans, Inc. was contracted to perform an investigation supporting the scoping of this initiative, identifying further details relating both to the obstacles enabling fraudulent seafood to enter the U.S. through the Ports of LA/LB, and tactics that would address these obstacles. Our findings and recommendations can be found in this document.

For the purpose of answering the below questions, Exulans both conducted primary-source document research and interviews. The personnel interviewed were:

1. [redacted] (by email) – U.S. Census Bureau, Customs Systems Requirement Branch
2. [redacted] (by email) – U.S. Census Bureau, International Trade Indicator Macro Analysis Branch
3. [redacted] National Fisheries Service, National Seafood Inspection Laboratory, Trade Monitoring Division
4. [redacted] National Marine Fisheries Service, Office of Science & Technology
5. [redacted] NOAA Office of General Counsel, Southwest Enforcement Section
6. [redacted] California Department of Fish & Wildlife, Law Enforcement Division
7. [redacted] (by email), National Marine Fisheries Service International Affairs
8. [redacted] National Marine Fisheries Service Office of Law Enforcement, San Diego Field Office
9. [redacted] U.S. Customs and Border Protection [redacted], Los Angeles-Long Beach Seaport

10. [redacted], California Department of Fish and Wildlife, Law Enforcement Division, Southern District

Several interviews were initiated but never final-scheduled and would still be useful to clarify outstanding questions that I mention in my answers below. These include:

1. U.S. Customs and Border Protection (CBP) Field Office Personnel and further conversation with [redacted] listed above
2. [redacted] U.S. Fish and Wildlife Office of Law Enforcement, Los Angeles Inspection Office
3. [redacted] – National Marine Fisheries Service International Affairs
4. [redacted] National Marine Fisheries Service Office of Law Enforcement
5. National Marine Fisheries Service Tuna Tracking and Verification Program (TTVP) personnel

2. Questions for Port of Los Angeles and Long Beach investigation:

Data Questions:

Data Details:

All below data sourced from USA Trade Online https://usatrade.census.gov/index.php unless otherwise noted. This data is primarily collected by U.S. Customs and Border Protection's Automated Commercial Environment (ACE) System.

For all of the below, Ports of LA/LB were assumed to include the Seaport of Los Angeles (LA), the Seaport of Long Beach (LB), and Los Angeles International Airport (LAX).

For all data pulled from the "HS Port-level Data Report" Portal of USA Trade Online, Measures of "Vessel SWT (Gen) (kg)" and "Air SWT (Gen) (kg)" were used. These are defined as "The gross weight in kilograms of shipments made by seafaring vessel at customs." and "The weight of goods, in kilograms, transported by airborne carriers at customs." (Forign Trade Division, U.S. Census Bureau 2016)

Import statistics are collected using the Harmonized Tariff Schedule (HTS) of the United States, which is managed by the U.S. International Trade Commission. Export Statistics are collected using Schedule B, Statistical classification of Domestic and Foreign Commodities Exported from the United States, which is managed by the U.S. Census Bureau and based on the HTS. (United States Census Bureau 2016) "The first six digits of the commodity numbers in chapters 1 through 97 of both the HTS and the Schedule B are identical with respect to descriptions and codes. Beyond the six-digit level, the classification may be comparable on a one-to-one basis or comparable by adding two or more import classifications to equal a single Schedule B classification." (United States Census Bureau 2017) HTS Codes have 10 digits. The wording,

numbering and coverage used for the first six digits of the HTS is internationally-agreed upon, administered by the World Customs Organization and subject to changes usually implemented every 5 years, the last becoming effective in 2017. The last four digits of the HTS are administered by the U.S. International Trade Commission Committee for Statistical Annotation of Tariff Schedules and can be changed through a biannual review process. (U.S. International Trade Commission 2017)

Definitions for this Investigation:

Import Data: "This measures all merchandise imported from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses or Foreign Trade Zones under Customs custody." (Forign Trade Division, U.S. Census Bureau 2016) This means that the import data also includes product that will be transshipped through the United States.

"Transshipments" are classified as either "foreign exports" or "re-exports" in the USA Trade database. (Forign Trade Division, U.S. Census Bureau 2016)

"Seafood" for the purpose of this investigation was defined as seafood that is intended for human consumption and includes HTS Codes: All of categories contained in Chapter 3 except those under heading 0301 and all categories contained in headings 1603, 1604 and 1605. It does NOT include products from fish caught by American-flagged fishing vessels overseas that are shipped directly to the U.S. without any alterations made in foreign countries. (U.S. International Trade Commission 2017)

"Sharks and rays" are shark and ray products fit for human consumption and includes HTS Codes listed in the table below. Note that I did not include dogfish in my calculations. As of the drafting of this investigation document the decision had not yet been made whether the SIMP would include dogfish. ([redacted] Seafood Import Monitoring Program and ITDS 2017)

"SIMP Species": The HTS Codes used to pull all data from the USA Trade Online System are listed below. These are likely to vary slightly from those that are used in the implementation of the SIMP, see the revised implementation guidelines that will be published here: https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines for the final HTS Codes.

Species	HTS Codes
Abalone	0307.81.00.00, 0307.83.00.00, 0307.87.00.00, 1605.57 (and all stat suffixes contained within)
Atlantic Cod	0302.51.00.10, 0303.63.00.10, 0304.44.00.10, 0304.53.00.10, 0304.71 (and all stat suffixes contained within), 0304.95.10.10, 0304.95.10.20, 0305.32.00.10, 0305.49.40.20, 0305.51.00.00, 0305.62.00 (and all stat suffixes contained within),
Blue Crab	0306.14.20.0, 0306.14.40.90, 0306.33 and all stat suffixes contained

(Atlantic)	within), 0306.93 and all stat suffixes contained within), 1605.10.05 (and all stat suffixes contained within), 1605.10.20.51, 1605.10.40.25,
Dolphinfish (Mahi Mahi)	0302.89.50.72, 0304.89.50.55
Grouper	0302.89.50.61, 0303.89.00.70
King Crab (red)	0306.14.20.00, 0306.14.40.03, 0306.33 and all stat suffixes contained within), 0306.93 and all stat suffixes contained within), 1605.10.05 (and all stat suffixes contained within), 1605.10.20.10, 1605.10.40.02
Pacific Cod	0302.51.90, 0303.63.90, 0304.44.15, 0304.53.15, 0304.71(all), 0304.95.10.10, 0304.95.10.10, 0305.32.10, 0305.39.40.20, 0305.51, 0305.62
Red Snapper	0302.89.50.58, 0303.89.00.67
Sea Cucumber	0308.11.00.00, 0308.12.00.00, 0308.19.01.00, 1605.61.00.00
Sharks (other than dogfish)	0302.81.00.91, 0302.92.00.00, 0303.81.00.91, 0303.92.00.00, 0304.47.00.00, 0304.56.00.00, 0304.88.00.00 0304.96.00.00, 0305.71.00.00
Shrimp	0306.16.00 (and all stat suffixes contained within), 0306.17.00 (and all stat suffixes contained within), 0306.35.00 (and all stat suffixes contained within), 0306.36.00 (and all stat suffixes contained within), 0306.95.00 (and all stat suffixes contained within), 1605.21, 1605.21.05.00, 1605.21. 10 (and all stat suffixes contained within),
Swordfish	0302.47.00 (and all stat suffixes contained within), 0303.57.00 (and all stat suffixes contained within), 0304.45.00, 0304.54.00.00, 0304.84.00.00, 0304.91.10.00, 0304.91.90.00, 0305.54.00.00
Tunas: Albacore	0302.31.00.00, 0303.41.00.00, 0304.87.00.00, 0304.99.11.90, 1604.14.10 (and all stat suffixes contained within), 1604.14.22 (and all stat suffixes contained within), 1604.14.30.51, 1604.14.40.00, 1604.14.50.00
Tunas: Bigeye	0302.34.00.00, 0303.44.00.00, 0304.87.00.00, 0304.99.11.90, 1604.14.10 (and all stat suffixes contained within except .91), 1604.14.22 (and all stat suffixes contained within except .51) , 1604.14.40.00, 1604.14.50.00
Tunas: Skipjack	0302.33.00.00, 0303.43.00.00, 0304.87.00.00, 0304.99.11.90, 1604.14.10 (and all stat suffixes contained within except .91), 1604.14.22 (and all stat suffixes contained within except .51) , 1604.14.40.00, 1604.14.50.00
Tunas: Yellowfin	0302.32.00.00, 0303.41.00 (and all stat suffixes contained within), 0304.87.00.00, 0304.99.11.90, 1604.14.10 (and all stat suffixes contained within except .91), 1604.14.22 (and all stat suffixes contained within except .51) , 1604.14.40.00, 1604.14.50.00
Tunas: Bluefin	0302.35.00.01, 0302.36.00.00, 0303.45.01 (and all stat suffixes contained within), 0303.46.00.00, 0304.87.00.00, 0304.99.11.90, 1604.14.10 (and all stat suffixes contained within except .91), 1604.14.22 (and all stat suffixes contained within except .51) , 1604.14.40.00, 1604.14.50.00

