

**FROM BAIT TO PLATE:
HOW FORCED LABOR IN CHINA
TAINTS AMERICA'S SEAFOOD SUPPLY CHAIN**

HEARING
BEFORE THE
**CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA**
ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

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OCTOBER 24, 2023
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**FROM BAIT TO PLATE:
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TAINTS AMERICA'S SEAFOOD SUPPLY CHAIN**

TUESDAY, OCTOBER 24, 2023

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was held from 9:02 a.m. to 10:49 a.m., in Room 2360, Rayburn House Office Building, Representative Chris Smith, Chair, Congressional-Executive Commission on China, presiding.

Also present: Senator Jeff Merkley, Co-chair, and Deputy Undersecretary for International Affairs, Thea Lee.

**STATEMENT OF HON. CHRIS SMITH, A REPRESENTATIVE
FROM NEW JERSEY; CHAIR, CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA**

Chair SMITH. The hearing will come to order. I want to welcome each and every one of you to this hearing on “How Forced Labor in China Taints America’s Seafood Supply Chain.” The compass, as we all know, is an instrument of great assistance to navigators and seafarers. Its origins lie in ancient China, specifically in the Han Dynasty, which dates back to the third century BC. It’s one of the many enduring contributions China has made not only to maritime exploration, navigation, and safety, but also to world civilization.

Yet today, we find ourselves confronting a very different reality in China, where its moral compass is adrift, both at sea and on land. Recent revelations from a comprehensive four-year investigation conducted by The Outlaw Ocean Project have shed light on deeply troubling practices within the Chinese distant water fishing fleet and seafood processing industry. These practices involve egregious violations of human rights, including forced labor and other exploitative activities. A four-year investigation, led brilliantly by Ian Urbina, who will testify before our Commission today, found, for example, that “almost half” of the Chinese squid fleet, 357 of the 751 ships that they studied, were tied to human rights and environmental violations. And that over 100 Chinese squid ships engaged in illegal fishing, including trespassing into waters of other nations.

On land, the investigation reveals a disconcerting pattern of PRC-based companies exploiting the forced labor of Uyghurs and North Koreans to process substantial quantities of seafood destined for the United States market. From fish sticks to calamari, these products infiltrate the supply chains of major restaurants, whole-

salers, and even find their way into the meals served in American schools and military bases. Such actions directly contravene the Uyghur Forced Labor Prevention Act and the Countering America's Adversaries Through Sanctions Act, both of which strictly prohibit the importation of goods produced by forced labor into the United States market.

It is evident that the People's Republic of China is not the sole party involved in these reprehensible practices. Governments, including our own, have been complicit—unwittingly or wittingly—in the procurement of tainted seafood. Our panel of experts—and what a group of experts we have indeed before this Commission today—will testify and emphasize the extent to which government procurement processes and policies have enabled these injustices. That is why Senator Merkley and I have drafted a letter to the Department of Homeland Security. Without objection, the letter to Secretary Mayorkas will be made a part of the record. Calling for a comprehensive investigation into not only the PRC's disturbing activities at sea and on the land, but also the weaknesses of our system and the complicity of the seafood industry.

Beyond these egregious abuses of human rights, there are also national security implications as well. Chinese fishing vessels serve as part of China's Maritime Militia. Earlier this year, such vessels, under the guise of fishing boats, severed cables on Matsu Island, an island off the coast of China still under the control of Taiwan. Additionally, hundreds of Chinese fishing ships reportedly operate in waters belonging to the Philippines, Vietnam, Malaysia, and Indonesia, serving as a civilian militia to escort Chinese oil and gas survey vessels and drilling rigs.

More to the point, just last Sunday a Chinese Coast Guard ship collided with a Philippine vessel enroute to deliver supplies to an outpost that the Philippines maintains at Second Thomas Shoal, located approximately 100 nautical miles off its coast. China claims that this territory, far beyond its legitimate boundaries—and despite the fact that the Permanent Court of Arbitration in the Hague made a binding decision in 2016 under the U.N. Convention on the Law of the Sea that this area lies within Philippine territorial waters.

This underscores an important fact. China, under Xi Jinping and the Chinese Communist Party, is willing to upend the rules of the global international order and act in a lawless, predatory manner, both at sea and on land. It shows no respect for human rights. We see that in a myriad of areas in addition to this one today. And it does not respect labor rights. I will point out parenthetically that when China was under consideration and the United States was moving towards the WTO with China, I held two hearings on that and voted against ascension into the WTO. And we argued that they would change the WTO and not the other way around. We were foolish, in my opinion, to think that somehow a rules-based organization like the WTO would somehow mitigate their abuses. Instead, they exploit them, and they have not come under the banner of international law even a little bit.

Thanks in large part, let me say this, to the reporting of Ian and his team—and published in *The New Yorker* and elsewhere—the consciousness of American businesses and government leaders are

awakening. And certainly, we're trying to amplify that and we're trying to work with you, Ian, and our other distinguished witnesses, to try to make real and systemic reforms. Some are beginning to walk away from their abuse-tainted sourcing. This includes the supermarket chain Albertsons, as well as McDonald's Filet-O-Fish. Both have severed ties with the supplier implicated in Ian's reporting on forced labor practices. So there's already good things happening, but so much more needs to happen because of this landmark and historic human rights work.

And we're seeing similar actions taken beyond the seafood industry. Over the summer, this Commission—after a hearing on these issues of forced labor—the Wisconsin-based company, Milwaukee Tool, regarding allegations that the company had purchased gloves from a supplier that was utilizing forced prison labor to make those gloves—Milwaukee Tool took action to investigate its supply chain. And I and my distinguished staff met with them. Last week, they discovered multiple examples of counterfeit gloves originating in the PRC bearing their brand name. Perhaps they were even made in a prison camp.

Part of that lawless behavior I spoke of includes ubiquitous unauthorized counterfeit goods. We know they proliferate all over China, and there needs to be far more done. It's not just the theft of intellectual property. It is the production of these counterfeit goods that flood our market, the European Union, and really the world market. The upshot is that Milwaukee Tool has cut ties with the glove manufacturer in question and they are now moving that operation outside of China altogether. I am deeply encouraged that the company has taken these positive steps. It is yet another example of an American company responding constructively to reports of human rights abuses in the PRC.

I think all of you know, this is not just a bicameral House-Senate, bipartisan Democrat and Republican commission; this also includes the executive branch. We are really privileged to have with us Thea Lee, whom I've known for decades. When she worked for the AFL-CIO, she was a one-woman force fighting against labor and human rights abuses. And now she is the Deputy Undersecretary for ILAB. And I just want to thank her for her leadership, and yield to her for any comments she wants to make.

**STATEMENT OF THEA LEE,
DEPUTY UNDERSECRETARY FOR INTERNATIONAL AFFAIRS,
U.S. DEPARTMENT OF LABOR**

Ms. LEE. Thank you so much, Chairman Smith. And good morning, everybody. It is a great pleasure to be here this morning with all of you. And I would like to thank you and your staff, Chairman Smith, for the courtesy extended to me to come and to speak early in order to accommodate my travel schedule later this morning.

This is my first hearing as a commissioner representing the executive branch. And I want to thank you for your leadership of the Commission in promoting human rights in China and for exposing the government's corrupt practices that fall short—fall way short—of universally recognized human rights and international labor standards. I would also like to thank the witnesses for being here today. And I look forward to your testimony.

I want to recognize the contributions made by the Commission staff in conducting research, producing reports, and organizing hearings such as today's. Exposing the abusive labor practices in fishing is of critical importance, as those abuses impact America's seafood supply chain, global supply chains, and community livelihoods around the world. This industry sits at the intersection of key Biden administration priorities, human and worker rights, environmental protection, food safety, and national security.

It is clear that we are at a moment where further urgent action is needed to achieve a whole-of-government approach to address egregious abuse of worker rights in the seafood industry. In 2022, President Biden signed a historic national security memorandum on combating illegal, unreported, and unregulated fishing and associated labor abuses. As shown in the recent Annual Report, the U.S. Government has taken actions to sanction human rights abusers and provide tools that help protect fishers from exploitation.

At the Bureau of International Labor Affairs, known as ILAB, an agency within the Department of Labor, our job is to advocate for worker rights around the world. We engage with our interagency and multilateral partners to fully leverage U.S. enforcement mechanisms and trade frameworks to prevent tainted seafood from reaching U.S. shores. We are pushing for better governance, including of crew labor rights on the high seas, and we are seeking to improve labor inspections on vessels and in seafood processing.

I think folks know we publish and maintain a list of goods produced with child labor or forced labor, based on our evidence-based research. We have documented child labor or forced labor in the production of fish, dried fish, shellfish, and shrimp in 20 countries, including China. Our Comply Chain and Better Trade Tool apps serve as useful resources for worker protection and the private sector's due diligence process. We have also dedicated more than \$20 million in project funding to address labor exploitation in the fishing and seafood sectors globally.

Our research and advocacy work has directly contributed to the U.S. Government's ability to stop tainted seafood at the border. The sanctioning of Pingtan Marine Enterprise, a Chinese fishing conglomerate, for labor abuse and illegal, unreported, and unregulated fishing, was a significant step in our enforcement actions. But we know that government action alone will not solve this problem. We need more reliable information, effective policy and enforcement actions, and transparency and accountability in global supply chains. We would like to see, as Chairman Smith said, the industry take greater responsibility for global supply chains. We need more effective tools to strengthen penalties and to deny market access to actors that tolerate labor exploitation.

Chair Smith, while the challenges remain daunting, progress is possible. And I saw this clearly. I met with some Indonesian fishers and advocates earlier this year at the Seafood Expo North America. And they told me that some simple improvements in working conditions, such as having access to Wi-Fi so they have means of communication at sea, could help prevent exploitation. It could make an enormous difference in people's lives. And we have been working with the Taiwanese government and with others to see if we can move that forward, because it provides a chain of communica-

tion, and it can help address especially some of the most egregious labor abuses in terms of unsafe conditions and forced labor.

So I'm looking forward to hearing from the witnesses today on suggestions on how government, business, and consumers can help turn the tide on forced labor in fishing. The Department of Labor is deeply committed to building a more sustainable seafood sector that respects labor rights and promotes the welfare of all the workers on fishing vessels and in the processing chain. Again, let me thank the witnesses, the esteemed witnesses, for being here today. I'm looking forward to hearing your testimony, but I also want to thank you for the work that all of you do every day to bring attention to these urgent issues. Thank you. I look forward to the rest of today's hearing.

Chair SMITH. Secretary Lee, thank you so very much. And, again, this Commission is really, really blessed to have you on it. You know, we worked with you, again, when you were not within government. To have such an advocate who is so knowledgeable is truly, truly remarkable. Thank you so much.

Now I'd like to introduce our distinguished witnesses, beginning with Mr. Ian Urbina, who is the director and founder of The Outlaw Ocean Project, a Washington, D.C.-based nonprofit journalism organization that produces investigative stories about human rights and environmental and labor concerns at sea. Mr. Urbina and his team of international investigative reporters conducted a remarkable historic landmark four-year investigation both on land and at sea, exposing horrific labor abuses in the global seafood industry attributable to the Chinese Communist Party and how this has tainted the United States seafood supply chain.

I'd like to note that this reporting is truly groundbreaking. It's the first reporting of its kind revealing how Uyghurs, North Koreans, and others are forced to work in seafood processing plants. His team is doing incredible work to shed light on the plight of persecuted communities and individuals trapped and held either on Chinese fishing vessels or in these plants, thousands of miles away from their homes. Before founding The Outlaw Ocean Project, Mr. Urbina spent more than a decade as a staff reporter for The New York Times. He has received various journalism awards, including a Pulitzer Prize and an Emmy. Thank you for your important work and for joining us today.

Our next distinguished witness is Professor Robert Stumberg, a professor of law at a place not too far from here, Georgetown University. He directs the university's Harrison Institute for Public Law, which often works with public officials and coalitions on health and food, trade policy, and human rights for workers. He's published several pieces, incisive pieces, including one titled "Turning a Blind Eye: Respecting Human Rights in Government Purchasing." Professor, we look forward to learning more about U.S. Government procurement and much more from you today, which will help guide us as we try to weigh in very strongly on this important issue. Thank you.

We're also joined by longtime friend Greg Scarlatou, the executive director of the Committee for Human Rights in North Korea. He's testified before this Commission on multiple occasions from as early as 2012, and before the Committee on Foreign Affairs as well,

when I was the chair of the Subcommittee on Africa and the Subcommittee on Global Health, Global Human Rights, and International Organizations. Mr. Scarlatoiu brings a wealth of knowledge of the plight of North Koreans, including extensive insight on North Korean forced labor in both China and in Russia. Many of us who have met him before are so impressed with his work, and that's why we couldn't wait to have him back here today to give us his counsel and insight.

Finally, I'd like to welcome Sally Yozell, the director of the Environmental Security Program at the Stimson Center, where she leads a team that conducts research and develops global security strategies to combat illegal, unreported, and unregulated fishing, put an end to forced labor and human rights abuses in the seafood industry, and work to increase transparency throughout the seafood supply chain.

While this is her first time as a witness before this Commission—and it won't be the last—she is not a stranger to Congress. As a matter of fact, she testified not too long ago for the House Natural Resources Committee to discuss full seafood traceability and how to stop Russian seafood, or “Putin's pollock,” from entering our borders. I fully agree with their views that American consumers do not want, and should not buy, seafood caught illegally or linked to labor and human rights abuses. Again, thank you for your landmark work as well.

We are joined, of course, by our very distinguished Co-chair, Senator Merkley. And I yield him such time as he may consume.

STATEMENT OF HON. JEFF MERKLEY, A U.S. SENATOR FROM OREGON; CO-CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Co-chair MERKLEY. Thank you very much, Mr. Chairman, for convening this hearing, which builds on several hearings this Commission has held on topics such as the implementation of the Uyghur Forced Labor Prevention Act, the plight of North Korean refugees in China, the aggressive long arm of the Chinese government, and the importance of holding American corporations to account when they are complicit in human rights abuse. I'm going to suggest that I put the balance of my statement in the record, given the limited time that you have to be here, and the desire to get right to the testimony. I'd rather jump right in.

Chair SMITH. Thank you, Senator Merkley.
Mr. Urbina.

**STATEMENT OF IAN URBINA,
DIRECTOR AND FOUNDER, THE OUTLAW OCEAN PROJECT**

Mr. URBINA. Thank you to Chairman Smith and Chairman Merkley. And thank you to the rest of the Commission for inviting me to speak. I'll briefly talk about a four-year investigation that my news organization, The Outlaw Ocean Project, conducted in collaboration with The New Yorker, focusing on China's role in human rights and environmental concerns tied to the world's seafood supply chain.

Seafood is a distinct global commodity. It is the world's last major source of wild protein. It is the largest globally traded food

commodity by value. Seafood is also harder to track than many other products. It is typically harvested offshore, often on the high seas, where there is limited national jurisdiction and little enforcement of what few murky rules exist. Labor spot checks on ships at sea are rare. These workplaces stay in constant motion. Deckhands are often undocumented. They tend to come from poorer nations. Their access to political capital and legal recourse in the form, say, of lawyers, advocates, journalists, or unions, is minimal.

And between bait and plate there are an inordinate number of handoffs of this product. It goes from fishing ship to refrigeration ship, to port, to processor, to cold storage, to exporter, to U.S. importer, to distributor or food service company, and then, finally, to restaurant, grocery store, or public food pantry, military base, or public school. These many handoffs make it tougher to trace the true origin of the catch and to ensure that there is no forced labor or other environmental crimes in the supply chain. Worse still, the few auditing entities that exist, what certification regimes that have emerged in the private sector, whether they focus on environmental or labor concerns, do a very poor job even at identifying and countering such crimes in these supply chains.

China plays a unique role. It is the undisputed superpower of seafood because its distant water fishing fleet, which is to say those vessels in foreign or international waters, is vastly bigger than that of any other country. So too is China's processing capacity. Even seafood caught by U.S.-flagged ships in our own waters is often shipped to China to be cleaned, cut, and packaged before being sent back to American consumers. China matters, and was the focus of our investigation—not just because it is the global linchpin of seafood production, but also because China is the most opaque of settings, the most prone to illegal fishing practices, and, we've come to find out, the most dependent on forced labor when it comes to seafood.

This forced labor occurs in two distinct realms: at sea and on land—on the fishing ships and in the processing plants. At sea, the problem of forced labor is endemic and varied. Debt bondage, human trafficking, beating of crew, criminal neglect in the form of beriberi, passport confiscation, wage withholding, denial of timely access to medical care, death from violence. We found a widespread pattern on Chinese ships. The investigation revealed that almost half of the Chinese fleet, 357 of the 751 ships we studied, were tied to human rights or environmental violations.

On land, the problem of forced labor is deep and consistent, especially after the start of the global pandemic led to severe labor and logistical and supply chain problems in China. The government there began helping its massive seafood industry keep production and exports up and running. It did so by moving thousands of workers across the country from Xinjiang, a landlocked and subjugated region in the far west, to Shandong, a coastal eastern province in the far east, where much of the seafood infrastructure is based.

Most of the global seafood industry is impacted. The investigation found that since 2018, more than a thousand workers from Xinjiang have been forcibly relocated to at least ten seafood processing plants in Shandong that supply dozens of major U.S. seafood

brands, as well as brands in at least twenty other countries. I need not tell this Commission about China's labor transfer programs and the ways in which this state-run effort has been legally defined as state-sponsored forced labor because the ethnic minorities pressed into service do not have an option to say no to these jobs.

I also do not need to remind this Commission that under the Uyghur Forced Labor Prevention Act, there are very clear and strict prohibitions of any products in part or whole being imported to the U.S. that rely on Xinjiang labor. Lastly, I do not need to tell the people gathered here that if credible evidence is brought forward, as I think our investigation has, indicating the existence of Xinjiang labor in a particular supply chain, then this federal law, the UFLPA, puts the onus on industry, on the companies themselves, to prove that they do not in fact have Uyghurs or other ethnic minority Xinjiang labor tied to their products. And until they do, U.S. Customs and Border Protection is supposed to block shipments of this import.

U.S. companies responding by simply saying that their partners in China at the plants have reassured them that no forced labor exists in their plants is probably not sufficient evidence that they are free from forced labor. Similarly, relying on social or marine auditing firms that inspected these plants but, by their own admission, were not actually looking for the presence of Xinjiang workers, is not sufficient evidence that they are free from forced labor. The Chinese seafood industry and the government have already responded that using Xinjiang workers is not illegal under Chinese law and that the use of these workers does not constitute forced labor because they receive proper living conditions, a salary, vocational training, and fair treatment.

But U.S. seafood companies need to understand that this misses the point. Under U.S. law, any use of Xinjiang workers is deemed illegal because it occurs in the context of a larger government-run and coercive program, and whether these workers are paid or they tell auditors or the state media that they are happy to have the job is not relevant. Think here for comparison of the use of child laborers in other countries, which may be legal or defined distinctly in those nations, but regardless of their laws it is not legal for those products to come into the U.S.

As an aside, I will mention that I am intentionally refraining, for the time being, from discussing an additional set of processing plants in China that our investigation found tied to U.S. seafood importers and that rely on another form of state-sponsored forced labor, namely North Korean workers. As you know, imports to the U.S. associated with this demographic of forced labor is also strictly prohibited by federal law. We will soon publish more of those findings about this topic.

But for now, I will humbly encourage the public to take a deep look at the broken nature of the labor auditing of the seafood industry and why seafood companies have been allowed for too long to operate in a place where they have culpable deniability, because to operate there they have to agree to not look too hard at thorny issues like human rights. In fairness to the industry, the world was not previously aware of how much Xinjiang labor had tainted the

global seafood supply chain. The world was also not aware of how pervasive forced labor on Chinese fishing ships is as well.

That moment has now passed. We now see that hundreds of seafood companies are tied to these Chinese ships and these Chinese factories. The question is, what will industry and government do about it? The laws on the matter, at least in the U.S., are pretty clear. The issue is whether they will be enforced. Thank you for your time today.

Chair SMITH. Thank you very much, Mr. Urbina, for that. I'd like to now recognize Mr. Stumberg.

**STATEMENT OF ROBERT K. STUMBERG,
PROFESSOR OF LAW, GEORGETOWN UNIVERSITY**

Mr. STUMBERG. Good morning, and thank you for this opportunity to talk about four questions. Number one, which U.S. Government agencies purchase seafood? Number two, is the Buy American Act an effective antidote to purchasing seafood that is tainted by forced labor? Number three, there's a prohibition on purchasing goods made with forced labor in the U.S. Federal Acquisition Regulation (The FAR). Is it effective? And number four, what's on the to-do list for fixing any gaps in these other laws? I've given you a relatively technical to-do list, which we certainly will not cover in today's conversation, but I'm happy to respond to any questions you might have about it.

Which agencies? It's a relatively small world in the context of seafood. The U.S. Department of Agriculture and the Defense Department far surpass the other agencies that purchase seafood, including the Federal Bureau of Prisons, the Department of Justice, the Veterans Administration, and others. Ian's team identified about \$200 million over a five-year period, which is certainly a conservative estimate. But that's a very solid baseline number that could easily be double or triple, if only better data were available.

It's interesting—when you look at who these agencies buy from, USDA buys from companies that are themselves importers. Almost all the purchasing for commodity programs is from three importers. Defense, on the other hand, buys from companies that are the two largest food service distributors in the United States, U.S. Foods and Cisco. They, in turn, buy from the importers. Two facts make that interesting.

Fact one, these two largest distribution companies are enormous. Cisco, for example, has \$68 billion in annual revenue. Compare that to a couple million dollars in federal contracting. It's just a blip on the scale of their revenue scheme. But there's an opportunity to focus on procurement, that tiny percentage, as the tail that might wag the dog. That is because the same company is also obligated to comply with the Tariff Act and its broad prohibition on any imports tainted by forced labor. So you see the connection between the Federal Acquisition Regulation and government purchasing on the one hand, and the Tariff Act, which is the foundation for the Uyghur Forced Labor Prevention Act.

When Ian's team asked USDA to comment on his reporting, he got a very interesting answer, which was, first, we're obligated to buy American only—both U.S.-caught fish and U.S.-processed fish, in terms of our purchasing. And second, it's audited by NOAA. And

they said they do on-site audits. The Federal Acquisition Regulation has three exceptions to Buy American. One of them is if the supply isn't available. The second is if the domestic prices are unreasonable, with a litmus test to 20 percent compared to foreign prices. And the third is, goods that are intended for resale, i.e., not for public feeding programs like the national school lunch program. The resale exemption applies to a military commissary or a government cafeteria.

Those are the three exceptions. And you then have to ask this question. If the USDA's answer is that they audit domestic processing, they've excluded foreign sources from auditing. So they presented a kind of Catch-22 on their own answer to the question that Ian posed. I presume that most of their purchasing probably does comply with the Buy American Act. And yet, is there enough of a loophole here, legally authorized under the Federal Acquisition Regulation, for them to buy based on these exceptions?

Let's think about auditing for a second. They say they do on-site auditing, but what's the site? Audits are often typically based in companies' corporate headquarters. They say they do on-site audits for processing but, again, the headquarters of an audit of a processing company may be different from the actual facility of the company. And so it raises as many questions as it answers in terms of whether the answer that Ian got is actually a clear explanation of the way they do business.

And then, of course, there's a possibility that they do perfectly comply with Buy American. These are big companies. And so they could make sure that they are segregating their sources for U.S. Government contracts, while on the other hand for all of their other customers—practically every major grocery chain in the United States and most institutional purchasers, governments, universities, that huge market—they are sourcing in Chinese processing facilities that used forced labor. So that's possible too. But then it reveals the need for a more comprehensive strategy for transparency, which simply does not exist.

I'm pretty much at the end of my time. That's the big picture. What's on the to-do list? I'll give you the broad categories. And we can talk about details if you're interested, either today or later. Number one, plug the gaps in the Federal Acquisition Regulation. The exceptions that I told you about—

Chair SMITH. With new law or through any kind of administrative action, or both?

Mr. STUMBERG. Could be either.

Chair SMITH. Okay.

Mr. STUMBERG. Every piece of the FAR, the Federal Acquisition Regulation, can be traced back to an act of Congress. If you try to amend the FAR, you have to go through an elaborate rulemaking process under a council that's chaired by the Office of Management and Budget, which is where progressive regulations go to get sick and die. On the other hand, Congress isn't exactly a model of democratic efficiency these days either. But everything can be traced back to laws such as the Trafficking Victims Protection Act, which is the law that contains the prohibition on purchasing goods made with forced labor, and the UFLPA, which is not synced with procurement at all. The opportunity to sync the UFLPA, which is run

by the border control agency, and procurement is an enormous opportunity. And there's no connection whatsoever at this point.

And I should just say, in passing, that it's common for government agencies of this scale, particularly when dealing with new laws like the UFLPA, not to be connected to each other. I mean, 9/11 was the story of agencies not connecting to each other, so we all have learned a very painful lesson. The U.S. Government does not have a strategy for monitoring or policing human rights in its procurement, governmentwide. The UFLPA contains the DNA, if I may say, for a governmentwide strategy that's narrowly focused on Xinjiang-sourced goods.

There are interesting concepts and inventions in the UFLPA and in CBP's implementation of it. You could take that DNA, extract it, and plug it into the procurement system. And you would end up with something that looks like a SWAT team of lawyers, auditors, and guys that like to wear sweat suits and jump on boats and, you know, chase around the ocean and do real investigative work on behalf of the American people. That could be a model for how that works.

The United States Government doesn't have it. Some smaller progressive governments around the world do. Swedish counties, for example, pool their resources for that kind of SWAT team to support all of their counties, which do most of the purchasing for governments in that country. Another example is that there are about 900 universities and government entities in Europe that have pooled their resources for electronics purchasing, which are also subject to forced labor, much of it from China. So for that industry, they pooled their resources through a monitoring entity called Electronics Watch. Electronics Watch, in turn, is based on the model of the Worker Rights Consortium.

So there are models out there that the U.S. Government could learn from and incorporate into its strategy. What better place to start than with seafood as a test case to build that strategy and then expand it to other sectors?

Chair SMITH. Thank you so much. I'm going to have to leave for a few moments. We have a vote going on the Speaker's—talk about dysfunction—Speaker's race. So I will go vote and then come right back. But, obviously, you're in great hands with Co-chair Merkley.

Co-chair MERKLEY. Well, thank you very much for your testimony. And we'll just proceed.

**STATEMENT OF GREG SCARLATOIU,
EXECUTIVE DIRECTOR, COMMITTEE FOR HUMAN RIGHTS
IN NORTH KOREA**

Mr. SCARLATOIU. Chairman Smith and Chairman Merkley, thank you for inviting me to testify this morning. Deputy Undersecretary Lee, it's an honor to meet you this morning.

The official dispatch of North Korean workers to China's seafood processing plants is a breach of applicable U.N. Security Council sanctions, international human rights instruments, and, most importantly, our own CAATSA. Mindful of CAATSA provisions relating to sanctions for forced labor and slavery overseas of North Koreans, my organization, HRNK, has conducted a preliminary investigation into whether the working conditions these workers face are

subject to Section 302(b) of the North Korea Sanctions and Policy Enhancement Act of 2016. We further endeavored to identify Chinese entities that employ North Korean laborers, with the aim of determining if such entities and individuals in charge meet the criteria under Section 111 of the Trafficking Victims Protection Act of 2000.

Until their repatriation began on August 23rd or the 29th, there were thousands of North Korean workers officially dispatched to Chinese seafood processing factories. In many cases, these workers process seafood imported from North Korea. The importation of seafood processed by North Korean workers in China, seafood exported from North Korea to China, or a combination of both into the United States would constitute a blatant violation of CAATSA. Three major seafood processing companies have historically employed North Korean labor and have exported their products to the United States. Witnesses mentioned the presence of at least three seafood processing factories that employ North Korean workers in Donggang, Dandong City.

North Korean seafood exported to China from Rajin Port is primarily transported overland by vehicles through Chinese customs. It is then distributed and sold in China's Yanbian Korean Autonomous Prefecture, Jilin Province, or flown into inland cities, including Beijing. Seafood processed in Hunchun is exported as frozen or dried food to the United States, Europe, Japan, and other countries.

The main North Korean seafood products transported inland in this manner include various species of squid, croaker, snow crab, hair crab, and blue crab. North Korean workers process fish caught seasonally, such as cod and pollock, as well as clams during clam season. They also process octopus and shellfish packaged as Chinese export products.

There are reported instances of processed seafood marked "made in China" being shipped out to Vladivostok, where labels are switched to "made in Russia" and exported to third countries.

The employment of North Korean workers in Chinese seafood processing plants and labor standards violations may contravene the ILO's Forced Labour Convention (No. 29), and the Abolition of Forced Labor Convention (No. 105), other ILO conventions, the Universal Declaration of Human Rights, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, also known as the Palermo Protocol.

The North Korean seafood processing workers face inhumane working conditions—long working hours, denial of proper rest and breaks, harsh treatment, and minimal safety measures, posing a risk to their physical and mental well-being. Lack of freedom and communication—they're often isolated, facing limited contact with the outside world and their families. They are unable to exercise their right to freedom of movement and communication. Absence of labor rights—such rights, including the right to unionize and engage in collective bargaining, are nonexistent.

North Korean workers covet overseas positions, as the average monthly remittance of \$70 is dramatically higher than the \$3 average monthly industrial wage in North Korea. The average bribe paid to become a dispatched worker is \$2,000 to \$3,000. The work-

ers must borrow the funds from moneylenders and pay it back with interest. The workers are lured with false promises and subsequently entrapped under abysmal working conditions.

