The [Sustainability Incubator](http://www.sustainability-incubator.com/) is an advisory firm helping food companies to advance sustainability and solve human rights challenges[[1]](#footnote-1). This means positive steps to improve fisheries and facing tough matters like slavery and illegal fishing with a clear strategy. We offer tools and strategies to American food companies to lower their risks of importing seafood with ties to illegality in production, and for four years have looked into the loopholes and hotspots. American food companies use our service, the [Labor Safe Screen](http://www.laborsafescreen.com/), to source seafood worldwide with due diligence while building a human rights commitment into everyday procurement.

Together we work with food companies in exporting and fishing countries and listen to NGOs to learn about production, see supply chains better, and build a stronger social license to operate (engaging with vessel owners, processors, exporters, industry associations, importers, distributors, retailers, migrant rights organizations in producing countries, conservation and human rights NGOs in destination countries to do so).

The purpose of these comments is to share what we see and specify some of the ways American food companies seeking “Trusted Trader” status could report information to federal authorities to help end illegal fishing, recognizing it is one part of a shared responsibility across many parties—each needing to play their role too for any change to occur.

Suggestions are offered too for things that can be measured to help enact the changes NOAA wants to see to lower illegal fishing worldwide. We offer a partial list of the information needed to track progress.

We propose that tracking changes in ties to IUU fishing for seafood imports will be helpful to many. Not for ‘gotcha’ reasons, but to ensure the efforts made by American food companies are making a difference—proof the problem is decreasing and exposures are closing out—because this is the incentive to report accurately to overcome legality concerns. To start the ball rolling, we offer four predictors of loopholes through import regulations, which apply to any country. These are “metrics” which can be tracked over time to confirm solutions are working.

**A. How to see a loophole**

It must be said that companies trading fish without accurate origins information are doing nothing wrong wherever reporting is not required. The global trade in fish products has many complex supply chains making it difficult to identify the origin and route to market for many fish species1, even for companies wanting to. Transparent and traceable American seafood is hampered by:

* US customs categories are very wide and do not capture the true fishing origins.
* Some major hubs for at-risk species, like Singapore, Thailand, Fiji, Trinidad, Vanuatu, PNG, China and the Marshall Islands, combine seafood from multiple origins and international domestic fleets not flagged by the exporting country, making it difficult to verify catches. For example, the Marshall Islands longline fleet reported a zero catch in WCPFC’s 2014 tuna yearbook despite being the 7th largest exporter of yellowfin tuna to US markets the same year. The same Marshall Islands vessels, now reflagged to FSM, fish for the same tuna and land it in the same port alongside 8 other fishing countries, including Taiwan, China and Korea. Reflagging is steps ahead of traceability initiatives.
* Tuna, pollock, squid and other top products are made from multiple fishing inputs from developing countries not reported to any information system.
* Upon arrival to the U.S. only 1-2% of seafood imports are inspected.
* The main law in place to discourage mislabeling of imports is the Lacey Act (3371-3378). Despite a few high profile penalties, as currently implemented the law does not include any proactive mechanisms for detecting illegal fish products as they enter. It can only be used to sanction violators for fraud and mislabeling once they have been discovered.
* There is effectively no legal deterrent to importing consignments of mixed shipments from multiple origins and containing an unknown fraction of laundered seafood.
* Until recently (February 2016) it was not illegal to import seafood made with forced labor. The U.S. Tariff Act of 1930 gave Customs and Border Protection the authority to detain and seize shipments where forced labor is suspected and block imports. Two orders occurred in March 2016.
* Considering these factors, it is not surprising that illegal and unreported catches represented 20-32% by weight of wild-caught seafood imported to the U.S. in 2011[[2]](#footnote-2).