Note that many of these HTS codes are inexact. For example, 0305.54.00.00 which includes smoked, dried, salted or brined swordfish also includes an additional 25 species in that same code. See my notes at the end of the Data Questions section below to clarify how the National Marine Fisheries Service (NMFS) will address this challenge.

1) *What percentage of total seafood imported into the U.S. is imported through the Ports of Los Angeles and Long Beach (including air cargo)?*
   a) Data Portal Used: HS Port-level Data Report Portal. Dates: 2003- 2017 through February.

	% of Total Seafood Imported into the United States			
Year	**Los Angeles Seaport**	**Long Beach Seaport**	**Los Angeles Airport**	**LA/LB/LAX Combined**
2003	30%	8%	1%	39%
2004	32%	7%	1%	40%
2005	29%	6%	1%	37%
2006	31%	4%	1%	37%
2007	30%	3%	1%	34%
2008	30%	2%	1%	34%
2009	30%	3%	1%	33%
2010	30%	2%	1%	34%
2011	29%	2%	1%	33%
2012	28%	2%	1%	31%
2013	26%	2%	1%	30%
2014	26%	1%	2%	29%
2015	25%	2%	2%	28%
2016	25%	1%	2%	28%
2017 through February	22%	1%	2%	25%

2) *How much seafood (including sharks/rays) is "transshipped" through LA/LB?*
   a) Data Portal Used: Harmonized System (HS) District-level Data – Trade By Commodity – Exports with data compared to HS Port-level Data – Exports, Foreign Export data measure
   b) Dates: 2012 – 2017 through March
   c) Transshipment data is only available by U.S. $ Value and at the District Level. The district of Los Angeles, CA was used which includes several ports and airports in addition of LA/LB/LAX that exported fish. ([redacted] 2017)
   d) In addition to LA/LB/LAX within the Los Angeles Customs District, fish was also exported from the two ports below, and it was impossible to tell if they were domestic- or foreign-sourced exports. (Fish was also exported from other ports beyond those listed below in the Los Angeles Customs District during these years, but I was able to verify that all their exports were domestic-sourced based on the species exported.)
      i) In 2012 and 2014 from Port Hueneme, CA (crustaceans)
      ii) In 2012, 2014 and 2016 from Ventura, CA (mollusks all years & frozen mackerel in 2014)

iii) Note that none of these species groups are of particular concern for illegal fishing nor are they currently included in the Seafood Import Monitoring Program.

iv) Shark and ray products were only exported from LA, LB and LAX in the LA Customs District.

Year	**Total Value Seafood Transshipped (USD)**	**Of which is sharks & rays (USD)**
2012	22,320,127	1,870,184
2013	14,290,613	3,739
2014	19,638,292	0
2015	19,199,534	0
2016	12,733,900	0
2017 through March	2,616,311	0

3) *What is the breakdown of seafood imported into the Ports of LA/LB by species and country of export?*

a) Data Portal Used: HS Port-level Data Report Portal

b) The report displaying this information for 2016 has over 5,000 cells, please refer directly to the spreadsheet "Weight – 2016 LALB Seafood Imports by Country and Species with All Country Totals.xlsx" for detailed answer to this question.

c) Harmonized Tariff System Codes that include species included in the NOAA Seafood Import Monitoring Program are highlighted. Note that NMFS/CBP has not yet published the detailed importer guide listing the HTS codes that are included in the program, so I had to use the HTS codes listed in the table above using my own best judgement. Also note that HTS Codes are revised biannually, so some highlighted species categories in the spreadsheet do not exist for 2017 recording purposes.

d) In 2016, > 408 Million Kgs of seafood was imported via the ports of LA/LB to which SIMP-related HTS codes were applied. This is 59% of all seafood imported through these ports!

4) *For sharks and rays, what is the breakdown of specific products (meat, wings, fresh fins, frozen fins, dried or powdered fins, etc.) imported into the Ports of LA/LB?*

a) Data Portal Used: HS Port-level Data Report Portal.

Port	Long Beach Seaport	Los Angeles International Airport	Los Angeles Seaport		
Commodity (Weight in Kg)	030488 Dogfish, Other Sharks,	030281 Dogfish And Other Sharks, Fresh Or Chilled	030571 Shark Fins, Smoked,	030382 Rays And	030571 Shark Fins, Smoked, Dried, Salted

Time	Rays, Skates, Frozen Fillet		Dried, Salted Or In Brine	Skates, Frozen	Or In Brine
2012		1,471	3,741		40,232
2013		2,336			62,466
2014		4,002	260	105	38,360
2015					25,631
2016		1,037	117		59,466
2017*	1,427				7,532
Total	1,427	8,846	4,118	105	233,687

*Through and including March

5) *Who are the top 10 import companies that receive seafood product through the Ports of LA/LB*
   a) The U.S. Customs Bureau is not authorized to release this information publicly. ([redacted] 2017) (U.S. Customs and Border Protection n.d.)
   b) Data Source for the below information is Urner-Barry Foreign Trade Data database, which requires a subscription to access: http://www.foreigntradedata.com/ Their database is updated daily from U.S. Customs Bureau-provided bills of lading received for imports via seaports only. No bills of lading for air shipments are available via this data portal.
   c) By law the CBP must anonymize importer identification information if the importer requests it. (U.S. Customs and Border Protection n.d.)
   d) In 2016, the Top 10 Import companies by total weight of seafood imported were:

	Importer	Pounds	Shipments
1	STARKIST COMPANY	179,827,000	417
2	ANONYMIZED IMPORT COMPANY	158,781,000	3,804
3	CHICKEN OF THE SEA	57,050,100	1,313
4	BUMBLE BEE FOODS	45,402,800	233
5	AQUA STAR	43,866,000	1,073
6	GREAT AMERICAN SEAFOOD IMPORTS	37,671,500	932
7	OCEAN BISTRO CORP	35,840,600	847
8	THE TUNA STORE LLC	34,598,300	121
9	VINH HOAN CO	32,584,100	752
10	PACIFIC AMERICAN FISH COMPANY	31,175,100	627

   e) From 2010-May 11, 2017, inclusive, the Top 10 Import companies by total weight of seafood imported were:

	Importer	Pounds	Shipments
1	ANONYMIZED IMPORT	1,988,620,000	45,587

	COMPANY		
2	STARKIST COMPANY	1,209,060,000	5,188
3	CHICKEN OF THE SEA	488,455,000	9,963
4	BUMBLE BEE FOODS	293,304,000	1,638
5	OCEAN BISTRO CORP	288,594,000	6,832
6	DLM FOODS	279,927,000	770
7	PACIFIC AMERICAN FISH COMPANY	236,263,000	5,005
8	AQUA STAR	179,755,000	4,752
9	VINH HOAN CO	175,213,000	4,113
10	WILLIAMS CLARKE COMPANY	167,273,000	4,216