Wage violations through compulsory contributions extracted by the North Korean authorities, unpaid overtime, and precarious safety and health conditions, are widespread. The workers must moonlight for other companies to pay back their loans, with the approval of three site supervisors—party, security agency, technical manager—who must also be bribed. Including moonlighting, a North Korean seafood processing worker in China may make up to about \$210 a month. The North Korean worker's monthly wages are paid upon their repatriation in North Korean currency at the official exchange rate.

During the COVID-19 quarantine, the workers received no wages and the interest on loans increased, reportedly leading to about thirty suicides, most of them women. The Chinese companies pay the North Korean regime mostly based on production volume. The payment is made in Chinese currency. Men mainly carry frozen fish blocks, and women sit down and peel fish or squid or sort clams and crabs by size. Most of the North Koreans work the whole day in cold storage. Additionally, the pungent smell inside is unbearable. North Korean workers at the Chinese seafood processing plants usually work about 10 hours a day. If production targets are not met, the workday can extend to over 12 hours.

I respectfully recommend the following: Continue to encourage civil society groups with relevant networks to continue investigating conditions of work at Chinese seafood processing factories, and whether products processed by North Koreans end up on the U.S. market. Propose that new findings on violations affecting North Koreans at such factories be included in the annual report on trafficking in persons required under Section 110(b) of the Trafficking Victims Protection Act of 2000.

Seek to determine whether the government of China has made any serious and sustained efforts to eliminate severe forms of trafficking in persons as they relate to the official dispatching of North Korean workers to Chinese seafood processing plants. And, finally, seek to confirm whether seafood exported from China to the United States contains North Korean seafood products and whether North Korean workers officially dispatched to China processed seafood exported from China to the United States. If confirmed—for example, if confirmed based on newly available information and analysis, such products would have to be denied entry at any of the U.S. ports, pursuant to a prohibition under Section 307 of the Tariff Act of 1930.

Thank you very much.

Co-chair MERKLEY. Thank you so much for bringing this perspective to bear on the North Korean element of forced labor.

And now we'll turn to Sally Yozell.

**STATEMENT OF SALLY YOZELL,
DIRECTOR, ENVIRONMENTAL SECURITY PROGRAM,
THE STIMSON CENTER**

Ms. YOZELL. Good morning, Chairman Merkley and Under Secretary Lee. Thank you for the opportunity to testify today. I ask unanimous consent that my full testimony be included in the record.

Co-chair MERKLEY. Without objection.

Ms. YOZELL. I was asked to speak about illegal, unreported, and unregulated fishing in the seafood supply chain. IUU fishing can take many forms and has been linked to criminal and illicit activities, such as smuggling of guns, drugs, and wildlife, human trafficking and forced labor, as we've heard, as well as money laundering and tax fraud. In all of its forms, IUU fishing directly contributes to overfishing, threatening the sustainability of fish stocks and damaging marine ecosystems. IUU fishing harms the economic, food, and environmental security of coastal communities, particularly in developing countries, and can destabilize the security of maritime states by fueling corruption and distorting markets.

I saw these impacts recently firsthand on a trip to the Gulf of Guinea, where Chinese-owned operations have expanded their industrial fleets, fishmeal operations, and fish bases. These developing nations often lack the financial and technical capacity to manage their fisheries. And they often lack the political will—they can be influenced by Chinese investment. This can lead to food insecurity and unemployment, environmental degradation, and civil unrest. IUU fishing accounts for a third of global fish harvest and it is valued at more than \$30 billion annually. Ultimately, it occurs because it remains profitable, loopholes persist, and the opaqueness of the global seafood supply chain has made it largely invisible to governments, businesses, and consumers.

That is, until last week, when Mr. Urbina's reporting has blown the lid off one of the most traded food commodities in the world, revealing a very dark side that has flourished undetected. Seafood accounts for more than \$140 billion in trade each year. The demand for seafood is greater than ever. The United States is the second-largest seafood importer, behind China. And last year we imported 340,000 metric tons of seafood, valued at over \$30 billion. We know one simple truth. U.S. consumers and consumers around the world do not want to eat seafood that is caught illegally or that is the product of forced labor and human rights abuses. But how do they know?

The United States imports about 85 percent of all its seafood. Just under 40 percent of U.S. seafood imports are initially caught in U.S. waters, exported for processing in Asia and China, and then reimported into the United States. An illustrative example of this is pollock and salmon. Because of the war on Ukraine, Russian-caught seafood is currently banned from the United States. Yet, Russian pollock and salmon enter U.S. commerce every single day. Under the U.S. COOL Act, fish that is processed in China becomes a product of China, essentially hiding its real origin. So Russian catch can be processed alongside U.S.-harvested fish, where it is commingled and processed into fish blocks, fish sticks, canned

salmon, or frozen filets, and then sent back to grocery stores, restaurants, and even our own school lunch programs, and on to unwitting American consumers.

Stopping the importation of “Putin’s pollock” through China is an easy fix if the United States Government were to implement a more comprehensive traceability system that tracks seafood throughout the supply chain. As a former co-chair of the task force which created NOAA’s seafood import monitoring program, called SIMP, I can say with certainty that SIMP was originally envisioned to prevent and deter IUU fish from entering the United States. It was to effectively track all imported seafood from the point of harvest to its initial entry into the U.S. market, or as we like to say, bait to gate. SIMP has been in operation for six years. Yet it only covers about 45 percent of U.S. seafood imports. It does not cover several high-risk species, including pollock, salmon, blue swimming crab, squid, and haddock.

As NOAA Fisheries looks to improve its program, they must consider the fact that SIMP is currently a single narrow program, rather than a true traceability system. It is siloed from other relevant monitoring programs and hamstrung by its reliance on a paper-based framework. This opens the door to falsification and prevents the use of advanced risk analytics. Globally, the United States, Japan, and the European Union all have traceability programs. And when you combine all three, they make up more than 60 percent of the international seafood market. This is a powerful bloc.

Several additional programs are coming online, such as South Korea and Australia. And all of these countries are looking to the United States as its global leader. At home, numerous agencies are working to combat IUU fishing. NOAA Fisheries manages the seafood and the SIMP program, as I noted. The U.S. Coast Guard uses satellite, AIS, and radar to track its fishing vessels at sea. The Department of Labor monitors for forced labor and human rights abuses. The Food and Drug Administration collects seafood data relating to human health and food safety. And the Treasury Department follows the money, which can provide valuable insight into beneficial ownership of IUU fishing enterprises. And I could go on.

But despite all of this data and all of these programs, the International Trade Commission estimates that \$2.4 billion worth of IUU-caught fish products entered the U.S. market in 2019 alone. In my written testimony, I have shared 10 next steps that can be implemented now to achieve a broader, more holistic vision to prevent IUU fish from entering our markets. To summarize just a few, let me say that we need a full-functioning traceability system that is, one, standardized: Expand the Seafood Import Monitoring Program and work with other countries to develop a consistent global list of high-risk species. Two, streamlined: Move to a full, digitized traceability system that will support the use of risk-based analytics and reduce the burden on industry. And we have to get rid of the paper. In today’s world, how many billion-dollar industries lack digitization and rely on paper-based records? Third, synchronized: The U.S. should widen its aperture to what is considered risky behavior.

First, NOAA Fisheries should follow through on its work to amend the definition of IUU fishing to include forced labor in the seafood supply chain and work across federal agencies to consider other risks linked to vessel histories, ownership information, and land- and sea-based processing, transshipment, and ports. IUU fishing is a global problem that requires global solutions. The United States Government has the opportunity and the responsibility to ensure more transparency and to chart a path forward that moves the seafood supply chain out of the shadows. Thank you for your time, and I'm happy to answer any questions.

Co-chair MERKLEY. Thank you very much, Ms. Yozell.

I'm going to note that there are submissions for the record. These are from Judy Gearhart, Research Professor at American University's Accountability Research Center; from Badri Jimale of the Horn of Africa Institute, from Stephanie Madsen, Executive Director, At-sea Processing Association, and from Michael Sinclair, former Federal Executive Fellow at Brookings. If there's no objection, their material will be entered into the record. Hearing none, so ordered. And now our Chair has returned. Is everything fixed? [Laughter.]

Chair SMITH. No. We'll have another vote in 15 or 20 minutes.

Co-chair MERKLEY. Thank you.

Chair SMITH. You know, Mr. Urbina, you mentioned auditors and, you know, one of the things that I've been very concerned about for the longest of times—as a matter of fact, back in 2012 I actually chaired a hearing on this Commission and pointed out that the ability of anybody to say anything of worth to an auditor, when potentially there are people around who will snitch on them, especially within the company, or even Chinese Communist Party security types, well, the audit hearing that we had made it clear—we focused on Apple and some of the other big companies—the auditors go in, they talk to six people, they'd say, "Oh, we met them separately,"—you know, separately, with recording devices going. "And they said, 'everything is just fine.'"

I'm wondering if that's been your experience. You know, our government, unfortunately, is too willing to accept that. They say, oh, they got a clean bill of health by auditing company X, Y, or Z. Many of them are foreign based. They're not Pricewaterhouse. They're coming out of Europe and the UK. I think it's a sham, frankly. You know, maybe there's some good people involved, but the process is a sham, because you're going to get a Potemkin village almost every time. And I wonder what your thoughts might be on that.

And you mentioned, Mr. Stumberg, about NOAA. We're in a big fight with NOAA on issues relating to ocean wind. I'm leading the effort in my state, because they and others, including the Bureau of Ocean Management, have been absolutely AWOL in terms of doing their due diligence about the impact of radars and the fish kill that we're seeing with whales. But, you know, reasonable people can disagree on that, but the radars are overwhelming. We will be blinded if these 3,400—it's the size of the Chrysler Building—ocean wind turbines go off the New Jersey, New York coast. And yet NOAA has been no help. I've been shocked and dismayed by

it. And I'm wondering if you might want to speak to how valid their work is on this.

Senator Merkley and I, in our letter yesterday to Secretary Mayorkas, we—bottom line, we believe the situation needs a robust and coordinated response across all federal levels, including DOD. What has the response been from USDA, and DOD, which procures so much of this fish for our troops and for the commissaries? I have a commissary in my district, joint bases in my district. I've been to it many times, you know, with others. I don't use it, but I go there when I do base tours. And there they are, right on the rack, all these different fish products. Which normally would be great, but if it's, as it is, sourced through human rights abuse, we've got a problem.

So I'm just wondering what their initial responses have been. Has there been a response? Because we're going to—you know, we're going to push really hard. I don't care who's in the White House, you know, we want no complicity in human rights abuse. So whoever comes in next, might be the same. Might be Biden again. It just has to change. There's got to be an aggressiveness there that has been sorely lacking.

Mr. URBINA. Thanks for the questions. On the issue of auditing, I would just sort of maybe pull up to altitude and take a big bird's-eye view of it, and first start by saying it's important to think of seafood in the way that it's distinct from other products. And remember that there are these two distinct universes where seafood is coming from and processing through. And so, when we think about the auditing system, and you think about the two universes—the at-sea and the on-land—it's important to ask, "Okay, what do the at-sea audits look like versus the on-land ones?"

And the at-sea audits are nonexistent when it comes to labor. And that's a huge problem that's easily overlooked because it's the toughest problem to solve. Spot checks on ships and conditions on ships are really a big challenge. So that's one dichotomy I'd put forward. The second one is the question of what kinds of audits we're talking about. Are these marine audits or social audits? Marine audits are largely environmental in focus. They're focused on IUU concerns and these matters. And the private sector has more of an infrastructure for marine audits. They're flawed, deeply flawed, the marine audits are, but at least they exist. How to check on the attempted traceability of where the fish is coming from, what gear is being used, what ships, etc.

When it comes to social audits in the seafood space, there's far less infrastructure. And there are some firms that are doing these social audits, meaning checking on labor issues, but only on processing plants. So that's a second dichotomy that I think is important to bear in mind. The next one is China. You know, audits in the rest of the world versus audits in China. That's another dichotomy to really not forget about. If you're going to operate in China, you've got to play by their rules. And the U.S. business community knows that. And so do NGOs who are now working there.

And those rules are pretty problematic. You know, you can't ask certain questions. You can't say certain things. And so auditing firms and U.S. companies that are operating there know full well

when they go in that they can't stay there unless they play by those rules. So there is a bit of a sham in having labor audits through private firms in China, because there's this whispered sense that they're not really going to do what even weak auditing is supposed to do. And then the last layer I would go to is whether social audits, labor-focused audits on land in China, are even looking for the right things and doing them in the right way. Are they even looking for Xinjiang workers? What we found is the answer is no. They were not fluent on the issue of the problem of Xinjiang workers.

They were not looking in the right way for that issue. And then also, are they doing them in a credible way? In other words, are they calling ahead and saying we're going to show up on Tuesday to check your plant? That's not a real audit, because they know to clean things up because the auditor's coming on Tuesday. So, these are the layers of questions I'd ask of auditing. And for the most part, the answers we got in our investigation were not hopeful ones.

Chair SMITH: You know, at that hearing in 2012, I would just point out that Thea Lee was one of our distinguished witnesses that day, speaking on behalf of the AFL-CIO. But we had Li Qiang—and I just say this because I think it speaks volumes—who was executive director of China Labor Watch. And he said, according to very conservative estimates, about 30,000 plants—over 100,000 audits are conducted for over 30,000 plants. The multinationals would then more often than not bribe the auditing companies by giving them like \$3,000 or so to avoid making the investment to make the improvements and to really bring the information forward. So people are chilled from telling you what is actually going on. This hearing was in relation to things like what Apple was doing with its workforce in China. So, you know, big, big caution flag when we hear about audits.

In terms of the response of DOD, for example, or any of the government agencies, I know your research is new, but what has the reaction been? Are they saying, let's meet with you, let's begin plotting out, you know? And, Mr. Stumberg, I'm doing a rewrite of my original law that—I'm the author of the Trafficking Victims Protection Act of 2000—and we have a reauthorization that we're working on. It will be marked up, we believe, in the next Foreign Affairs Committee meeting. That said, we're looking at some new language in a number of areas. I'd love to get your input as to how we could amend that or should amend that. So please, either now or in follow-up, we just need that from you, if we could.

Mr. STUMBERG. That sounds like bait. I'll take it. [Laughter.]

Chair SMITH. Thank you. I appreciate that.

Mr. STUMBERG. The Trafficking Victims Protection Act, as implemented in the FAR, requires prevention plans to prevent the government from buying goods made with forced labor. Good. It only authorizes prevention plans for services performed overseas, not goods purchased by agencies, and explicitly not goods that are commercial off-the-shelf items. These are so-called COTS items, which include canned fish. So, yes, there are prevention measures in the Trafficking Victims Protection Act. But, no, they don't cover any of the products we've talked about here today.

And for the overseas services, what they have in mind is commissary services for military bases and embassies overseas, not importation of goods produced overseas or processed overseas. So there's a disconnect in the Trafficking Victims Protection Act as relates to the FAR sections that aim to prevent procurement sourced with forced labor. Fortunately, the Uyghur Act provides a good model for closing this gap in the FAR with respect to procurement of goods. For example, purchasing agencies could require prevention plans for goods that pose a high risk of forced labor based on guidance from the Departments of Labor, Homeland Security, and other agencies in the forced-labor task force. More specifically, the FAR could incorporate the Uyghur Act's rebuttable presumption of forced labor for purposes of procurement. So to summarize, the agencies that are doing procurement should follow the precedent set for trafficking victims by importing from the Uyghur Act some of its standards. Does that make sense?

Chair SMITH. It does.

Mr. STUMBERG. And the threshold is very high.

Chair SMITH. I deeply appreciate it. Because we're doing it right now.

Mr. STUMBERG. Right.

Chair SMITH. Thank you. You know, finally, Mr. Scarlatoiu, in your testimony you say that all North Korean workers in Chinese seafood plants who were detained during COVID-19 were recently repatriated. I understand that some of them had to stay longer than three years due to lockdown during the pandemic. Does that mean they will be reprimanded for staying longer in a foreign land than the contracted three years, even though it was out of their control?

Mr. SCARLATOIU. Basically, we're dealing with two categories of North Koreans. The ones who are there without government approval—China claims that they're illegal economic migrants—they were arrested, punished, and forcibly repatriated to North Korea, where they face a credible fear of persecution. Workers have normally been okay for as long as they follow the instructions of their three site supervisors, the state security department fellow, the site technical supervisor, and the party representative—the Korean Workers' Party representative. So they go back home and for about three years they're under the surveillance of the Gestapo, Stasi, basically the Ministry of State Security. And then they're okay.

However, in this particular case, they overstayed their contracts. Most of them still moved around in groups. Their humanitarian situation was dire. There were no contracts, there was no money at their work sites. A few of them managed to moonlight if some companies were still open for business, with the approval of the three site supervisors, whom they had to bribe. We have had very credible reports from sources within the North Korean escapee community, who in turn have their sources inside China, that things were so bad that these workers had to work on Chinese farms. They barely had one meal a day. And it went so far as these workers going to the local markets to acquire vegetable clippings—the clippings that are thrown away—and making vegetable soup out of them.

I have mentioned the issue of loan sharks. These workers do want, at the initial stage, positions overseas. The average monthly salary of a North Korean industrial worker is \$3 a month. They can make as much as \$70 or, if they manage to moonlight, even up to \$210. They have to pay a bribe in the amount of \$2,000 to \$3,000. They have to repay the loan sharks. Interest accumulates. This is what happened under COVID. And they were all under tremendous pressure. We have had reports of about 30 suicides among these workers, most of them women.

In terms of the repression they face when they go back home, based on what we know about how North Korea operates, yes, sir. They will be under much more pressure than their predecessors who were simply out there in China until the contracts expired and then they came back home. In North Korea, it doesn't matter that you haven't done anything wrong. There is a perceived offense of having worked at an unauthorized worksite, having overstayed your contract, regardless of the reason why. The likelihood that they will face some degree of punishment, if not harsh punishment, is quite high.

Chair SMITH. Ms. Yozell, a few years ago I chaired a hearing on Malaysia being red-carded for their abuses with regard to their fishing. Can you explain the difference between the U.S. seafood import program and the red carding program of the EU?

Ms. YOZELL. Sure. The EU system, as you say, is a carded system. And basically it is a government-to-government system in which literally there is catch verification that the seafood that is being caught is not IUU fish. And if it is, then a country will first receive a yellow card, and then if they don't improve the work they do, then they get a red card. And when they receive a red card, all seafood from that country is no longer allowed to be imported. On the other hand, in the U.S. system, the SIMP program, it's the industry that is required to determine if seafood caught is IUU or not. And it is not government-to-government. Information is then passed through. And NOAA then determines, based on the information it receives from the brokers, whether the seafood is IUU fish or not.

Co-chair MERKLEY. Thank you so much. And I'm going to ask you—Director Urbina, thank you for your four-year study. In your testimony you note that you studied 751 ships. You've also referred to how difficult that is. What does it mean to study a ship? Like, were 751 boats tracked as to what they were offloading and where they were offloading it? Or were these conversations with 751 crews? How did you go about this very difficult task?

Mr. URBINA. Sure. So, again, thinking in bifurcated fashion, at sea, on land. Three of the four years we've really focused on the at-sea universe. And our hope was to look at the entire Chinese distant water fleet. That was too big to take on. So we then honed it down to look at the portion of the fleet that we thought was potentially most interesting and illustrative. So we honed in on the squid fleet, for a bunch of reasons. The squid fleet, and the distant water squid fleet, is in the most interesting places around the world—North Korean waters, coast of West Africa, high seas Falkland Islands, high seas Galapagos.

The goal then was to go to those four places and lay eyes directly on the vessels and try to talk our way onto the vessels to witness crew, witness conditions, check seafood traceability and their refrigeration, talk to officers and captains, etc. And that was successful. In each of those places we were able to get on vessels. When that didn't work, we interviewed the crew through a very old-school method of bottle communication. So we would write notes and put them in plastic bottles weighed down with rice and, you know, cigarettes, and candy.

And when the ship would try to leave when they saw us coming, we would follow them and we—I would throw bottles onto the back of the vessel. And the crew, usually the deckhands—the captain was looking forward, the deckhands were facing backwards—they would receive the bottle. Sometimes they wouldn't open it, read it. Other times, they would. They'd take the message out. It was written in Bahasa Indonesian, because a lot of the crew were Indonesian, Chinese, and English. There'd be a pen in there. Sometimes they would scribble responses to the questions back, phone numbers of family back home, pleas for help. They'd put it back in the bottle, throw it back over, we'd pick it up. So that was a labor-intensive process, but very effective in getting interactions with crew.

So that was sort of the on-the-water method of reporting. The remote method of reporting was a deep dive on various forms of data, which would allow you to understand where these ships have been, you know, by way of tracking them through satellite technology, etc. Are they engaged in sovereignty incursions, so illegal fishing in that form? Is there a written record in any universe—be it foreign media, or state reports, or other databases—of dead bodies coming off of these ships, of infractions by the ships?

So, vacuum in all that you can about the vessels and build a database so that you can identify levels of concern for different vessels. And then connect the supply chain dots from those vessels, to refrigeration, to port, to processing plant, to U.S. or European buyer. The only way you have impact is if you can make it relevant to European and American consumers. And for that, you need the supply chain work. You can just talk about a bad thing happening on a vessel, but no one's going to care unless they realize they're tied. So that was the on-water investigation.

The on-land investigation was a whole different kettle of fish, if you will. And this was done by the investigative team at my organization—mining of media reports and cell phone footage by workers from within processing plants, open-source intelligence, to see what you can lay eyes on. That TikTok—Chinese TikTok, there's a lot of footage of workers chronicling their labor transfer from Xinjiang to Shandong. Here I am on the plane. Here I'm arriving at my factory. Here I am working. Here I am seeing the ocean for the first time. So, we mined all of that material to connect the dots to actually figure out how many workers were actually in these plants.

And then also a lot of companies have newsletters which are very candid. Parent companies of the seafood processing plants talk very openly about how appreciative they are of the Chinese government helping them fill their labor shortage by transferring workers. And so we mined that material as well, and a number of other mate-

rials to build a grid of knowledge about what the plants are that are using Uyghur workers.

Co-chair MERKLEY. It is truly a stunningly expansive project you undertook, under incredibly difficult circumstances. And just as you were describing throwing bottles onto the boats and hoping somebody would open the bottle—and you apparently got a lot of bottles thrown back, giving firsthand accounts. So thank you for elaborating on that. I am really kind of struck by all of your testimony of how complex and difficult it is to tackle this particular challenge.

And one piece that I hadn't anticipated, that U.S. flagged vessels fishing in their own waters ship their product to China for processing. So immediately it's intermixed—U.S.-produced food is intermixed with the Chinese flow. Is that one—is that an inevitable piece of the economics of processing because it's so labor intensive? Why is American seafood from U.S. vessels in American waters being shipped to China for processing?

Mr. URBINA. I'll take that one on. Inevitable is the word that I focused on in your question. I think the answer to the inevitable part of your question is no, but it depends. The challenge of solving that problem depends on the type of seafood. If you look at the history of squid, very labor intensive, costly, dirty work. And during the late '80s, early '90s it was wholesale shipped to China for the cleaning, processing of it. There is not much infrastructure for processing of squid in the U.S. The challenge that the industry will face for finding alternate places to do that work is going to be tough.

Pollock, different story. You know, there are out of Alaska at-sea processors who are doing a lot of the processing in U.S. waters, on U.S. vessels, for U.S. consumers, and avoiding the problem. Can they scale up? I don't know. But really an honest answer would be to look at the type of seafood and then look at how we could encourage processing alternatives that allow industry players to not rely on North Korean or Uyghur-worked factories in China.

Co-chair MERKLEY. I'll ask—thank you. And I will say, Professor Stumberg, you described Director Urbina's work—James Bond would be impressed. And I think that's certainly—the more you know about your project, the more that that rings true. One of the challenges we've had with the UFLPA is that even if goods are detained, when they are released they are sent to Canada. If they're banned from our market, they're sent to Canada or Europe. How much do we have to accentuate international cooperation to have any significant impact on this challenge?

Mr. STUMBERG. In addition to that, two years ago Congress asked the Department of State and Defense to look around the world and report back to Congress on the risk of forced labor in seafood. Sally knows more about this than I do. But the report that came back to Congress was that 29 countries, including China, have a very high risk of forced labor in their seafood. And so the need for this kind of monitoring is profound. You're right, there are obvious markets all around the world. If they can't sell their seafood in the United States, they're going to go somewhere else. Someone else will buy that seafood. So, why bother, right?

Well, from a moral point of view, "why bother" is easy. The American taxpayers don't want to be trading in forced labor prod-

ucts just to save a few pennies on the dollar. Why bother in terms of the rule of law and a global economy that is working for working people in the United States as well as abroad? If American workers, including the processors in Alaska, have to compete with forced labor in China, they're not going to. How do you compete with slave labor?

Co-chair MERKLEY. So let me reframe the question, because as a principal author of the UFLPA, I certainly believe that we should be doing this. How do we get Canada and Europe to work in concert with the United States to help us tackle this challenge?

Mr. STUMBERG. I don't have a profound answer to that profound question, but I will observe this: Europe is ahead on this. The European Union has already approved a comprehensive sustainability disclosure mandate for all of their member governments, a directive that was approved and is now being implemented—the corporate sustainability reporting directive. So they're years ahead of us, with that Europe-wide, industry-wide disclosure system, the kind of systematic approach that Sally was alluding to earlier, including very specific auditing protocols. And they're implementing it now as we speak.

On the tail of that, both the European Parliament and the Commission have approved proposals for mandatory due diligence, which is legalese for doing the kind of homework that Ian was talking about. And the kind of homework that CBP has outlined for itself in its own work plan. It's just that when you read the details of the European approach to due diligence, it's pretty gauzy. It's chock full of legal jargon. It's hard to understand how it's really going to happen. But when you read the CBP program, you go, oh, this could actually work.

So in some sense, the United States is a thought leader, but we're way behind Europe in terms of scaling this up and applying it not just to seafood, not just to food, but industrywide, region-wide. So getting in sync with what the Europeans are doing, learning from the way they're scaling up this kind of corporate accountability, understanding that companies are going to have to comply with these EU directives and they're going to be preoccupied with that for a decade or more while the Americans are futzing around with vessel by vessel withhold orders. You know, we're not on the same page, and the Europeans are really making us look like we're still in the 20th century. So that's a quick answer to your question.

Co-chair MERKLEY. Thank you.

Ms. Lee.

Ms. LEE. Thank you, Chair Merkley.

I think you could feel that I was getting interested in this answer, because this is part of what I spend a lot of my time doing—trying to think about how we can cooperate better with other countries, how do we cooperate better within the United States Government? Because we actually have some very powerful tools. And I think all of you have mentioned several of them. And I don't think we're using them to the full extent that we need to or could. So I guess one quick thing with respect to Canada is that in our most recent USMCA trinational meeting, Mexico and Canada, under the USMCA, also committed to institute a forced-labor import ban.

And they don't know how to do it. So we brought some of our Customs and Border Protection folks. And we are going through ongoing technical exchanges to help to see how far we can go in terms of sharing information that would make that more effective. Even the Canadian and Mexican businesses said to us, We don't want to get all the forced-labor import rejects that come from the United States. That's not good for our own competitive atmosphere.

But, you know, Professor Stumberg, I don't totally agree with you in terms of the European Union versus the United States. I think our tools are amazing, the Uyghur Forced Labor Prevention Act, the rebuttable presumption which gets around some of the issues that Ian raised; that we don't have to prove or get access to China, because we know China doesn't give access. They don't give access to auditors. But you know, I think we're at the very beginning of learning how to implement those.

And one of the things that I've also been doing in the G-7 and the G-20 is trying to figure out how we can take the very best of what the European Union is doing and what the United States has—a lot of other countries are very jealous of a forced-labor import ban, in whole or in part. Because if we were able to enforce the Tariff Act of 1930, the Uyghur Forced Labor Prevention Act, the North Korean sanctions, it would be massively powerful. We can't really do it all of a sudden. But I also think that the point that you raised, Professor Stumberg, about the integration of U.S. Government procurement with the trade measures, the import ban, and the Uyghur Forced Labor Prevention Act, is exactly next.

So I know that wasn't really a question, but the question is for each of you—and thank you so much for your testimony, for your work. One thing, if you could, back to enforcement. Because I'm in the executive branch, I don't know how long it'll take Congress to enforce better and stronger laws. I know we need them. But I think that there's so much that can be done. What would be your number-one “ask” of the U.S. Government in terms of strengthening enforcement of existing laws? So if each of the witnesses wouldn't mind, I would love to hear from you.

Mr. URBINA. I'm going to cheat and answer with multiple small pieces that add up to one. I think that when it comes to enforcement, as the point you made, there's a real problem within the U.S. Government about agencies not actually working well with each other. And I know that sounds boring and very Washington-focused, but as I've looked at this for over a decade it's a huge problem. So you even look at things like trafficking getting introduced as an element within SIMP. The bigger issue is that the agency that oversees SIMP isn't built to be looking at trafficking issues and labor issues.

ILAB is, and even State is, but the whole program of SIMP resides under an agency that's a bunch of folks that are really, really strong on fishery issues and marine issues, but not labor issues. But everyone is defensive about their jurisdiction, and therefore there's language in the rule, but not real, actual implementation of it. That's got to be fixed, and it's by people in this room. Similarly, a threshold issue. Say Customs and Border Protection has their own interpretation of WROs—what is the threshold for a case that might be brought forward? This person was trafficked. Here's the

evidence. The burden is on NGOs and journalists to do all that work. That's a problem. And then it's handed to Customs and Border. And Customs and Border, sometimes their lawyers will say, Okay, but we want recent stuff—recent defined as within the last two years. These contracts—these people are at sea for two years.

So, your case is going to be automatically kicked out because your case of a trafficking human being is three or four years old. But the nature of the industry that that person's working in, they're going to be offshore for two years. So, there are fundamental interpretive flaws and threshold issues in how these agencies are implementing the tools on the table. And unless someone really pushes and fixes those, the best law on the books isn't going to get what it's supposed to do.