The easiest way to find a loophole is to look at the data gaps and limitations on traceability in the import environment today. Consistent coding across chains is a data gap. Fishery origins are not encoded in the HTS codes currently (rather, the last country of processing is encoded) and this makes product tracing and risk ID difficult for matters occurring earlier in seafood supply chains. Some retailers would like assurances of traceability back to catches. U.S. retailers and importers may purchase up to 100 species of fish from close to 200 fisheries worldwide.  Their seafood departments may lack the domain expertise, information and tools that would allow them to recognize risks of inputs from IUU fishing within their supply chains and to proactively work with them to reduce buying of illegal products. Quantitative information on the volumes of fish caught and entering a supply chain is needed to run mass balance checks. However, in the current environment it is probably the hardest to get. U.S. customs collects many product attributes for imports and could query every consignment arriving in U.S. ports, if landed volumes could be linked to catch certificates at export.

We suggest NOAA consider the big data gaps. The following four metrics are good predictors of which countries are sinks for illegally-fished content. Catch this information to find loopholes:

1. Extent to which customs codes for seafood imports capture fishing origins

Customs codes are among the largest IUU loopholes for an importing country. The ‘fit’ of codes to species and origins is a good measure of tightening and slipping in international seafood supply chains for untraceable products. Nobody is doing this and it is the major gap in oversight for controls on IUU fishing.

2. Pro-active mechanisms for detecting illegal fish products as they enter

The extent to which the standard paper trails for imports captures fishing origins (catch documents, landings, export supply chains, import paperwork for incoming consignments) is a measure of which countries have oversight for the documentation of transfers, and which require signatures or how they check validity for the authorization of transfers.  The EU catch certificate program would serve as a good control.

3. Inspection rates for seafood imports over past ten years, now, and projecting forward

The average rate of inspection for seafood imports is 5% worldwide. The rate of inspection for U.S. seafood imports is less than 2%.

4. Penalties: what are they?

The history of penalties (last 5 years) and what tends to be caught by the authorities, relative to the type of IUU fishing problems this country has (e.g. with regional infractions versus imports), is a good measure of the risk versus reward in the market for selling fish with illegal / untraceable content.

**B. What can US food companies do, to show their seafood imports were legally fished?**

Reality check: Without some form of legality verification for U.S. seafood imports, incidents of illegal fishing and slavery will continue to occur in the production of American seafood. Risks will be vague and without sufficient granularity to solve problems, such that all products and companies will continue to carry the same threat of exposure.

Now that U.S. policy-makers are asking for traceability to verify legal origins for some imported products, some of the big unknowns are, what information can companies provide to help? What type, how much, and how accurate are enough to qualify for Trusted Trader status?

The number of products affected is already large. The species on the initial list have origins in 40+ countries and include:

* Abalone; Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfish (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Shrimp; Sharks; Swordfish; and Albacore, Bigeye, Skipjack, and Yellowfin Tuna.

Relatedly, seafood on the Department of Labor’s “[List of Goods Produced by Forced and Child Labor](http://www.dol.gov/ilab/reports/child-labor/list-of-goods/)” includes:

* **Fish** = Cambodia, Ghana, Indonesia, Kenya, Peru, Philippines, Thailand, Uganda, Yemen;
* **Shrimp** = Bangladesh, Burma, Cambodia, Thailand; and
* **Shellfish (farmed)** = El Salvador & Nicaragua.

A comprehensive list of data requirements is probably not the right fit. While potentially manageable for single controlled experiments, such lists quickly become unmanageable, costly and burdensome for individual companies and impractical for the assessment of complex problems like illegal fishing and slavery too. Heavy data requirements can also overwhelm and obscure the positive and more tactical ways food companies can contribute to solutions.