6) *What is the breakdown of seafood imported into the Ports of LA/LB by final destination (i.e. state) within the U.S.?* - See answer to #8 below.
7) *Who are the top 10 import companies shipping product to?* - See answer to #8 below.
8) *How much of the total seafood imported into the Ports of LA/LB is processed in the U.S. then exported outside the U.S.?*

The data for questions #6-8 is not collected by Customs and Border patrol nor is it collected in a central location by any state or federal entity I could find. The U.S. Census Bureau Customs Systems Requirements Branch [redacted]) with whom I discussed this need suggested that LA/LB-located import and processing companies or business associations might have the data and be willing to share it. ([redacted] 2017)

Additional Helpful database-related information collected during interviews and research:

a) The International Trade Data System (ITDS) is the name of an interagency initiative establishing a "single window" through which all data required by government agencies for international trade transactions may be submitted. ITDS is not a tangible software/hardware system. (U.S. Customs and Border Protection 2013) [redacted] Seafood Import Monitoring Program and ITDS 2017)
b) The Automated Commercial Environment (ACE) is the Customs and Border Protection (CBP) software/hardware system developed to enact the ITDS initiative. (U.S. Customs and Border Protection 2013)
c) Automated Broker Interface (ABI): To enter information into ACE import/export brokers often choose to have an ABI system in place. There are multiple unique ABI systems in existence (these are private company software systems) each with their own user interface experience and each that links to ACE in a slightly different way. ABI systems must be approved by CBP however and meet minimum requirements. What this means is that each importer/exporter who uses an ABI will be physically entering their data into a different software system, so there is not a common vocabulary. NMFS S&T does work with ABI software companies to ensure that each of their systems meet NMFS requirements accurately. ([redacted] Seafood Import Monitoring Program and ITDS 2017)

d) Partner Government Agencies (PGAs) are the 47 agencies other than CBP that require data be entered into ITDS to meet their own regulatory requirements. PGA Message Sets are the unique set of data entry fields that PGAs require be completed within the ACE system to ensure that they have all of the information needed to confirm compliance with their regulatory obligations. (U.S. Customs and Border Protection 2013)

e) An ACE Portal is the window that enables PGAs to look into ACE and see the data that has been entered there by commercial importers/exporters and to download that data. There are only approximately 25 individuals throughout NOAA and NMFS who have the ability to access the ACE Portal (primarily members of the Office of Law Enforcement) because full background investigations are required by CBP to have that access. [redacted], Seafood Import Monitoring Program and ITDS 2017)

f) To address this access challenge, National Marine Fisheries Service Science & Technology (NMFS S&T) has set up a software system that pulls information from ACE and NMFS' PGA Message Set once per day via a secure file transfer protocol. These "workspaces" can be used by employees who have not had a full background check, and has systems and workflow tools to make the ACE data easier to work with. This data is of course still subject to Privacy Act and other normal federal information security requirements. [redacted], Seafood Import Monitoring Program and ITDS 2017)

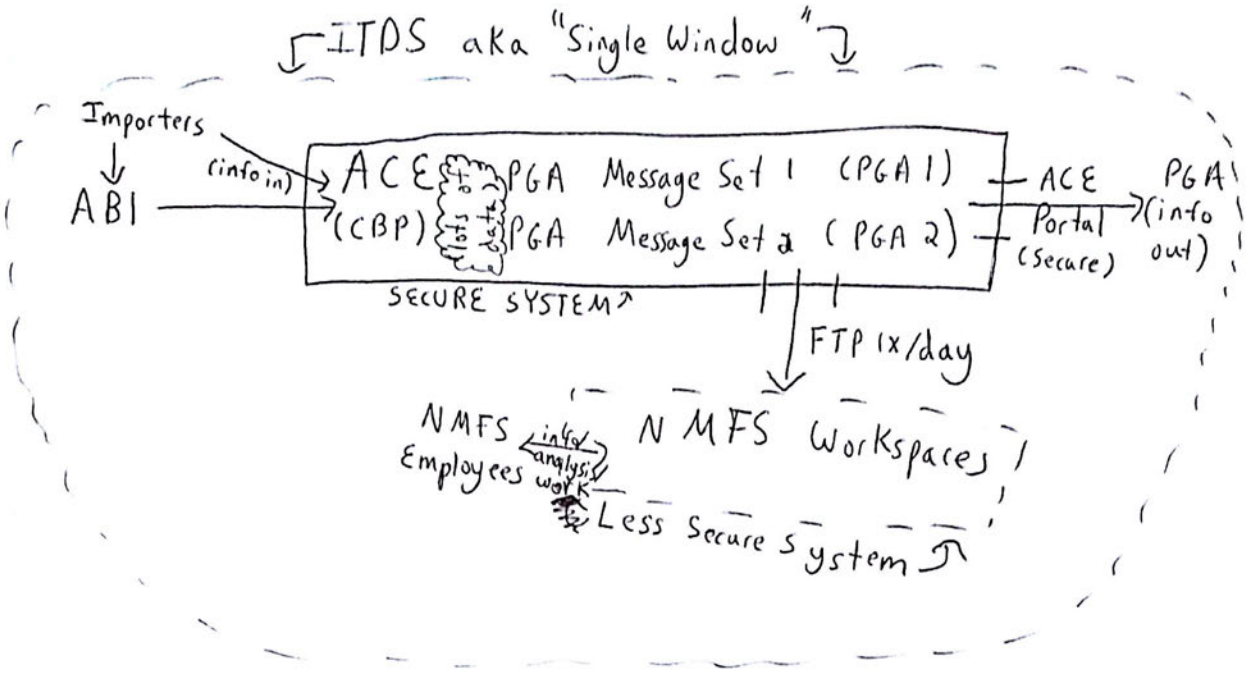

Figure 1. ITDS Infrastructure Summarized

g) Specific to Seafood Import Monitoring Program (SIMP) implementation:
   i) A final list of HTS Codes used for implementing the SIMP will be published in the near future (expected by July 2017). Expect about 100 codes for the 11 species.
   ii) This list of codes will flag within ACE that an additional filing with NMFS through their PGA Message Set is required.

iii) The next step after the HTS code will be asking the importer to identify the product to the species level using a standardized 3-digit FAO codes (known as "3-alpha codes")
iv) If the species identified using the 3-alpha code is currently covered under SIMP, then additional PGA Message Set data fields will be required to be completed for product entry to be authorized. At a minimum, the PGA Message Set data fields will include the information listed as required in the Final Rule for the SIMP (e.g. harvesting vessel name and flag state, fishing gear used, etc.). See page 2 of the compliance guide for a list of that required information: http://www.iuufishing.noaa.gov/Portals/33/SIMPComplianceGuide2017.pdf
v) Once the PGA Message Set Implementation Guide is published (expected by July 2017), details of each data entry field that will be required will be available. Note that some will only accept standardized codes (3-letter codes for country of origin, for example) and some will allow free text entry. See commentary in question 16 below regarding gaps and weaknesses that I anticipate being present in this implementation. NMFS IA was responsible for making the specific decisions for the PGA Message Set requirements.
vi) The PGA Message Set requirements were designed to facilitate the validation of the data by requiring multiple levels of authentication of the information reported. For example, I have been told there will be at least two data fields describing the Ocean Area, so if a fish is claimed to be caught in Seychelles Waters and also reported as being caught in the Atlantic Ocean, it could trigger an alert when the data is evaluated. This apparently is how NMFS IA intends to strike a balance between providing flexibility in the information that is reported to account for the likely different levels of precision of information that importers will have that meet legal requirements, while also providing avenues to validate the data reported.
vii) A "workspace" will be created by NMFS S&T to enable analysts to easily access and process the data that will be entered in the new SIMP PGA Message Set. Currently NMFS S&T anticipates that this workspace will be operational in January 2019 the earliest. [redacted] Seafood Import Monitoring Program and ITDS 2017)