Mr. STUMBERG. First a note about SIMP. As Sally explained, SIMP was built to cover environmentally illegal fishing. It was not built to cover human rights illegal fishing, nor does it cover any of the commercially valuable fish that the USDA and the Department of Defense purchase. If you just applied SIMP to what the U.S. Government buys, that would be a big leap forward. And while you're at it, collect what relevant labor rights information you can. I'm not trying to pitch SIMP as the right place to have a human rights strategy, but it could be a very valuable tool if expanded, as a coalition of eight civil society organizations recommended back in March. They did a really good report led by the World Wildlife Fund and seven other groups.

Two other ideas: First of all, implement the Uyghur Forced Labor Prevention Act. What do I mean by that? It's now been a year and a half since the workplan hit the pavement, right? Have some empathy for CBP. In response to their initial list of 20 known entities that have direct connections to Xinjiang province, they've been flooded with thousands of pieces of evidence about other entities. An entity could be anything from a vessel to U.S. Foods. Thousands. So how do they process that? They have yet to come out with a rule or a guideline on how they're going to make decisions about how and when to add more entities to the list, but so far they've gone from 20 to 27 and that's it.

So I have empathy for them considering the workload, but it's been a year and a half and at least they need a strategy for telling the rest of us, this is how we're going to sift through all this evidence. You can say the same about the five high-priority categories where they're focusing on enforcement. I'd make the pitch that Ian has—you know, give them an invitation to add seafood next, simply based on his reporting alone. He's done their work for them.

And not only that, if I can say one more thing—when I read the CBP work plan published a year and a half ago, I couldn't believe that this was from a U.S. Government bureaucracy because it was so forward looking. They were talking about, and I assume they're working on this now, using artificial intelligence and the various computer databases—the very ones that Ian used—to intentionally sift through and pull out all the data that he's presented in his reporting. CBP implies that they want to be able to do the same damn thing with AI.

Now, I don't know squat about AI, but I have a feeling that that's probably possible. So could Ian's work be a picture of what

the future looks like at CBP? I hope so. Probably everything except, you know, putting on your jumpsuit hopping on a skiff and chasing down people on the high seas. I don't expect CBP to do that. But we have to leave something for Ian and his grandchildren to do. [Laughter.]

Ms. LEE. It's all about the jumpsuit.

If I could say one last thing—thank you so much for those answers. And I actually completely agree with what you both said here. And it's one of the things—ILAB is in cooperation talks with both CBP and with NOAA because, as you said, we have the expertise. I have 165 staff now. We have tremendous technical expertise. And so we're doing some staff exchanges. We're doing some contracting. And we really do want—and we're in very deep conversation with NOAA about SIMP and ways that we think it could be strengthened and improved, and the definitions, and so on. I think that's really important.

And with respect to the Uyghur Forced Labor Prevention Act, you know, I sit on the FLETF, the Forced Labor Enforcement Task Force. In fact, I co-chair the entity subcommittee. So I will tell you that we are trying as hard as we can. It's been very slow going. It's been frustrating, I think, to all of us. But, you know, we're trying to figure out what can withstand legal challenge, what can be as robust as possible. But I share your frustration with the slowness of the process. But I will tell you that we are really trying to use those tools that Congress gave us as effectively as we can. And I apologize, I'm going to have to leave—to catch a plane. But thank you, again, to all of you for your work.

Ms. YOZELL. If I could just hop in for a minute, please. I want to just note that you had asked what could be done, one or two things. I think the number one thing that we've been waiting for, for quite some time, is for NOAA to add labor and human rights abuse to the definition of IUU fishing. They said they would a while ago, and they have backed off of that. In addition, I think it's really important—we recently interviewed several federal agencies and said: What do you need to do better at your job? Your agency, as well as others, all said: Sharing data and information.

NOAA collects a significant amount of information through its SIMP program, but it does not share it. You and other agencies collect a lot of information that NOAA could use as well, but they haven't asked for it. So we really need to open that aperture and understand all that we can about risky flags, risky vessels, risky ports, and I could go on and on. And I also want to just note that there are a number of things that were in the NDAA and appropriations that have asked NOAA to try to harmonize the data and information more, and that has yet to occur.

And then just finally, expanding the list of species covered. It's such a small list, yet pollock, salmon, squid, blue swimming crab, and haddock—all species we know have been the result of IUU fishing but are not on NOAA's list. And they must be expanded to those and others.

Co-chair MERKLEY. Thank you very much, Director Yozell. And thank you, Deputy Undersecretary Lee. This is why it's so valuable that this Commission have members of both parties from the House and Senate, but also to have members from the executive

branch. And I think many of the recommendations and ideas that are discussed here—having you here to hear them directly, from your role inside the administration, is hugely helpful. I hope we have given you sufficient time to catch your plane. I really appreciate that you're here in person.

Ms. LEE. Thank you.

Co-chair MERKLEY. Thank you.

I'm going to raise some questions provided by others, starting with one from Congresswoman Wexton, who would like to have been here. And her question is for you, Mr. Urbina.

She asks: Currently, most Americans focus on where their fish is caught, for example, was it caught in Alaska or was it caught in Norway, not about where they are processed, as in China or the Russian Far East, and by whom. How do we make the complex supply chain more transparent, so importers in the U.S. seafood industry understand that they're not violating the Uyghur Forced Labor Prevention Act, and the Countering America's Adversaries Through Sanctions Act?

Mr. URBINA. Yes, I think seafood, again, is distinct from tomatoes, or cotton, or computer chips—it traverses these two universes. And so one big thing that has to happen intellectually in the public space is we need to not be talking about seafood as a marine issue but be talking about seafood as a product that crosses land as well. And so, I think, that's one big step. So environmental groups, Oceana, for example, or Greenpeace or Sea Shepherd or whatever, need to be really working more closely with Human Rights Watch and lawmakers who are focused on land issues, more than they are now.

Number two, I think the infrastructure that exists for the private sector to monitor and trace its supply chain also has to evolve a lot—and hopefully this will be a poke in that direction—in that they can no longer, I think, simply put forward that they're MSC certified or that they've been sort of accredited as a good steward by a private entity, and therefore, they're part of the ocean conservation team. That's not enough anymore. I think there has to be much more involvement by seafood companies on land labor issues.

And then lastly, I think Sally really said it best. The definitional change in IUU to incorporate sea slavery or human rights issues is one big step. And then building on, as Bob and Sally have both said, SIMP, a flawed tool but the one that's probably the most developed on the table. Building on SIMP, expanding it, redefining it, getting more agencies involved in it is—at least from what I hear from experts—probably the best step for trying to get the supply chain of this product more under control.

Co-chair MERKLEY. Thank you. Thank you very much.

Chair Smith would like a little bit more information regarding how China has reacted to the reporting about forced labor in their seafood industry.

Mr. URBINA. I'll answer that. With a wall of silence. I mean, if you think of the three big players that you would expect to respond to this reporting, one would be the market players—seafood companies in Europe in the U.S. The second would be government players, meaning this government. And the third would be China. The

history of the last two years of engaging with market players, and we put all of our interactions with all 300 companies up on our website, has been largely a wall of silence. Most of the big companies refuse to engage. A couple of exceptions engaged; Lunds is one example, where these are companies that didn't agree, didn't like what we were telling them, but were willing to converse and knew they were on record the whole time. They pushed back at times but were very open in trying to figure out how to fix these things.

But the vast majority of market players did not. And I think that's a big problem, because those who don't engage end up getting very little journalistic light on them because there's just this wall of silence from them. And those who do engage end up getting a lot more spotlight on them, even though they took the high road. In terms of the Chinese government, there have been a couple of comments coming out of the Overseas Fisheries Agency Association essentially calling the story and the reporting fabricated. But there's something interesting in that response, which is—and this is something I think the public in the West needs to be mindful of—they elide definitions. They are quick to point out under our own laws nothing illegal is happening here. This is not forced labor. These people are paid a wage. They're given vocational training and happy to have these jobs. And it's all true. And it's all coming from the Chinese government. But it's irrelevant. And I think, luckily, the U.S. media and companies are understanding that that's irrelevant, because of the category that is child labor, or prison labor, or North Korean labor, or Uyghur labor. That's point one. There has been market reaction since the reporting. So big companies have already begun severing ties to major factories in China. And so that's having clear financial repercussions in China. But that's about what we've seen.

Co-chair MERKLEY. Thank you.

You know, as we're talking about this I was thinking about a whole different piece of this forced labor, which is the west coast of Africa. My daughter worked with children who were basically sold into the fishing industry. The ships are anchored under the old slave castles. So it's like a very dramatic, ancient slavery, new slavery. But all of that seafood is domestic consumption, so it doesn't enter into the supply chains in the way that we're talking about here. And I've read reports of other slave labor in other parts of the Pacific, in which, again, it's mostly for domestic. But this is an area where the supply chains affect the U.S. We have more—perhaps more leverage if we can solve the complexity and bring all the forces to bear.

I did want to go back to just one piece of this, which was the purchasing by the U.S. Government. And I believe that it was noted—and I'm not sure which of you raised this—but the three exceptions. That was your testimony, Mr. Stumberg? That the U.S. Government—the exceptions include, domestic supply is unavailable, domestic prices are too high, or it's intended for resale. So you're essentially saying that the U.S. Government will purchase non-American seafood if it's in one of those three exceptions and that this ties into the possibility of purchasing seafood from China that has been produced essentially by slave labor. Do I have that correct?

Mr. STUMBERG. You do.

Co-chair MERKLEY. Okay.

Mr. STUMBERG. I can illustrate one of those exceptions, if seafood is not available. First of all, what does that mean? Is it not available as U.S.-caught seafood, or is it simply not available in terms of processing in the United States? The rule itself is vague. It's open on that point. Let me just leave it at that because it gets very technical at that point.

In terms of price reasonableness, it's a 20 percent range. So comparing U.S. processing to any low-wage country, where you get into a 20 percent range, I don't empirically understand or know what that looks like. But when you add the prospect of forced labor in that low-wage country, you can imagine how it gets to the point where the price advantage may well be such that unwittingly the U.S. standard for what's a reasonable price encourages, incentivizes processors to go to foreign suppliers in order to compete for U.S. procurement.

Co-chair MERKLEY. That third category, that it's intended for resale. Why would the U.S. Government be purchasing these non-American supplies for resale?

Mr. STUMBERG. To help stock commissaries and to provide the raw goods for other contractors who are running cafeterias for U.S. Government facilities, that kind of thing. And I mention it only because it's very explicit in the regulation. So they've thought about it.

Co-chair MERKLEY. And, finally, I want to turn to you, Mr. Scarlatoiu, for bringing the North Korean aspect to bear. You noted the enormous stress in which individuals may be excited about being able to leave North Korea for higher wages, but the North Korean government takes 90 percent of the wages, and the wages perhaps aren't paid until they return to North Korea, what might be many years. And that meanwhile, the interest is accumulating on the money they borrowed to pay the bribe to get on that trip to begin with. And that the stress of these combined factors has produced significant evidence of suicides, primarily women, you mentioned. Why primarily women?

Mr. SCARLATOIU. In both categories, that of North Koreans who cross the border without government approval and in some industries where North Koreans are dispatched officially by the government, depending on the industry, women represent a higher proportion than men. In the case of refugees, about 80 percent. In the case of the workers, if we're talking—and, again, it's industry based—restaurant workers, textile workers—they're mostly women. At the seafood processing plants, there are particular tasks that are assigned to women—peeling the seafood, measuring the seafood, and, of course, they have to spend time within those terrible working conditions in the refrigerated cold rooms, a very harsh environment. They have to experience the pungent smell. These are jobs that North Korean workers take up. Chinese workers would not take up these jobs because the working conditions are so terrible.

It is very likely that these working conditions take more of a physical and psychological toll on these women. Some of them happen to be married women who have left families behind. And the

stress of not only having to live under these working conditions but also to be unable to repay those loans and interest, takes a very heavy toll on them. There is no proper health care provided. And of course, there is no mental health care provided—none whatsoever—to these North Korean workers.

Co-chair MERKLEY. And these suicides are happening while doing foreign labor, or after returning to North Korea?

Mr. SCARLATOIU. We had reports that the suicides happen in China while they were still unable to return home.

Co-chair MERKLEY. And the loans have to be repaid after one returns to North Korea?

Mr. SCARLATOIU. They continue paying them once they're dispatched to China; in this case, as seafood processing workers. Of course, the \$70 a month that they receive from the North Korean regime—not in dollars but in North Korean currency when they return—is not enough to cover the debt and the interest. And thus, they have to moonlight and do odd jobs, of course with the approval of their site supervisors. Unless they do that, this would be perceived as great wrongdoing, and they would be punished.

Co-chair MERKLEY. We touched on a lot of different pieces of a complex puzzle. Thank you each for bringing your perspective, knowledge, and experience to bear. Do we have closing comments that need to be read into the record?

Staff Director TOZZI. I think we can leave—if there are supplemental materials, people can submit them by close of business Friday.

Co-chair MERKLEY. If there are any supplemental materials or questions from members of the Commission, please submit them by the end of the day on Friday. And if we do have additional questions to send to all of you, please respond as promptly as possible so we can get those into the record.

Again, thank you very much for your testimony and your work on a very significant human rights challenge, one that this Commission is determined to highlight and to develop as much as possible legislative strategies to increase our ability to improve those conditions. Thank you, and this hearing is adjourned.

[Whereupon, at 10:49 a.m., the hearing ended.]

A P P E N D I X

PREPARED STATEMENTS

STATEMENT OF IAN URBINA

Thank you to Chairman Smith and Chairman Merkley and thank you to the rest of the Commission for inviting me to speak. I will briefly talk about a four-year investigation that my news organization, The Outlaw Ocean Project, conducted in collaboration with The New Yorker, focused on China's role in human rights and environmental concerns tied to the world's seafood supply chain.

Seafood is a distinct global commodity. It is the world's last major source of wild protein. It is the largest globally traded food commodity by value.

Seafood is also harder to track than many other products. It is typically harvested offshore, often on the high seas, where there is limited national jurisdiction and little enforcement of what few murky rules exist. Labor spot checks on ships at sea are rare. These workplaces stay in constant motion. Deckhands are often undocumented. They tend to come from poorer nations. Their access to political capital and legal recourse in the form, say, of lawyers, advocates, journalists, or unions, is minimal.

And, between bait and plate there are an inordinate number of handoffs of this product. It goes from fishing ship, to refrigeration ship, to port, to processor, to cold storage, to exporter, to U.S. importer, to distributor or food service company, and then, finally, to restaurant, grocery store, or to public food pantry, military base, or public school. These many handoffs make it tougher to trace the true origin of the catch and to ensure that there is no forced labor or other environmental crimes in the supply chain. Worse still, the few auditing entities that exist, what certification regimes that have emerged in the private sector, whether they focus on environmental or labor concerns, do a very poor job even at identifying and countering such crimes in these supply chains.

China plays a unique role. It is the undisputed superpower of seafood because its distant water fishing fleet, which is to say those vessels in foreign or international waters, is vastly bigger than that of any other country. So too is China's processing capacity: even seafood caught by U.S.-flagged vessels, in our own waters, is often shipped to China to be cleaned, cut and packaged before being sent back to American consumers.

China matters, and was the focus of our investigation, not just because it is the global linchpin of seafood production, but also because China is the most opaque of settings, the most prone to illegal fishing practices and, come to find out, the most dependent on forced labor when it comes to seafood.

This forced labor occurs in two distinct realms: at sea and on land—on the fishing ships and in the processing plants.

At sea, the problem of forced labor is endemic and varied. Debt bondage. Human trafficking. Beating of crew. Criminal neglect in the form of beriberi. Passport confiscation. Wage withholding. Denial of timely access to medical care. Death from violence. We found a widespread pattern on Chinese ships. The investigation revealed that almost half of the Chinese squid fleet, 357 of the 751 ships we studied, were tied to environmental or human rights violations.

On land, the problem of forced labor is deep and consistent. Especially after the start of the global pandemic led to severe labor, logistical and supply chain problems in China, the government there began helping its massive seafood industry keep production and exports up and running. It did so by moving thousands of workers across the country from Xinjiang, a landlocked and subjugated region in the far west, to Shandong, a coastal eastern province in the far east where much of the seafood infrastructure is based.

Most of the global seafood industry is impacted. The investigation found that since 2018, more than a thousand workers from Xinjiang have been forcibly relocated to at least ten seafood processing plants in Shandong that supply dozens of major U.S. seafood brands, as well as brands in at least twenty other countries.

I need not tell this Commission about China's "labor transfer" programs and the ways in which this state-run effort has been legally defined as "state-sponsored forced labor" because the ethnic minorities pressed into service do not have an option to say no to these jobs.

I also do not need to remind this Commission that under the Uyghur Forced Labor Prevention Act, there are very clear and strict prohibitions of any products in part or whole being imported to the U.S. that rely on Xinjiang labor.

Lastly, I do not need to tell the people gathered here that, if credible evidence is brought forward, as I think our investigation has, indicating the existence of

Xinjiang labor in a particular supply chain, then this federal law, the UFLPA, puts the onus on industry, on the companies themselves, to prove that they do not in fact have Uyghurs or other ethnic minority Xinjiang labor tied to their products and until they do, U.S. Customs and Border Protection is supposed to block shipments of this import. U.S. companies responding by simply saying that their partners in China at the plants have reassured them that no forced labor exists in their plants is probably not sufficient evidence that they are free from forced labor. Similarly, relying on social or marine auditing firms that inspected these plants but, by their own admission, were not actually looking for the presence of Xinjiang workers, is also not sufficient evidence that they are free from forced labor.

The Chinese seafood industry and government has already responded that using Xinjiang workers is not illegal under Chinese law and that the use of these workers does not constitute forced labor because they receive a salary, vocational training, proper living conditions, and fair treatment. But U.S. seafood companies need to understand that this misses the point. Under U.S. law, any use of Xinjiang workers is deemed illegal because it occurs in the context of a larger government-run and coercive program, and whether these workers are paid or they tell auditors or state media that they are happy to have the job is not relevant. Think, here, for comparison, of the use of child laborers in other countries, which may be legal or defined distinctly in those nations, but regardless of their laws, it is not legal for those products to come into the U.S.

As an aside, I will mention that I am intentionally refraining, for the time being, from discussing the additional set of processing plants in China that our investigation found tied to U.S. seafood importers and that rely on another form of state-sponsored forced labor, namely North Korean workers. As you know, imports to the U.S. associated with this demographic of forced labor is also strictly prohibited by federal law. We will soon publish more about those findings.

But for now, I will humbly encourage the public to take a deep look at the broken nature of the labor auditing of the seafood industry and why seafood companies have been allowed for too long to operate in a place where they have culpable deniability because to operate there they have to agree to not look too hard at thorny issues like human rights.

In fairness to industry, the world was not previously aware of how much Xinjiang labor had tainted the global seafood supply chain. The world was also not aware of how pervasive forced labor is on Chinese fishing ships themselves.

That moment has passed. We now see that hundreds of seafood companies are tied to these Chinese ships and these Chinese factories. The question is what will industry and government do about it? The laws on the matter, at least in the U.S., are pretty clear. The issue is whether they will be enforced.

1. Introduction

Two-hundred and forty—that’s the number of name-brand stores and institutional suppliers that we all depend on. Through them, we all buy seafood from importers who sell what forced laborers process in Chinese factories and vessels. We do it as families, as schools, as businesses. What is not in that number are the ways we buy forced-labor seafood as governments, mostly through five federal agencies and local school food authorities.

The Outlaw Ocean team, led by Ian Urbina, made transparency happen. They aren’t the first to reveal Xinjiang supply chains.¹ But what distinguishes their seafood reporting is that they literally chased outlaw vessels across the seas, surveilled trucks at the port, and monitored internet traffic in multiple languages. James Bond would be impressed. And they didn’t stop with the report. They created power tools for tracing supply chains, purchasing seafood, and fixing policies that unwittingly enable an empire of exploitation. Now we can trace our own families’ supply chains for products we buy every week.

The international Coalition to End Forced Labour in the Uyghur Region has added the Outlaw Ocean reporting to its online library to show the complex puzzle of affected industries—aluminum, apparel, automotive, cotton, food, vinyl, polysilicon, solar, and more.²

I appreciate your invitation to address one piece of this puzzle—the role of governments as wholesale buyers of seafood. I will briefly respond to several procurement questions:

- Which U.S. government agencies purchase seafood?
- Is the Buy American Act an antidote to forced-labor goods?
- Does the prohibition on purchasing forced-labor goods work?
- What is on the to-do list for fixing related gaps in policy?

a. Forced labor in U.S. seafood supply chains

Outlaw Ocean reporters have linked Chinese forced labor to U.S. Government suppliers who sent seafood worth \$200 million over the past 5 years to military bases, federal prisons, and the National School Lunch Program.³ By one estimate, half of the fish sticks served in American public schools have been processed in China.⁴

Even fish that is “locally caught” or “wild caught” can be processed by forced labor because much of the fish coming out of U.S. waters and U.S.-flagged ships is frozen, sent to China for processing, refrozen, and then shipped back to the United States.⁵ In those cases, country-of-origin labeling requires labeling as a fish from two countries, e.g., “Alaskan” and “Product of China” on the same label.⁶

¹See, e.g., the interactive tools developed by the Helena Kennedy Centre for International Justice at Sheffield Hallam University and NomoGaia, *Driving Force—Automotive Supply Chains and Forced Labor in the Uyghur Region*, which includes an interactive supply chain map and a data base of companies at every stage of the supply chain, available at <https://www.shuforcedlabour.org/drivingforce/> (viewed October 21, 2023).

²Coalition to End Forced Labour in the Uyghur Region, *Seafood Imports in More Than 20 Countries Implicated in Uyghur Forced Labour* (October 2023), <https://enduyghurforcedlabour.org/seafood-imports-in-more-than-20-countries-implicated-in-uyghur-forced-labour/> (viewed October 21, 2023). The coalition’s on-line library includes the work of this committee: <https://enduyghurforcedlabour.org/> (viewed October 21, 2023).

³See Appendix 1, Outlaw Ocean, Discussion, and Appendix 2, Outlaw Ocean, Methodology; Ian Urbina, *The Crimes Behind the Seafood You Eat*, New Yorker (October 9, 2023), available at <https://www.newyorker.com/magazine/2023/10/16/the-crimes-behind-the-seafood-you-eat> (viewed October 21, 2023); Ian Urbina, *The Uyghurs Forced to Process the World’s Fish*, New Yorker, News Desk (October 9, 2023), available at <https://www.newyorker.com/news/news-desk/the-uyghurs-forced-to-process-the-worlds-fish> (viewed October 21, 2023); Ian Urbina, *The return of an old scourge reveals adept sickness in the global fishing industry*, Boston Globe (October 12, 2023) (\$50 billion from one NSLP supplier), available at <https://www.bostonglobe.com/2023/10/12/opinion/beriberi-fishermen-outlaw-ocean/> (viewed October 21, 2023).

⁴Urbina, *Uyghurs Forced to Process*; see Appendix 2, Outlaw Ocean, Methodology.

⁵Kristen Abrams, *There’s something fishy about your seafood. China uses human trafficking to harvest it*, USA Today, Opinion (October 11, 2023), available at <https://www.usatoday.com/story/opinion/2023/10/11/us-seafood-china-human-trafficking-uyghur-forced-labor/71127786007/> (viewed October 21, 2023).

⁶Craig A. Morris, *A Tale of a Fish from Two Countries*, U.S. Department of Agriculture, Blog Archives (posted December 5, 2016), <https://www.usda.gov/media/blog/2016/12/05/tale-fish-two-countries>; see also Frank Asche et al., *China’s Seafood Exports: Not for Domestic Consumption?*, Science, DOI: 10.1126/science.abl4756 (January 28, 2020).

The report that suppliers to U.S. agencies import seafood from China is not surprising. The rest of the U.S. market imports 75 percent to 80 percent of its seafood.⁷ China is the leading exporter to the United States,⁸ which is China's second-leading export market (after Japan).⁹

b. Federal procurement of seafood

So how much seafood does the federal government purchase? There is no clear statistic. The overlapping search filters on USAspending.gov indicate which agencies are most likely to purchase seafood, but they are not accurate as stand-alone measures. The following are dollar amounts of federal procurement since fiscal year 9, just over 5 years.

- *The industry codes* for wholesale trade in seafood and seafood preparation/packaging also show USDA in the lead: Agriculture \$1.046 billion, Justice \$2.4 million, Defense \$1.2 million, Smithsonian \$82,000, and Veterans \$57,000.¹⁰
- *The product codes* for direct purchase of meat, poultry and fish shows Defense in the lead: Defense, \$2.4 million, Agriculture \$1.046 billion, Justice \$1.2 million, and Veterans \$54,000.¹¹
- *The service code for accommodation and food* would include seafood as a very small percentage of a big absolute number. It shows Defense in the lead, \$5.9 billion, Homeland Security \$403 million, State \$394 million, Agriculture \$391 million, Veterans \$139 million, and Justice \$48,000.¹²

In sum, USDA appears to lead the other agencies in terms of direct purchase of seafood, in the range of \$1 billion over a 5-year period.

Since July 2022, USDA has invited bids entitled Pacific Seafood Products (8/3/22), Salmon Products (6/15/23), Pollock Products (11/17/22), Shrimp Products (12/13/22), Salmon Products (12/22/22), Groundfish Products (3/2/23), Pollock Products (5/9/23), Section 32 Purchase of Salmon and Pollock Products (6/14/23), and Section 32 Purchase of Rockfish and Shrimp Products & CCC Pollock and Haddock (6/15/23), and Salmon Products (9/15/23).¹³

To illustrate one example, the June 2023 "Section 32 Purchase of Salmon Products" requested fixed-price bids for Pacific Seafood Items, Alaska Sockeye (Red) Salmon Products (Canned) and Alaska Sockeye (Red) Salmon Products (Filets).¹⁴ The award of this procurement listed F.O.B. distribution to food assistance programs at various locations in the United States. Awards totaled 1,269 discrete delivery locations with a total procurement value of over \$70 million (estimate).¹⁵

⁷ NOAA Fisheries, US Aquaculture, Current Status of Seafood, updated September 20, 2022, <https://www.fisheries.noaa.gov/national/aquaculture/us-aquaculture> (viewed October 15, 2023).

⁸ China exported 377,3221,296 kg to the United States in 2022). NOAA Fisheries, Foreign Fishery Trade Data, Foreign Trade, 2022 (search for all species and all countries), <https://www.fisheries.noaa.gov/national/sustainable-fisheries/foreign-fishery-trade-data> (viewed October 15, 2023).

⁹ The value of China's exports to the United States was \$1.87bn out of \$16.12bn total exports in 2021. USDA Foreign Agriculture Service, 2021 China's Fishery Report, Report Number: CH2021-0176, 15, Table 11. China: Exports of Seafood Products by Country of Destination (December 22, 2021), available at <https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=2021%20China%27s%20Fishery%20Report-Beijing-China%20-%20People%27s%20Republic%20of-12-17-2021> (viewed October 20, 2023).

¹⁰ USAspending.gov, search parameters for FY2019-24, NAICS 3117 for seafood processing/packaging and NAICS 424460 for wholesale trade in seafood (viewed October 21, 2023).

¹¹ USAspending.gov, search parameters for FY2019-24, PSC 8905 for meat, fish and poultry (viewed October 21, 2023).

¹² USAspending.gov, search parameters for FY2019-24, PSC 72 for accommodation and food service (viewed October 21, 2023).

¹³ USDA, Agricultural Marketing Service, Open Purchase Requests for Seafood, https://www.ams.usda.gov/open-purchase-request?field_term_grades_and_standards_target_id=865 (viewed October 3, 2023).

¹⁴ USDA, Solicitation—Domestic Commodity Invitation, Description: 12-3J14-23-B-0467, Bid invitation number: 2000009419, Purchasing Group: AMS—Livestock (Start date: June 15, 2023), available at <https://www.ams.usda.gov/sites/default/files/2000009419%20-%20Bid%20Invitation.pdf> (viewed July 27, 2023).

¹⁵ USDA, 2000009419-3, Reports :: Bid Array, Archive Date: 2024-01-12, https://usda.jaggaer.com/clearview/usda_domestic_2000009419_3_1689170424?p=reports_bid_array;menu=1318;scenario=2 (viewed July 23, 2023).

The pre-solicitation announcement provided this notice of the Buy-American regulation:

“Pursuant to Agricultural Acquisition Regulation (AGAR) 470.103(b), commodities and the products of agricultural commodities acquired under this contract must be a product of the United States and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States.”¹⁶

The solicitation notice also required full transparency of processing facilities at the bidding stage:

Offerors who intend to use more than one processing plant and shipping point for contracts awarded under this solicitation, other than the processing plant and shipping point entered in their bids, may submit a list of their approved processing plants and shipping points on a separate sheet of paper to be uploaded in WBSCM, and to be submitted with their bids.¹⁷

c. USDA comments on reports of forced labor

The Outlaw Ocean reporters asked USDA to comment on their evidence that some USDA suppliers were importing from processors that used forced labor in China. USDA replied that all the fish that it purchases “must be grown and processed in the United States or its territories” as required by the Federal Acquisition Regulation (FAR).¹⁸ When the reporters followed up with more specific questions, the agency replied that:

1. USDA requires that seafood products be sourced in U.S. waters by U.S. flagged vessels, which it confirms with onsite audits.
2. The audits verify that processing facilities are based in the U.S. or its territories.
3. For documentation, contractors are required to provide documents during audits that show compliance with requirements including domestic origin.¹⁹

The USDA comments imply that the Buy American Act is an antidote to forced labor goods, specifically in seafood supply chains. On a technical level, the USDA comments invite questions for a closer look:

- What is the site of an onsite audit? The contractor’s business office? A sampling of fishing vessels? A sampling of processing facilities? All facilities? In other words, are these audits any more effective than the audits that failed, as shown by Outlaw Ocean’s reporting (e.g., audits by the Marine Stewardship Council, Sedex, and several wholesalers).
- Does verification of processing based on a declaration of intent before performance establish “domestic origin” as performance actually happened? Does “domestic origin” include both catch of seafood in U.S. waters and processing of that seafood in U.S. territory?
- How would an auditor find out whether a contractor requested use of foreign processing based on non-availability of that processing in U.S. territory? Do USDA contract officers keep records of determination of availability?

