



## Ports 2.0 – West Coast Ports Project Combatting IUU Seafood Initiative Investigatory Document

Building on the 2017 report for Natural Resources Defense Council’s (NRDC) IUU West Coast Ports Initiative, the Ports 2.0 project sought to deepen the understanding of the challenges associated with addressing IUU seafood products entering or transiting through U.S. ports, with a focus on the Ports of Los Angeles, Long Beach, and Sea-Tac. In addition to source document review, Exulans conducted 21 (12 in-person and nine phone) interviews to inform the key findings and recommendations. The interviewees were selected to gather the perspectives of NOAA Fisheries, partner law enforcement agencies, and industry representatives on efforts to detect and deter IUU fish products from entering U.S. commerce with a specific focus on NOAA Fisheries’ Seafood Import Monitoring Program (SIMP).

### Key findings:

- SIMP is experiencing normal growing pains associated with a new regulatory scheme, including confusion from stakeholders and difficult prioritization decisions within NOAA Fisheries.
- NOAA Fisheries and OLE leadership and staff continue to note inadequate human resources as a key detriment to SIMP implementation. The organizational will and funding are available, but the Department of Commerce/NOAA hiring process remains, at best, cumbersome and slow.
- NOAA Fisheries and OLE staffs possess the technical skill and access to “mine” trade data to focus their limited resources on abnormal or suspicious activities.
- While previous years included import inspection provisions, NOAA OLE West Coast Division prioritized SIMP in Joint Enforcement Agreements with CDFW, OSP, and WDFW.
- NOAA Fisheries desires stakeholder (industry and NGO) statements of support to inform intra- and interagency deliberations on how to prioritize regulatory, policy, and process improvements related to monitoring seafood imports.

### Recommendations:

- Encourage NOAA Fisheries to reconsider the allowable responses to “if available” fields within ACE. Specifically, requiring importers to provide an affirmative statement of the unavailability of information.
- Prioritize generating statements of support on NOAA Fisheries’ IUU efforts from across the spectrum of stakeholders (harvesters, importers, processors, public/end users, and NGOs). For maximum impact, any letter should address specific recommendations for program improvement.
- Collaborate with NOAA Fisheries Office of International Affairs and Seafood Inspection to develop a discreet list of program effectiveness metrics/questions to evaluate SIMP in 12-18 months.

### Background:

Of note since completion of the initial report, the SIMP regulatory scheme passed the compliance date of January 1, 2018, except for shrimp and abalone which were delayed until December 31, 2018. As a result, by the early spring, NOAA Fisheries started validation of compliance through audits of import records and dedicated efforts by analysts and sworn law enforcement officers. While policy and law enforcement personnel tend to avoid discussing ongoing operations or investigations, Exulans expects the interviewees' comments were informed by the activities.

### Key Findings:

- *SIMP is experiencing normal growing pains associated with a new regulatory scheme, including confusion from stakeholders and difficult prioritization decisions within NOAA Fisheries.*

Despite significant stakeholder and governmental outreach prior to the compliance date of SIMP, IASI's initial audits led to significant confusion and concerns from importers (██████████ 2018). As a result, NOAA decided to pause starting new audits (██████████ 2018). IASI released a ["Guide to audit requirements for the seafood import monitoring program"](#) in early May 2018. It is unclear if IASI auditors have resumed the random and targeted requests for import records under SIMP.

Similar to the Exulans' 2017 report, the law enforcement personnel interviewed believed the records collected under SIMP to add value to their efforts. However, they also highlighted that it is too soon to evaluate the value of the information to inform investigations and operations. Of note, State law enforcement personnel stated a desire for additional clarity on the mechanics of requesting information from NOAA OLE's analytical team (██████████ 2018). However, the States seemed surprised when Exulans explained the analytical team consisted of four personnel to support all of OLE's analytical needs, not just SIMP. While it is a small cadre of personnel leveraging the import data to seek out inconsistencies, the coordination between IASI and OLE in Silver Spring is strong at the staff level (██████████ 2018). The offices are coordinating to reduce duplication of effort and sharing best-practices for evaluating import data. Of note, the NOAA Office of General Counsel also published a [summary settlement schedule](#) for non-compliance with the SIMP regulations (██████████ 2018).