Are there other programs to learn from? There are surprisingly few verification programs for U.S. commodity imports to check whether the inputs to production trace back to legal origins. Of those that do exist, only the conflict minerals program’s approach is comprehensive. [Intel](http://www.intel.com/content/www/us/en/corporate-responsibility/conflict-free-minerals.html) deserves credit for directly tackling the issue. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank 1502) targets the link between the global mineral trade and the conflict in the eastern Democratic Republic of the Congo (DRC). Similar to the California Supply Chains Transparency Act (CA SB 657), this is a disclosure statue that requires public U.S. companies with products containing tin, tantalum, tungsten, or gold that might originate from the DRC or surrounding countries to report on their supply chain due diligence measures. (See [Enough Project](http://www.enoughproject.org/reports/point-origin-status-report-impact-dodd-frank-1502-congo).) The [Clean Diamond Trade Act (2003)](http://www.state.gov/e/eb/diamonds/c19900.htm) authorizes the President to take steps to implement the Kimberly Process Certification Scheme, but it is limited to trade funding rebel groups. Structural gaps have led many [prominent actors to withdraw](http://www.brilliantearth.com/kimberley-process/) from the process. The [Better Cotton Initiative](http://bettercotton.org/about-bci/) [chain of custody system and traceability tool](http://bettercotton.org/wp-content/uploads/2014/01/Slides_BCI-Chain-of-Custody-and-Traceability-System.pdf) is noted as a stronger import verification program. This is a voluntary program with members from all levels of the supply chain and civil society. [GoodWeave](http://www.goodweave.org/about/child_labor_free_rugs) is an NGO that provides a completely voluntary, independent, third party verification of hand made carpet imports from South Asia. Companies that sell GoodWeave licensed products sign an agreement to map all levels of the supply chain, including contracting and subcontracting.

We propose that Trusted Traders are those U.S. companies which can show due diligence for sourcing with legality. Rather than a cumbersome reporting program, we would like to suggest companies show they are tracking the supply chains behind their products in an efficient and accurate way.

What exactly can US food companies report to NOAA, to show their seafood imports were sourced with diligence to confirm legality? The following options are consistent with [Interpol’s Project Scale](http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale), the EU’s [yellow card](http://europa.eu/rapid/press-release_IP-15-4806_en.htm) program for fishing countries, the [UN Guiding Principles on Business and Human Rights](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), [ILO guidance](http://mneguidelines.oecd.org/Brochure_OECD-Responsible-Mineral-Supply-Chains.pdf), and the [OECD due diligence framework](http://mneguidelines.oecd.org/Brochure_OECD-Responsible-Mineral-Supply-Chains.pdf) and mirror the categories of engagement in the [UK Modern Slavery Bill](http://www.gov.uk/government/collections/modern-slavery-bill) and [California Supply Chains Transparency Act](http://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf) and similar regulatory mandates.

**C. Reporting requirements for Trusted Traders**

There are three kinds of checkpoints behind legality verification for seafood:

1. Catch documentation: Where was it fished it, exactly?

2. Product tracing: How did it get to me?

3. Line of command for transfers: Who’s in charge of production, and mixing, anyway?

All three types are needed to really verify the origins, but reporting on legality via #1 and #2 is a shared responsibility. Companies taking a due diligence approach are “Trusted Traders”, we humbly suggest, when they are prepared to show U.S. agencies their efforts to manage #3.

First off, the ongoing verification of catch documentation is best handled by governments. Possibly the single most effective thing NOAA could do would be to improve customs codes. A species-specific commodity code could then be used as a batch ID on all paperwork starting with the fishing country. It would allow for linking the consignments arriving at U.S. ports back to the catch report.

To support NOAA to verify products back to legal fishing catches, one day, ideally, exporters could provide a history of transfers, segregation and tracking techniques, such that:

* Fishery ID origins are clearly marked on all transfers documentation.
* Origins or codes denoting origins are found on bills of landing and on all paperwork accompanying the shipment.
* Sellers and buyers use the same code through non-destination ports.
* Trans-shipping companies report mixed inputs and origins.
* Optional liability item added to the conditions of contract of carriage in the waybills to discourage the mixing of products in transit.

This is idealistic but sets a target for the kinds of information needed to assure consumers they can trust the legal fishing origins of seafood imports have been verified.

Second, American food companies can assist federal agents to obtain the following information to trace products to origins in legal fishing catches, where needed and on demand:

* Harvest date, location (by geographical identifier), weight, gear type, species (scientific name, common name), permit # for fishers
* Vessel registration, ownership (including joint venture status), captain, status, flag, flag history, home port, at-sea transfer documents, transfer authorizations, logbooks, crew log – equally for catching, trans-shipping and supply vessels
* Port of landing, Landed volumes by location and time, any required catch documentation
* Harder to get, but very useful if information is available to allow for confirmation of volumes of inputs and outputs from fishing and exporting countries over any given period.