The more substantive question is, what is the domestic-origin requirement? If a purchase is made under procurement rules that allow foreign processing of fish, then there would be no domestic processing, and thus, no audit of domestic processing.

Section 2 below looks into the “requirement” of purely domestic sourcing and the several exceptions to that rule that allow contractors to source seafood from foreign processors. Section 3 follows that with a summary of federal rules that prohibit procurement of goods produced with forced labor.

2. Exceptions to the Buy American Act

a. Federal agency procurement

The Buy American Act requires agencies to purchase only “domestic end products” for public use in the United States. The BAA is implemented through the Federal

¹⁶USDA, Agricultural Marketing Service, Pre-Solicitation Announcement for Section 32 Purchase of Salmon Products (May 11, 2023), <https://www.ams.usda.gov/content/pre-solicitation-announcement-section-32-purchase-salmon-products>.

¹⁷USDA, Solicitation, Bid invitation number: 2000009419, at 1–2 (see above).

¹⁸Appendix 1, Outlaw Ocean, Discussion, U.S. Department of Agriculture.

¹⁹For the detailed email exchange, see id.

Acquisition Regulation (FAR) and additional agency rules, including the Department of Agriculture (AGAR).²⁰

USDA requires that all commodities acquired for use by the Food and Nutrition Service [USDA Marketing Service] must be a product of the United States, “*except as may otherwise be required by law*, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States . . .”²¹

A preliminary question is whether all U.S.-caught seafood is a *domestic end product*, regardless of where it is processed. The answer is *no*, to be a domestic end product, seafood must be “processed *and* prepared . . . exclusively in the United States.”²²

There are three exceptions to the Buy-American mandate: (1) if the supply is not adequate, (2) if domestic prices are unreasonable, and (3) if the product is for resale in stores.

(1) Inadequate supply

- (a) “The Buy American statute does not apply with respect to . . . supplies if . . . , either as end items or components, [they] are not . . . produced in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.”²³
- (b) “The head of the contracting activity may make a determination that [a] supply is not . . . produced in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. A determination is not required before January 1, 2030, if there is an offer for a foreign end product that exceeds 55 percent domestic content.”²⁴

Let’s interpret that language. The contract office may determine that a seafood product is not available in sufficient quantities. But a determination is not required before 2023.

That latter phrase is ambiguous; it could be read two ways.

- The first is that a formal, written determination is not required before 2030. If so, then decisions about availability will not be traceable. They will become invisible decisions until 2030.
- The second is that a decision about domestic availability is not required at all before 2030, so long as the product from a foreign processor exceeds 55 percent domestic content.

The first is a blow to transparency, and the second is a loophole for foreign processors. In practice, the two meanings may be equivalent.

In the case of seafood, a contractor could assert that the U.S.-caught fish is available, but the domestic processing capacity is not. Imagine the conversation: *Domestic processing has become too expensive. So why not process the fish in China? The processing won’t exceed 45 percent of the total cost. Besides, no one will ever know the difference.*

(a) Unreasonable prices

A reasonably priced domestic product is not available if the lowest domestic offer is more than 20 percent higher than the lowest foreign offer (or 30 percent higher for a small business bidder). For example, if the domestic price from a large business is 21 percent higher than the lowest foreign offer, it is not reasonable. The agency must accept the lower foreign offer.²⁵

If there is no reasonably priced domestic offer, then a foreign offer that uses U.S.-caught seafood would enjoy a 20 percent price preference over a competing foreign

²⁰41 U.S.C. ch. 83; FAR 25.002 Policy; Subpart 425.1—Buy American Act—Supplies.

²¹AGAR, 470.103(b) Exceptions.

²²AGAR 470.103(b) Use by the Food and Nutrition Service and (d) Product derived from animals.

²³FAR 25.103(b) Nonavailability.

²⁴FAR 25.103(b)(2); see FAR 25.106(b)(2). While *domestic content* is not explicitly defined, the FAR determines the *amount* of domestic content based on the percent of the cost of all components. FAR 25.101(a) General. (“the cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components . . .”)

²⁵FAR 25.103(c) Unreasonable cost; FAR 25.106(b)(1) Determining reasonableness of cost. For Seafood Product Preparation and Packaging (NAICS 311710) the threshold for small business is 750 employees or less. FAR 2.101 Definitions, “Small business concern” incorporates 13 CFR Part 121 Small business size regulations; 13 CFR 121.201 What size standards has SBA identified by North American Industry Classification Systems codes?

product—so long as it has at least 55 percent domestic content (the value of the raw seafood).²⁶

The question here is, what is the cost advantage of processing seafood in a low-wage country like China? A more severe question is, how much more advantage can Chinese processors gain by participating in forced-labor schemes with workers from Xinjiang and North Korea? Is that advantage likely to exceed 20 percent compared to U.S. domestic processing?

I was unable to find any recent cost comparisons of fish processing in low-wage countries. A study done in 1995 indicates that the wages can range from 6 to 18 percent of total product costs, with U.S. costs on the high end.²⁷

(b) Resale in stores

The Buy-American Act does not apply to agency procurement of seafood for resale in a commissary at military bases or other government-authorized retail stores. This is because resale to consumers is not a public use (e.g., a public feeding program).²⁸

b. Grants to State and local governments

The U.S. Department of Agriculture (USDA) buys about 20 percent of fish that is served in schools. The remaining 80 percent is purchased with Federal funds by local buyers who rely on many of the same importers.²⁹ There is no exception for local buyers to buy foreign seafood because there is no requirement to Buy American.

(1) School food authorities

When spending funds under the National School Lunch Program, local school food authorities and state distributing agencies are required to buy domestic commodities or products “to the maximum extent practicable.”³⁰

(2) Other recipients of Federal funds

When spending federal funds generally, state and local governments “*should*, to the greatest extent practicable” provide a preference for goods produced in the United States.³¹

This “practicable” standard amounts to a recommended practice; they “*should*” rather than “*must*.”³² It is not a constraint on local purchasers that seek a price advantage from purchasing foreign-sourced fish. Local authorities are likely to purchase directly or indirectly from the same importers who sell to neighboring businesses that Outlaw Ocean reporting has linked to forced labor—the likes of Food Lion, Giant Foods, Gordon Food Service, Harris Tweeter, IGA, Kroger, Sysco, and US Foods.³³

3. Forced-labor prohibition in procurement

The FAR prohibits procurement of goods made with the benefit of trafficking, which includes forced labor.³⁴ Trafficking is a composite of related harms that include commercial sex, forced labor, fraud, and the worst forms of child labor.³⁵

²⁶ FAR 25.106(b)(2)(ii); see FAR 25.101(a) General.

²⁷ Aurora Zugarramurdi, María A. Parin, Hector M. Lupin, *Economic engineering applied to the fishery industry-4. Production Cost*, 103, Table 4.6 (Food & Agriculture Organization, 1995), https://www.google.com/books/edition/Economic_Engineering_Applied_to_the_Fish/a4lUTm1-f9kC?hl=en&gbpv=1 (viewed October 21, 2023).

²⁸ FAR 25.003; FAR 25.102 (Buy-American policy requires “only domestic end products for public use inside the United States.”) The FAR does not define “commissary,” but other federal regulations refer to “Authorized resale outlets (military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies). See 41 CFR 51-6.4.

²⁹ Appendix 2, Outlaw Ocean, Methodology.

³⁰ 7 CFR 210.21(d)(2) Procurement. A domestic *agricultural commodity* is produced in the United States, and a domestic *food product* is processed in the United States substantially using agricultural commodities that are produced in the United States. 7 CFR 210.21(d)(1). See also 2 CFR 250.17(e) Use of funds obtained incidental to donated food distribution.

³¹ 2 CFR 200.322 Domestic preferences for procurements.

³² 2 CFR 200.101(b) Applicability to different types of Federal awards.

³³ Outlaw Ocean, Bait-to-Plate sourcing tool, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/bait-to-plate/#buyers> (viewed October 21, 2023).

³⁴ FAR 22.1504 (Violations and remedies); Exec. Order No. 13,126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (June 12, 1999), 64 Fed. Reg. 32383 (June 16, 1999).

³⁵ FAR 22.1703 (Combat human trafficking—policy); FAR 22.1704 (Violations and remedies). “Severe forms of trafficking in persons” means “(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) The recruitment, harboring, transportation, provision,

a. Definition of forced labor

The FAR waters down the definition of *forced labor* in comparison to the ILO's definition. In the FAR:

“Forced labor’ means knowingly providing or obtaining the labor or services of a person—(1) By *threats of serious harm to, or physical restraint* against, that person or another person; (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.”³⁶

In contrast to “threats of serious harm,” the ILO requires only a “menace of penalty.” Many elements of the Chinese labor schemes for Uyghurs and other Turkic and Muslim-majority peoples appear to violate both definitions of forced labor. Yet the FAR definition is qualitatively less comprehensive when it comes to coercion that does not involve threats or physical restraint. For example, it is not clear whether serious harm includes being fired or canceling a work visa if a worker refuses to work overtime. Similarly, it is not clear whether physical restraint includes locking factory doors during working hours or other constraints on freedom of movement.

The FAR's definition of forced labor is also inconsistent with the definition in the Tariff Act of 1930, which prohibits import of goods produced with convict, forced, or indentured labor.³⁷ The Tariff Act is the foundation for the Uyghur Forced Labor Prevention Act.

b. Prevention plans

The FAR requires certain contractors to have a plan to prevent forced labor, but this is limited to contracts for products or services acquired outside of U.S. territory that exceed \$500,000.³⁸ No prevention plan is required when there is evidence that a product is being imported to the United States from a region or a business that has a high-risk of forced labor. Nor is there any link between procurement and the high-risk sectors identified under the UFPLA or the list of entities known to have connections with forced-labor schemes in Xinjiang.

4. The fix-it list

a. Implement procurement tools

(1) *Exceptions to the Buy American Act*

- (a) *Non-availability*—Close the “non-availability” gap³⁹ by requiring agency contract officers to:
 - i. formally determine when domestic products are not available (prior to 2030 when they must do it anyway), and
 - ii. determine availability based on both domestic content of a product and domestic processing of a product.
- (b) *Reasonable prices*—Enable agency contract offices to waive the rule on reasonable prices from foreign suppliers⁴⁰ (the 20-percent range) when there is evidence that a supply chain poses a high risk of human trafficking or forced labor.

(2) *Compliance with the FAR's prohibition of trafficking and forced labor*

- (a) Apply the UFLPA presumption of forced labor to bidders and suppliers of contractors in U.S. government procurement.⁴¹
- (b) Require a trafficking and forced-labor prevention plan for high-risk imports, starting with seafood and priority sectors for UFPLA enforcement.

or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjecting to involuntary servitude, peonage, debt bondage, or slavery.”

³⁶ FAR 22.1702 Definitions.

³⁷ Section 307 of Title III, Chapter 497 (46 Stat. 689); Tariff Act of 1930, 19 U.S.C. 1307.

³⁸ FAR 22.1703(c) Policy.

³⁹ This would entail rulemaking by the FAR Council of FAR 25.103(b) Nonavailability.

⁴⁰ This would entail rulemaking by the FAR Council of FAR 25.103(c) Unreasonable cost; FAR 25.106(b)(1) Determining reasonableness of cost.

⁴¹ This would entail rulemaking by the FAR Council of FAR 22.1703 Policy and FAR 11.1704 Violations and remedies. See the pending legislation introduced by Senators Rubio and Merkley, S. 1770, the Uyghur Genocide Accountability and Sanctions Act of 2023, Sec. 10. Prohibition on certain United States government agency contracts.

The FAR already provides for prevention plans in limited circumstances (services provided abroad in contracts over \$500,000).⁴²

- (c) Define forced labor for procurement consistently with its definition in the Tariff Act and the ILO Convention—based on the menace of a penalty, rather than explicit threats.⁴³
- (d) Do not recognize “social audits” as evidence of compliance if (1) the auditor is paid by the supplier, or (2) the auditor fails to conduct confidential interviews with workers using strict protocols to avoid coercion by employers.⁴⁴
- (e) Develop NOAA audit protocols for USDA purchasing.

(3) Federal Funding Accountability and Transparency Act of 2006—Fully implement the Federal Funding Accountability and Transparency Act of 2006 (FFATA), in which Congress mandated transparency of federal suppliers and sub-suppliers down to contracts of \$25,000. However, the Office of Management and Budget used rulemaking to exclude most supplier subcontracts.⁴⁵ Congress could reassert its transparency obligation by:

- (a) clarifying that public disclosure of contractors and subcontractors applies not only to prime contractors (first-tier), but also to all subcontractors and their suppliers (second and third tier),
- (b) requiring Federal contractors to disclose their full government supply chains, either on USAspending.gov or Open Supply Hub, a neutral transparency platform,⁴⁶ and
- (c) requiring broader public disclosure of records of shipments to the U.S. from overseas suppliers as a way of providing the government and public with the means to verify the completeness and accuracy of brand disclosures.

(4) Need for a human rights strategy in procurement

As noted above, U.S. procurement law prohibits purchase of goods made with human trafficking and forced labor.⁴⁷ The law requires contract managers to require greater transparency on high-risk contracts by writing a prevention plan and reporting any investigations. However, a GAO audit found that agencies were completely unaware of their duties under this law.⁴⁸

Contract officers do not have the time, human rights expertise, corporate-affiliation data, or trade data they need to monitor suppliers’ compliance with human rights obligations. Other countries have been more creative. For example, Swedish counties have created an inter-agency SWAT team to oversee its human rights standards.⁴⁹ And over 900 European universities and government entities have affiliated with Electronics Watch to monitor and enforce their ITC procurement codes.⁵⁰

b. Implement the UFLPA

Reforming the mechanics of the Federal Acquisition Regulation is a heavy lift, and the forum for doing so (the OMB) is dedicated to saving money, not saving lives. It should be easier to persuade U.S. Customs and Border Protection to implement already authorized elements of the Uyghur Forced Labor Prevention Act. No “reform” is necessary. The challenge is to just do it—understanding that the agency

⁴² FAR 22.1703(c) Policy.

⁴³ This would entail rulemaking by the FAR Council of FAR 22.1702 Definitions.

⁴⁴ See Testimony of Scott Nova, Executive Director of the Worker Rights Consortium, Hearing of the Senate Committee on Finance: Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field, 13–14 (February 16, 2023), <https://www.finance.senate.gov/imo/media/doc/2023.02.16%20Nova%20Testimony%20for%20Customs%20Hearing.pdf> (viewed October 21, 2023).

⁴⁵ Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109–282, 2(b)(1)(D), 120 Stat. 1186, 1187 (2006); Reporting Executive Compensation and First-Tier Subcontract Awards, 77 Fed. Reg. at 44052–53.

⁴⁶ Open Supply Hub, Explore Global Supply Chain Data, <https://opensupplyhub.org/>, and OSH, Civil Society, <https://info.opensupplyhub.org/civil-society> (viewed October 23, 2023).

⁴⁷ FAR 22.1503, 52.222–50.

⁴⁸ U.S. Government Accountability Office, DOD Should Address Weaknesses in Oversight of Contractors and Reporting of Investigations Related to Contracts (Washington: GAO–21–546, 2021), 1, 19.

⁴⁹ See Pauline Gothberg, Public Procurement and Human Rights in the Healthcare Sector: The Swedish County Councils’ Collaborative Model (London: Edward Elgar 2019), 165–179.

⁵⁰ Electronics Watch, Affiliates, <https://electronicswatch.org/en> (viewed October 21, 2023); Id, What We Do; Id, Monitoring Partners; Id, Electronics Watch Contract Conditions with Guidance for Contractors (EW, June 2020).

has been swamped by evidence that importers are sourcing from Xinjiang and from facilities in other parts of China connected to forced labor. Several ideas have been presented to this committee (and DHS) by Dr. Laura Murphy of Sheffield Hallam University, and to the Senate Finance Committee by Scott Nova at the Worker Rights Consortium. These and other published reports are posted in the online library of the Coalition to End Forced Labour in the Uyghur Region.⁵¹ Here is a thumbnail sketch for two of their recommendations:⁵²

(1) **Known entities**—The UFPLA’s presumption of forced labor is triggered by doing business with a “known entity” implicated in forced labor or importing products with any content from Xinjiang.⁵³ The original list of known entities was based on CBP’s past withhold-release orders (WROs) or Commerce Department actions. The first list, issued June 2022, included 20 known entities. Two months earlier, Dr. Murphy’s team sent the Forced Labor Enforcement Task Force (FLETF) evidence of 55,000 Xinjiang entities doing business in the Uyghur Region and 150 businesses that participate in state-sponsored labor-transfer programs that are tantamount to forced labor.⁵⁴

Yet the list has expanded by only seven entities. Obviously, the FLETF must triage its workload, and it needs to establish an efficient process for vigorously expanding the known-entity list. Quality of evidence matters, and entities cited in high-profile reports by Outlaw Ocean, Sheffield Hallam University, and others merit additions to the known-entity list.⁵⁵

(2) **High-priority sectors**—The FLETF monitors and develops an enforcement plan for high-priority sectors, which include apparel, cotton and cotton products, silica-based products, and tomatoes and downstream products.⁵⁶

No new priority sectors have been added since the UFPLA was first implemented. The Outlaw Ocean reporting makes an urgent case that the FLETF should adopt seafood as the next priority sector. Moreover, the reporting and interactive tools provide elements that CBP could incorporate into its own monitoring and enforcement strategy.

c. Expand the Seafood Import Monitoring Program (SIMP)

(1) **Scope of SIMP**—The SIMP requires disclosure of seafood imports for 1,100 unique species, categorized in 13 species groups, that are vulnerable to illegal fishing, seafood fraud, or both. SIMP covers about half of all seafood imports into the United States. SIMP species groups include Abalone, Atlantic cod, Blue crab (Atlantic), Dolphinfish (Mahi Mahi), Grouper, King crab (red), Pacific cod, Red snapper, Sea cucumber, Sharks, Shrimp, Swordfish, and Tuna (Albacore, Bigeye, Skipjack, Yellowfin, Bluefin).⁵⁷

(2) **Gaps in coverage**—In light of the Outlaw Ocean reporting, it becomes clear that SIMP is not designed to cover species connected with forced labor, in part because most of these are not at risk of extinction from illegal fishing. *Not covered* by SIMP are squid and the species that are purchased by USDA including Haddock, Pacific Rockfish, Pacific Whiting, Pollock, Salmon, and various groundfish.

⁵¹ Coalition to End Forced Labour in the Uyghur Region, <https://enduyghurforcedlabour.org/> (viewed October 21, 2023).

⁵² For a broader overview of UFPLA reforms, see Marti Flacks, *What’s Next for the Uyghur Forced Labor Prevention Act?* (CSIS, June 21, 2023), <https://www.csis.org/analysis/whats-next-uyghur-forced-labor-prevention-act> (viewed October 21, 2023).

⁵³ U.S. Customs and Border Protection, *Operational Guidance for Importers*, 4–5 (June 13, 2022); Uyghur Forced Labor Prevention Act, Pub. L. No. 117–78, 135 Stat. 1529, 2(d)(2)(B)(ii) and §–3(a).

⁵⁴ Testimony of Professor Laura T. Murphy, Sheffield Hallam University, Helena Kennedy Centre for International Justice, Hearing of the Congressional-Executive Commission on China: *Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains*, 3 (April 18, 2023), available at <https://www.cecc.gov/events/hearings/implementation-of-the-uyghur-forced-labor-prevention-act-and-the-impact-on-global> (viewed October 21, 2023).

⁵⁵ See Testimony of Scott Nova, Executive Director of the Worker Rights Consortium, Hearing of the Senate Committee on Finance: *Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field*, 9–10 (February 16, 2023), <https://www.finance.senate.gov/imo/media/doc/2023.02.16%20Nova%20Testimony%20for%20Customs%20Hearing.pdf> (viewed October 21, 2023).

⁵⁶ U.S. Customs and Border Protection, 2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China—Report to Congress 9–11 (July 26, 2023); Uyghur Forced Labor Prevention Act, Pub. L. No. 117–78, 135 Stat. 1529, 2(d)(2)(B)(viii) and (ix). See Scott Nova testimony, 11–12.

⁵⁷ NOAA Fisheries, *Seafood Import Monitoring Program*, <https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program> (viewed October 21, 2023).

(3) **NOAA proposed rule**—In December 2022, NOAA reported that “shrimp and tuna (Albacore, Bigeye, Bluefin, Skipjack and Yellowfin) are the most predominant species that are entering U.S. markets and that are vulnerable to forced labor in the supply chain.” With shrimp and tuna already on the SIMP list, NOAA proposed adding additional tuna species to the list.⁵⁸

(4) **Need to significantly expand SIMP**—A coalition of leading civil society organizations replied to the NOAA proposal by calling for several major expansions of SIMP. They provided 19 pages of commentary and recommendations, including these among others:⁵⁹

- (a) Cover of all species of seafood imports, whether by land, air, or sea,
- (b) Report unique vessel identifiers to enable traceability,
- (c) Deepen supply chain reporting requirements such as the provenance of fish feed used in aquaculture.
- (d) Address forced labor by disclosing the country or regional fishery management organization (RFMO) where the fishing occurs, the home country of the fishers, and the countries where the fish may be processed or consumed,
- (e) Require recordkeeping of worker and crew manifests at sea, proof of minimum age requirements (18 or older), duration of work at sea (less than 3 months), and proof of grievance mechanisms, and
- (f) Increase transparency on SIMP audit procedures.

(5) **Need for international cooperation**—Congress directed the Departments of State and Commerce to report on human trafficking, including forced labor, in seafood supply chains. The agencies reported (December 2020) on the need to expand seafood transparency beyond traditional health and environmental concerns, both domestically and in terms of international cooperation. They identified 29 countries that pose a significant risk of forced labor in their seafood supply chains: Bangladesh, Burma, Cambodia, Cameroon, Ecuador, Fiji, Gabon, Ghana, Guinea, Honduras, Indonesia, Ireland, Kenya, Madagascar, Mauritania, North Korea, Pakistan, Papua New Guinea, the People’s Republic of China, Philippines, Seychelles, Sierra Leone, South Africa, South Korea, Taiwan, Tanzania, Thailand, Vanuatu, and Vietnam.⁶⁰

Appendix 4 of the DOS/DOC report includes technical recommendations to deter human trafficking and forced labor outside of U.S. waters. This Commission could ask the multi-agency group focusing on seafood to comment on how the Outlaw Ocean reporting relates to their recommendations and strategy for deterrence.

It would be ironic if the result of stronger U.S. measures against forced-labor imports merely resulted in those goods being shipped to other countries. Outlaw Ocean’s reporting highlights the need to expand border bans, similar to the UFLPA and Tariff Act, among other countries. The U.S. government should work with trading partners to ensure no country is a dumping ground for fish processed with Uyghur forced labor.⁶¹ The UFLPA model will be truly effective when other countries follow suit.

⁵⁸ NOAA, Notice of Proposed Rule, Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, 87 FR 79836–79848, 50 CFR 300, Agency/Docket No. 221215–0273, RIN:0648–BK85, Document No. 2022–27741, available at <https://www.Federalregister.gov/documents/2022/12/28/2022-27741/magnuson-stevens-fishery-conservation-and-management-act-seafood-import-monitoring-program> (viewed October 21, 2023).

⁵⁹ Comment on NOAA–NMFS–2022–0119, RIN: 0648–BK85, submitted by World Wildlife Fund, Oceana, Greenpeace, International Corporate Accountability Roundtable, Azul, Conservation International, and Global Labor Justice/International Labor Rights Fund (March 28, 2023), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0119-2163> (viewed October 21, 2023).

⁶⁰ Report to Congress Human Trafficking in the Seafood Supply Chain Section 3563 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), available at <https://www.fisheries.noaa.gov/international/international-affairs/forced-labor-and-seafood-supply-chain> (viewed October 21, 2023).

⁶¹ Section 4(b)(1) of the UFLPA requires the U.S. Government strategy for implementation of the law to include “a plan to enhance bilateral and multilateral coordination, including sustained engagement with the governments of United States partners and allies, to end forced labor of Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups in the Xinjiang Uyghur Autonomous Region.”

APPENDIX 1
THE OUTLAW OCEAN PROJECT DISCUSSION

U.S. Department of Agriculture⁶²

July 10, 2023

Email sent to the U.S. Department of Agriculture's Acting Deputy Director of Communications, Ed Curlett. The email outlined procurement contracts awarded by the USDA to five seafood companies whose supply chains are linked to Uyghur forced labor, and that the U.S. has prohibited the import of goods produced by forced labor. The email also asked for comment.

July 13, 2023

Paige at the U.S. Department of Agriculture press office replied: "Thank you for reaching out. I'm looping you with Allan Rodriguez, USDA's Press Secretary." July 13, 2023: Allan Rodriguez emailed: "USDA is committed to preventing forced labor and human trafficking. All agricultural products, including fish, purchased by USDA for use in food assistance programs are procured in accordance with the Federal Acquisition Regulation (FAR) System, and must be grown and processed in the United States or its territories. The FAR implements procurement-related aspects of various statutes and Executive Orders, including those addressing forced or indentured child labor and the trafficking of persons. Thanks, Allan [Quoted text hidden] [Quoted text hidden] USDA includes FAR-prescribed contract terms regarding combatting human trafficking which outlines required notifications, contractual remedies, and contractor compliance with U.S. Government policy."

July 19, 2023

Email sent to USDA Press Secretary Allan Rodriguez for further clarification on the USDA's statement. The email asked: 1. As we have identified five companies in the U.S. that are major providers of seafood to the USDA and these companies rely heavily, if not exclusively, on processing in China, how does the USDA ensure that all the seafood they're providing through these contracts is processed in U.S.-based processing facilities? 2. Does the USDA verify this independently or do you rely on the contracted company to provide the verification? 3. If the latter, what types of information or documentation are required from the contractor to verify the country of origin and location of processing of the seafood provided under USDA contract?

July 20, 2023

The Outlaw Ocean Project replied to say yes, that was fine.

July 21, 2023

Allan Rodriguez replied with the following answers:

1. USDA requires that our seafood products be sourced in U.S. waters by U.S. flagged vessels and produced in U.S. establishments approved by the U.S. Department of Commerce's Seafood Inspection Program. USDA ensures this requirement is met by conducting pre-and post-production, onsite audits.

2. USDA and the Department of Commerce verify requirements are being followed by conducting onsite pre-production and post-production audits to ensure that contractual, technical, and operational requirements of each Department are met. In addition to verifying compliance with requirements, these onsite audits verify that processing facilities are based in the U.S. or its territories.

3. Each contractor must declare the production facilities and shipping points they intend to use to produce products for USDA. In addition to onsite verification, contractors are required to provide documents during audits that show compliance with contractual, technical, and operational requirements including domestic origin. Contractors that source seafood from both U.S. and international waters or flagged vessels must have a segregation plan in place that ensures only seafood sourced from U.S. waters and flagged vessels is provided to USDA's food purchase program.

⁶²The Outlaw Ocean Project, Discussion, U.S. Department of Agriculture, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/#us-department-of-agriculture> (viewed October 20, 2023).

U.S. Department of Defense⁶³

July 12, 2023

Email sent to the U.S. Department of Defense regarding procurement contracts awarded to Sysco.

The email said that Sysco sells Ruggiero and High Liner seafood; Ruggiero and High Liner have imported seafood from Chinese processors connected to Uyghur forced labor. The email also asked for comment.

U.S. Department of Justice⁶⁴

July 10, 2023

Query sent to the U.S. Department of Justice via the online form required for media queries.

The email outlined procurement contracts awarded by the Bureau of Prisons to a seafood company whose supply chain is linked to Uyghur forced labor, Channel Fish Processing, and that the U.S. has prohibited the import of goods produced by forced labor. The email also asked for comment.

APPENDIX 2
THE OUTLAW OCEAN PROJECT
METHODOLOGY⁶⁵

How did the investigation calculate the total number of seafood plants connected to Xinjiang forced labor?

We found user-generated content posted in the last 12 months showing Xinjiang minorities working at ten seafood enterprises, for which we also had state media and/or company statements describing Xinjiang labor transfers. The ten plants are operated by five corporate entities, and each group owns two facilities:

Company name	Corporate Group
Qingdao Lian Yang Aquatic Products Co. Ltd.	Tianyuan
Qingdao Tianyuan Aquatic Products Co. Ltd.	Tianyuan
Rizhao Jiayuan Foodstuff Co. Ltd.	Shandong Meijia
Rizhao Meijia Keyuan Foods Co. Ltd.	Shandong Meijia
Rizhao Rirong Aquatic Products Co. Ltd.	Rongsense
Rizhao Rongxing Food Co. Ltd.	Rongsense
Rongcheng Haibo Ocean Food Co. Ltd.	Chishan
Shandong Haidu Ocean Food Co. Ltd.	Chishan
Yantai Longwin Foods Co. Ltd.	Sanko
Yantai Sanko Fisheries Co. Ltd.	Sanko

How did the investigation find out about social audits conducted at Shandong seafood-processing plants using Xinjiang labor?