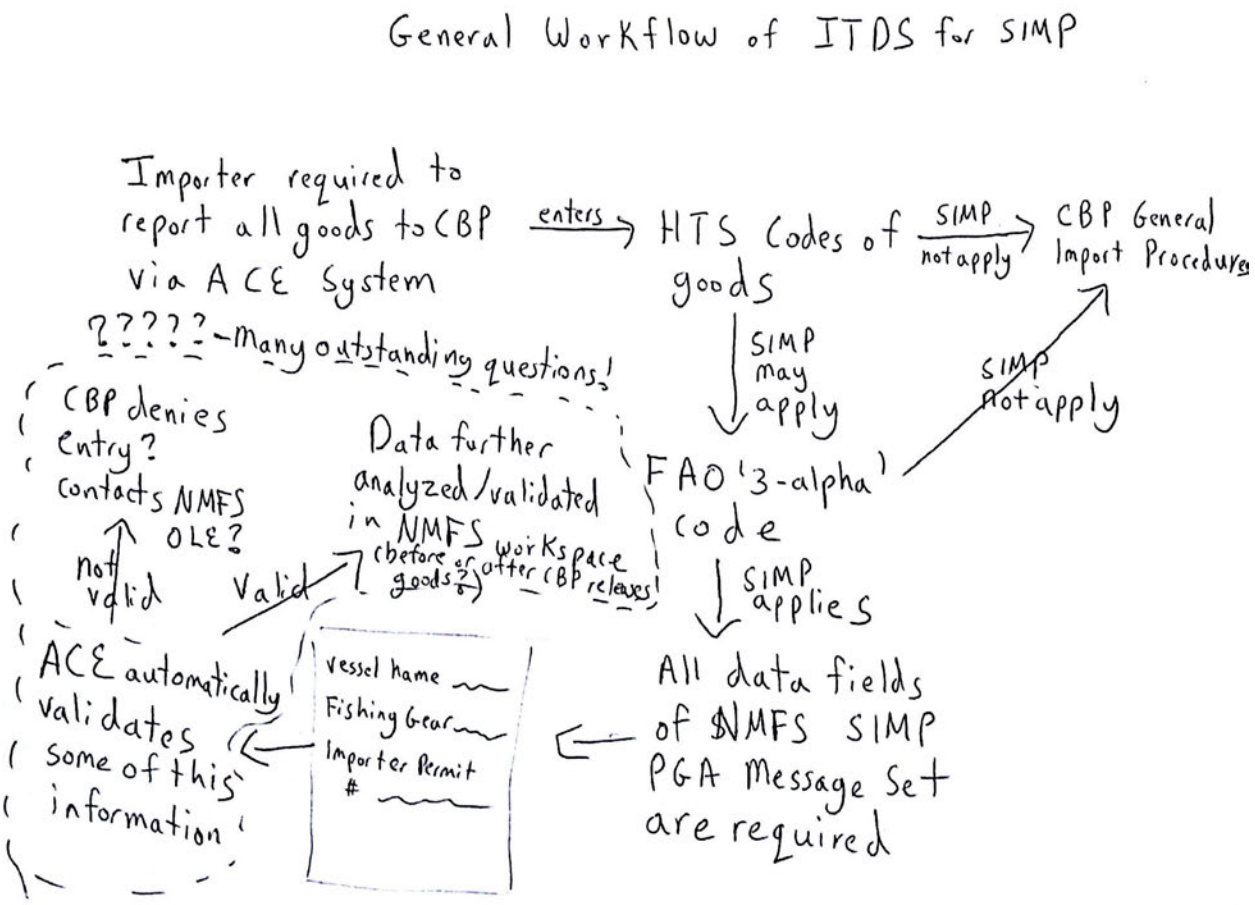

Figure 2. Workflow for Data entered into ACE for SIMP

Process Questions

9) What is the import process for seafood entering the Ports of LA/LB?

a) Who are the federal and state agencies that are involved in the import of seafood?

i) CBP – Described as the "gatekeepers" for all goods entering the U.S., all requests for import authorization are made through CBP and CBP must authorize the release of all goods into the U.S. (U.S. Customs & Border Protection 2014) (Shaw 2017)

ii) NMFS – Office of Law Enforcement (OLE) SAs act as lead investigator for most seafood-related regulatory violations. "NMFS [OLE] is lead agency over whales, dolphins, porpoises, seals and sea lions import, under the MMPA and ESA." (U.S. Fish & Wildlife Service International Affairs n.d.) NMFS International Affairs (IA) oversees compliance with Regional Fishery Management Organization (RFMO)-driven import requirements through the National Seafood Inspection Laboratory Trade Monitoring program, and various Dolphin-Safe Certification requirements through the Tuna Tracking and Verification Program (TTVP). The NMFS Seafood

Inspection Program shares responsibility for seafood sanitation, labeling and quality inspection with the Food and Drug Administration (FDA).

iii) U.S. Fish & Wildlife Service (FWS) – "Generally all wildlife (including parts and products) imported into or exported from the United States for any purpose must be declared to the U.S. Fish & Wildlife Service and cleared prior to release by U.S. Customs and Border Protection or prior to consignment for export." (U.S. Fish & Wildlife Service Office of Law Enforcement 2017) For marine species, FWS is the lead agency for the import of all species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including those concurrently listed under the MMPA and ESA.

iv) FDA – "Responsible for the safety of all fish and fishery products entering the United States." It is required by law that the FDA receives prior notice before all food is imported into the U.S. ([redacted] 2017)

v) California Department of Fish & Wildlife, Law Enforcement Division (CA F&W) – This agency only has authority and jurisdiction over seafood product after it has been released by CBP and entered CA State territory. ([redacted] 2017) CA F&W only engages in inspections within the CBP Port Zones at the ports of LA/LB when asked to by a federal partner, generally either FWS or NOAA OLE. ([redacted] 2017) ([redacted] 2017)

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

i) The CBP ACE system automatically flags product to be held pending partner-agency verification of compliance with this law:

(1) Antarctic Marine Living Resource Conservation Act – This is the implementing legislation for the Convention for the Conservation of Atlantic Marine Living Resources (CCAMLR). For seafood imports, this Act implements CCAMLR Catch Documentation System (CDS) Requirements for Patagonian Toothfish, which includes requirements of advance notice to importing countries and several steps verifying product legality by importing countries before authorization of import. (Dawson 2017) (Ortiz 2017)

ii) CBP ACE system requires additional information to be entered into the system in order to comply with these laws **I'd like to verify (2) with the FWS and (3) and (4) with NOAA TTVP**:

(1) Commencing January 1, 2018 though the final rule was effective January 9, 2017: The Seafood Inspection Monitoring Program (Magnuson-Stevens Fisheries Conservation and Management Act is where it is implemented) 15 CFR Part 902 and 50 CFR Parts 300 and 600 ([redacted], Seafood Import Monitoring Program and ITDS 2017) The Seafood Import Monitoring Program applies only to imported product (not product that will be transshipped).

