



**To:** Subcommittee on Water, Oceans and Wildlife Republican Members  
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**Date:** April 4, 2022  
**Subject:** Oversight Hearing on “*Russian Seafood Ban Implementation and Seafood Traceability*”

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On Thursday, April 7, 2022, at 1:00 p.m. EDT, in person in Longworth room 1324 and via Cisco Webex, the Subcommittee on Water, Oceans and Wildlife will hold a hybrid oversight hearing entitled the “Russian Seafood Ban Implementation and Seafood Traceability.”

Republican members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

**Member offices are requested to notify Annick Miller no later than Wednesday, April 6, at 4:30 p.m. EDT**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at [HNRCDOcs@mail.house.gov](mailto:HNRCDOcs@mail.house.gov). Please contact David DeMarco ([David.DeMarco@mail.house.gov](mailto:David.DeMarco@mail.house.gov)) or Everett Winnick ([EverettWinnick@mail.house.gov](mailto:EverettWinnick@mail.house.gov)) should any technical difficulties arise.

## **I. KEY MESSAGES**

- In response to a Russian import ban on U.S. seafood, the Russian invasion of Ukraine and a Biden administration Executive Order banning the importation of certain Russian products, legislative efforts are underway to ensure that Russian seafood processed in other countries does not enter the U.S. market.
- While many aspects of international trade policy fall within the House Ways and Means Committee’s jurisdiction, there are efforts to expand a National Oceanic and Atmospheric Administration (NOAA) regulatory program, the net effect of which would not ban Russian seafood or foreign processed Russian seafood imports but instead, could affect all imported and domestic seafood, including aquaculture.
- The United States imports as much as 85 percent of its seafood.<sup>1</sup> Similar to the energy sector, the United States can enhance our nation’s domestic seafood production through

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<sup>1</sup> Nat’l Oceanic and Atmosphere. Ass’n, *Report on SIMP Implementation* (April 2021), <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>.

regulatory certainty and aquaculture. Some legislative efforts, such as H.R. 4690 (Huffman), would instead undermine domestic seafood production and could make consumers more dependent on foreign food sources.

## II. WITNESSES

### *Panel I – Federal*

- TBA

### *Panel II – Non-Federal*

- TBA, National Customs Brokers and Forwarders Association of America (*Republican witness*)
- Ms. Sally Yozell, Senior Fellow and Director of Environmental Security, Stimson Center, Washington, DC
- Dr. Tabitha Grace Mallory, Founder, and CEO, The China Ocean Institute, Seattle, WA
- Mr. Austin Brush, Senior Analyst, the Center for Advanced Defense Studies, Washington, DC

## III. BACKGROUND

### *Executive Order Banning Importation of Russian Seafood*

On March 11, 2022, President Joe Biden signed Executive Order (EO) 14068, which bans the importation of certain products of Russian Federation origin, including fish, seafood, and preparations thereof.<sup>2</sup> Shortly thereafter, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued instructions on how to enforce the new EO. These instructions stated that the imports of banned items which have pre-existing written contracts or written agreements have until March 25, 2022, to arrive in the United States (U.S.).<sup>3</sup> OFAC later extended this authorization for fish and seafood through June 23, 2022.<sup>4</sup> In addition, OFAC issued guidance on certain terms used in the EO. Specifically, it defined the term “Russian Federation origin” to mean “goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product.”<sup>5</sup> It also listed specific items under the Harmonized Tariff Schedule of the United States which are included in the terms “fish, seafood, and preparations thereof.” The covered tariff lines can be found [here](#).<sup>6</sup> The definition of “Russian Federation origin” established by the EO and by OFAC’s implementation materials

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<sup>2</sup> [Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression \(March 11, 2022\)](https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/11/executive-order-on-prohibiting-certain-imports-exports-and-new-investment-with-respect-to-continued-russian-federation-aggression/), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/11/executive-order-on-prohibiting-certain-imports-exports-and-new-investment-with-respect-to-continued-russian-federation-aggression/>.

<sup>3</sup> Dept. of the Treasury, *Authorizing Transactions Related to Certain Imports Prohibited by Executive Order of March 11, 2022*, (March 11, 2022), [https://home.treasury.gov/system/files/126/russia\\_gl17.pdf](https://home.treasury.gov/system/files/126/russia_gl17.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> Dept. of the Treasury, *Russian Harmful Foreign Activities Sanctions* (March 11, 2022), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1027>.