As with any new program, NOAA Fisheries has identified areas needing clarification or improvement, some of which will require work within CBP's ACE system (██████████ 2018). One specific item, as highlighted in the 2017 report, surrounds the "when available" fields of unique vessel identifier, catch documentation identification, and authorization to fish. Exulans's recommendation to change those fields to require importers to affirmatively state the presence of the information at the time of the entry filing received mixed reactions from NOAA Fisheries staff (██████████ 2018). The key point against the recommendation was an inferred presumption in the current set up that if the importer of record received the information it would be provided. This acknowledges that the information must come from the foreign exporter and the importer of record unlikely to be in a position to obtain the information (██████████ 2018). Further NOAA S&T staff noted:

*“the diversity of the various global fisheries and authorizing authorities are very complex as a result of the country, region, fishery, species, characteristics of species and etc. The difficulty is that a reference table which could establish the validity of any such data provided to Customs would be very complex and difficult to establish. Absent the table, and with no validation of the data at the time of the Entry filing, the value of it would default to follow up work at that time of audit or investigation.” (██████████ 2018)*

While the context from NOAA Fisheries is useful and raises a valid concern, Exulans’ contends the value identifying legitimate usage of the “when available” is worth the time and effort.

It is important to note that this type of request to change the reporting requirement occurs within the larger context of NOAA Fisheries as one of many Federal agencies utilizing ACE to meet their statutory mandates and regulatory requirements to monitor imports. As such, any requests for changes to ACE require approval from an interagency Change Control Board (CCB)<sup>1</sup>. The CCB evaluates an Agency’s request against other applications and prioritizes all the changes based on their impact to facilitate commerce or address a specific programmatic need. Also, a submission to the CCB must identify funds to complete the work. Pursuant to the tuna importation requirements, NOAA Fisheries has completed several requests for modifications to ACE through the CCB (██████████ 2018). To meet expectation, a fully vetted and ready-to-go package can often take between 18-24 months to go from submission to actual implementation within ACE. The length of time to implement a change and the cost in staff time and appropriated money make it an imperative for IASI to carefully consider which changes to pursue (██████████ 2018). This narrative extends to recommendations on working through the World Customs Organization, U.S. International Trade Commission, and U.S. Census Bureau to refine the Harmonized Tariff Schedule to capture greater detail on trade of shark species (██████████ 2018).

- *NOAA Fisheries and OLE leadership and staff continue to note inadequate human resources as a key detriment to SIMP implementation. The organizational will and funding are available, but the Department of Commerce/NOAA hiring process remains, at best, cumbersome and slow.*

This point was a consistent message with Headquarters and Regional NOAA Fisheries and OLE staff. Without prompting nearly every interviewee mentioned that vacancies and gaps in the staffing models are impacting the NOAA’s ability to achieve program objectives. When questioned about the source of the problem, office leaders stated the issue resided not with typical hold-ups within the Federal government of creating positions or budget allocations, but that the problems fall mostly on NOAA’s Workforce Management Office’s inability to process applications in a timely manner (██████████ 2018). Even after a brief conversation it is apparent that Workforce Management’s issues are a well-known concern within NOAA, but solutions remain elusive. Exulans is unclear whether external pressure to fill vacant positions will assist or exacerbate the situation by taking staff away from resolving the problems.

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<sup>1</sup> Background information on DHS and CCBs is available [here](#).

- *NOAA Fisheries and OLE staffs possess the technical skill and access to “mine” trade data to focus their limited resources on abnormal or suspicious activities.*

NOAA has worked with DHS/CBP to ensure the appropriate members within IASI and OLE have full access to the International Trade Data System (ITDS) and ACE systems. In addition, OLE secured authorization for a member of their analytical team to work side-by-side within CBP’s Headquarters (██████████ 2018). At the time that Exulans met with IASI and OLE staffs to discuss this topic, the individual stationed at CBP was a former Customs analyst with over two decades of experience working with import/export information. In short, OLE would have a difficult time finding a more qualified individual to work within the system.

Similar to other law enforcement and government databases, the ability to utilize ITDS/ACE to answer questions is as much art as technical skill. It requires an analyst, in conjunction with the law enforcement case officer, to narrowly define a question and determine which pieces of information actually inform an investigation. While IASI and OLE would not discuss the specific terms, Exulans confirmed broadly that analysts are:

- Evaluating the likelihood of imports by FAO ‘3-alpha’ code (i.e. does the species make sense to have come from that region?)
  - Looking for discrepancies or abnormalities in particular HTS codes (e.g. FAO 3-alpha region, price, gear type)
  - Comparing the permit and vessel data against published permit and vessel lists (i.e. Regional Fisheries Management Organization)
  - Developing automated search parameters to focus on ports or importers of concern.
- *While JEAs from previous years include import inspection provisions, NOAA OLE West Coast Division prioritized SIMP implementation in Joint Enforcement Agreements (JEA) with CDFW, OSP, and WDFW.*