We communicated our findings to hundreds of North American and European companies buying seafood from Shandong plants using workers from Xinjiang. In many cases, companies pointed to social-audit reports to assert there was no evidence of forced labor at the implicated factories. We asked importers and their customers to tell us when and what types of social audits had been conducted, who had conducted them, and what they had found with respect to Xinjiang workers. Although in most cases, companies declined to answer our enquiries, usually referring to commercial confidentiality, some buyers confirmed audit dates, auditor identities, and the standard used (Sedex Members Ethical Trade Audit, or SMETA). A few even shared audit reports. In order to further ascertain whether Xinjiang workers were being detected by social audits, we spoke to the auditors, and standards and certification bodies, about our findings.

⁶³The Outlaw Ocean Project, Discussion, U.S. Department of Defense, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/#us-department-of-defense> (viewed October 20, 2023).

⁶⁴The Outlaw Ocean Project, Discussion, U.S. Department of Justice, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/discussion/#us-department-of-justice> (viewed October 20, 2023).

⁶⁵The Outlaw Ocean Project, Methodology, <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/methodology/#method-discussion> (viewed October 20, 2023).

How did the investigation identify companies importing seafood from Chinese processors connected to abuses at sea and on land?

Trade data allowed us to track exports from processing plants to stores and restaurants outside of China. We obtained data from a variety of sources, including Chinese customs and private aggregators of import data from North American and European countries. We also searched company websites for information about customers and export approvals. Footage posted to Douyin by workers in seafood plants often featured seafood packaging showing useful details like vessel names or brand labels. We also used optical character-recognition searches to look for examples of packaging and documentation featuring the unique export codes of Chinese processing plants (export approval codes and health marks issued by government authorities, certification codes issued by the Marine Stewardship Council and the Aquaculture Stewardship Council).

How did the investigation connect companies importing seafood tainted or associated with crimes or other concerns to consumers?

Trade data told us which companies were importing seafood from Chinese suppliers of interest, but in most cases, we needed to look at the next link in the chain: the customer of the importer. We searched through importers' websites, product catalogs, and social-media profiles in order to ascertain who they were supplying. We used OpenCorporates, an open database of companies, to identify the ownership and corporate structures of companies in the U.S., Canada, Europe, and elsewhere. We also used a U.S. Government trademark data base and a global brand database to expand our list of brands owned by companies importing seafood tainted by forced labor or illegal fishing to search across catalogs and online stores for major grocery chains and food service groups.

We identified unique codes for importers—health marks issued by market state authorities, certification codes issued by the Marine Stewardship Council and the Aquaculture Stewardship Council—and conducted optical-character recognition searches for those codes on product packaging and commercial documents. We visited dozens of stores in 12 states (Alabama, Arkansas, California, the District of Columbia, Florida, Georgia, Hawaii, Massachusetts, New York, South Carolina, Texas, and Virginia) and several countries (Australia, France, Ireland, and the United Kingdom) to obtain images of seafood packaging in order to establish, using those unique codes, the origin of the seafood. We reviewed product listings on major retailer and foodservice distributor websites to identify seafood products that were produced or sold by target importers and that matched the types of seafood sourced from Chinese processors of interest.

Finally, communications with seafood importers and their customers—and, in some cases, the next tier of buyers—helped clarify our findings on the connections among fishing vessels, processing plants, and global consumers.

How did the investigation connect companies importing seafood tainted by or associated with potential crimes or other concerns to public procurement chains in North America and Europe?

We looked at government-contract databases, such as the European Union's tender data base, which contains detailed records of tenders and contracts for all European Union countries and European agencies, and USASpending.gov, which provides federal spending data, to identify the main companies supplying frozen seafood to government agencies. We used trade data to identify any companies that received procurement contracts and also imported from Chinese companies tied to seafood associated with potential crimes, including those using Uyghur labor. We also investigated major government suppliers' product lists and catalogs to ascertain if they were supplied by companies that imported seafood associated with potential crimes and risk indicators.

In the UK, whitefish is supplied by companies associated with our investigation to public institutions such as schools and hospitals. The supply is typically through intermediaries, working under what are known as "framework agreements" that identify government-approved vendors. Implicated seafood suppliers were identified through reference to brand names and the use of unique Marine Stewardship Council (MSC) codes on primary school menus for 2023 and other documentation.

U.S. public procurement rules have various exemptions that allow local-level buyers for school-lunch or other federally supported programs to purchase food and other products if they are looking for better options in terms of price, quality, quantity, or availability. **In the U.S., half of the fish sticks served in public schools have been processed in China, according to the Genuine Alaska Pollock Producers, an industry group.** They said their research was derived from a re-

view of purchasing records of their members. States and large school districts have historically used USDA grants to buy seafood directly from commercial vendors, much of which is sourced through China, the organization said. Foods purchased by the USDA have only accounted for about 20 percent of what is served in schools, according to the organization, which means the remaining 80 percent is purchased mostly by local buyers.

STATEMENT OF GREG SCARLATOIU

The witness wishes to thank HRNK team members Ingyu Choe, Mohona Ganguly, Raymond Ha, Doohyun (Jake) Kim, Damian Reddy, as well as Jung Gwang-il, Ko Young-hwan, Lee Hyun-seung and Ri Jong-ho for their invaluable contributions to research, translation, editing, direct testimony, and securing testimony from key witnesses in China and North Korea.

EXECUTIVE SUMMARY

Mindful of Section 321 of the Countering America's Adversaries Through Sanctions Act (CAATSA), "Sanctions for Forced Labor and Slavery Overseas of North Koreans," as applied to North Korean workers officially dispatched to Chinese seafood processing plants, HRNK endeavored to make a preliminary determination as to whether the working conditions these workers face are subject to Section 302(b) of the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9241(b)). We further endeavored to identify Chinese entities that employ North Korean laborers, with the aim of determining if such entities and individuals in charge meet the criteria under Section 111 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7108) relating to the prevention of trafficking in persons.

Until their repatriation began on August 23 or 29, 2023, there were thousands of North Korean workers officially dispatched to Chinese seafood processing plants. In many cases, these workers processed seafood imported from North Korea. The importation of seafood processed by North Korean workers in China, seafood exported from North Korea to China, or a combination of both, into the United States directly from China or relabeled "Made in Russia" in the Russian Far East would constitute a blatant violation of CAATSA.

Chinese seafood processing plants are notorious for their reliance on forced or indentured labor, including that of North Korean workers. For over three decades, North Korea has been officially dispatching workers to countries such as Russia, China, and the UAE, where they work in factories, restaurants, and in other enterprises to earn hundreds of millions of dollars annually for the regime. This is despite the various sanctions against overseas North Korean labor, and the ban imposed on North Korean overseas workers by the United Nations Security Council in 2019. This ban required the immediate expulsion of North Korean workers from the countries that were benefiting from their labor.¹ However, despite the severity of these measures, they have largely been ignored.

China continues to utilize North Korean overseas labor to the fullest extent possible. For instance, as claimed by the Chinese government, last year, there were over 80,000 North Korean workers residing in one northeastern Chinese city alone. At least 450 of these workers were working in seafood processing plants, according to HRNK's research. Despite the Chinese government's most ardent efforts to erase any mention of these workers on the internet, numerous posts on Chinese social media have featured them in some capacity.² According to individuals interviewed by HRNK, much of the seafood products that these workers process is exported to the United States, which is a clear violation of CAATSA and other applicable U.S. legislation.

NORTH KOREAN WORKERS IN CHINESE SEAFOOD PROCESSING PLANTS:
INTERNATIONAL LEGAL IMPLICATIONS

The dispatch of North Korean workers to Chinese seafood processing plants has long been a controversial subject due to its multifaceted legal and human rights implications.

¹Choe Sang-hun, "North Koreans Trapped in 'State-Sponsored Slavery' in Russia," *The New York Times*, April 3, 2023. <https://www.nytimes.com/2023/04/03/world/asia/north-korea-human-rights.html>.

²Ian Urbina, "The Crimes behind the Seafood You Eat," *The New Yorker*, October 9, 2023. <https://www.newyorker.com/magazine/2023/10/16/the-crimes-behind-the-seafood-you-eat>.

The employment of North Korean workers in Chinese seafood processing plants may raise concerns regarding human rights abuses and labor exploitation. The *International Labour Organization (ILO)* sets internationally applicable labor standards, including the Forced Labor Convention (No. 29) and the Abolition of Forced Labor Convention (No. 105), which prohibit the use of forced labor. These workers often face exploitative conditions, including long working hours, low wages (or wages that are appropriated), inadequate safety measures, and limited freedom of movement. Such practices contravene the principles of various ILO conventions, as well as the *Universal Declaration of Human Rights (UDHR)*.

The employment of North Korean workers in Chinese seafood processing plants has raised allegations of forced labor and human trafficking. There have been reports indicating that workers' passports are confiscated by the North Korean authorities, leaving these workers vulnerable to exploitation and restricted movement. These actions violate Article 4 of the *UDHR*, which prohibits any slavery or forced labor. Such conduct also violates the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* (also known as the Palermo Protocol), which condemns any behavior amounting to trafficking in persons.

The involvement of Chinese seafood processing plants employing North Korean labor has also evoked questions relating to international economic sanctions imposed on North Korea. These sanctions aim to stifle the North Korean government's sources of revenue, including the exportation of labor. Thus, the presence of North Korean workers in Chinese seafood processing plants could potentially violate these sanctions, demanding further international attention and action. The international community generally condemns the use of forced labor. States and organizations can rely on conventions such as the *UDHR*, the *International Covenant on Civil and Political Rights (ICCPR)*, and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* to address labor rights violations and protect the rights of North Korean workers. Both China and North Korea have ratified the ICCPR and the ICESCR. China is a founding member of the ILO, and it has ratified Conventions 29 and 105.

Under the *Countering America's Adversaries Through Sanctions Act (CAATSA)*, the United States has imposed sanctions on various entities involved in North Korean labor exports. The purpose of these sanctions is to prevent North Korea from earning foreign currency through labor exports, which could be used to fund its nuclear weapons and ballistic missile programs. The *CAATSA* sanctions target not only North Korean workers abroad, but also foreign companies and individuals involved in their employment. Under Section 321 of *CAATSA*, the United States imposes sanctions on entities involved in "knowingly employing North Korean laborers." If Chinese seafood processing plants employ North Korean workers, they risk being subjected to U.S. sanctions. This provision serves to deter countries from engaging in these practices due to the potential economic and reputational consequences.

The human rights implications for the above conduct include:

1. *Inhumane Working Conditions*: North Korean workers dispatched to Chinese seafood processing plants often face extremely challenging working conditions. Reports suggest that workers are subjected to long work hours, harsh treatment, and minimal safety measures, posing a risk to their physical and mental well-being. The denial of proper rest and breaks violates the workers' right to safe working conditions.

2. *Lack of Freedom and Communication*: Workers dispatched from North Korea are often isolated. They are allowed limited contact with the outside world and their families. As a result, they are unable to exercise their right to freedom of movement and communication. This isolation also leaves them vulnerable to exploitation and unable to seek assistance or redress for any human rights violations they may face.

3. *Absence of Labor Rights*: The labor rights of these workers, including the right to join a trade union and engage in collective bargaining, are severely curtailed. This lack of representation compromises workers' ability to advocate for fair wages, acceptable working conditions, and access to social security benefits.

LIVING AND WORKING CONDITIONS FOR NORTH KOREA'S OVERSEAS WORKERS

North Korean workers must undergo a strenuous process before being sent abroad, and suffer from horrific and squalid working and living conditions once they cross the border. Overseas positions are highly coveted by North Koreans, as the average monthly remittance of \$50 to \$100 makes a considerable difference for their families back home, as opposed to the \$3 monthly wage they would receive as fac-

tory workers in North Korea. North Korean workers dispatched to Chinese seafood processing plants pocket about \$70 a month (500 Chinese yuan).³

Selection is a particularly competitive undertaking, as prospective workers utilize all available resources to bribe officials into allowing them to work overseas on an “official” contract. These are considered to be “golden opportunities” for North Korean workers, who are catalyzed into attempting to be dispatched overseas by the purported benefits, such as earnings to start businesses in North Korea, and even the allure of obtaining “middle-class status symbols,” such as watches, televisions, and foreign-made rice cookers. The average bribe paid to a government official to be dispatched overseas is \$2,000–\$3,000. The workers often come from the *dong-yo* (“wavering”) class in North Korea’s *songbun* system of loyalty-based social classification. For these workers, this is a huge amount of money. The only option is to borrow it from money lenders and pay it back with interest.⁴

One North Korean escapee, Lim Il, recounted his reaction to learning he was to be sent overseas to China:

“I felt like I had won the lottery,” he said. “People fantasized about getting overseas labor jobs . . . Unless you were an idiot, you wouldn’t give up such an opportunity.”⁵

Once they reach their destination, their passports and any other official documents are confiscated by their minders. The minders closely monitor them, limiting their freedom of movement and preventing them from speaking to other workers. The laborers sometimes work up to fourteen to sixteen hours a day. They are given no holidays (potentially having one day off a month at most), and they are not paid directly by their foreign employers. According to the North Korean overseas workers, as well as the former officials who used to supervise the process of their expatriation, the North Korean government seized up to 90 percent of their salary, leaving a measly 10 percent for the workers and their families back home to survive on.⁶

Their living conditions are also inhumane, as laborers are often forced to reside in unsanitary and hazardous accommodations provided to them by their employers. They can sometimes also be subjected to excessive fees to pay for this housing.⁷ Laborers whose wages are specifically being used to provide revenue for the North Korean government are placed in collective housing arrangements and purposefully isolated from other workers of different nationalities. After enduring these ruthless conditions, North Korean workers who eventually return home are subject to strict surveillance by the Ministry of State Security (MSS) for three years.⁸

HISTORY OF NORTH KOREAN INVOLVEMENT IN CHINA’S SEAFOOD PROCESSING INDUSTRY

North Korean workers have long been involved in China’s seafood processing industry. Over 3,000 workers were employed pre-COVID in seafood processing plants in the northeastern city of Hunchun. The major seafood processing companies that have historically employed North Korean labor and have exported their products to the United States include Joint Venture Hunchun Dongyang Seafood Industry & Trade Co. Ltd. and Hunchun Pagoda Industry Co. Ltd., distributed globally by Ocean One Enterprise; Yantai Dachen Hunchun Seafood Products; and Yanbian Shanghai Industry & Trade Co. Ltd.⁹

North Korean laborers have not only suffered from inhumane working and living conditions, but have also been explicitly discriminated against by their Chinese employers. In Dandong, North Korean workers even had to wear blue headbands, al-

³Interview with North Korean escapee, October 8, 2023.

⁴Interview with North Korean escapee, October 9, 2023.

⁵Tim Sullivan, Martha Mendoza, and Hyung-Jin Kim, “NKorean Workers Prep Seafood Going to US Stores, Restaurants,” AP News, August 21, 2021. <https://apnews.com/article/sports-middle-east-canada-europe-global-trade-8b493b7df6e147e98d19f3abb5ca090a>.

⁶Greg Scarlatoiu, Raymond Ha, and Hyunseung Lee, “North Korean Workers Officially Dispatched to China & Russia,” *The Committee for Human Rights in North Korea*, September 26, 2022. https://www.hrnk.org/uploads/pdfs/Overseas_Workers_0926.pdf.

⁷U.S. Customs and Border Protection, “North Korea Sanctions & Enforcement Actions Advisory,” July 23, 2018. <https://www.cbp.gov/sites/default/files/assets/documents/2018-Aug/NorthZ%20Korea%20Sanctions%20%20Enforcement%20Actions%20Advisory.pdf>.

⁸Scarlatoiu, Ha, and Lee, “North Korean Workers Officially Dispatched to China & Russia.”

⁹Sullivan, Mendoza, and Kim, “NKorean Workers Prep Seafood Going to US Stores, Restaurants.”

legedly to distinguish themselves from Chinese workers.¹⁰ Chinese workers received job protections and were allowed to take days off, while North Korean workers finished their contracts while taking no sick days and filing no complaints. The restrictions these workers face have made them very “valuable” employees in the eyes of Chinese employers. Li Shasha, a sales manager at Yanbian Shenghai Industry and Trade Co, claimed that North Korean laborers were “more stable” than Chinese workers, and that “they won’t take leave for some personal reason.”¹¹

North Korean laborers are also paid considerably less than their Chinese counterparts. For instance, at one seafood processing plant, North Korean workers were reportedly paid about \$300, compared to the Chinese workers’ salary of \$540.¹² However, due to “voluntary contributions” demanded by the North Korean authorities, those involved in the seafood processing industry only get to retain about \$70 out of the \$300 they earn.

North Korean workers in China are far more heavily monitored and surveilled than their counterparts in other countries, such as Russia, the UAE, and Malaysia. The North Korean government fears that the workers dispatched to China may be more predisposed towards wanting to escape, as they could potentially follow the example of tens of thousands of North Koreans who escaped to or through China.

Most of the workers at the Hunchun seafood processing plant are women in their twenties. They arrive at the plant already divided into work units, each headed by a North Korean overseer. They are isolated from all others, including their fellow workers, and even their employers.¹³ One supervisor at a Hunchun company that has many North Korean employees stated that, “They’re not allowed to mingle with the Chinese We can only communicate with their team leaders.”¹⁴

The workers are surrounded by North Korean propaganda. There are even posters featuring political slogans posted all over their living quarters. Because of the constant surveillance, it can be said that there is very little difference, if any, between the workers’ treatment in North Korea and their conditions in China.¹⁵ One medical worker who had treated many North Korean workers corroborated this account, saying, “They only talk about what they need to. They don’t talk about what they might be thinking.”¹⁶

WERE SEAFOOD PRODUCTS PROCESSED WITH NORTH KOREAN LABOR EXPORTED TO THE UNITED STATES?

Seafood products processed by North Korean workers were almost certainly exported to the United States. In “The Crimes Behind the Seafood You Eat,” Ian Urbina and his team discovered that companies that have employed North Korean and Uyghur workers have exported over 47,000 tons of seafood. Around 17 percent of the squid processed and packaged by Uyghurs and North Koreans was sent to dozens of U.S. importers, which in turn distributed it to destinations including military bases and public schools. North Korean escapees interviewed by the witness, including those who were directly involved in North Korean seafood exports to China or the dispatch of North Korean workers to Chinese seafood processing plants, concurred with Urbina’s findings. This blind spot is in part due to the seafood industry being notoriously difficult to monitor and police.¹⁷ These difficulties are compounded by the fact that China has often obstructed the details of its seafood processing industry from the U.S. government.¹⁸

The United States has strict laws banning the importation of all goods made with North Korean labor, the most prominent of which is CAATSA. The implementation of these laws in numerous industries has been documented recently, including the confiscation of products made with North Korean and Uyghur labor. However, seafood processed with the use of North Korean labor has made its way through American import companies, and eventually to the public through supermarkets and res-

¹⁰ Choi Woo-jung, “Korean Workers in Dandong All Wearing Blue Bands on Their Heads . . . Why?” [in Korean], *TV Chosun*, December 20, 2013. Accessed October 10, 2023. https://www.chosun.com/site/data/html_dir/2013/12/20/2013122003710.html.

¹¹ “How U.S. Seafood Fans May Help Fund North Korea,” *CBS News*, October 4, 2017. <https://www.cbsnews.com/news/how-us-seafood-fans-may-unwittingly-help-fund-north-korea/>.

¹² Sullivan, Mendoza, and Kim. “NKorean Workers Prep Seafood Going to US Stores, Restaurants.”

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ United Nations Office on Drugs and Crime, “Fisheries Crime,” accessed October 9, 2023. https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/Fisheries_Leaflet_PRINT.pdf.

¹⁸ Urbina, “The Crimes behind the Seafood You Eat.”

taurants. Some examples of distributors are Sea-Trek, which is based in Rhode Island and ships products to Europe, Central America, Australia, and the Caribbean, and the Fishin' Company, which exports and supplies seafood to supermarkets, retailers, and food companies. Seafood proven to be processed using North Korean labor has, in recent years, been found not only through these suppliers, but through notable supermarket chains as Walmart and ALDI. In 2017, several of these companies moved to address concerns regarding their supply chains.¹⁹ However, these efforts have not halted the importation of "tainted" seafood.

HAVE CHINESE FACTORIES PROCESSED SEAFOOD
IMPORTED FROM NORTH KOREA?

According to a report published by South Korea's Korea International Trade Association (KITA), seafood caught on North Korea's east coast is first gathered at the port of Rajin before it is transported overland, passing through North Korean customs at Wonjeong and Chinese customs at Quanhe.²⁰

North Korean seafood that has passed through Chinese customs is distributed and sold in cities and counties within China's Yanbian Korean Autonomous Prefecture, Jilin Province. Some of it is processed in seafood processing facilities in Hunchun and then exported as frozen or dried seafood to the United States, Europe, Japan, and other countries.²¹

Additionally, after North Korean seafood clears Chinese customs at the Quanhe (Hunchun) border crossing, a significant portion of it is transported by plane to inland cities, including Beijing. The main North Korean seafood products transported inland in this manner include squid, flounder, snow crab, horsehair crab, and lobster.²²

[Statement continues with table entitled "Status of Major North Korean Seafood Trading Companies" on next page.]

¹⁹ Sullivan, Mendoza, and Kim, "NKorean Workers Prep Seafood Going to US Stores, Restaurants."

²⁰ Baek Seong-ho, "North Korea's Seafood Production and and Exports" [in Korean], KITA Inter-Korean Trade Report vol. 7 (2020). <https://www.kita.net/cmmrcInfo/internationalTradeStudies/researchReport/northKoreaTradeReportDetail.do?pageIndex=1&no=13&classification=19&searchReqType=detail&pcRadio=19&searchClassification=19&searchStartDate=&searchEndDate=&searchCondition=CONTENT&searchKeyword=&continent—nm=&continent—cd=&country—nm=&country—cd=§or—nm=§or—cd=&itemCd—nm=&itemCd—cd=&searchOpenYn=>

²¹ Ibid.

²² Ibid.

Status of Major North Korean Seafood Trading Companies²³

Company	Affiliation	Year Established	Main products	Notes
Chosun Ryoongseong Trading Company.	Korean People's Army (KPA) Rear Service Bureau		Seafood	Major seafood export bases in Chongjin, Sinpo, Wonsan, Onchon, Haeju, and Uiju, with ownership of numerous fishing vessels.
Chosun Chongunsan Trading Company.	KPA	1997	Seafood	
Chosun Shinheung Trading Company.	KPA (State Security Department)		Seafood	
Chosun Shinjin Trading Company.	KPA (General Political Bureau)		Seafood, Processed Seafood Products	
Chosun Birobong Trading Company.	KPA (Reconnaissance Bureau)	1988	Seafood	
Chosun Maebong Trading Company.	Ministry of the People's Armed Forces	1980	Seafood	
Chosun Gwangmyeong General Trading Company.	Cabinet (External Economic Affairs Committee)	1976	Seafood	
Chosun Namsan Trading Company.	Nampo Economic & Administration Committee Trade Bureau	1984	Seafood (clams, shellfish, crab, shrimp)	
Chosun Songdownon Trading Company.	Wonsan Economic & Administration Committee Trade Bureau	1983	Seafood (pollock, flounder, red snapper, clams, squid, abalone, shrimps, crabs, sea cucumbers, etc.)	
Chosun Fishing & Vessels Company.	Cabinet (Fisheries Committee)		Primarily responsible for seafood-related transportation services	
Chosun Daeseong General Trading Company.	Korean Workers' Party (KWP)	1974	Seafood	
Chosun Rungrado General Trading Company.	KWP (Pyongyang City Party Committee)	1973	Seafood, Shellfish	

INTERVIEW FINDINGS

HRNK interviewed ten individuals, including former officials with direct involvement and experience dealing with the importation of North Korean seafood into China and the dispatch of North Korean workers to Chinese food processing plants, as well as individuals still actively involved in North Korea's seafood trade and the export of labor to Chinese processing plants.²⁴

None of the individuals interviewed by HRNK were aware of North Korean sailors or fishermen dispatched to Chinese fishing vessels. However, all ten interviewees

²³ Kim Jong-hwa, "The Current Status of North Korea's Fisheries Industry and Ways to Promote Inter-Korean Exchange" [in Korean], Chungnam Institute Issue Report (April 30, 2019), 12. <http://oak.cni.re.kr/handle/2016.oak/5676>.

²⁴ English and Korean versions of the questionnaire and respondent answers are available upon request.

were aware of the presence of North Korean workers at Chinese seafood processing factories. North Korean workers dispatched to Chinese processing plants also process fish and other seafood caught by North Korean vessels and subsequently exported to China.

Thousands of North Korean seafood processing laborers have worked in China, stifled under various tight restrictions and egregious human rights abuses. They have worked in seafood processing plants, such as those in Hunchun, while the Chinese and North Korean regimes continued to grow richer by exporting products processed with North Korean labor to countries including the United States, which would be a clear violation of CAATSA.

Reflecting on his experience, stating that while he never thought of himself as being put through such unbearable treatment, a North Korean formerly dispatched to a Chinese seafood processing plant remarked that “These North Korean workers (today) still don’t know they are slaves.”²⁵

SELECTION AND DISPATCH PROCEDURES

Based on the decisions of North Korean authorities (central and regional) and based on consultation between North Korean and Chinese entities, investment proposals are first publicly announced in China. Subsequently, contracts are signed with Chinese counterparts who meet the requisite conditions.

This is followed by the selection of workers within North Korea. The regime agencies tasked with the official dispatching of overseas workers include the Central Party’s Overseas Dispatch Department and the Provincial Party’s 2nd Department (Overseas Dispatch Department). The ultimate controlling authorities are typically officials from the Korean Workers’ Party (KWP), in particular the Organization and Guidance Department, as well as the Ministry of Social Security with respect to security-related matters.

The KWP’s Overseas Dispatch Department sends an official document related to overseas dispatch worker recruitment to the Provincial Party. Then, the Provincial Party’s 2nd Department (Overseas Dispatch Department) recruits workers to be dispatched overseas. To be selected as an overseas dispatch worker, one must be employed in a factory or enterprise at the provincial level or above.

Guidelines for selecting personnel are issued to various factories and enterprises. The selection process follows a principle of voluntariness rather than coercion. In principle, worker selection is done by the relevant unit’s trade company, the unit committee, and the city or provincial committee, with approval from the municipal office of the Ministry of Social Security.

The Provincial Party’s 2nd Department is supposed to send a recruitment notice to the provincial factory/enterprise to select personnel, but this procedure is not followed. The selection process is rigged. There is already a list of people that will be sent. Those who wish to go abroad have already bribed the relevant officials with the help of brokers, and their identity and background checks are already complete.

The background check can take several months. The Ministry of Social Security thoroughly checks the resident registration documents for each individual, verifying, through authorities at the local level, the *chulsin songbun* (social class assigned at birth), ideological orientation, and family relationships. If even a minor problem is discovered during this process, the individual will be disqualified at the document review stage. Having relatives in China is also a reason for disqualification. Those with relatives in China are considered to be at high risk of defection. During the document review, individuals must also undergo a physical examination to determine if they can work overseas for an extended period. The Ministry of State Security conducts a final review of all the aforementioned items prior to issuing the visa.

Before initiating the clearance process, the individual needs to receive a positive review and evaluation from the organization (Youth League or Party organization) of the factory/enterprise they belong to. If all goes smoothly, the Provincial Party’s 2nd Department finally informs the factory/enterprise that certain individuals will be dispatched as overseas laborers to China. The bribe required to go abroad varies by region, and it can range between \$2,000 and \$3,000. In North Pyongan Province, one must pay a \$2,000 bribe in cash.

Generally, the standard duration of overseas work contracts is three years. The standard duration of a work permit issued for dispatch to China is three years. In some cases, workers may be dispatched for shorter periods, such as one-year or three-month intervals for training or internships. When the contract expires, it can be extended by allowing the workers to exit and re-enter customs on the same day,

²⁵ Sullivan, Mendoza, and Kim, “NKorean Workers Prep Seafood Going to US Stores, Restaurants.”

thereby enabling them to continue working in China.²⁶ Workers typically travel by bus and train both when they are dispatched to China and when they return home. This is mainly because they are often assigned to companies near the North Korea-China border, making transportation by bus, train, or sometimes even traveling on foot a viable option.

Due to a lack of transparency regarding their contracts, the North Korean authorities ultimately employ deceptive methods to dispatch workers. For instance, when dispatched to China, the contract stipulates a monthly wage of 2,000 to 2,500 Chinese yuan, i.e., \$280 to \$350, luring workers with false promises. This leads to a climate where workers strive to be dispatched abroad, particularly to China, as foreign currency-earning laborers. However, at the dispatch sites, the workers' wages are heavily poached under various pretexts.²⁷ After excluding food expenses, living expenses, medical expenses, national contributions, and state support funds, the amount paid to workers from the contracted 2,000 Chinese yuan is typically only an average of 200 to 300 Chinese yuan. Moreover, wages are often not paid in full for various reasons, leading to widespread dissatisfaction and an unjust cycle of exploitation.

WORKING CONDITIONS AND EMPLOYMENT PRACTICES IN CHINA

The interviewees confirmed that in Dandong, China, the focus is on clothing production and repair rather than fish processing. Seafood processing primarily takes place in the Yanbian, Yanji, Hunchun, and Tumen areas. However, interviewees mentioned the presence of at least three seafood processing factories where officially dispatched North Korean workers are employed in Donggang, Dandong City. One interviewee pinpointed the name of one such factory— Donggang Luyuan Food Co., Ltd.

North Korean workers process a wide variety of fish at the Chinese plants depending on the season: fish caught seasonally, such as cod and pollock; clams during clam season, and crab, including snow crab, during crab season. They also process squid, octopus, shellfish, and package them as Chinese products for export. The interviewees reported instances of processed seafood marked "Made in China" being shipped out to Vladivostok in the Russian Far East, where labels are switched to "Made in Russia" and subsequently exported to third countries.