<sup>6</sup> U.S. Department of the Treasury, *Russian Harmful Foreign Activities Sanctions Frequently Asked Questions*, <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1027>

makes clear that the EO does not apply to items that have “been incorporated or substantially transformed into a foreign-made product.” This definition is a main focus of today’s hearing.

In the seafood industry and many other industries with global supply chains, products may go through multiple countries before the final product reaches the U.S. Specific to this hearing’s topic, Russian-caught seafood, in some cases, is sent to other countries such as China, Indonesia, Thailand, and Vietnam for processing then is imported into the U.S. Longstanding federal customs law requires importers to determine a single country of origin based on where the product underwent its last substantial transformation.<sup>7</sup> This law applies to seafood exports and imports alike. This means that Russian-caught seafood processed or substantially transformed in other countries will not have “Russia” as its country of origin when imported into the U.S. For example, fish processed into fillets in Thailand is considered to be “substantially transformed” under CBP requirements and therefore Thailand would be the country of origin for those products. This CBP requirement also applies to all U.S.-caught seafood that is processed overseas and re-imported to the U.S.

There are various estimates on the values and levels of Russian seafood imports. According to an *Undercurrent News* analysis of trade data and industry estimates, over \$1.2 billion worth of seafood (predominantly crab) is directly imported from Russia on a yearly basis.<sup>8</sup> An additional \$342 million worth of Russian-caught seafood is estimated to be processed in China. According to industry estimates, 95 percent of headed and gutted (H&G) pollock, approximately 50 percent of H&G cod and haddock, and 60 percent of wild salmon processed in China are caught by Russian vessels.<sup>9</sup> In 2014, Russia imposed an embargo on U.S. seafood. In February of 2022, the Alaska congressional delegation introduced legislation to ban the importation of Russian seafood and seafood products, including including such seafood processed in other countries. The United States-Russian Federation Seafood Reciprocity Act of 2022, H.R. 6821, introduced by the late Congressman Don Young (R-AK), is pending consideration by the House Committee on Ways and Means.<sup>10</sup> Identical Senate legislation introduced by Sen. Dan Sullivan (R-AK), S. 3614, is pending consideration by the Senate Finance Committee.

### ***Federal Country-of-Origin Requirements***

The U.S. Department of Agriculture (USDA) and the Customs and Border Protection (CBP) regulate separate country-of-origin labeling requirements that affect most imports. USDA’s Country of Origin Labeling (COOL) is a labeling law that requires retailers, such as grocery stores, to notify their customers with information regarding the source of certain foods.<sup>11</sup> These requirements cover certain commodities, including unprocessed wild and farm-raised fish and

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<sup>7</sup> Customs and Border Patrol, *Marking of Country of Origin on U.S. Imports*, page 1, <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jul/ICPMarking-of-COO-onUS-Imports.pdf>.

<sup>8</sup> Undercurrent News, *US Ban on Russian-Origin Seafood from China Could Hit \$342M Worth of Imports* (March 15, 2022), <https://www.undercurrentnews.com/2022/03/15/us-ban-on-russian-origin-seafood-from-china-could-hit-220m-worth-of-imports/>.

<sup>9</sup> *Id.*

<sup>10</sup> H.R. 6821 (117<sup>th</sup> Congress) <https://www.congress.gov/bill/117th-congress/house-bill/6821?q=%7B%22search%22%3A%22russian+seafood%22%7D&s=2&r=1>

<sup>11</sup> The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the 2002 Supplemental Appropriations Act (2002 Appropriations), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities.

shellfish.<sup>12</sup> USDA's COOL requirements specifically exclude "processed food items" which are defined as items that have "undergone specific processing resulting in a change of character" or that have been "combined with at least one other covered commodity."<sup>13</sup> Examples of items excluded from COOL requirements include fish sticks, smoked salmon, canned tuna, and breaded shrimp.<sup>14</sup>

However, CBP country-of-origin requirements are in fact more pertinent to this situation. Under the CBP, the Tariff Act of 1930 (Public Law 71-361) requires all imported products, whether or not exempt from USDA's COOL requirements, to be marked with country-of-origin labeling.<sup>15</sup> As mentioned above, CBP considers the country of origin to be the last country where processing has resulted in a substantial transformation of the goods. A substantial transformation occurs when, "as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process."<sup>16</sup>

The aforementioned laws and policies are set by the Department of the Treasury, USDA, and CBP. The Committee on Natural Resources does not have jurisdiction over any of the issues described above but they will likely be discussed at the hearing.