(2) ESA - Implementing legislation of CITES, importation of animals listed under the ESA is illegal. This also applies to transshipment.
(3) Dolphin Protection Consumer Information Act – Implements import requirements relating to dolphin-safe labeling. (NOAA Fisheries 2017)
(4) International Dolphin Conservation Program Act – Amended Marine Mammal Protection Act (MMPA) to make requirements of the Agreement on the International Dolphin Conservation Program legally effective in the United States, and includes import requirements. (NOAA Fisheries 2017)

iii) No CBP system flags **that I know of, I'd like to verify this through CBP and FWS interviews** but these federal laws apply to import or transshipment of seafood. NOAA OLE, FWS or both are the responsible agencies:
(1) Lacey Act – Makes the import of fish product caught in contravention to any other nation's laws illegal.
(2) MMPA – Importation of marine mammals or their parts is illegal except under specific scientific or cultural significance exemptions.
(3) Shark Conservation Act of 2010 – Implemented through the Magnuson-Stevens Act Subpart N – requires shark fins to be landed naturally attached to carcass.
(4) Magnuson-Stevens Act generally, especially 16 USCG 1857 (1)(q) – This is very similar to import prohibition in the Lacey Act, but only applies to foreign vessels and only allows lower-cost civil penalties to be assessed. ([redacted] 2017)
(5) Atlantic Tunas Convention Act: This is the implementing legislation for the conservation and management measures of the International Commission for the Conservation of Atlantic Tunas (ICCAT), Western and Central Pacific Fisheries Commission (WCPFC), Indian Ocean Tuna Commission (IOTC), Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and Inter-American Tropical Tuna Commission (IATTC). For seafood imports, this Act implements numerous and various catch documentation schemes and requirements for swordfish and several species/product forms of tuna. The National Seafood Inspection Laboratory is responsible for monitoring compliance with these import requirements. ([redacted] 2017) ([redacted] 2017)
(6) Public Health Security and Bioterrorism Preparedness and Response Act of 2002 requires that FDA receive prior notification of all food that is imported or offered for import into the United States.
(7) 18 USC 545 – Importation Contrary to Law – Often used by Department of Justice prosecutors and is very broad so can be used for a whole spectrum of actions relating to importation. ([redacted] 2017)

iv) CA State Laws specific to importation – CBP does not have any system flags for these laws. ([redacted] 2017) ([redacted] 2017) CA Fish and Game Code:
(1) Section 2353: No import unless animals were taken/possessed legally, not prohibited, and declared appropriately.

(2) Section 8032: Requires any person engaged in the business of importing fish to have an appropriate license.
(3) Section 8036: Requires a CA importer's license for anyone who purchases/receives fish from outside the state.
(4) Section 8050: Lists paperwork required to be kept by importers (and others)– must be in English, for 3 years, and documentation of one back and one forward (who sold to and who sold it to you). (Note this paperwork is for supply chain traceability only, it does not verify legality of catch in any way.)

c) *What triggers an inspection of a specific seafood shipment?*
While each enforcement agent I spoke with said that they strive to complete some random inspections, the majority of inspections were conducted in response to specific intelligence received. These agents also universally commented that the most successful cases occurred in response to intelligence, which is my personal experience as well. In addition to specific intelligence triggers:

i) For NOAA: [redacted] (NOAA Special Agent who is responsible for the LA/LB region) sometimes puts "species of interest" (Russian Crab, Mexican Abalone for example) flags based on known risk analyses into ACE for CBP to call her whenever certain types of product comes in. ([redacted] 2017) Also Patagonian Toothfish imported without an import permit and pre-approval from NOAA is caught proactively by CBP. ([redacted] 2017) Other RFMO-regulated seafood imported without required permits is sometimes caught by the National Seafood Inspection Labs doing manual reviews of ITDS and review of paper reporting made to them, but this is an example of illegal importation not illegal fishing, and the illegal activity is usually caught after the fish has entered the commerce stream (though this does not prevent prosecution from taking place).

ii) For CA F&W: They conduct as many routine random inspections of different fish businesses as possible (they can inspect anyone who handles fresh/frozen/live seafood in the state of CA). They did not have specific numbers of inspections. ([redacted] 2017) CA F&W does not have access to ITDS and is normally brought into import-related cases by FWS or NOAA, CBP and CA F&W seems to have very little direct communications on seafood-related issues. If CA F&W needs federally-sourced data for an investigation, they are usually able to get it but are dependent upon FWS and NOAA for access and it takes time to gain that access. ([redacted] 2017)

d) *What percentage of seafood is inspected each year, how many inspections are conducted by each agency?*
The agents I talked to were not able or did not feel at liberty to answer these questions, I would need to conduct follow-on interviews at the regional administrator level to acquire this data. In general, however, inspections by the single NOAA Special Agent

responsible for the Ports of LA/LB could be said to occur on a monthly basis, and CA F&W inspections only occur within the federal borders of the Ports when they are requested to by a partner federal agency, perhaps a few times per year. Also, the NOAA National Seafood Inspection Laboratory is responsible for reviewing 10,000 import documents per year for compliance with tuna and Patagonian Toothfish import requirements set out in the Atlantic Tunas Convention Act and Antarctic Marine Living Resource Act. They inspect 100% of all documents submitted each year, and for every Patagonian Toothfish import, VMS, vessel licensing, etc. are all verified for 100% of all imports. ([redacted] 2017)

e) What is the process when illegal seafood is detected?

When illegal seafood is detected, the case is referred to the responsible agency's enforcement personnel (if it's not first detected by that agency), who conduct an investigation in coordination with a prosecutor to bring the case to court or for settlement. If possible the seafood product will be seized as evidence. In cases were violations are detected by NOAA National Seafood Inspection Laboratory personnel, they call NOAA OLE Headquarters to refer the case to the appropriate special agent.

f) In general – what is the import process "flow" (both data and the product itself)

i) All edible Seafood products and products from species listed in Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are required by various laws listed in 9) b) above to be declared via the CBP ACE system in advance of importation. Products not listed under CITES but to which MMPA and ESA are applicable are required to be declared to CBP and require prior authorization from NOAA before import.

ii) There are automatic flags listed in the ACE system telling CBP to hold CITES and seafood products in the trade zone until the responsible federal agency (FDA, FWS or NMFS) releases them. I do not know if there is a flag in the CBP ACE system that automatically notifies CBP agents that a species to which MMPA or ESA apply is being imported.

iii) The responsible agency must verify that all necessary steps have been taken in compliance with the applicable laws. This can range from a paperwork process (does the importer have an appropriate license?) to an in-person inspection of the product.

iv) Once the responsible agency clears the shipment, CBP may choose to either authorize delivery or to subject the goods and their entry documents to additional examination.

(1) If the shipment shows indications of being illegal, it will be seized by the responsible agency and an investigation will be pursued.

v) Once all examinations (if applicable) are complete and found to be in good order and necessary duties have been paid, CBP will authorize the merchandise for delivery.

vi) The importer will then arrange for the release and transport of the goods. (U.S. Customs & Border Protection 2014)

The above is based on pertinent CBP, FDA and FWS documents describing import procedures, I would need to conduct an interview with personnel from these agencies to authoritatively answer this question.

g) Is the process described in f) different if the product is delivered by air v. by ship?
I could not find any differences in data requirements between air or ship delivery in pertinent documentation. However, I would need to conduct an interview with CBP, FDA and FWS personnel at the airport and seaports to authoritatively answer this question.

h) Is the process different for any specific species (such as sharks/rays)?
The process is distinct for certain products listed under CITES, for Patagonian Toothfish etc. as explained in f) i) above. Also species of particular interest to a federal agency partner can be tagged in ITDS requesting that CBP notify that partner when the product arrives in port.

i) What sorts of shipments do you specifically seek for inspection? (i.e. shrimp, sharks, etc.)
i) NOAA: Russian Crab, Mexican Abalone and Sea Cucumber and Patagonian Toothfish have all been of special interest at different points in time in recent years. ([redacted] 2017)
ii) CA F&W: Sharkfin and marine mammals have been of particular focus, especially at wholesalers and restaurants, in recent years. ([redacted] 2017) ([redacted] 2017)

j) What is the process when the species are CITES-listed, are NDFs considered or evaluated in this process?
i) ESA implements CITES in U.S. law. FWS is the responsible agency for CITES inspection, permitting, monitoring and enforcement.
ii) There are flags in the ACE system for all CITES-listed species that require the detention of the product by CBP until released by FWS. The FWS PGA Message Set of the ACE system includes a Taxonomic Serial Number that defines the import product to the specific species level, enabling the system to work in this manner even with generic HTS codes for many CITES species groups (such as sharks). (U.S. Customs and Border Protection 2016)
iii) A FWS Import license required for all importers of CITES-listed species. In addition, FWS must make a Non-Detriment Finding (NDF) (that the action would not be detrimental to the survival of the species) before issuing an import permit or introduction from the sea certificate. These import permits certificates are required for the import of Appendix I CITES-listed species and introduction from the sea certificates for Appendix I and II-listed species. This is a separate process from the

NDF issued by the exporting country. The factors FWS is required to consider when making these NDFs can be found in 50 CFR 23.61. I do not know who within FWS makes the NDFs, if they consider the validity of export-country NDFs, and how they communicate with their enforcement agents at the ports. (U.S. Customs and Border Protection 2016)

iv) Once FWS has verified all necessary licenses and permits/certificates have been issued, they indicate this fact in ACE and the product is released by CBP. The FWS and CBP both can inspect the product before releasing it.