Working conditions for the North Korean workers dispatched to Chinese seafood processing plants are dire. Wage violations (through compulsory "contributions" extracted by the North Korean authorities), unpaid overtime, and precarious safety and health conditions are common.

Wages are not directly handed to the laborers, but are recorded in the company's books for payment. The Chinese companies pay the North Korean authorities mostly based on production volume, and the payment is made in Chinese currency. Since the company's books are under the control of the company owner or management, there is always a risk of wage arrears, and a significant portion of the wages that laborers are supposed to receive upon returning to North Korea may be appropriated by the state or left unpaid. This has led to significant dissatisfaction among the workers.

Safety is governed by labor safety rules established in cooperation with local Chinese companies, but these rules are often not properly enforced due to the overriding focus on earning foreign currency for the North Korean regime. Due to excessive exploitation, most of the workers are in a severe state of physical and emotional exhaustion. There is insufficient medical coverage for those who fall ill. Minor illnesses are treated with over-the-counter medicine, but for severe cases, workers were taken to a "Welfare Hospital" in Dandong City, which is now closed.

One interviewee mentioned that his cousin often visited the Chinese seafood processing plants as an interpreter, and he also went several times to translate. The first thoughts that came to his mind when he saw the workers' appearance and their work environment were "prisoners" and "jail." Men mainly carry frozen fish blocks, and women sit down and peel fish or squid or sort clams and crabs. The sort-

²⁶Contract extensions may occur based on mutual agreements at the local level between the parties involved. However, the North Korean regime is reluctant to allow workers to spend too much time outside the country. More often than not, the teams of dispatched workers are replaced entirely after repatriation. Their chances of being allowed to leave the country again are extremely low.

²⁷This includes financing projects such as greenhouse construction, construction of hydroelectric power plants, revolutionary historical site construction and renovation in Pyongyang, and construction in Samjiyon. The funds needed for such projects is often siphoned from the wage statements of overseas workers. As a result, many workers reportedly have nearly empty wage statements even after having worked abroad for several years.

ing is done based on size, categorizing the larger ones as first-grade, the smaller ones as second-grade, etc., as there is a price difference based on grade. Most of the workers in seafood processing factories work in cold storage, so they work all day in extremely cold conditions. Additionally, the pungent smell inside is unbearable. Due to such poor working conditions, local Chinese people are unwilling to work there.

North Korean workers at Chinese seafood processing plants usually work about 10 hours a day. However, if production targets are not met, the workday can extend to over 12 hours. If they fail to complete their daily assigned tasks, the workers face collective pressure within the company. Moreover, if deficiencies such as failure to complete one's tasks or any behavior deemed "deviant" persist, their monthly wages may be partially reduced or not paid at all.

According to eight out of ten interviewees, North Korean workers' monthly wages are paid upon their return to North Korea, in North Korean currency, at the official exchange rate. The reason behind that procedure is that the North Korean authorities do not want the workers to be in possession of larger amounts of cash while in China, as that may facilitate their defection. Two interviewees stated that payments to the workers were made monthly while in China. When workers in China want to purchase daily necessities such as toilet paper, cosmetics, toothpaste, toothbrushes, sanitary pads, underwear, and medications, they are required to manage these expenses themselves. When workers request these necessary products from their managers, the managers purchase the items on their behalf and deduct the cost from the workers' wages. This way, a portion of the workers' wages is spent on these personal consumables in China.

North Korean workers at Chinese seafood processing plants make about 500 Chinese yuan a month, i.e., \$70. The average salary of a North Korean industrial worker in North Korea is \$3 per month. Despite severe exploitation, these jobs are highly coveted, as they allow the workers to dramatically increase their families' income in North Korea, by North Korean standards. However, since contracts run for only up to three years, they must moonlight for other companies to have enough to pay back the loan sharks who lent them \$2,000 to \$3,000 to bribe officials in order to be sent to China. Moonlighting must be approved by the three site supervisors (party, security agency, technical manager), who also must be bribed. On rare occasions, their own worksites may pay a limited amount of overtime, according to the interviewees. Overall, a North Korean seafood processing worker in China may make up to 1,500 Chinese yuan a month, or about \$210.

The working conditions involve collective living, where both work and daily life take place within the factory and dormitory facilities. This arrangement can be likened to detention or confinement facilities. Workers are generally not allowed to go outside except for specific instances such as visiting a hospital or buying groceries, which require supervision by a guardian or a fellow worker.

IMPACT OF THE COVID-19 PANDEMIC

Due to the border lockdown during COVID, North Korean workers in China could not return home. As a result, these workers stayed in China for up to five or six years. The workers received no wages during the pandemic, and the interest on loans they had taken from loan sharks in North Korea to bribe officials increased, leading to many female workers taking their own lives. North Korean authorities reportedly used deception to manipulate families in the aftermath of such incidents.

Beginning on August 23 or August 29 of this year, all or most North Korean workers in China, including workers at the Chinese seafood processing plants, were repatriated. Those who were sick and those over 30 years of age, were reportedly the first ones to be sent back.²⁸ According to interviewees, many buses were observed entering North Korea at dawn. From October 1st to October 10th, an eyewitness thought it was due to the Korean Chuseok (Thanksgiving) holiday period, but he witnessed buses going in again on October 12th. The repatriated workers will be replaced by entirely new teams dispatched from North Korea. According to one interviewee, there has been speculation that seafood processing workers will not return to China in the future. Instead, it is expected that China will build such factories in North Korea and employ people there.

Repatriation may come as a great relief to North Korean workers officially dispatched to China, including workers previously stationed at China's seafood processing plants. Their life under COVID was terrible. For several years, they had to

²⁸There were workers who were diagnosed with cancer during their stay in China. They could not return due to COVID and only recently managed to return to North Korea. The body of a deceased worker was also recently sent back to North Korea.

seek accommodation within the factory premises. Essentials were provided by the person in charge, who would go shopping once or twice a week. Since the official contracts had ended, they had no work and had to do odd jobs, especially on Chinese farms, to secure even one meal a day. One interviewee spoke about North Korean workers being spotted picking up discarded vegetable clippings at local markets to use as soup ingredients.

POSSIBLE TIES TO SOUTH KOREA

None of the interviewees were able to name any South Korean companies involved in trading Chinese seafood processed by North Korean workers, although they were aware of the close association with South Korean businesses in certain sectors, including clothing and electronics assembly. Thus, interviewees thought that collaboration with South Korean entities in the seafood processing sector was not entirely outside the realm of possibility. However, three of them stated that most of the seafood processed in factories in Donggang, Dandong City goes to South Korea. The interviewees also mentioned that all Russian frozen crabs exported to South Korea are processed by North Korean laborers who label them as Chinese or Russian products.

RECOMMENDATIONS

On behalf of the Committee for Human Rights in North Korea (HRNK), I respectfully recommend to the Congressional-Executive Commission on China that it consider some, or all of the following:

- Encourage civil society organizations with connections to North Koreans currently or formerly involved in the official dispatching and management of North Korean workers at Chinese seafood processing plants to continue investigating conditions of labor at these facilities, as well as the possibility that seafood products processed by North Koreans may end up on the U.S. market.
- Propose that new findings regarding violations of internationally accepted labor standards affecting North Koreans at Chinese seafood processing plants be included in the Annual Report on Trafficking in Persons, required under Section 110(B) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 707(B)).
- Seek to determine whether the government of China has made serious and sustained efforts to eliminate severe forms of trafficking in persons, as they relate to the official dispatching of North Korean workers to Chinese seafood processing plants and the working conditions at such facilities.
- Seek to confirm whether seafood exported from China to the United States contains North Korean seafood products, and whether North Korean workers officially dispatched to China processed seafood exported from China to the United States. Should that be the case, such seafood products exported from China to the United States would have to be denied entry at any of the ports of the United States, pursuant to a prohibition under Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

The witness also recommends continuing to seek information pertaining to the following questions, some of them addressed in the current submission:

- Do the working conditions at seafood processing plants in China, as they apply to officially dispatched North Korean workers, qualify for an exemption to the prohibition above? Is there any evidence that such North Korean labor does not qualify as forced or indentured labor?
- Are there any extenuating circumstances that may grant an exception to some of the persons involved in dispatching North Korean workers to Chinese seafood processing plants?
- Does the employment of North Korean laborers result in the direct or indirect transfer of stores of value to the North Korean authorities?
- Are all wages and benefits provided directly to the laborers and held in bank accounts within the Chinese jurisdiction in which they temporarily reside, and are such wages and benefits denominated in Chinese currency?
- Do the North Korean laborers' working conditions conform to internationally accepted standards, in particular to the International Labour Organization (ILO) core conventions?

STATEMENT OF SALLY YOZELL

Representative Smith, Senator Merkley, and members of the Commission, thank you for the opportunity to testify today.

My name is Sally Yozell, and I am the Director of the Environmental Security Program at the Stimson Center, a nonprofit, nonpartisan research institution based here in Washington, D.C. Our program employs a research-to-action model that supports innovative policy actions to create durable global change for good. A central focus of our work is combating illegal, unreported, and unregulated (IUU) fishing.

IMPACTS OF IUU FISHING

IUU fishing can take many forms—from local, small-scale boats misreporting catch, to large-scale, industrial foreign-flagged vessels underreporting their catch. Beyond this there are also coordinated efforts supported by flag state governments or transnational crime syndicates. IUU fishing is a “crime of convergence,” and has been linked to other criminal and illicit activities such as the smuggling of guns, drugs, and wildlife; human trafficking and forced labor; as well as money laundering and tax fraud.ⁱ

In all its forms, IUU fishing directly contributes to overfishing, threatening the sustainability of fish stocks and damaging marine ecosystems. The consequences of IUU fishing ripple throughout increasingly complex supply chains, far beyond the point of harvest. It harms the economic, food, and environmental security of coastal communities. IUU fishing destabilizes the security of maritime states, supports organized criminal networks, fuels corruption, destabilizes good governance, distorts markets, and drives human trafficking and labor and human rights abuses in the fishing industry.

I saw this firsthand on a recent research trip to the Gulf of Guinea to better understand the impacts of foreign-flagged fishing on coastal communities. Chinese-owned operations have expanded their presence in West Africa through industrial fleets, fish meal operations, and bases. All these enterprises deepen partnerships with West African governments and increase access to fish in West African waters. This rapid expansion is occurring in developing nations that lack the financial, technical, and operational capacity to manage and enforce their fisheries. There is often a lack of political will to manage these distant water fleets, which can be linked to corruption or influenced by other Chinese foreign investments. The degradation of these fisheries can lead to food insecurity, unemployment, and environmental degradation and has the potential to drive civil unrest and destabilize the security of these maritime states.ⁱⁱ It is imperative that the Chinese fleets consider investing in sustainable fisheries management as part of their expansive fisheries access agreements.

It is estimated that IUU fishing accounts for up to a third of the world’s total fisheries harvest and is valued at more than \$30 billion annually, but due to its clandestine nature the number in fact could be higher.ⁱⁱⁱ Ultimately, IUU fishing occurs because it remains profitable, loopholes persist, and the opaqueness and complexities of the global seafood supply chain have made it largely invisible to governments, businesses, and consumers.

That is, until last week.

Mr. Urbina’s reporting has blown the lid off one of the most traded food commodities in the world, revealing a dark side that has flourished undetected.

COMPLEXITIES OF THE GLOBAL SEAFOOD SUPPLY CHAIN

Seafood accounts for more than \$140 billion in trade each year.^{iv} Commercial fishing is big business, with a complex global seafood supply chain and over 56 million people working on vessels to support it.^v The demand for seafood is greater than ever; in 2022, the United States imported 340,000 metric tons of seafood, valued at just over \$30 billion.^{vi}

Fueling this demand are distant water fishing (DWF) fleets. The details of their operations are largely obscured as they fish far from shore, often with little oversight from their home countries or accountability in the regions where they fish. The five largest DWF fleets—from China, Taiwan, Japan, South Korea, and Spain—target four main regions of the ocean: the Pacific, West Africa, East Africa, and South America.^{vii} With regard to China, which has by far the largest global DWF fleet, there is little insight into vessel ownership—and the Chinese-owned enterprises that support these vessels, the conditions aboard these vessels, nor the fisheries access agreements these fleets use. The challenges these fleets pose to coastal countries’ marine resources will persist unless there is measurable shift toward improved fisheries management, accountability of flag-state responsibilities, and over-

all transparency throughout the seafood industry and supply chain. As the largest distant water fleet, China has the opportunity to improve transparency by providing more detailed information about the beneficial ownership of its fishing enterprises.

Against this complicated backdrop, we know one simple truth: U.S. consumers—and consumers around the world—do not want to eat seafood that is caught illegally or that is the product of forced labor. In fact, 72% of U.S. consumers support increased traceability for seafood; they want all parts of the industry to be fair and equitable, especially for the harvesters, processors, and merchants who follow the rules.^{viii}

But how can they know?

The seafood supply chain is complex. Seafood is harvested all around the world in nearshore coastal waters, in territorial seas and Exclusive Economic Zones, and on the high seas. Depending on the fish, the seafood supply chain looks different. It is often transshipped and processed at sea, or processed in major centers often located in China where seafood can be commingled with other global catches and altered, making it difficult to distinguish, while also opening up the potential for mislabeling, all before it moves by air or sea to various wholesale suppliers, stores, and restaurants. At each point in the supply chain, new and different risks emerge.

The United States imports about 85% of its seafood.^{ix} Just under 40% of U.S. seafood imports are caught in U.S. waters, processed in China, and then imported back into the United States.^x After being processed, it is imported back into the United States.

An illustrative example of this is pollock and salmon. As a result of Russia's invasion of Ukraine, Russian-caught seafood is currently banned from the United States. Yet despite this, Russian pollock and salmon still enter U.S. commerce today.^{xi} Since 2014, Russian seafood exports to the U.S. have grown by 173%.^{xii} In 2021 Russia exported \$1.2 billion worth of crab, cod, pollock, salmon, and other fish to the United States.

Under the U.S. Country of Origin Labeling (COOL) Act, seafood products are labeled as products of the processing country. Russian-caught fish that is processed in China becomes a product of China—essentially hiding its real origin. Russian catch is processed alongside U.S. harvested fish, where it can be commingled and processed into fish blocks, fish sticks, canned salmon, or frozen fillets, and sent back to U.S. grocery stores, restaurants, and even school lunch programs for unwitting American consumers.^{xiii}

Stopping the importation of “Putin’s pollock” through China is an easy fix. If the United States government implemented a comprehensive traceability system that tracked all seafood through the supply chain, IUU fish products could not be masked.

TOWARDS TRACEABILITY

In 2015, the Obama Administration’s Task Force on Combating IUU Fishing and Seafood Fraud created the Seafood Import Monitoring Program, which is managed by NOAA Fisheries. As a former co-chair of the Task Force, I can say with certainty that it was originally envisioned to be a cornerstone of a comprehensive risk-based seafood traceability system. It was meant to effectively and efficiently track imported seafood from the point of harvest to its initial entry into the U.S. market—from bait to gate.

Our goal was to initially start with a limited number of 13 species groups at risk of IUU fishing and seafood fraud and eventually ramp up to cover all species. Now in operation for six years, the Seafood Import Monitoring Program covers about 45% of U.S. seafood imports. But it does not cover several high-risk species like pollock, salmon, blue swimming crab, and squid.

This is a pivotal time for the Seafood Import Monitoring Program. Per its rule-making last year (0648–BK85), NOAA Fisheries is considering adding new species, increasing the use of electronic catch verification, applying artificial intelligence to the process, and increasing enforcement and auditing. Expanding the Seafood Import Monitoring Program to include all species is a good next step to provide greater confidence to consumers that the seafood they buy is not illegally harvested.

As NOAA Fisheries looks to improve its program, they must consider the fact that, rather than a true traceability system, the Seafood Import Monitoring Program is a single narrow program. It is siloed from other relevant trade monitoring programs that exist within NOAA Fisheries and across other federal agencies. It is hamstrung by its reliance on a paper-based framework, which opens the door for falsification, and which altogether prevents the use of advanced risk analytics. The program is further constrained by inadequate enforcement capacity and limited interagency communication.

Unlike the European Union's IUU fishing law, which uses a red-yellow-green card system, which relies on a government-to-government certification process, the Seafood Import Monitoring Program places the burden of proof on the importer of record. Without digitization and electronic catch certification, importers of record lack the ability to see across the full length of the seafood supply chain to verify that each unit of seafood entering U.S. commerce has been safely, legally, and sustainably harvested.

As a leading market state, the United States has tremendous power—and responsibility—to transform global fishing practices and improve monitoring, control, and surveillance. Together with Japan and the European Union, we import more than 60% of all internationally traded seafood. This is a powerful market block. The United States can do so much more to improve fishery resources globally and provide consumers with the confidence that the seafood they consume is safe, legal, and sustainable.

We cannot fail.

OPPORTUNITIES FOR IMPROVEMENT

As more seafood tracking and traceability systems are implemented around the world, other countries are looking to the United States as a global leader in this space, with a functional and effective seafood traceability system that is **standardized, streamlined, and synchronized**.

Importers, harvesters, and businesses in the seafood supply chain are well aware, data and information about seafood is collected and stored by numerous U.S. agencies. NOAA Fisheries examines seafood data from the point of harvest to when it enters the U.S. market; the U.S. Coast Guard uses automatic information systems (AIS) and radar to track fishing vessels at sea; the Department of Labor monitors forced labor allegations and evidence of human rights abuses; the Food and Drug Administration collects seafood data relating to human health and food safety; and the Treasury Department follows the money, which could provide insights into beneficial ownership of IUU fishing enterprises. I could go on.

Despite all of this data and all of these programs, the International Trade Commission estimated that \$2.4 billion worth of IUU-caught products entered the U.S. market in 2019 alone.^{xiv}

Regulators, advocates, and industry agree; more can be done.

One key barrier to a better system is the lack of standardization of the data the U.S. government collects. Standardized data is needed—from different points in the supply chain—that is appropriately granular and verifiable so that it can be communicated across agencies in a timely manner. Moreover, the paper-based system that exists today hinders success. In today's world, how many multi-billion-dollar industries lack digitization and rely on paper-based records?

A cohesive system requires a globally standardized list of fish species at risk for IUU fishing and mislabeling. This is critical as more international traceability programs come online. IUU fishing is inherently a global problem; illegally caught or mislabeled species entering one major market state are very likely to enter other global markets. For example, Japan's new counter-IUU fishing regulation covers Pacific saury, squid, mackerel, and sardine. None of these species are included in the U.S. program and we know from Mr. Urbina's reporting that illegally and unsustainably caught squid is entering the U.S. market. On the other hand, Japan's list of species considered at risk for IUU fishing does not include sharks and tunas, which are covered by the U.S. program. The scale of our solutions needs to match the scale of the global problem; gaps in our collective efforts will only allow IUU fishing to continue to thrive.

As regulators work towards standardizing data, they must be cognizant of the burden these data and information requirements have on harvesters and businesses. Simplifying the data collection process is imperative and creating a digitized, interoperable system is essential. Alignment of data elements across trade tracking programs opens the door to improved interagency data sharing and collaborative enforcement, while simultaneously reducing the burden on law-abiding industry.

There is no need to reinvent the wheel. Risk analytics systems already exist and are used by other federal agencies. For example, the Food and Drug Administration screens more than 50 million imports a year for health and safety, including seafood. The FDA uses the PREDICT system, which electronically reviews trade data and targets risk screening for fraudulent and adulterated products.

The multidimensional problem of IUU fishing needs an equally multidimensional solution. Viewing risk in a more holistic way—and creating a synchronized system to communicate that risk between and among relevant agencies, businesses, and stakeholders—is exactly the path forward to gain more success.

Beyond focusing only on **species** considered at risk, the United States should widen the aperture of what is considered “risk” in the seafood supply chain. Forced labor and human rights abuses should be a priority for the U.S. government, as outlined in President Biden’s 2022 National Security Memorandum on Combating IUU Fishing and Associated Labor Abuses.^{xv} NOAA should follow through on its work to amend the definition of IUU fishing to include forced labor and human rights abuses in the seafood supply chain (0648–BG11).

Federal agencies also need to work together and use all their available tools to share information and reduce risks within the seafood supply chain. Risks can be linked to vessel histories, ownership information, and land- and sea-based processing. Transshipment, ports, flag-state activities, the role of middlemen and intermediaries, also present risk. Armed with a more detailed understanding of these risks and how they interact, the U.S. government can better focus its resources to target and root out bad actors and prevent IUU-caught fish from entering our markets, while rewarding those who abide by the laws.

NECESSARY NEXT STEPS

No seafood trade tracking system is perfect. As technology advances there will be new opportunities for improvement. There are some incremental changes that can be made now to achieve a broader, more holistic vision to prevent IUU-caught fish from entering our markets. Beyond providing confidence to consumers that the seafood they are buying is legally harvested, creating an effective seafood traceability system can positively impact environmental, economic, and human security around the world.

Last year, NOAA Fisheries published a draft rulemaking to update its Seafood Import Monitoring Program, but it fell short and, perhaps more importantly, lacked input from stakeholders. NOAA Fisheries and its interagency partners should begin a public and transparent process to improve the Seafood Import Monitoring Program, by:

- Including all seafood species under the Seafood Import Monitoring Program.
- Creating a globally standardized list of fish species at risk for IUU fishing and mislabeling.
- Widening the aperture of what is considered “risk” in the seafood supply chain, including and especially with respect to human rights abuses and forced labor.
- Improving monitoring, control, and surveillance by requiring automatic information systems and vessel monitoring systems to be used on vessels throughout the seafood supply chain and by sharing the data publicly.
- All relevant agencies should implement the relevant provisions of the FY2023 National Defense Authorization Act, including harmonizing data standards.^{xvi}
- Improving information sharing among the relevant government agencies.^{xvii}
- Moving to a fully digitized seafood traceability system.
- Using risk-based analytics to better target bad actors.
- Requiring electronic catch documentation that is verified by governments to accompany all seafood that enters the U.S. market.
- Requiring detailed beneficial ownership information to accompany harvest documents.

No single agency or organization alone can solve this challenge. IUU fishing is a global problem that requires global solutions. The United States government has the opportunity—and responsibility—to chart a path forward to move the global seafood supply chain out of the shadows. A transparent system will benefit all.

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STATEMENT OF REPRESENTATIVE SMITH

The compass is an instrument of great assistance to navigators and seafarers. Its origins lie in ancient China, specifically the Han Dynasty, which dates to the third century BC. It is one of the many enduring contributions China has made not only to maritime exploration, navigation, and safety, but also world civilization.

Yet today, we find ourselves confronting a very different reality in China, where its moral compass appears to be adrift, both at sea and on land.

Recent revelations from a comprehensive four-year investigation conducted by The Outlaw Ocean Project shed light on deeply troubling practices within the Chinese distant water fishing fleet and seafood processing industry.

These practices involve egregious violations of human rights, including forced labor and other exploitative activities. A four-year investigation led brilliantly by Ian Urbina, who will testify today, found for example that “almost half of the Chinese squid fleet, 357 of the 751 ships we studied, were tied to human rights or environmental violations” and over 100 Chinese squid ships engaged in illegal fishing, including trespassing into the waters of other nations.

On land, the investigation reveals a disconcerting pattern of PRC-based companies exploiting the forced labor of Uyghurs and North Koreans to process substantial quantities of seafood destined for the U.S. market.

From fish sticks to calamari, these products infiltrate the supply chains of major restaurants, wholesalers, and even find their way into the meals served at American

schools and military bases. Such actions directly contravene the Uyghur Forced Labor Prevention Act (UFLPA) and the Countering American Adversaries Through Sanctions Act (CAATA), both of which strictly prohibit the importation of goods produced by forced labor into the U.S. market.

It is evident that the People's Republic of China is not the sole party involved in these reprehensible practices. Governments—including our own—have been complicit in the procurement of tainted seafood.

Our panel of experts testifying today will emphasize the extent to which government procurement processes and policies have enabled these injustices.

This is also why Senator Merkley and I have drafted a letter to the Department of Homeland Security, calling for a comprehensive investigation into not only the PRC's disturbing activities at sea and on land but also the weaknesses in our system and the complicity of the private sector in the seafood industry.

Beyond these egregious abuses of human rights, there are also national security implications as well.

Chinese fishing vessels serve as part of China's maritime militia. Earlier this year, such vessels, under the guise of fishing boats, severed cables to Matsu Island, an island off the coast of China still under the control of Taiwan.

Additionally, hundreds of Chinese fishing ships reportedly operate in waters belonging to the Philippines, Vietnam, Malaysia, and Indonesia, serving as a civilian militia to escort Chinese oil and gas survey vessels and drilling rigs.

More to this point, just last Sunday, a Chinese coast guard ship collided with a Philippine vessel en route to deliver supplies to an outpost that the Philippines maintains at Second Thomas Shoal, located approximately 100 nautical miles off its coast.

China claims this territory, far beyond its legitimate boundaries, despite the fact that the Permanent Court of Arbitration in The Hague made a binding decision in 2016 under the U.N. Convention on the Law of the Sea that this area lies within the Philippines' territorial waters.

This underscores an important fact: China, under Xi Jinping and the Chinese Communist Party, is willing to upend the rules of the global international order and act in a lawless, predatory manner, both at sea and on land. It shows no respect for human rights writ large, let alone labor rights.

But fortunately—thanks in large part to the reporting of Ian Urbina and his team, published in *The New Yorker* and elsewhere—the consciences of American businesses and government leaders are awakening, and we are beginning to see them walking away from abuse-tainted sourcing. This includes the supermarket chain Albertsons, as well as McDonald's Filet-O-Fish. Both have severed ties with a supplier implicated in Ian's reporting on forced labor practices.

We are seeing similar action taken beyond the seafood industry. Over the summer the Commission sent a letter to a Wisconsin-based company, Milwaukee Tool, regarding allegations that the company had purchased gloves from a supplier that was utilizing forced prison labor to make those gloves.

Milwaukee Tool took action to investigate its supply chain, and I met with them last week. They discovered multiple examples of counterfeit gloves originating in the PRC bearing their brand name.

Part of that lawless behavior I spoke of includes ubiquitous unauthorized, counterfeit goods. The upshot is that Milwaukee Tool has cut ties with the glove manufacturer in question and they are moving that operation outside of China altogether.

I am deeply encouraged that the company has taken these positive steps, as it is yet another example of an American company responding constructively to reports of human rights abuses in the PRC.

STATEMENT OF SENATOR MERKLEY

Thank you, Mr. Chairman, for convening this hearing, which builds on several hearings that this Commission has held on topics such as the implementation of the Uyghur Forced Labor Prevention Act, the plight of North Korean refugees in China, the aggressive long-arm of the Chinese government, and the importance of holding American corporations to account when they are accomplices in human rights abuses.

Today we will hear about fresh investigative reporting from The Outlaw Ocean Project that gives us even more information about the prevalence of forced labor in China. This time we are examining the seafood supply chain, including its vulnerability to forced labor both on land and at sea.

At least ten major seafood companies in China were found to have received more than a thousand Uyghurs and other predominantly Muslim ethnic minorities from

the Xinjiang Uyghur Autonomous Region. These individuals were forcibly transferred to work in seafood processing factories in Shandong province, thousands of miles away from Xinjiang.

My colleagues at the Commission and I are horrified to learn that this seafood processed by Uyghur forced laborers is reportedly entering the United States—something we worked hard to stop with the Uyghur Forced Labor Prevention Act.

We will continue working with our friends at the Department of Homeland Security and Customs and Border Protection to fully enforce this legislation.

The investigations also revealed evidence of thousands of North Korean laborers working in seafood processing centers in China along the border of North Korea. The Outlaw Ocean Project found that over one thousand tons of seafood have been exported to American importers by Chinese seafood-processing companies linked to North Korean labor. Pursuant to the Countering America's Adversaries Through Sanctions Act, we must swiftly stop these imports.

China's seafood industry is not only responsible for human trafficking, bad labor practices, and egregious human rights abuses, but it is also tied to China's illegal, unreported, and unregulated fishing, which has global repercussions for the environment, for food security, and for our national security. The PRC's maritime aggression is alarming, as their fishing fleets have been found to overfish, target protected species, and encroach on waters of other countries, violating international law. American businesses need to pay attention to this behavior and recognize that it impacts them, too.

As we'll hear today, seafood processed in the PRC by Uyghur and North Korean forced laborers enters the United States illegally—including through U.S. Federal procurement, impacting hundreds of American military bases and public school cafeterias.

Major American grocery store chains, restaurants, and food-service companies are also implicated, unwittingly exposing thousands of American consumers to seafood linked to forced labor and egregious human rights abuses.

For the United States to be able to protect American consumers from exposure to products tainted by forced labor and to best defend persecuted groups abroad, we need to better understand the nature and scale of this challenge. I look forward to hearing from our witnesses as to how we can use existing tools and legislation to address this challenge and what more we can do.

Thank you, Mr. Chairman.

STATEMENT OF REPRESENTATIVE MCGOVERN

Good morning. I join my colleagues in welcoming those present to today's hearing on the use of forced labor in the seafood supply chain. I regret that I am not able to join you in person.

This hearing continues the work of the Congressional-Executive Commission on China to shine a light on the use of forced labor by the People's Republic of China, and its consequences for supply chains and the American consumer.

Forced labor is a grave human rights violation that has been prohibited under U.S. law since 1930. American consumers should not have to worry about whether the products they purchase are tainted by forced labor from China, or for that matter, from any other country.

American workers and American producers should not have to compete with companies that rely on forced or slave labor. There is wide bipartisan agreement on this issue.