For clarity, a Cooperative Enforcement Agreement (CEA) provides the framework to deputize a State’s law enforcement personnel and the annually renewed JEA between OLE and the State sets the prioritization for enforcing specific federal laws and regulations to achieve agreed upon priorities. The CEA/JEA model remains a key force-multiplier for NOAA OLE to support federal objectives (██████████ 2018). While public interest exists surrounding the terms of the JEA, since they are a contract between NOAA OLE and the State, as a general statement, they are not a publicly releasable document. However, they are designed to closely align with [NOAA OLE’s Regional priorities](#) (██████████ 2018). For FY18, Exulans was able to confirm the west coast JEAs specifically include port inspections to support SIMP (██████████ 2018).

NOAA OLE has extensive experience working on imports, including investigating potential Lacey Act violations due to fraud, mislabeling, and other IUU fishing activities (██████████ 2018). In addition, WDFW and CDFW have dedicated significant resources to ensure products entering comply with their state’s regulations (██████████ 2018). As a result, field officers have developed close relationships with their local CBP counterparts (██████████ 2018). The trust developed enables law enforcement personnel from OLE/CDFW/WDFW to efficiently process holds on specific imports for further review (██████████ 2018). That said, it remains to

be seen how OLE will partner with the State agencies during joint operations to leverage SIMP's record retention requirements to meet the program's objectives (██████████ 2018).

Of note, the Executive Branch/DOC/NOAA [FY19 budget](#) zeroed out the Cooperative Enforcement Agreement (CEA) program, thus eliminating funds to support the JEA program. While Congress appears set to provide funding, Exulans recommends NRDC consider tasking their congressional liaison staff to track and, if necessary, conduct a concerted press on DOC, NOAA and OMB personnel to educate and advocate on the return on investment achieved through the CEA/JEA program. Without the \$17.8M investment, it is highly unlikely that State agencies will support their officers utilizing the authority granted under the CEA to conduct federal enforcement efforts.

- *NOAA Fisheries desires stakeholder (industry and NGO) statements of support to inform intra- and interagency deliberations on how to prioritize regulatory, policy, and process improvements.*

During the June 4<sup>th</sup> meeting between NOAA IASI and NRDC, it seemed that ██████████ provided a guarded response to the concept of a letter from NRDC. In subsequent informal discussions with the ██████████ and other staff members within IASI, they welcomed a document clearly outlining specific concerns and/or recommendations (██████████ 2018). They indicated that such a letter, with the perspective from other stakeholder groups, could assist in developing the justification to allocate resources and pursue a shift in policy or procedures (██████████ 2018). There is limited opportunity and availability to make changes to CBP's ACE system, so any change request benefits significantly from non-governmental support.



Questions to NOAA Fisheries on SIMP:

1. As part of the analysis for the SIMP [final rule](#), NOAA estimated 2,000 new applicants for an International Fisheries Trade Permits (IFTP). How many were issued?
2. For each SIMP regulated species, what is the total number of entries since implementation?
  - a. How does that compare to the average number of entries, by species, from 2015-17?
3. NOAA's final rule analysis stated that "authorized fisheries stand to benefit from import monitoring programs that aim to identify and exclude products of IUU fishing and seafood fraud, both through enhanced market share and potentially higher prices."
  - a. Has a change in market price occurred?
  - b. *Do industry, importers, or trade groups attribute the shift due to the exclusion of IUU fishing and seafood fraud?*
4. Within the SIMP framework, what percentage of entries were subjected to an automated hold due to lack of required information (incomplete info on NOAA Message Set)?
5. How many, by number or percentage, entries were subjected to verification (i.e. audit) by NOAA Fisheries?
  - a. What is the breakdown by species?
  - b. What is the breakdown by export country?
  - c. How many led to NOAA Fisheries to request CPB place a hold on a shipment?
  - d. How often did those audits result in coordination with or a referral to OLE for further investigation?
6. What percentage of entries were selected for additional screening due to the risk criteria created between NOAA Fisheries and CBP, as described in the verification of entries section of the final rule?
  - a. What is the breakdown by species?
  - b. What is the breakdown by export country?
  - c. How often did those audits result in coordination with or a referral to OLE for further investigation?
7. What percentage of entries contained blanks in fields for vessel identification, catch documentation, or authorization to fish (i.e. utilized the "if available" exception)?
  - a. How many of those entries were subjected to an automated hold due to inconsistency other data?
  - b. How many entries were subjected to verification?