### ***Seafood Import Monitoring Program***

The Committee on Natural Resources has jurisdiction over the National Oceanic and Atmospheric Administration's (NOAA) Seafood Import Monitoring Program (SIMP). NOAA established SIMP in 2016 as a risk-based traceability program aimed at preventing illegal, unreported, and unregulated (IUU) seafood and misrepresented seafood from entering the U.S. market. Currently, SIMP applies to thirteen category species that comprise about 1,100 individual species.<sup>17</sup> The category species are Abalone, Atlantic cod, Blue crab (Atlantic), Dolphinfin (Mahi Mahi), Grouper, King crab (red), Pacific cod, Red snapper (northern), Sea cucumber, Sharks, Shrimp, Swordfish, and Tuna (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). According to NOAA, SIMP imports make up roughly 45 percent by volume and 47 percent by value of all seafood products imported to the U.S.<sup>18</sup>

Seafood importers are required to obtain a NOAA Fisheries International Fisheries Trade Permit. At the time of entry, the importer is required to report to the CBP essential information pertaining to the initial harvest and the initial offload of the fish. This includes vessel name, vessel country (flag state), location of harvest, method of harvest (gear type), place of first offload, and the responsible entity receiving the fish, as well as other information.<sup>19</sup> In a letter to the

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<sup>12</sup> Regulations for fish and shellfish covered commodities [7 CFR Part 60](#).

<sup>13</sup> [7 CFR Part 60.119](#)

<sup>14</sup> *Id.*

<sup>15</sup> Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) requires that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked with its country-of-origin.

<sup>16</sup> [19 CFR Part 10, et al.](#)

<sup>17</sup> Nat'l Oceanic and Atmosphere. Admin., *Seafood Import Monitoring Program*, <https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program>.

<sup>18</sup> [Developing a Priority List of Species for Consideration under the Seafood Import Monitoring Program](#).

<sup>19</sup> Nat'l Oceanic and Atmosphere. Admin., *Report on the Implementation of the U.S. Seafood Import Monitoring Program*, page 5, <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>.

Committee on Natural Resources, the National Customs Brokers and Forwarders Association of America (NCBFAA), which represents the licensed customs brokers who file over 95 percent of all entries for merchandise entering the U.S., explained the process created by SIMP<sup>20</sup>:

A single fishing vessel may be out at sea for six to eight weeks at a time catching up to 350 tons of fish from 20 to 30 different locations. So, for example, when a typical shipment of canned seafood arrives in the U.S., it may consist of 20 containers holding 60,000 tins. The seafood in these products may easily have originated from 10 or 12 different vessels catching fish from over a hundred different locations. So, for this one typical customs entry, 15 additional data elements explode into thousands of data elements at entry, as all these variations are accounted for.

A witness from NCBFAA will testify on SIMP at this hearing.

Additionally, earlier this month NOAA released its Report to Congress on the *Development of a Priority List of Species for Consideration under the Seafood Import Monitoring Program*.<sup>21</sup> The report stated that NOAA is considering expanding several SIMP species to create larger species groups, such as expanding tunas to include additional tuna and tuna-like species. However, NOAA noted that any consideration of the potential expansion of species included in SIMP would require a formal rulemaking process.<sup>22</sup>

By law, formal rulemaking must include issuance of a proposed rule, development of supporting regulatory materials (such as a cost-benefit analysis), a public comment period, OMB and interagency review and approval, and a reasonable implementation period. Adoption of such a rule would also compel U.S. regulators to develop and impose comparable traceability requirements on domestic harvesters of all added species regulated under SIMP.