The U.S. Government has made important progress in enforcing the ban on forced labor since passage of the bipartisan Uyghur Forced Labor Prevention Act that I was privileged to lead and which became law in December 2021. Rather than rely on moral suasion, the law creates a rebuttable presumption that all goods produced in the Xinjiang region of China are made with forced labor. That means the burden of proof lies with those who want to import goods to show that their supply chains are free of forced labor. In the past we have heard from the Department of Homeland Security that the law has brought "a sea change" to the way the government approaches forced labor issues. That is a very good thing. One of the questions in today's hearing is whether/how the UFLPA can be applied in the fisheries sector.

As we take up this question, it is important to take into account the work that the U.S. Government is already doing to address forced labor in the seafood supply chain. The problem is complex and global: a congressionally mandated report¹ issued in 2020 by the National Oceanic and Atmospheric Administration identified

¹ National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, section 3563.

29 countries particularly at risk for human trafficking, including forced labor, in their seafood sector. The report provides recommendations that overlap with proposals we will hear today, in particular the need to promote and support global traceability efforts.

The fact that the problem is global does not in any way diminish the relevance of a focus on China. As The New York Times vividly reported last fall, China’s “rapacious” deep-water commercial fishing fleet is the largest in the world and operates non-stop in international waters. Not only does the PRC tolerate labor abuse, but its fleet’s fishing practices, driven by rapidly increasing demand for seafood, harm local economies and the environment, and risk the sustainability of many species, such as tuna. So there is no question that we should do all we can to counter the PRC’s bad practices—even as we acknowledge a broader set of actors and recognize that a comprehensive response will require strong international governance and cooperation, import standards and proactive supply chain verification, along with innovative ways to meet rising global demand for protein.

Part of that comprehensive response should be to support U.S. fishing, which of course does not rely on forced labor. The U.S. fishing industry, while not perfect, is much more sustainable than fishing elsewhere. The Magnuson-Stevens Act has been largely successful at helping revive U.S. fishing stocks after total collapse earlier in our history. One of the big takeaways from the U.S. experience is that fisheries management cannot be a race to the bottom. Planning, community stewardship, a regulatory floor, and verification are essential.

Finally, let me reiterate a point I have made previously: enforcing forced labor laws generally, and the UFLPA in particular, requires resources. This Commission must be clear that talk about human rights in China has to be backed up with funding. Cuts to the budgets of agencies that implement human rights policy will gut that policy. It is important to keep this in mind as the struggle to approve FY 2024 appropriations bills continues.

Thank you.

STATEMENT OF SENATOR SULLIVAN

Overview

Chair Smith, Co-chair Merkley, fellow Commissioners, I appreciate the opportunity to provide written testimony for this hearing, as I was unable to attend in person. I commend the Commission for a timely and laser focus on the impacts of Chinese forced labor on the global seafood market, which has a significant negative impact on an industry that is an economic pillar of my state of Alaska.

Forced labor in the Chinese seafood supply chain—both on land and on sea—has been an open secret for years, but never has it been as well documented as in CECC witness Ian Urbina’s Outlaw Ocean Project reporting. His thorough reporting on human rights abuses throughout the seafood supply chain, coupled with other witnesses’ testimony and credible documentation from many others through the years, is a call for action.

These human rights abuses need to be combated because they are just wrong. But these unacceptable practices also have two related impacts: the damage done to global seafood sustainability, and the devastating economic impact forced labor has on seafood producers that are playing by the rules—like those in my state. Fortunately, the U.S. and its partners can tackle all three of these challenges through a series of national and global actions.

As we all know, Alaska leads the country in the magnitude and sustainability of its seafood sector. According to the Alaska Seafood Marketing Institute in its 2022 report, the Alaska seafood industry nationally creates over 100,000 full-time-equivalent jobs, \$6 billion in annual labor income, and \$15 billion in economic output. Alaska and the U.S. seafood industry in general have produced large, diversified harvests as a result of a decades-long commitment to sustainable management.

But the Alaska seafood industry and others around the world that maintain high sustainability and labor standards cannot compete—and shouldn’t have to—with China’s system of forced labor and vacuum-the-ocean efforts that hide behind obscured supply chains. These supply chains can crush our U.S. producers because their “competition” is seafood caught through illegal, unreported and unregulated (IUU) fishing, including with forced labor, as well as seafood caught in Russian waters.

What Next?

I commend our government’s efforts in combating IUU fishing and forced labor, particularly the efforts of the agencies that are members of the U.S. Inter-Agency

Working Group on IUU Fishing. But we need to do even better. Our efforts must be both national and global, as China has strategically positioned itself as an integral component in the global seafood supply chain, including many U.S.-produced products. Here are some thoughts on how to further improve our response:

1. **U.S. Laws.** The U.S. has a number of laws to combat IUU fishing, forced labor or both, including the Maritime Security and Fisheries Enforcement Act, the Moratorium Protection Act, and the Uyghur Forced Labor Protection Act. But are they effective? Do they need further enforcement? Are there gaps or flaws that need amending? Further resources to improve enforcement? Lawmakers need to know these answers, and to provide targeted support if needed.
2. **Stronger Seafood Import Controls.** Part of U.S. import controls include the Seafood Import Monitoring Program (SIMP), which, despite its comprehensive-sounding name, is focused on requirements for importers; importers are a very small part of the global seafood supply chain. This is a baked-in design flaw in a program that is meant to be used for screening and deterrence only, so it does not find imports of IUU seafood. So instead of expanding this resource-intensive program, I support strengthening other efforts to ensure integrity in the supply chain, including enforcing existing U.S. laws and supporting adoption of global standards by seafood importing nations.
3. **Working with Global Partners.** The seafood supply chain is truly global. If seafood produced by forced labor cannot be imported into one country, it will likely be moved to another. Tackling the issue means looking at adopting global standards and assisting other countries with their seafood management. Some of these efforts are captured in my Fighting Foreign Illegal Seafood Harvests Act of 2023, which focuses on fighting IUU fishing at its source.
4. **Banning Imports of Russian Seafood.** Despite Russia's ban on the import of U.S. seafood, and despite the brutal, illegal invasion of Ukraine by the Russian Federation, and despite the President's March 2022 Executive Order 14068 that resulted in the prohibition of Russian seafood imports, seafood products of Russian Federation origin continue to enter United States commerce through "substantial transformation" that is often occurring in China. I urge the Biden Administration to close this loophole that is lending itself to unethical practices in both China and Russia, and for Congress to pass my United States-Russian Federation Seafood Reciprocity Act of 2023, which would codify this ban.
5. **Corporate Efforts, Consumer Knowledge.** I don't think any of us would knowingly choose to eat seafood that came from forced labor. I support transparency throughout the supply chain, including corporations raising their standards and labeling that informs consumers on the origin of their seafood.

Conclusion

We—Congress, executive branch agencies, industry, nongovernmental groups—share the goal to strengthen the seafood supply chain both ethically and economically. Some of our efforts have been successful, while others have fallen short. This is a moment where we must seize the opportunity to expand our efforts in a thoughtful and comprehensive way. If done correctly we can both bolster our domestic seafood industry AND strengthen the global seafood supply chain that provides healthy, nutritious protein to consumers around the world, strengthens our economy, and provides jobs to hardworking men and women. Inaction, and the consequences associated with this, are simply not an option.

STATEMENT OF REPRESENTATIVE ZINKE

I would have given the following opening statement if not for my duties at the House Republican Conference electing a Speaker-designee.

Thank you, Chairman Smith, for holding this very important hearing on China's use of forced labor in the seafood industry both on fishing vessels and processing facilities, and the infiltration of related seafood into the United States supply chain.

It must first be noted that between the legally ambiguous use of the Antiquities Act to deem large swaths of the U.S.'s Exclusive Economic Zone (EEZ) restricted to commercial harvests, top-down regulatory bureaucracy from NOAA Fisheries, inadequate stock assessments, and the invasion of fishing grounds by wind turbines, America's fishermen are at the brink.

The number of U.S.-flagged fishing vessels has steadily decreased over decades and will continue to dwindle as there is hardly any current incentive for young fishermen to invest their time, money, and effort in a profession needled by an overbearing regulatory regime and under constant threat from highly bankrolled e-NGOs.

To supplement the limited amount of domestic catch (by both labor restrictions and catch restrictions), satiate America's demand for seafood, and be in the black, U.S. seafood companies are forced to import from China.

I appreciate the work of Ian Urbina and his team at The Outlaw Ocean Project in uncovering the extensive use of forced labor, including Uyghur forced labor, on Chinese fishing vessels and in seafood processing. However, American seafood companies do not have the luxury of a crack investigative team with unlimited time and resources to survey the Chinese exporters they source from.

In fact, many of the U.S. companies mentioned in Urbina's reporting who later ceased accepting imports from their Chinese counterparts invested in what industry considered "top-of-the-line" third-party auditors to investigate labor abuses in China.

I hope that this hearing delves into what the United States Government can do better to identify Chinese companies using forced labor and ease the burden on U.S. companies just trying to supplement the U.S. food supply chain.

While decoupling from any users of forced labor is the ultimate goal, what must be investigated is the extent that Chinese forced labor infests the American food supply chain and how we can supplant it without creating inconvenience and higher prices for ordinary Americans.

Additionally, while not necessarily within the scope of this hearing, I hope that we can discuss what action can be taken to revitalize the American seafood industry, particularly through deregulation and possible amending of the Magnuson-Stevens Act.

SUBMISSIONS FOR THE RECORD

 THE NATIONAL SECURITY IMPERATIVE
 TO TACKLE ILLEGAL, UNREPORTED, AND UNREGULATED FISHING

[From Brookings Commentary, Order From Chaos: Foreign Policy in a Troubled World, January 25, 2021]

By Michael Sinclair

[Editor’s Note: This piece is part of a series titled “Non-state Armed Actors and Illicit Economies: What the Biden Administration Needs To Know,” from Brookings’s Initiative on Non-State Actors.]

Over the last few years illegal, unreported, and unregulated (IUU) fishing has become more recognized as a national security concern. At first glance, fish hardly seem to be on par with other cutting edge national security issues—cyber, space, artificial intelligence, drones, nuclear proliferation, and perhaps most importantly the return of strategic competition now commonly referred to as “great” power rivalry (although perhaps not for long). But in the years to come, make no mistake, fishin’ may indeed become an increasingly important mission for the United States and its security partners and allies around the world, and most certainly those in the Indo-Pacific.

To succeed in this mission, the Biden administration should lean on the U.S. Coast Guard to do what it does best, especially in the Pacific, where Chinese fishing fleets do double-duty as maritime militias that threaten and intimidate the fishers from neighboring nations. The administration should also continue to develop counter-IUU bilateral agreements, including those that may allow prosecuting masters of vessels that commit “grave breaches.” It may also need to make a hard choice between partnering with China’s neighbors, or with China itself, to best address this threat.

FISHING AS AN INDUSTRY

Fishing, a \$401 billion global industry, provides 20% of the protein intake for nearly half of the world’s population, and global fish consumption has been on the rise for almost 60 years. Yet 93% of the world’s fish stocks are fully exploited, over-exploited, or significantly depleted, and global climate change is adversely affecting stocks.

It’s axiomatic that sustainment requires effective management. The problem is that fish move, so for management to be truly effective it must be consistently applied both regionally and, really, around the world. In other words, country A’s strong fisheries management practices can be undermined by country B’s if the latter is unwilling or unable to implement strong practices—or worse, if it actively or tacitly condones IUU fishing.

ENTER: CHINA

Chinese fishing practices present a truly unique and dire IUU threat. First, China boasts the world’s largest fishing fleet. It uses this fleet, to devastating effect, to meet its population’s huge demand for protein. It also provides generous subsidies, which has incentivized the rapid proliferation of large, capable, “distant water” vessels that can harvest staggering amounts of catch in a single voyage, often by dragging the ocean bottom without regard to fish type, age, or quantity limits. When working together in fleets, these vessels are rapacious.

Chinese-flagged fishing vessels range the world over in search of catch and are notorious for fishing within other nations’—especially developing nations’—exclusive economic zones (EEZs). Most recently, a huge Chinese fishing fleet, estimated to have 350–400 vessels, plied the waters near the environmentally sensitive Galapagos islands—a UNESCO World Heritage Site—and so overwhelmed the government of Ecuador’s ability to respond that Ecuador requested U.S. Coast Guard assistance to protect its EEZ. This fleet then moved south into Chile’s EEZ, where it continued to operate as late as December 2020 in the face of an active response from the Chileans and a strong rebuke from then-U.S. Secretary of State Mike Pompeo. Shortly after, Pompeo also imposed visa sanctions on certain Chinese officials associated with China’s malign maritime activities, including IUU fishing, in the South China Sea. The presence of this fleet has most recently resulted in a new sustained regional response: Operation Southern Cross.

While China sometimes attempts to strategically deny oversight for activities of its distant water fishing fleet in much the same way that Russia denied responsibility for the activities of armed actors during violence in the Crimea, China takes the opposite tack in the South and East China Seas. There, its fishing fleet doubles as the sanctioned People's Armed Forces Maritime Militia. This militia has a history of working in a coordinated fashion to harass and bully China's neighbors' own fishing vessels in disputed maritime territory and, in some cases, those neighbors' EEZs. It's increasingly clear that these maritime militias are part of a concerted Chinese "gray zone" effort to exert strategic influence throughout the region.

THE OPERATIONAL AND LEGAL CHALLENGES OF FISHERIES ENFORCEMENT

IUU fishing is an exceedingly difficult challenge. First, the operational dynamics are significant. Patrol vessels and aircraft (and their crews) are expensive. Few countries can afford them or dedicate such resources to fishing regulation in meaningful numbers. And the tyranny of distance plagues EEZ protection, like it does other maritime issues. This makes developing and maintaining the domain awareness across thousands of miles of ocean necessary for effective fisheries management a Herculean (or perhaps more accurately Sisyphian) task. Further, bad actors actively frustrate state attempts to build that awareness, through tactics like disabling required tracking devices; deploying difficult-to-detect, untended gear like high seas drift nets that indiscriminately kill marine life; and using onload/offload "motherships" to mask the type and size of fish they catch.

The international legal landscape also makes it difficult for states, beyond a vessel's flag state, to engage in IUU fishing enforcement. Thus, often only China can address Chinese IUU fishing. China is largely not interested in doing so, although that might be improving slowly as China develops aquaculture capabilities and recognizes that sustainment and better transparency may be in its best long-term interests.

Moreover, several other international legal norms complicate countering IUU fishing. First, Article 73 of the United Nations Convention on the Law of the Sea (UNCLOS) prohibits criminal prosecution of fishing offenses in the absence of an express agreement between two states authorizing such prosecution. While the United States has signed but not yet ratified UNCLOS, it considers the vast majority of the treaty to accurately reflect the current state of customary international law as it relates to the law of the sea. Next, there are several broad-reaching, multi-lateral international agreements like the United Nations Fish Stocks Convention and many specific regional fisheries conventions that provide for enforcement remedies like catch and vessel seizures, but consistent with UNCLOS, do not typically allow for criminal prosecution.

Domestically, the Magnusson-Stevens Fisheries Conservation Act and the Lacey Act provide the substantive law for fishing violations in the United States EEZ, but aren't particularly helpful elsewhere. On a positive note, Congress recently passed the Maritime Security and Fisheries Enforcement (SAFE) Act directing the U.S. government to start the process of focusing the efforts of relevant federal departments and agencies on the challenge posed by IUU fishing.

OPTIONS

The Biden administration can adopt several measures to better address the national security challenge posed by IUU fishing, both in general and regarding China.

First, the United States could look to increase its use of non-governmental organizations (NGOs) as force multipliers, especially in the realm of improving the quantity and quality of maritime domain awareness information. The European Union's partnerships with NGOs to extend its fisheries management capabilities are a good model. But Washington should exercise great discretion on who to partner with and what activities the government sanctions—there are some cowboys out there.

Second, the administration should ensure the maximum availability of Coast Guard forces in the Pacific theater: both cutters and law enforcement detachment boarding teams that are embarked aboard Navy ships and perhaps even integrated within deployed U.S. Marine Corps forces. An increased Coast Guard presence will help model what responsible maritime behavior should look like, and provides the operational commander in theater with flexible options to prevail across the full spectrum of strategic competition. In other words, there should be lots of Coast Guard resources in the Pacific, and U.S. Navy ships there should be fully capable of delivering *both* lethality and coast guardsmen, depending on the mission need.

Third, the United States should consider developing the legal framework, and associated policies and procedures, to embark Coast Guard boarding teams aboard the National Oceanographic and Atmospheric Administration (NOAA)'s growing fleet of

vessels. NOAA, already in the IUU fight, oversees the National Marine Fisheries Service (NMFS) charged with domestic fisheries enforcement. Both NOAA and NMFS have a long history of teaming up with the Coast Guard. This will require jointly developed protocols to safely and effectively deploy Coast Guard law enforcement detachment boarding teams on NOAA's more capable, longer-range vessels as a sort of "Coast Guard cutter-lite." This should be undertaken in a manner similar to how the Navy employs embarked Coast Guard personnel during counter-drug operations.

Fourth, the State Department and the U.S. Coast Guard should expand the use of bilateral IUU fishing agreements. These agreements are particularly crucial in the Pacific, where competing claims of international sovereignty necessitate increasing the capacity and capabilities of partner nations to better deal with Chinese maritime aggression, including the malign activities of its fishing fleet/maritime militia.

More globally, the United States should pursue bilateral agreements that make criminal prosecution possible for especially heinous cases. This could be akin to the grave breaches "try or transfer" provisions that established the quasi-universal jurisdiction and helped make the Geneva Conventions so revolutionary in the humanitarian law context. Indeed piracy—another crime of universal jurisdiction—shares much (but not all) in common with IUU fishing, especially as IUU fishing so often intersects with other forms of criminality. This is of course easier said than done, especially with nations like Mexico, whose fishers are notorious IUU fishing recidivists. (Moreover, the United States is unlikely to reciprocally subject its own citizens to Mexican criminal jurisdiction.) Yet, despite a long history of U.S. flagged fishing vessels sometimes violating domestic fisheries laws within the U.S. EEZ, the overall risk of foreign criminal prosecution for U.S.-based fishers is relatively low. This is because U.S. fisheries management within its EEZ has been relatively successful, even if not perfect. Thus, unlike near Chinese shores, lots of fish remain in the U.S. EEZ, so U.S.-flagged fishing vessels don't need to travel all over the world chasing catch.

But, adding prosecutorial teeth and applying those teeth—especially with regard to the vessel's master—may begin deterring some of the more egregious IUU violations. The United States would therefore also need to develop its own applicable extraterritorial criminal statute, perhaps modeled on the extraterritorial reach of the Maritime Drug Law Enforcement Act. Such a statute would enable it to engage in appropriate criminal prosecutions of IUU fishing cases with a sufficient nexus to the United States. As such, criminal prosecution for "grave breaches" of IUU fishing measures could then become increasingly central to U.S. negotiations of international fisheries management agreements.

Finally, fisheries enforcement is not a good issue area for reducing U.S.-China tensions. In fact, on this issue, seeking cooperation for the sake of cooperation may pose unacceptable risk. Specifically, it risks undermining the important and necessary collaboration with other countries in the Pacific and around the world to guard their fisheries, including against China's fishing fleet. A focus on cooperating with China on fisheries enforcement also risks charges of hypocrisy and complicity against the United States from specially affected states, including isolated island nations in the Pacific and West African nations, both of which are extremely vulnerable and whose fisheries, food security, and livelihoods are devastated by Chinese fishing. Why should these countries seek partnership with the United States to check Chinese EEZ encroachments if the United States is itself partnered with China?

Further, calling for more aggressive Chinese enforcement of the activities of its fishing fleets also runs the risk of incentivizing China to engage in more far-flung military operations. China's naval force grows more impressive by the year. Thus, China could disguise its military maritime expansionism under the sought-after self-policing of its fishing fleet (while in reality not breaking with its current tacit consent to fishing crimes). Better first to build capacities, capabilities, and partnerships with affected, like-minded countries.

Michael Sinclair, Federal Executive Fellow, The Brookings Institution; Captain, U.S. Coast Guard, © 2023 The Brookings Institution.

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STATEMENT OF JUDY GEARHART,
ACCOUNTABILITY RESEARCH CENTER, AMERICAN UNIVERSITY

Recent reporting by The Outlaw Ocean Project has highlighted the need for U.S. leadership in improving ocean stewardship and advancing transparency in seafood supply chains. The CECC has an important role to play in both ensuring the implementation of the Uyghur Forced Labor Prevention Act (UFLPA) covers the seafood industry and enlisting U.S. seafood industry leaders—both major retailers and importers—in efforts to prevent human rights abuses in the seafood industry. The Outlaw Ocean Project findings highlight the geopolitical importance of the U.S. building stronger alliances around these goals.

U.S. trade policy is a powerful tool, as demonstrated by the application of the UFLPA to apparel and other industries. To advance sustainable change, however, these efforts must be paired with an increase in seafood industry workers' access to remedy and regulatory incentives for greater producer and retailer cooperation. The solutions will require:

- A. Strengthening interagency cooperation and the Seafood Import Monitoring Program;
- B. Increasing reporting requirements on corporations;
- C. Enabling fishers' access to remedy; and
- D. Deepening alliances with other countries combating IUU and forced labor at sea.

A. Strengthening Interagency Cooperation and the Seafood Import Monitoring Program

In June 2022, the White House issued a National Security Memorandum (NSM) on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses—calling for greater U.S. leadership and increased interagency collaboration to address these issues. Strengthening interagency efforts and policy coherence will benefit U.S. fishing companies and others operating legally.

The Outlaw Ocean articles highlight reasons to believe a significant portion of U.S. seafood imports are processed by Uyghur forced labor in China. Notably, a significant portion of that seafood may even have been caught legally by U.S. fishing vessels and exported to China to be processed and then re-exported back to the U.S. or on to other countries. Such is the case for a third of Alaska's seafood, for example. Not only is the processing of seafood in China subsidized by forced labor, but the narrow scope of U.S. regulations currently enables the commingling of IUU fish with other, similar species and then exported under the name of the unmonitored species. Fuel subsidies to distant water fleets, which the WTO is attempting to address, further enable these practices. Absent stronger trade regulations and reporting requirements on seafood producers and retailers, U.S. consumers are helping to finance the operation of the Chinese fleet.

The CECC should encourage current efforts to expand the scope and strengthen the implementation of the U.S. Seafood Import Monitoring Program (SIMP) and NOAA's efforts to work more closely and transparently with other U.S. Government agencies. In response to the June 2022 NSM and NOAA's proposed new rule for reforms to SIMP, a number of civil society organizations have called for additions to SIMP. These recommendations include: 1) reporting on all species of seafood imports (via land, air, and sea), 2) the use of unique vessel identifiers to enable traceability, and 3) increased transparency in SIMP auditing procedures.

1. Covering all seafood imports whether entering by sea, land, or air would help address issues relating to fraudulent labeling and challenges in identifying processed seafood correctly. NOAA's most recent proposal to expand SIMP would still only cover 21 percent of seafood imports coming from China.

2. Require that importers report producer vessels' unique vessel identifiers or authorization and related key data elements to enable greater traceability and facilitate additional reporting requirements on fishing practices, fisher protections, and producer vessels' ownership and control.

- Traceability data on vessel suppliers that includes key data elements (KDEs) on the date and location of landing, offloading or transshipment, and on the commingling or transformation of the product, will require businesses to adopt more responsible practices.
- These and other IUU related KDEs should be paired with increased reporting on labor issues such as (but not limited to) crew manifests, duration of work

at sea, the labor rights record and policies of supplier vessels and the manning agencies they use.

- Both labor policies and catch documentation must be paired with requirements that buyers report on the vessels or vessel group supplying them and the ownership and financing behind those vessels.

This increased reporting would greatly expand the ability to identify forced labor risks at sea and thus enable Customs and Border Protection to better uphold its mandate under the UFPLA and more broadly, the U.S. Tariff Act, to hold goods at port suspected of being made in whole or in part with forced labor.

3. Improve upon and increase transparency in SIMP audit procedures to facilitate the interagency collaboration and stakeholder engagement mandated by the NSM. This will enable NOAA and other U.S. agencies to engage with greater credibility when seeking collaboration from key market actors and allies such as the EU and Japan in monitoring seafood supply chains.

B. Increase reporting requirements on corporations

To strengthen the implementation of SIMP, additional regulations and incentivizers should require increased reporting for both retailers and importers to track KDEs relating to both the provenance of their seafood and the treatment of fishers as outlined above. Transparent data sharing between corporations and SIMP could prove essential for preventing both IUU and forced labor. It may also benefit the U.S. seafood processing industry.

C. Focus on access to remedy

Multiple studies have documented the correlation between IUU and forced labor in the seafood industry. The revelation of Uyghur forced labor in seafood processing in China is an added area of risk. Much of the seafood processed in China has already come from vessels that may be using forced labor, some of which may or may not be Chinese vessels. Encouraging China's ratification and implementation of the Port State Measures Agreement (PSMA) could provide a constructive pathway to engage China on overfishing and labor rights abuse at sea. Although this will not directly address the problem of forced labor in China's seafood processing sector, it should be included in the context of future dialog.

Additional policies are needed to prevent forced labor, human trafficking, and other pervasive human rights abuses at sea. These include the need for fishers to be allowed access to port services and connectivity at sea. The expansion of electronic catch documentation should also come with greater connectivity at sea that is then also extended to fishers. Access to port services and connectivity at sea also requires increased engagement of national and global trade unions. Representative fisher organizations need to be engaged in the development of greater fisher rights protections on all distant water fleets to be given access to port and at-sea inspection data so they can better monitor fishers' welfare and the implementation of policies meant to protect them.

D. Deepening alliances with other countries combating IUU and forced labor at sea

U.S. leadership is needed to build a coalition of countries that prioritize responsible ocean stewardship and the protection of seafood industry workers on the water and on land. Currently, the U.S. requirements for electronic catch documentation are applied to a much smaller number of species than the EU requirements, yet the EU requirements also do not require key data elements on labor-related issues.

The U.S. needs to prioritize catch documentation and traceability and strengthen its collaboration with other countries committed to such improvements, including the EU and Japan. Such alliances will be essential to advancing more responsible ocean stewardship, coordinated policing, and market incentives for responsibly caught and processed seafood.

STATEMENT OF BADRI JIMALE, HORN OF AFRICA INSTITUTE

I am Badri Jimale. I represent Horn of Africa Institute. I am testifying in favor of having meaningful discussion about the illegal fishing practices conducted by People's Republic of China-based companies in the Horn of Africa. I will discuss the impact of Chinese fishers on Somaliland.

The illicit activities of People's Republic of China-based companies engaging in illegal fishing off the coast of Somaliland are posing significant challenges for the local fisher industry, placing immense pressure on its sustainability. Unfortunately,

Somaliland lacks a well-equipped coast guard capable of effectively fending off these encroachments by Chinese trawlers prowling its waters. This glaring inadequacy creates an alarming scenario where the delicate balance between marine resources and human livelihoods is severely jeopardized. Moreover, what exacerbates this issue is the overall lack of transparency and communication surrounding these activities, leading to confusion among local authorities and communities alike.

Disturbingly, it must be highlighted that this problem extends beyond just Somaliland's shores, as China's fishing in Nigerian seas has resulted in countless Nigerian fishermen being rendered unemployed due to extreme overfishing practices employed by Chinese vessels. We are deeply concerned about the potential ramifications of such a scenario repeating itself in Somaliland. The devastating consequences stemming from such unsustainable methods are numerous—depletion of fish stocks, impacting food security and nutrition; loss of income for local fishermen leading to heightened poverty levels; and irreparable damage to fragile marine ecosystems that support diverse species and maintain ecological balance. These actions not only undermine sustainable development efforts but also violate international laws governing maritime territories.

Urgent measures need to be taken by both national and international stakeholders to address this critical issue before irreversible harm occurs.

SUBMISSION OF STEPHANIE MADSEN, AT-SEA PROCESSORS ASSOCIATION

1. OVERVIEW

Chair Smith, Co-chair Merkley, Commissioners, thank you for the opportunity to provide written testimony to supplement the record. My name is Stephanie Madsen, and for the last 17 years I have served as Executive Director of the At-sea Processors Association (APA).

APA represents proud American seafood companies, all participants in the Bering Sea Alaska pollock fishery. My members are some of the many seafood sector participants who have read *The New Yorker's* gut-wrenching new reporting on human rights abuses in the Chinese seafood sector and concluded that the status quo is completely unacceptable. Ian Urbina's Outlaw Ocean Project spent 4 years conducting brave, innovative and harrowing reporting on the inhumane treatment of workers on board some of China's distant water fleet vessels and in several seafood processing plants in Shandong Province. The reporting team present very credible evidence that forced labor is widespread aboard some Chinese fishing vessels. They also use analysis of social media posts to confirm the presence of Uyghur laborers in some Shandong Province seafood processing facilities—laborers who are victims of China's brutal repression of Xinjiang and its "re-education" of the province's minority populations.

These human rights abuses should be intolerable for all of us. Equally intolerable is a system that allows seafood products harvested and processed under these conditions to enter global commerce. Unfortunately, while strict U.S. labor and environmental regulations hold my members to stringent performance standards, Federal and multilateral policy settings have been largely ineffectual in discouraging and preventing the exploitation of workers in the Russian and Chinese seafood sectors.

We can and must do better. On a national level, Federal authorities and the seafood industry must act with urgency to put in place stronger systems that can prevent seafood produced with forced labor or via IUU fishing practices from entering our domestic market. On a global level, we need reforms that will bring greater transparency and assurance to seafood supply chains and drive down international rates of IUU fishing and human rights abuse in seafood production.

2. WILD ALASKA POLLOCK

The contrast between the practices of my members and those of their Russian and Chinese competitors could not be more stark. I represent the Bering Sea's Alaska pollock catcher-processor fleet. Our vessels fish sustainably, exclusively in U.S. waters, operating under U.S. labor laws. All vessels are crewed overwhelmingly by U.S. citizens and green card holders. Two federally trained independent observers are on board at all times. Vessels return to port every 10 to 14 days. We have voluntarily subjected our vessel operations to independent third-party social audits in an effort to demonstrate and extend best practices. We are proud to provide stable family-wage jobs—with full labor and safety protections—to thousands of American workers.