U.S. seafood importers can ask suppliers to account for the origins and inputs to their products if they know precisely what to ask and who. However, their reach may be limited to exporters, who may purchase widely to make their orders. Obtaining information earlier in the supply chain is essential to traceability. One day, reports could be made through online surveys for processors or fishing companies. These potentially could be handled by industry associations in fishing countries in the future.

For now, Trusted Traders should be asked to report on what they themselves can acquire. They will have blind spots. It will take time for their sellers in foreign countries to trust it is in their business interests to take time to report accurately. It is important to consider that the design of the reporting instruments will determine the quality and accuracy of the information gathered, being realistic about cost, blind spots, sensitivity and fear of allegations, and other incentives to neglect to report or to mis-report.

The make or break of product tracing, for the purpose of verifying legal fishing origins, is not reporting by companies, it must be emphasized. Rather it is cooperation between U.S. officials and foreign officials to trace and verify seafood back to source, and taking some time to build.

Taking all this into consideration, we recommend NOAA could grant Trusted Trader status to U.S. importers able to demonstrate a transparent line of command for managing legality issues in procurement (meaning transparent to federal agents, not publicly). The requirements could include any two or more of the following, which NOAA would need to validate:

* Supply chain map and report for each product of concern.
* Vessel registry (any four of the following vessel identifiers: registration, ownership including joint venture status, captain, status, flag, flag history, home port, at-sea transfer documents, transfer authorizations, logbooks, crew log – equally for catching, trans-shipping and supply vessels.
* Access to all transfer documentation, where fishery origins are identifiable.
* Signatures from buyers and sellers on a warranty to disclose all fishing origins, if called upon to do so, or in a registry online[[3]](#footnote-3) in the best cases.
* An analytics program[[4]](#footnote-4) to scan seafood traceability data for legal origins (and/or hotspots for illegal fishing and slavery) as products move through the supply chain from vessels to processors, importers and retailer. The analytics can include rule sets that issue a pass or fail or alert or compliant status to supplies as they move through the program. The analytics should scan for evidence published by [federal government sources](http://developer.dol.gov/).
* An information system to track outgoing weights against incoming weights on a regular basis.

Thank you for your consideration of these suggestions and comments.

[*Contact us*](http://www.sustainability-incubator.com/contact/) *for assistance closing loopholes and weeding out ties to illegal fishing and slavery for seafood imports. The Sustainability Incubator is a Honolulu-based company backing up procurement goals with real world details, relationships and action.*

1. Our services flow from four premises.  First, being in business ourselves, we see business innovation as a force for good in society.  Some companies want to stand out as reliable top performers and we know this because we do too.  Second, sustainability and ethical sourcing are two areas which have separated companies in the seafood market.  Big U.S. retailers have buying criteria which sellers must meet, and companies who meet them reliably make the sales.  Third, supply chain accountability and compliance are normal thinking in food business.  Seafood companies manage for food safety already and feedbacks can be added or subtracted to make food production more secure. Fourth, buying and selling moves money and reaches places which change peoples lives.  [↑](#footnote-ref-1)
2. Pramod, Nakamura, Pitcher and Delagran 2014. See http://www.sciencedirect.com/science/article/pii/S0308597X14000918 [↑](#footnote-ref-2)
3. Five UK companies agree to disclose their fishery sources. See http://www.seafoodsource.com/news/environment-sustainability/european-retailers-aquafeed-firms-commit-to-seafood-transparency and http://www.thefishsite.com/fishnews/26088/seafood-companies-retailers-publish-source-fishery-data-in-transparency-drive/ [↑](#footnote-ref-3)
4. For example the Labor Safe Screen (see [www.laborsafescreen.com)](http://www.laborsafescreen.com)) and the Labor Safe Digital Certificate (see www.traceregister.com). [↑](#footnote-ref-4)