Data Details:

1. Total seafood imported into the U.S. through Seattle District: Data Portal Used: HS Port-level Data Report Portal. Dates: 2008- 2018 through June.

Vessel data:

Measures	Vessel SWT (Gen) (kg)					
Port	Aberdeen- Hoquiam, WA (Port)	Bellingham, WA (Port)	Blaine, WA (Port)	Port Angeles, WA (Port)	Seattle, WA (Port)	Tacoma, WA (Port)
2008	1,564,622	0	38,808	50,000	65,474,191	2,110,401
2009	5,548,664	0	0	0	63,918,292	3,059,700
2010	1,249,775	0	199,182	0	78,805,827	2,436,422
2011	3,113,325	0	17,120	0	62,225,177	2,169,723
2012	2,131,090	1,949,242	0	0	56,865,230	5,859,782
2013	1,997,294	0	0	0	56,182,342	13,098,889
2014	739,552	0	0	0	56,603,597	13,768,787
2015	0	0	0	0	44,028,692	16,531,271
2016	0	0	0	0	46,875,574	16,112,968
2017	18,099	0	0	0	46,985,336	17,404,548
2018 thru June	0	0	0	0	20,491,039	6,438,767

Airborne carriers:

Measures	Air SWT (Gen) (kg)					
Port	Blaine, WA (Port)	Port Angeles, WA (Port)	Seattle, WA (Port)	Seattle-Tacoma International Airport, WA (Port)	Spokane, WA (Port)	Tacoma, WA (Port)
2008	0	0	416	433,473	0	0
2009	0	0	0	858,481	0	0
2010	0	0	0	514,233	0	0
2011	0	0	0	452,192	0	0
2012	0	0	124	314,502	0	0
2013	0	0	0	427,062	927	0
2014	2,325	0	0	416,229	0	0
2015	0	0	0	1,048,538	0	0
2016	0	0	0	3,761,911	0	0
2017	0	0	0	4,837,293	0	0
2018 through June	0	0	0	2,729,463	0	0

2. How much seafood (including sharks/rays) is “transshipped” through SeaTac?
3. What is the breakdown of seafood imported into the Ports of SeaTac by species and country of export?
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 SeaTac?
5. Who are the top 10 import companies that receive seafood product through the Ports of SeaTac?
  - a. In 2016 (or 2017, if available) top 10 import companies by total weight of seafood imported
  - b. From 2010-Aug 20018, the Top 10 import companies by total weight of seafood imported were:



Interviews:

Federal:

1. [REDACTED] NOAA Fisheries Office of International Affairs and Seafood Inspection (IASI), Seattle WA
2. [REDACTED] Foreign Affairs Specialist, NOAA Fisheries IASI, Silver Spring MD
3. [REDACTED] Foreign Affairs Specialist, NOAA Fisheries IASI, Silver Spring MD
4. [REDACTED] Foreign Affairs Specialist, NOAA Fisheries IASI, Silver Spring MD
5. [REDACTED] Foreign Affairs Specialist, NOAA Fisheries IASI, Silver Spring MD
6. [REDACTED] NOAA Fisheries SIMP program outreach coordinator
7. [REDACTED] NOAA OLE, [REDACTED] Operations and International Programs, Silver Spring MD
8. [REDACTED], [REDACTED], NOAA OLE West Coast Region, Seattle WA
9. [REDACTED]: NOAA OLE Special Agent, Bellingham
10. [REDACTED] NOAA OLE Special Agent, San Diego Field Office
11. [REDACTED] NOAA OLE Analytical Team, Silver Spring MD
12. [REDACTED], [REDACTED], NOAA OLE West Coast Region, Lacey WA
13. [REDACTED] NOAA Fisheries Office of Science & Technology, Silver Spring MD
14. [REDACTED] NOAA Office of General Counsel, Southwest Enforcement Section, Long Beach CA
15. USFWS Office of Law Enforcement rep, Pacific NW region

State Officials:

1. [REDACTED] Washington Department of Fish and Wildlife, Olympia WA
2. [REDACTED] Washington Department of Fish and Wildlife, Port Townsend WA
3. [REDACTED] Washington Department of Fish and Wildlife, Mill Creek WA
4. [REDACTED] Detective, Washington Department of Fish and Wildlife, Olympia WA
5. [REDACTED] California Department of Fish and Wildlife, Law Enforcement Division, Southern District

Industry representatives:

1. [REDACTED]
2. [REDACTED] (unable to arrange an interview or gather responses to emails)
3. [REDACTED] (unable to schedule an opportunity to meet or talk)