The above is based on pertinent FWS and CBP documents describing CITES regulations and import procedures, I would need to conduct an interview with CBP and FWS personnel to authoritatively answer this question.

k) Are there different processes for Protected Marine Resources?

i) MMPA, CITES, ESA can all apply depending on the species. NOAA and FWS share responsibilities for Protected Marine Resources under these authorities. All species listed under CITES are the responsibility of FWS. For the MMPA, NMFS has lead responsibility over whales, dolphins, porpoises, seals and sea lions that are not listed under CITES, FWS leads on all others. (U.S. Fish & Wildlife Service International Affairs n.d.) For the ESA, NMFS generally manages all non-CITES-listed marine species and FWS manages land and freshwater species. (National Marine Fisheries Service 2016)

ii) See previous section for a discussion on CITES requirements. For MMPA and ESA, import and export are both prohibited except under very specific scientific or "enhancement of species" reasons, and species included in these laws cannot be considered as being "in-transit" (i.e. transshipped). (U.S. Fish & Wildlife Service International Affairs n.d.) (U.S. Fish & Wildlife Service 2016)

iii) MMPA and ESA-listed marine species that are not also CITES-listed do not have automated flags for the product to be held by CBP in the ACE system. ([redacted] Next Question- MMPA and ESA Species 2017)

10) How is seafood that is being transshipped through the U.S. (versus for which U.S. is final destination) handled?

a) Who are the federal and state agencies that are involved in these transshipments?

All federal agencies involved in import are also involved in inspection and investigations relating to transshipments. State agencies will not have authority or jurisdiction in the case of transshipments, as the authority federal agencies rely upon for such inspections is totally Customs based, which is a power reserved by the federal government. ([redacted] 2017)

b) What are the authorities and jurisdictions associated with product that is in-transit?

i) Once a product has entered U.S. Customs Territory, the same authorities and jurisdictions apply as if it had been imported. It does not matter if the U.S. is meant to be its final destination. U.S. Customs Territory includes all waters within 24 nautical miles of shore (called the 'Contiguous Zone'). ([redacted] 2017)

ii) In addition, ESA, CITES and MMPA implementing legislation all explicitly applies to product that is in-transit. The Lacey Act's definition of importation is also broad enough to apply to any product that enters U.S. Customs Territory, no matter its final destination. ([redacted] 2017)

iii) The Antarctic Marine Living Resource Conservation Act also has provisions that apply to transshipment of Patagonian Toothfish.

c) Are transshipped products inspected?

Yes. For example, [redacted] executed a civil forfeiture case two years ago for shark fins that came from Central America, were transshipped through the U.S. with an intended destination of Hong Kong. I am not clear on whether transshipped goods are subject to similar data reporting requirements to imported goods, this would be an important question to ask CBP personnel. ([redacted] 2017)

11) What does the Joint Enforcement Agreement between NOAA and the State of CA authorize and facilitate? How do CA DFW and NOAA OLE/other federal agencies coordinate their efforts, are there opportunities for them to work together more effectively?

In the LA/LB region, CA F&W and NOAA OLE coordinate their efforts through their local relationships and awareness of each other's laws and regulations. Whenever either agency receives information pertinent to the other, they consistently will share the information and, if appropriate, conduct joint operations in response to that intelligence. ([redacted] 2017) [redacted] 2017) ([redacted] 2017)

a) Sharing of resources, authorities, joint operations?

The JEA between NOAA OLE and CA F&W deputizes CA F&W agents to enforce federal laws and regulations, and provides CA F&W funding and training to do so. This in turn also facilitates joint operations between the two organizations. (NOAA Fisheries 2017)

b) How well is the JEA executed? What are the JEA's strengths and limitations?

i) Strengths: The provisions of the JEA do result in an expanded number of inspections under the Magnuson-Stevens Act and CA F&G regulations in California coastal waters, including of the MPA network, by providing funding for additional patrols by CA F&W and enabling F&W agents to verify compliance with federal law at the

same time as state law. CA's JEA is almost exclusively executed through CA F&W's coastal patrols with a focus federally on the Magnuson-Stevens Act. ([redacted] 2017)

ii) Limitations: Law Enforcement agencies are (rightfully) very cautious in applying each other's authority or in allowing other agencies to apply their authority. While the JEA may in principal legally provide CA F&W the authority to conduct federal inspections at ports, it is not currently used in that way. In addition, the agreement does not include granting CA officers unaccompanied access to federal customs zones at the seaports and airports, which limits their involvement to only those cases where they are explicitly invited and escorted in these zones. To be exercised broadly at the port import level, much more extensive formal discussion and agreement would be required.

Even outside of the port, it has been very difficult for CA F&W to participate in joint operations with federal partners. This is due to the sensitivity surrounding law enforcement authorities, while NOAA is comfortable with CA F&W operating under their authority for Magnuson-Stevens Act enforcement, this does not then provide the high degree of clarity and comfort for other federal authorities and agencies ([redacted] 2017)

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

In general, my interviewees were reticent to answer this question in detail, which is not unexpected as in some instances admitting that you do not have a certain tool is exposing a weakness to the public and those who might want to exploit that weakness. In general, however, inspectors do receive training, have job aids at their disposal and, as described above, the ITDS system provides some automated reporting for federal agencies. In addition, NOAA S&T developed an automated workspace for use by the National Seafood Inspection Laboratory Trade Monitoring team to pull information from the ITDS system in a useful way and to flag inconsistent or suspicious entries.

There was a consistent theme across all interviews no matter the agency in wishing for additional agents to conduct inspections and investigations. ([redacted] 2017) ([redacted] 2017)

<u>NOAA Traceability Rule Implementation Questions:</u>

13) How do you anticipate the NOAA traceability rule affecting the current seafood inspection process?

Overall, if executed as intended, the rule's primary impact on the existing seafood inspection process will be to provide more targeted intelligence for inspection officers on-the-ground,

increasing the number of intelligence-driven import inspections and in turn the number of cases.

None of the interviewees, others than those at NOAA HQ, had any more information about the SIMP and its likely impacts than what is publicly available. They generally seemed to believe that it would help them by providing them more information, but they had no additional details available beyond that general assertion. ([redacted] 2017) [redacted] 2017)

During an email exchange with NMFS International Affairs staff (an HQ-level office), they stated; "Any suspected violations (fraud, misreporting, inadequate recordkeeping, etc.) will be referred to the NMFS Office of Law Enforcement. NMFS OLE works with CBP and other agencies via the Commercial Targeting and Analysis Center to analyze information on inbound shipments. Such interagency collaboration will allow NMFS to access information under the FDA prior notice requirement for all food imports." ([redacted] 2017) I asked several follow-on questions to this statement that to date have not been answered.

The initial "impact" of the seafood rule will be seen at NMFS S&T and HQ levels as they work to develop systems and procedures that meaningfully translate the newly-received data into actionable intelligence and risk assessments. ([redacted], Seafood Import Monitoring Program and ITDS 2017) See below for details.

a) Will it impact the rate and quality of inspections?