The requirement for comparable traceability within the U.S. is a World Trade Organization (WTO) rule. This is currently an issue with SIMP as it relates to shrimp and abalone. NOAA has previously stated that current data collection for aquaculture shrimp and abalone in the U.S. is not equivalent to the data required to be reported for imports through SIMP.<sup>23</sup> Since 2018, the agency has been working on a proposed rule establishing reporting requirements for domestic aquaculture shrimp and abalone species to meet import equivalency requirements.<sup>24</sup> To date, this rule has not been finalized, and is opposed by the National Aquaculture Association.<sup>25</sup>

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<sup>20</sup> Seafood supply chain letter to House Committee on Natural Resources (Oct. 8, 2021), available at [https://republicans-naturalresources.house.gov/UploadedFiles/Letter\\_to\\_Chair\\_Grijalva\\_and\\_Ranking\\_Member\\_Westerman\\_regarding\\_H.R.\\_3075.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/Letter_to_Chair_Grijalva_and_Ranking_Member_Westerman_regarding_H.R._3075.pdf).

<sup>21</sup> Dept. of Commerce, *Development of a Priority List of Species for Consideration under the Seafood Import Monitoring Program*, <https://media.fisheries.noaa.gov/2022-03/NOAA%20NMFS-Seafood%20Import%20Monitoring%20Program%20Priority%20List%20Report.pdf>.

<sup>22</sup> It should be noted that NOAA last year issued an assessment of SIMP's efficacy that concluded that "[a]s currently implemented, SIMP does not prevent or stop IUU fish and fish products from entering U.S. commerce." Report on the Implementation of the U.S. Seafood Import Monitoring Program, NOAA, at 6 (May 2021). <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>.

<sup>23</sup> 83 FR 17762 - Magnuson-Stevens Fishery Conservation and Management Act: Lifting the Stay on Inclusion of Shrimp and Abalone in the Seafood Traceability Program.

<sup>24</sup> 83 FR 51426 - Magnuson-Stevens Fishery Conservation and Management Act: Traceability Information Program for Seafood.

<sup>25</sup> NAA Comments on U.S. Farm-Raised Shrimp and Abalone Traceability Rule, (Nov. 26, 2018), [https://republicans-naturalresources.house.gov/UploadedFiles/NOAA-NMFS-2015-0122-0064\\_attachment\\_1.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/NOAA-NMFS-2015-0122-0064_attachment_1.pdf).

An expansion of SIMP would require NOAA to develop and establish registration, reporting, and recordkeeping requirements for all domestic seafood species that do not currently have equivalent data requirements.<sup>26</sup> This includes most domestic aquaculture, but also species that do not have Fisheries Management Plans under the Magnuson-Stevens Act (Public Law 94-265) if the species is also imported. Without it, discrepancies between the treatment of like-products may prompt U.S. trading partners to create new regulatory barriers to U.S. exports, file a case against the U.S. in the World Trade Organization, or do both.<sup>27</sup> Further, depending on the species, SIMP expansion will apply to any U.S.-caught fish shipped out of the U.S. for secondary processing and re-exportation to the U.S. Significant amounts of U.S.-harvested salmon, flatfish, crab, squid, and other products would be impacted by such an expansion.

The Committee's majority intends to use this hearing as an opportunity to advocate for expansion of SIMP to all seafood species, as proposed by the Illegal Fishing and Forced Labor Prevention Act, H.R. 3075 (Huffman, D-CA). Similar provisions were also included in the America COMPETES Act, H.R.4521 (Johnson, D-TX). However, because CBP considers the country-of-origin to be the last country where processing resulted in a substantial transformation, an expansion of SIMP alone will not prevent Russian-caught seafood processed in other countries from entering the U.S. market.

Overall, the United States imports as much as 85 percent of its seafood.<sup>28</sup> The federal government can enhance our nation's domestic seafood production through regulatory certainty and, in some cases, by promoting aquaculture. Unfortunately, the Committee's majority has instead opted for increased regulatory burdens for this and many other industries. For example, Rep. Huffman has introduced Sustaining America's Fisheries for the Future Act of 2021, H.R. 4690, a bill to reauthorize the Magnuson-Stevens Act, that could undermine the domestic seafood industry through expanded regulations, command-and-control dictates and other means.

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<sup>26</sup> Domestic seafood has to comply with MSA requirements. Unless, domestic seafood is exported for processing SIMP requirements do not currently apply. WTO rules require comparable traceability requirements within the United States for each species.

<sup>27</sup> World Trade Organization, *Stages in a Typical WTO Dispute Settlement Case*, [https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/c6s10p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s10p1_e.htm).

<sup>28</sup> <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>