The rule should increase both the rate and quality of inspections by providing inspectors the information they need to identify the highest-risk shipments and target their limited resources accordingly.

b) What are the first 3 steps you anticipate having to take to implement the rule?

At the field level, the first step will be training the inspectors on the new law and its associated implementing procedures (for example, how agents will be able to access and receive the information). ([redacted] 2017)

From CA F&W's perspective, the first step depends upon NOAA's intentions surrounding rule implementation. If NOAA OLE would like State partner agencies' support in enforcing the new regulations or handling any potential increase in case load, then the JEAs will need to be evaluated to ensure that all necessary authority is being granted, training will need to be given to the partner agency enforcement officers on federal import regulations, additional funding will need to be provided to the partners to support the increased enforcement activity, and additional agreements including CBP will be necessary to grant CA officers

necessary access to customs zones. In addition, it remains unclear as to how much access State partner agencies will have to SIMP data. ([redacted] 2017)

From NMFS S&T's perspective, first the SIMP must come on-line and be on-line continuously for nearly a year; this will allow software designers to work out any bugs within the ACE system and be able to test the system to identify any unanticipated data loopholes or challenges. After that "break-in" period, NFMS S&T will develop custom software to facilitate access to and meaningful analysis of the data. ([redacted], Seafood Import Monitoring Program and ITDS 2017) This software development is a part of their normal work and will not require funding beyond their current levels. ([redacted], Next Question- MMPA and ESA Species 2017)

I have not yet engaged in interviews (beyond a couple of email exchanges) with NMFS IA or NOAA OLE staff that answered this question directly. However I've been told by another interviewee that both of these offices received funding to hire additional analysts focused solely on evaluating SIMP data and providing risk-based analysis results to drive port-level inspections and investigations. ([redacted], Seafood Import Monitoring Program and ITDS 2017) If that proves to be the case, putting these personnel in place and training them appropriately will no doubt be a necessary first step.

c) Do you have the funding and support to execute these steps?

At the port level, little additional funding would be necessary to receive training or conduct targeted investigations when intelligence drives them. Depending on the number of high-risk shipments identified from the additional data, additional resources in the form of SAs may be necessary, especially for the NOAA LA/LB area; there is currently only a single Special Agent responsible for the area. NOAA is currently authorized to hire additional SAs for the LA/LB Area, I do not have details on numbers of hiring status. ([redacted] 2017)

At the NOAA Headquarters level; additional funding has been earmarked for NMFS IA and NOAA OLE analyst staff, I have not yet had the direct question answered of whether any additional funding is necessary generally at this level. ([redacted], Seafood Import Monitoring Program and ITDS 2017)

d) Do you anticipate any roadblocks to executing these steps?

None were explicitly identified, beyond the usual uncertainty associated with future year budgeting.

14) When the traceability rule goes into effect, what are the most important improvements in the current seafood inspection system you see being made?

Improved ease of access to catch documentation was seen as the greatest improvement that would be made in the system. (Importers will be required to retain such documentation locally for two years after import.) In addition, there was the hope that the SIMP would make proactive identification of high-risk shipments more common, increasing the likelihood of inspection of product before it enters the U.S. market. There was little understanding of how exactly the rule would provide this proactive identification, however. ([redacted] 2017)

a) *What gaps allowing seafood fraud and IUU fish into the U.S. do you think will remain? What suggestions do you have to address these gaps?*

Both federal and state-level enforcement officials currently contend with a common pathway for smuggling IUU seafood into the United States through the mislabeling of that product. For example, legal and illegal sharkfins are often dried and then comingled, making identification extremely difficult. While the SIMP program will generally add transparency to the details of seafood product being imported into the U.S., which may allow for some identification of mislabeled seafood (for example a claim that an Atlantic species was caught in the Pacific could trigger an inspection that identifies mislabeling), this will likely continue to be a challenge that is difficult to address other than through focused intelligence-gathering efforts. ([redacted] 2017) ([redacted] 2017) None of the enforcement officials had suggestions to address this gap beyond status quo. This isn't surprising, I don't have one either, it's an extremely difficult challenge.

b) *Are enforcement agents able to easily access port-of-entry information further down the supply chain (i.e. at restaurants/retailers)? Could the IUU rule help with this somehow?*

It is currently extremely difficult for enforcement agents to access port-of-entry information further down the supply chain. However, I can't currently see any way that the SIMP will improve that situation. The SIMP will require that the importer has documentation of the seafood product from where it was harvested to where it was imported, and that the importer retain that documentation for three years. This information could be helpful to enforcement agents looking at product at the retail level, but the SIMP does not contain any requirements for that information to continue to be passed forward through the supply chain after import, negating this potential benefit.

Gaps/Assessment Questions:

15) *What are examples of enforcement actions that have been taken with regard to illicit seafood imported (or attempted to be imported) through the Ports of LA/LB?*

Given the volume of seafood imported through the Ports of LA/LB, there are surprisingly few publicly-released examples of successful enforcement actions. One reason for this may

be that many seafood import-related cases are prosecuted as Civil cases and settled outside of court. ([redacted] 2017)

a) Patagonian Toothfish:
   i) Directly after ITDS came on-line for NOAA in 2016, multiple instances of importers submitting required paperwork after deadlines or not at all were identified. ITDS enabled all Patagonian Toothfish product to be flagged for seizure if appropriate clearance from NOAA (via the National Seafood Inspection Laboratory) has not been granted in advance. In these cases the National Seafood Inspection Lab contacted NOAA OLE to appropriately pursue the case. ([redacted] 2017)
   ii) In several of these cases it was clear that there was more to the error than simply missing deadlines with a new electronic system. In some cases the volume reported in the paperwork as compared to volumes identified in CCAMLR's electronic catch documentation system did not match. Final results from these cases were not public, but [redacted] did mention that a single container of Toothfish is valued at over $1 Million USD and that the containers are seized when processing an enforcement case, so automatically the financial penalty for non-compliance is steep. ([redacted] 2017)
   iii) [redacted] notes that the combination of stringent conservation and management measures at CCAMLR and its associated electronic catch documentation schemes requiring advance notice and evaluation of the legality of fish has likely had a significant impact in the amount of IUU Patagonian Toothfish that is caught in the Southern Ocean. In the 90s there was a report that estimated that 75% of all Patagonian Toothfish in the U.S. was caught from IUU sources, and the general consensus is that that this number is much lower current day. ([redacted] 2017)

b) The Hump (Santa Monica, CA) whale meat case –
   i) This case began in 2010 when a sting operation at this restaurant identified that Sei whale meat, imported illegally from Tokyo, was being served at this restaurant. The likely port of entry for this product was LA/LB. Note however that this case was identified at the restaurant, not the import, level. (Santa Monica Daily Press 2014)

c) Blessings, Inc. Sea Cucumber Smuggling Case
   i) This is a recent case focused on the Tijuana border crossing, not the ports of LA/LB. According to multiple enforcement agents smuggling of Sea Cucumber and Sea Turtle Eggs from Mexico at this border crossing is common, with several recent cases going to court. ([redacted] 2017) ([redacted] 2017)
   ii) The sea cucumber was smuggled across the border between 2010 and 2012 after being purchased for roughly $13 Million US; the product was ultimately sold for $17.5 Million U.S., demonstrating the strong financial incentive for this illegal trade. (Associated Press 2017)

16) *Within the current system, how effective are state and federal agencies in detecting IUU and seafood fraud?*

Quite a bit of more detailed investigation to further understand how state and federal agencies allocate their limited resources would be required before I could fairly rate their "effectiveness" in detecting seafood fraud. However, I can say with confidence that, with the expectation of a few highly-regulated fisheries such as CCAMLR Patagonian Toothfish, it is currently very easy to smuggle IUU seafood product in through the Ports of LA/LB. None of the interviewees stated this opinion outright, but given the volume of product that is imported through these ports and the ease of mislabeling and comingling product, it was implied.

a) *What are the gaps and challenges? What would need to improve or change for this system to work better?*

The fundamental challenge for detecting IUU fish imported into the U.S. is that a huge volume of seafood product is imported each year, and the information to determine whether that product was legally caught is extremely difficult to acquire. When the SIMP comes on-line, some of this information will be easier to acquire, but a new challenge of having too much information to meaningfully review will take its place. A few changes that could help to meet these challenges were suggested during interviews, including:

i) RFMO electronic catch documentation schemes
   (1) It is exceptionally hard to prove where an individual fish was caught, especially when working in the RFMO/high seas context. However a high percentage of illegal product can be identified just using documentation, because illegal product will often be reported using fraudulent documents. Once suspicious documents are identified, this can allow investigators to then conduct more targeted in-depth research to answer the difficult question of where the product was caught and if it was a legal act. ([redacted] 2017)

ii) Advance shipment notification requirements (2 weeks) for highest-risk species
   (1) This degree of advance notification is required for Patagonian Toothfish and has proven successful in greatly decreasing the likely volume of IUU product imported into the U.S. As it currently stands, even dolphin-safe tuna imports aren't required to give advance notice (rather must report the product in a bi-weekly report). As a result, if IUU-sourced tuna were imported into the U.S., it would be long gone down the supply chain before an investigation could be completed, taking away the highly effective deterrence tool of seizing the product. ([redacted] 2017)

iii) ACE or NMFS S&T Software complete automatic first-round verification of the legality of catch using data reported in PGA Message Sets, also evaluates data for consistency or other suspicious indicators.
   (1) In general, the more data reported in PGA Message Sets that is required to use standard text the better. When free-text is allowed, it's much harder to identify trends or analyze the data meaningfully. (For example, if free-text is allowed to report the body of water where the product was captured, a mis-spelling of "Indonesia" or WCPFC" could prevent the identification of an inconsistent data report, and it is hard to design a system that can identify that different names and latitudes and longitudes all functionally are a part of a same ocean regulatory area..)
   (2) While the final details of the PGA Message Set have not yet been published, based on my conversation with [redacted] I anticipate the following areas for improvement:
      (a) Ocean Area where product is caught will have one field that is standardized but only will identify if the product was caught in a country's territorial waters or in international waters, the detail of where the product was caught in international waters will likely be a free text field. It would be better for it to be standardized at least to identify which RFMO applies to the product.
      (b) The "authorization" field where a vessel's fishing license would be entered will likely be an optional field. This is essential for determining legality of catch and should not be optional, especially as the importer is already required to have this information on-hand per the Final Rule.
iv) As much information as possible is reported in ACE vice kept locally by the importer.
   (1) The SIMP Final Rule requires that chain of custody documents, and documents validating where the product was harvested and by whom, be kept locally for two years by the importer, and allows them to be in a language other than English as long as the importer can translate them. While a definite improvement from status quo, this leaves room for improvement, specifically:
      (a) There is a Document Imaging System (DIS) integrated into the ACE system. Since importers likely will already have the majority of the documents digitally (I find it unlikely that they'll be receiving paper copies of vessel licenses in the mail), it would likely be viable for all parties to require that the documents be uploaded instead of kept locally.
      (b) Require the information contained in those documents be entered into PGA Message Set data fields. This will overcome the challenge an investigator would face in having to translate documents if the information is already translated into the data field.
v) CBP-CA F&W MOU

(1) Currently CBP does not interact with CA F&W on seafood issues. This is not because collaboration is impossible, the two agencies already have a robust anti-Marijuana-smuggling MOU and collaborative procedures in place.
(2) It is possible that putting an MOU in place between CBP and CA F&W could increase monitoring of seafood imports and associated investigations, especially as related to shark fins. ([redacted] 2017) It is my personal belief that the CA shark fin law that makes it illegal to possess all shark fins, could be applied to any shark fins that leave the customs zone at the Port of LA/LB, even if the product is in transit to another state. This will need to be verified by a lawyer, and may require very specific policies be put in place to prevent CA officers from stepping on the reserved Federal right to regulate interstate commerce.

3. Recommendations and Next Steps:

Following from my findings above, I believe the greatest obstacles to limiting the import of IUU seafood product into the Ports of LA/LB that NRDC could substantively influence are quite consistent with NRDC's initial conclusions. Specifically:

1. Lack of meaningful, risk-based analysis of existing data submitted to CBP via the ACE system, and of SIMP data once implemented.
2. Lack of direct coordination between CBP and CA F&W on the topic of seafood imports, resulting in federal agencies not maximizing the potential impact of California's Shark Fin Ban, amongst other opportunities it could provide.
3. Lack of easy access to evidence that seafood was caught legally.
4. Lack of personnel to conduct seafood import investigations and inspections.

The next steps I recommend NRDC take are listed below. With the exception of 1) a), these actions will be useful in the development of an NRDC IUU initiative no matter if SIMP implementation is delayed by the ongoing legal proceedings.

<u>Time-Sensitive:</u>

I recommend completing time-sensitive steps as soon as possible as the window of opportunity to influence implementation of these initiatives could close by October, 2017.

1) Seize opportunities to maximize the utility and transparency of information submitted in accordance with SIMP requirements:
   a) Conduct an in-depth review of the final PGA Message Set Implementation Guide when it is published (likely in July, 2017) to identify weaknesses and potential loopholes, with the intent that NRDC could advocate for appropriate changes.
      i) [redacted] is the best NOAA POC to determine the status of this Guide. It will be published here: https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines with expounding details published here:

http://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/FinalRuleTraceability.aspx

b) Learn more about NMFS' International Affairs' intentions with the Trusted Trader Program. Seek avenues to influence NMFS IA to maximize the types and transparency of data submitted as a part of this program. A starting point would be correcting the weaknesses and loopholes identified in 1) a).

c) Exulans, Inc. staff or their colleagues will be able to complete a targeted review of PGA Message Set Implementation Guide materials and the results of NRDC interviews/information-gathering efforts on the Trusted Trader Program during this time period under a new contract, if so desired.

2) Identify what is currently preventing NMFS OLE from hiring the additional Special Agents they have been authorized in the West Coast region and if that could pose an advocacy opportunity for NRDC.

Not Time-Sensitive:

The opportunities associated with these steps will remain open as long as they are pursued in the next year, therefore the priority assigned to these steps can be dictated by NRDC's internal priorities.

3) Conduct follow-on interviews to fill the remaining gaps in information identified above and further develop existing relationships. Specific recommended interviews to fill the greatest knowledge gaps are below. See interview notes shared separately that contain specific outstanding questions for each of these interviewees.
   a) CBP Field Office Personnel and further conversation with [redacted] listed above
   b) [redacted] U.S. Fish and Wildlife Office of Law Enforcement, Los Angeles Inspection Office
   c) [redacted] – National Marine Fisheries Service International Affairs
   d) [redacted] National Marine Fisheries Service Office of Law Enforcement
   e) National Marine Fisheries Service Tuna Tracking and Verification Program (TTVP) personnel
4) Conduct a legal review to identify if California's Shark Fin Ban can be used as I suggested in 16 a) v) ii) above. Are there other California or Washington state laws that could be used in a similar manner, if so?
5) Conduct interviews with other West Coast state enforcement agencies with an aim to identifying further opportunities to maximize the impact of the U.S.'s power as an importing country to decrease IUU activity. Suggested interviewees include:
   a) [redacted] Washington Department of Fish & Game
   b) [redacted] CA F&W officer who held [redacted] position previously, [redacted] would be able to give you his contact information

6) Conduct further research to identify existing obstacles to the U.S. better using its existing legal authorities to enforce protected marine resource-related laws on product that is transshipped through the U.S.
   a) I would recommend starting this research with interviews of CBP Field Office staff to better understand how data on transshipped product is collected and reviewed by CBP.
   b) [redacted] may also have some insight into how transshipment cases he has pursued were first identified.

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