The United States produces vast quantities of Alaska pollock for domestic and global consumption. Our products reach consumers in the form of fish sandwiches,

fish sticks, frozen fillets, seafood surimi, and in many other product forms. The Bering Sea Alaska pollock fishery is conducted entirely within U.S. federal waters in conformance with strict federal regulations. This single fishery accounts for more than one-third of total U.S. fishery landings and provides American and global consumers with more than three *billion* seafood meals every year.

The Bering Sea Alaska pollock fishery is also vital for communities across Alaska, in addition to coastal communities in Washington and Oregon where many Alaska pollock fishing vessels home port. We provide a tax revenue base, sustain infrastructure, and generate economic activity in coastal communities with few alternative means of economic development. Among the beneficiaries are numerous western Alaska villages that are some of the most remote and socio-economically disadvantaged in the Nation.¹

Our vessels not only harvest Wild Alaska Pollock, they also immediately perform primary processing on board. This process utilizes the entire fish to produce a variety of products, with frozen fillet and frozen surimi blocks the two most important for human consumption. After offload to cold storage and other facilities in Unalaska, AK, these products are transported to secondary processing facilities located in or near the markets where they are consumed. U.S. secondary processing facilities are located in Anacortes, Bellingham and Redmond, WA; Brunswick and Carrollton, GA; Braintree and Gloucester, MA; Portsmouth, NH; Cucamonga, CA; Motley, MN; and Carteret, NJ. At these facilities, fillet and surimi blocks are cut to size and made ready for consumers through processes such as breading, battering, and re-manufacturing before being packaged for final sale in retail or food service outlets. In total, the U.S. Alaska pollock sector generates approximately 30,000 jobs in the American seafood harvesting, processing, distribution, wholesale, retail, restaurant and food service industries.²

Wild Alaska Pollock harvested by our vessels remains fully traceable throughout the supply chain, and anyone handling our product at any point can see detailed information about its origin. This includes the name of the vessel that harvested the fish, the harvest time and date, and even the exact tow. Importantly, in the United States only U.S.-harvested pollock can carry the name “Alaska” on the label. If you purchase a fish sandwich, fish sticks, or other whitefish product labeled as “Alaska” or “Alaskan” pollock, you can be assured that its entire production life cycle—from bait to plate—occurred under the most ethical conditions.

3. THE RUSSIA-CHINA SEAFOOD AXIS

Few global seafood supply chains are so simple and transparent. Part of what makes *The New Yorker’s* reporting so important is that China is a global seafood juggernaut. Not only does it farm and harvest huge amounts of fish every year, it is also the world’s biggest seafood processing hub. The full supply chains of seafood products that pass through these Chinese processing facilities can be incredibly complex and opaque. Product often moves through the hands of myriad supply chain actors, sometimes becoming intermixed or anonymized over time.

Assurance mechanisms that can provide greater supply chain transparency frequently fail or are non-existent. Importers and retailers too often lack visibility of whether the seafood they are buying is sustainably or ethically produced. This urgently needs to change.

While human rights abuses in the Chinese seafood sector are rightly under the microscope today, to focus exclusively on China is to miss a critical part of the picture. It is impossible to tell the story of the Chinese seafood industry without expanding one’s gaze to neighboring Russia. That is because so much of the raw material entering Chinese processing facilities originates in Russian waters. It is harvested by Russian fishing vessels where human rights abuses, including the exploitation of North Korean and other vulnerable migrant workers, are an open secret. These fisheries also directly fund Russia’s war in Ukraine. For example, in 2023 the Russian budget allocated \$US3.97 billion in revenue from auctions distributing pol-

¹For general background on the Community Development Quota (CDQ) program, which has enabled Western Alaska communities to now control catch rights to more than one-third of Bering Sea Alaska pollock quota, see: <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/community-development-quota-cdq-program>.

²Mckinley Research. The Economic Value of Alaska’s Seafood Industry (January 2022) available at https://www.mcdowellgroup.net/wp-content/uploads/2022/05/mrg_asmi-economic-impacts-report_final.pdf.

lock and crab fishing quota;³ and on October 1st, 2023 Russia imposed a new export duty on seafood that is now raising significant additional sums for the Kremlin.⁴

Recognizing the importance of seafood production to the Russian economy, on March 11, 2022 President Biden signed Executive Order 14068 prohibiting the importation of Russian seafood into the United States.⁵ Yet sanctions have had minimal impact. Ilya Shestakov, the head of Russia's Federal fisheries agency, recently stated: "the situation in the [Russian seafood] industry is stable. The sanctions, in fact, did not touch us at all."⁶

The primary reason for this is the axis that Russia has built with the Chinese seafood processing sector. The act of re-processing Russian seafood in China constitutes "substantial transformation" under international trade rules, conferring "Chinese origin" on Russian seafood products and allowing them to evade sanctions and continue entering the U.S. market—without any import duties or serious regulatory scrutiny.

Russia and China combine to form a seafood superpower axis. In 2023, analysts estimate that the total Russian wild-capture harvest will exceed five million tons—a stunning total. Pollock is a key pillar of Russia's seafood economy, sometimes accounting for up to 40 percent of total Russian fishery landings.⁷ Indeed, Russia harvests a majority of the world's "Alaska pollock," with its 2023 Total Allowable Catch set at more than two million tons.⁸ A huge portion of this harvest is sent directly to China, where it moves through Chinese seafood processing facilities. Thanks to Ian Urbina's reporting, the world now knows the conditions under which some Chinese seafood processing occurs—and much of the time it is Russian raw materials that are moving through the facilities that lack any serious human rights due diligence or supply chain integrity.

The Russia-China seafood superpower axis is only getting stronger. Just this month it was reported that Chinese economic development officials are planning to open a significant new seafood processing center to deliver semi-finished products made from imported Russian seafood.⁹ The new facility will be built in Hunchun, a Chinese city in far eastern Jilin province, which, tellingly, shares a border with both Russia and North Korea.

4. A STRONGER SEAFOOD IMPORT CONTROL SYSTEM

Important work has been done over the last two decades to try and improve seafood supply chain transparency, and now is the time to scale up what has been proven to work. It will take a range of approaches—from policymakers, seafood sector participants, and other stakeholders—to bring needed reform to the global seafood sector. A critical category of reforms that APA is calling for today is the adoption of a more uniform and robust system of import controls by seafood importing nations.

(a) *EU Documentation Requirements*

In 2010, the European Union implemented a new Illegal, Unregulated and Unreported (IUU) Regulation.¹⁰ Although by no means perfect, the Regulation was a quantum leap forward in the fight against IUU fishing, and it established effective systems that should inform U.S. action now.

A core tenet of the EU's IUU Regulation is the requirement that a catch certificate accompany all seafood imports. The catch certificate must be issued by a flag state. Among other things, the certificate requires disclosure of the type and quantity of seafood harvested, as well as an attestation that it was caught by a licensed fishing vessel operating legally. Additionally, the EU system creates what is referred to as an "Annex IV"¹¹ document requirement. This obliges any third-country processor or exporter to confirm: (i) that seafood products received from another country were accompanied by a valid catch certificate; and (ii) that the final products being re-exported are coming from that specific consignment. Critically, the

³ See: <https://www.seafoodnews.com/Story/1246973/Russia-Ready-to-Attract-397-Billion-as-Result-of-Crab-and-Pollock-Actions-This-Year>.

⁴ <http://government.ru/en/docs/49567/>.

⁵ <https://www.Federalregister.gov/documents/2022/03/15/2022-05554/prohibiting-certain-imports-exports-and-new-investment-with-respect-to-continued-russian-federation>.

⁶ See: <https://www.youtube.com/watch?v=sUP2auVdNiw>.

⁷ In 2023, analysts expect that approximately two million tons of Russia's approximately five million tons of fishery landings will be "Alaska pollock". See: <https://www.youtube.com/watch?v=sUP2auVdNiw>.

⁸ See: <https://www.intrafish.com/fisheries/russia-sets-pollock-quota-for-2023/2-1-1340793>.

⁹ See: <https://www.intrafish.com/processing/chinese-officials-launching-seafood-processing-center-to-produce-value-added-product-from-imported-russian-crab-pollock/2-1-1530304>.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R1005>.

Annex IV document must be endorsed by regulatory authorities of the transiting state.

These document requirements are in no way a silver bullet. They are, however, vastly superior to the requirements currently facing seafood products entering the United States:

(i) *They are more comprehensive*, applying to all seafood products, not merely a subset considered to be “high risk.”

(ii) *They are more streamlined*, creating a uniform set of requirements that impose a manageable administrative burden on both industry and regulatory authorities.

(iii) *They are more credible*, carrying the imprimatur of regulatory authorities in both harvest and transshipment countries.

Adopting the EU import documentation requirements would be an immediate and significant improvement on the status quo for the U.S. seafood import system. Furthermore, the benefits would be significantly magnified by the alignment it would create between the two most important global authorities in the fight against IUU fishing. Uniform documentation would allow for far deeper U.S.-EU cooperation on enforcement, limiting the ability of bad actors to present fraudulent information on catch certificates and Annex IV documentation, and providing authorities in both jurisdictions with specific, complementary information about how seafood moves through supply chains globally. If other major importing nations, notably Japan, could be encouraged to follow suit, the effectiveness and potential impact of the document requirements would become even more significant.

APA calls for immediate action from the U.S. Congress and the Biden Administration to follow Europe’s lead and require catch certificates and the equivalent of Annex IV documentation to accompany all seafood imports.

(b) “Identification and Certification” Authorities

A second element of the European Union system should also be targeted for adaptation. The EU’s IUU Regulation enables issuance of a “yellow card” or “red card” against any flag state that is not providing an acceptable level of cooperation in the fight against IUU fishing. This element of the IUU Regulation arms EU authorities with critical leverage. It allows them to insist upon state cooperation on catch certificate and Annex IV requirements; and it empowers them in broader anti-IUU consultations.

In the United States, the High Seas Driftnet Fishing Moratorium Protection Act and its implementing regulations provide some parallel authorities, allowing the President to take action against non-cooperating countries.¹¹ Pursuant to the Act’s requirements, NOAA Fisheries produces a biennial report to Congress on improving international fisheries management. The report enables NOAA to (i) “identify” nations and entities for certain problematic activities; (ii) consult with identified nations and entities; and (iii) issue negative certifications against nations or entities that are not cooperating on corrective action.

The EU “carding” system and the U.S. biennial IUU reporting process have both resulted in specific, measurable, and important improvements in fishing activities and seafood supply chains globally. For example, the EU issued a “yellow card” against Thailand in April 2015. This resulted in a highly productive dialog between Thai and EU authorities, and the subsequent enactment and enforcement of new Thai laws and regulations. These reforms improved transparency in Thai seafood supply chains, created a new system for registering and monitoring vessels, and channeled more resources into enforcement activities.¹²

Successes have also been achieved through the NOAA Fisheries biennial IUU reporting process. For example, after the 2019 report had identified three countries—South Korea, Ecuador and Mexico¹³—the 2021 report revealed that two of those countries had taken significant corrective actions as a result of bilateral consultations with U.S. authorities. First, in November 2019 South Korea responded to U.S. consultations by enacting legislative changes that enable quick enforcement action against a vessel found to have fished illegally. Second, consultations with Ecuador resulted in an end to Ecuadoran recalcitrance in the Inter-American Tropical Tuna

¹¹ <https://www.federalregister.gov/documents/2011/01/12/2011-507/high-seas-driftnet-fishing-moratorium-protection-act-identification-and-certification-procedures-to>.

¹² See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61.

¹³ NOAA Fisheries. Improving International Fisheries Management: 2019 Report to Congress (September 2019) available at: https://media.fisheries.noaa.gov/dam-migration/improving-intl-fisheries-mgmt_2019_report_final.pdf.

Commission, enabling more effective cooperative action in that critical multilateral forum.¹⁴

Nonetheless, shortcomings are evident. Most significantly, bilateral consultations resulting from the U.S. biennial report come without the clear sequence of economic consequences prescribed by the EU's IUU Regulation. We believe an optimal program design would distinguish itself from the EU system by enabling a more targeted approach to "carding" trading partners.

Different seafood supply chains have vastly different challenges even within individual countries. It is possible for some fisheries or regions to have effective measures in place while others are plagued by serious IUU activity. Furthermore, a clear shortcoming of the EU system is that major nations are, in reality, "too big to card". For example, it is almost impossible to imagine the EU issuing a "red card" against China and prohibiting the importation of all Chinese seafood into the EU. Both shortcomings can be addressed by giving the NOAA Administrator power to exclude imports of a specific species from a specific country when such action is warranted by serious IUU concerns. APA calls for adoption of such a system as quickly as is practicable.

(c) Forced Labor and Human Rights

As Commissioners will be aware, Section 307 of the Tariff Act of 1930 provides U.S. Customs and Border Protection (CPB) with the power to detain any import shipment when it has reason to believe that the goods—or their inputs—were made with forced labor.¹⁵ These authorities have become far more meaningful in recent years thanks to Congress's enactment of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) repealing the "consumptive demand" clause.¹⁶ Since the 2016 implementation of TFTEA, Withhold Release Order (WRO) authorities have been issued by CBP against seafood shipments on several occasions.¹⁷

With respect to products tainted by Uyghur labor specifically, the Uyghur Forced Labor Prevention Act provides strong authorities to ensure that such products are denied entry to the U.S. market. It is very concerning that the law does not yet appear to have been enforced with respect to seafood. If investigative journalists have been able to identify the use of Uyghur laborers at specific seafood processing plants in China, U.S. Customs and Border Protection authorities should be able to do so as well. APA calls for full implementation and enforcement of this landmark law with respect to seafood imports immediately.

Beyond Uyghur and other forced labor, APA welcomes dialog about other import control system improvements that may be necessary to ensure that all seafood imports are produced through processes that respect the human rights of workers at every stage of production.

(d) The Seafood Import Monitoring Program

APA is sharing the above ideas in good faith and with a spirit of cooperation. We stand ready to listen to alternative ideas, and to engage in authentic dialog about their merits with policymakers, members of civil society, and other seafood industry participants. This includes with NGO's advocating for Seafood Import Monitoring Program (SIMP) expansion.

APA has consistently held the view that SIMP has a central design flaw: it imposes all the obligations on a single and often marginal player in the supply chain, namely the seafood importer. For many seafood products, the importer is moving inventory just a single, modest step along a lengthy global supply chain. The role is transactional, connecting customer quality and product form specifications with the lowest cost raw material that can satisfy them. Importers have expertise in seafood trading, import documentation compliance, and logistics. What they often lack is either knowledge or leverage that can be helpful in the fight against IUU.

Transactional importers are not harvesters, or processors, or retailers. They are not price setters, and they do not define market tolerance for risk. To make them the central character in our Nation's seafood import control system is to fundamentally misread the cast.

¹⁴ See: <https://media.fisheries.noaa.gov/2021-08/2021Report-to-Congress-on-Improving-International-Fisheries-Management.pdf>.

¹⁵ For general background see: <https://crsreports.congress.gov/product/pdf/IF/IF11360#:u:text=Section%20307%20of%20the%20Tariff%20enforces%20the%20prohibition>.

¹⁶ <https://www.congress.gov/bills/114th-congress/house-bill/644/text>.

¹⁷ See, for example: <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-seafood-harvested-forced-labor> and <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-chinese-fishing-fleet>.

SIMP stands in contrast with the programs and initiatives discussed above that focus on fishing and processing operations—and, critically, the governments that regulate them. The respective results to date stand in clear contrast, too: since SIMP’s implementation in 2018, we are unaware of even a single instance in which it has operated to secure any positive change with respect to fishing practices or meaningful seafood supply chain integrity. The reality is that transactional importers attempting to comply with SIMP reporting requirements are not currently reaching up complex and opaque seafood supply chains to extract useful information or press for needed changes. Unfortunately, given the position of transactional importers in most seafood supply chains, we believe it is unrealistic to expect that this will ever change.

SIMP advocates and responsible seafood sector participants share strong alignment on values and objectives. Today we are calling for a renewed dialog across stakeholder groups to reach agreement on how our shared objectives can be achieved.

5. CORPORATE DUE DILIGENCE

Although not the primary focus of today’s hearing, it is important to note that more effective corporate due diligence in seafood supply chains must be part of the solution. Seafood companies and corporate buyers should put in place due diligence programs that are calibrated to the nature of the risk and designed to provide true assurance relating to supply chain integrity.

Social auditing is often a central element of such corporate due diligence processes. As *The New Yorker’s* reporting makes clear, social auditing is not a panacea. It is ineffective in identifying collusion among bad-faith operators, for example, or in uncovering falsified government information or secret government activities. A social audit provides insight into practices at a specific location and at a specific moment in time. This may be insufficient in high-risk environments, in which case additional corporate due diligence methods will be required.

When used appropriately, however, we strongly believe that social auditing is an important tool for the seafood sector. It can define minimum acceptable standards, provide a measure of assurance, and drive needed improvements globally. In particular, voluntary programs can enable good-faith actors to receive external scrutiny and feedback, which in turn can help strengthen effective operational procedures.

In this context it is important to understand that, in many cases, human rights abuses in the seafood sector occur not as a result of premeditated actions but because of serious process failures. Where a vessel operator has not prioritized translation services, crew members may commence work under conditions they do not fully understand. Where a company has not anticipated and planned for a scenario where they go out of business while crew remain at sea, workers may find themselves stranded. Where recruiting firms rather than vessel operators hold the contractual relationship with crew members, three-way misunderstandings may lead to pay or other conditions being contrary to what was promised. Voluntary social audits can be a mechanism for the establishment of robust systems in these and other areas.

APA is proud to have undertaken independent, voluntary social audits of its vessel operations, and we hope other seafood companies and associations will follow our lead. At the same time, it is always critical to be honest about the limitations of such programs. They should never be relied upon as a singular solution, and they should never be used as a shield against valid criticism of failures to undertake more comprehensive due diligence in high-risk environments.

6. CONSUMER EMPOWERMENT

The New Yorker’s reporting underscores the shortcomings of another aspect of the seafood sector’s current operations. Opacity in seafood supply chains and seafood labeling too often disempowers even the most well-intentioned consumers in the United States and globally, limiting the ability of even highly diligent individual seafood buyers to make informed decisions.

For example, in Europe consumers purchase pollock products carrying the “Alaska pollock” species name and assume that it is ethically sourced. Unfortunately, EU authorities allow this confusion to prevail, refusing to grant a Geographical Indication to Alaska for pollock harvested off its coasts. As a result, people from Spain to Slovenia who purchase “Alaska pollock” products harvested in Russia and processed in China mistakenly assume they are from Alaska. We remain grateful to the U.S. Congress for enacting legislation to prohibit the use of the “Alaska pollock” name on foreign-harvested seafood products. This is the kind of “truth in adver-

tising” that should be expanded across more seafood labeling laws in the United States and globally.

The role of the Marine Stewardship Council (MSC) in seafood supply chain labor assurance was a focal point of *The New Yorker’s* reporting. Today, however, I want to highlight another highly concerning dimension of the MSC’s impacts on the global seafood industry: its evolution to become a barrier to transparency in seafood labeling. The MSC’s revenue model has long relied on logo license fees. In its most recent annual report, logo license fees from use of the MSC eco-label were reported as totaling more than 29 million pounds. In our opinion, a thirst to maintain and grow this organizational revenue compromises the integrity of the MSC program in numerous ways. One is the MSC program’s concerted, decades-long effort to market a generic MSC logo designed to provide blanket and anonymous “assurance.”

Since last year’s invasion of Ukraine, this problem has become far more acute. The MSC has refused to stop certifying Russian seafood, and its eco-label is now serving to “blue-wash” a Russian seafood industry that many consumers of good conscience have no desire to finance.

Russian “Alaska pollock,” Pacific salmon, Pacific halibut, Pacific cod and other species reach global consumers behind the veil of a reassuring MSC “blue check”. In many cases, there is no easy way for seafood buyers to see that these products are harvested in Russia and processed in China, often under completely unacceptable labor and environmental conditions. As a result, on supermarket shelves the world over, identical-looking seafood products hide behind identical MSC eco-labels, leaving even the most diligent seafood consumer disempowered.

Consumers have a right to know where their seafood comes from, and governments, seafood companies, and assurance programs should all do their part to bring transparency to consumer purchasing decisions. A good place to start is to require the display of harvest origin on all seafood products. APA supports federal action to mandate such disclosures.

7. CONCLUSION

We want to recognize again the important reporting of *The New Yorker*, which has shone a needed spotlight on individuals in the Chinese seafood sector who are victims of a failing system. To date, while important progress has been made in the fight against IUU fishing, there have also been far too many failures. The truth is that some industry initiatives in this area have been too weak to make a difference, while some NGO proposals would grind legitimate and ethical seafood trade to a halt. This issue is too serious to tolerate a continuation of such failures. We must all work together to implement more transparent, more ethical global seafood supply chains. APA stands ready to do its part.

LETTER FROM THE CHAIRS TO SECRETARY MAYORKAS

October 24, 2023

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

As chairs of the bipartisan and bicameral Congressional-Executive Commission on China (CECC), we write to pose questions about the Department of Homeland Security (DHS)'s response to troubling reports about forced labor and other human rights abuses in China's seafood industry and to urge immediate actions to ensure that America's seafood supply chains are forced labor-free. Given that these reports implicate the United States Government's seafood purchases, we believe the situation needs a robust and coordinated response across all Federal agencies.

Recent investigations by Washington, DC-based nonprofit journalist organization The Outlaw Ocean Project revealed human rights abuses on board China's illegal, unregulated, and unreported (IUU) fishing fleets and the forced labor of Uyghurs transferred from the Xinjiang Uyghur Autonomous Region (XUAR) to seafood processing factories in the Shandong province of China. There is also emerging evidence of North Koreans working in seafood processing in Liaoning province. Up to 80,000 North Korean laborers are working in the cities of Donggang and Dandong, important seafood processing centers. Since 2017, at least three Chinese seafood processing companies, known for employing North Korean workers, sent over 1,000 tons of seafood to the United States through a dozen different importers.

The evidence presented by The Outlaw Ocean Project and detailed in the New Yorker and other publications globally is compelling and well documented. Major wholesalers, restaurants, grocery chains, food service companies, and the U.S. Government all import large amounts of seafood from the processing plants in Shandong and Liaoning. From the fish sticks served at school lunches to the fish sandwiches and calamari sold at major restaurants and grocery chains, the plates of American consumers are filled with products likely tainted with forced labor. At the very least, we should all agree that American veterans, school children, and men and women in uniform should not be unwitting accomplices to egregious human rights abuses.

As you know, under the *Uyghur Forced Labor Prevention Act* (P.L. 117-78, or UFLPA); the *Countering America's Adversaries Through Sanctions Act* (P.L. 115-44 or CAATSA) as well as Sec. 307 of the *Tariff Act of 1930* (19 U.S.C. § 1307), seafood caught or processed with forced labor should be prohibited from entry into the United States. Because Uyghurs and North Koreans are working in PRC-based processing plants, the ability of DHS to act immediately and robustly is greatly enhanced by existing legislation.

Given that the information compiled in the reports referenced above was shared with DHS before publication, we ask you to report on the actions already taken to address seafood supply chains from China's IUU fishing and tainted with the forced labor of Uyghurs and North Koreans, and we urge you to take the following steps as soon as possible:

- 1) Issue Withhold Release Orders (WROs) for all seafood processing facilities in Shandong and Liaoning provinces.
- 2) Place the companies that employ Uyghur labor on the "Entity List" pursuant to UFLPA and inform seafood importers of the intent to stop imports from those companies immediately.
- 3) Stop imports from companies employing North Korean labor immediately, pursuant to CAATSA.
- 4) Coordinate with all Federal agencies purchasing seafood for schools, veterans, prisons, and military bases to inform them of DHS actions against China's seafood industry and train procurement specialists about U.S. laws prohibiting the import of forced labor-made products and enforcement of both existing WROs related to China and the UFLPA. We have sent copies of this letter to the Secretaries of Agriculture, Defense, Labor, Education, and Vet-

erans Affairs and the Director of the Office of Management and Budget to start an interagency dialog on Federal procurement.

- 5) Report to us on the specific outcomes of DHS coordination with the Secretary of Commerce to address the import of seafood caught or processed with forced labor as required by the James Inhofe National Defense Authorization Act of 2023 (P.L. 117-263).

We note and appreciate the emphasis placed by DHS on China's seafood industry over the past several years and the enforcement of the UFLPA by the men and women of Customs and Border Protection (CBP). There is always more that can be done, but we continue to offer staunch support for CBP's enforcement efforts and DHS's leadership of the Forced Labor Enforcement Task Force. Please let us know how we can assist you to ensure America's seafood supply chains are cleared of forced labor.

We look forward to your response.

Sincerely,

Representative Chris Smith
Chair

Senator Jeffrey A. Merkley
Co-chair

cc: Secretary of Defense
Secretary of Agriculture
Secretary of State
Secretary of Education
Secretary of Veterans Affairs
Secretary of Commerce
Secretary of Labor
Director of the Office of Management and Budget
Undersecretary Robert P. Silvers, Department of Homeland Security

QUESTIONS AND ANSWERS FOR THE RECORD

QUESTION FOR GREG SCARLATOIU OF HRNK FROM SENATOR SULLIVAN

Question. I have introduced the U.S.-Russian Federation Seafood Reciprocity Act of 2023, bipartisan and bicameral legislation to close the loophole that is allowing Russian-origin seafood that has been reprocessed in other countries to be imported into the U.S. What do you think the impact of closing this loophole would be on the forced labor situation in China?

Answer. Closing this loophole may provide the basis for a broader counteroffensive against Chinese export goods produced with forced labor. A “domino effect” could be triggered while addressing the seafood processing industry, subsequently exposing other Chinese industrial sectors that use forced labor. The case of North Koreans officially dispatched to Chinese seafood processing factories could provide an example of how “closing the loophole” may result in diminished demand and thus reduced numbers of laborers sent to China, in particular to China’s Hunchun region.

Within the greater picture of China’s use of forced labor, North Korean workers represent a group that is systematically abused by their own regime and the Chinese authorities. Subjected to endless coercion, control, surveillance, punishment, exploitation, and appalling working conditions, in a work environment that resembles a North Korean work setting, North Korean workers provide cheap labor to China, procure hard currency for their own North Korean regime, and get to keep very little to themselves.

According to witnesses formerly and currently involved in the exportation of seafood from North Korea to China and the processing of seafood by North Korean workers in China, the Russian Far East is an important destination for such products processed and packaged by North Koreans.

According to the (South) Korean Industrial Trade Association (KITA), notably, after the inter-Korean relations were completely suspended due to the sinking of the corvette Cheonan and the Yeonpyeong Island shelling incident in 2010, North Korea needed an alternative market for seafood exports that had been going to South Korea. Simultaneously, Chinese regional governments and enterprises began to focus on investing in seafood processing facilities in the border region of Hunchun as a strategy to alleviate the excess demand for such seafood. Consequently, Hunchun became the major processing center and market for North Korean seafood, evolving into the “Hunchun-Border Economic Cooperation Zone.”

According to KITA, Chinese provincial governments and enterprises regarded Hunchun as strategically advantageous due to its convenient geographical location for trade with North Korea, South Korea, Japan, and Russia, and shorter transportation distances, leading to cost savings in seafood processing. This collaboration between North Korea and Chinese enterprises in the seafood sector gained momentum following the South Korean government’s sanctions after the “May 24 measures,” i.e., sanctions imposed by South Korea against the North, a response to the March 26, 2010, sinking of the ROKS Cheonan by a North Korean submarine.

KITA confirms that, as of the end of 2019, approximately 30 companies in China’s Hunchun region had seafood processing facilities and were specialized in processing North Korean seafood. It is estimated that these seafood processing factories employed around 2,000 to 2,200 North Korean workers.

Beginning on August 23 or 29, 2023, most or all North Korean workers officially dispatched to China, including workers from Chinese seafood processing factories, were returned to North Korea.

According to sources within the North Korean escapee community in South Korea and the United States, many of them with points of contact in China and North Korea, the North Korean regime is likely already preparing the next groups of workers to be dispatched to China’s seafood processing factories and other industrial sectors. The Russian Far East is reportedly an important destination for Chinese seafood processed and packaged by North Koreans in China. “Closing the loophole” presents the potential to curb Russian demand for such products and reduce the number of North Korean and other forced laborers involved in China’s seafood processing industry, in particular in the Hunchun region.

QUESTIONS FOR THE OUTLAW OCEAN PROJECT FROM REPRESENTATIVE ZINKE

Question. You cite the UFLPA, which creates a CBP rebuttable presumption of “forced labor” for products from the Xinjiang region. If you think that the onus should be on industry and that currently available third-party auditors don’t provide “sufficient evidence” of a lack of forced labor, how can U.S. seafood companies meet your standard for proving the lack of forced labor?

Answer. Respectfully, I’d start by refining certain phrasing of your question because it has errors in its assumptions.

First, it is important to point out that the issue is not that I “think the onus should be on industry.” The onus is in fact on industry under the UFLPA. This is not an aspirational or interpretive matter. It is a fact of law. Feel free to check with Prof. Stumberg or other legal experts about UFLPA. But the “rebuttable presumption” within that law indeed shifts the burden of proof to an importer to show that its supply chain from those provinces is free of forced labor. Under CBP rules, that would require the importer to prove a negative, either that: (a) its suppliers do not include processing facilities from those provinces, or, (b) if they do, those suppliers do not use processing facilities where there is evidence of forced labor. So the issue is not meeting my standard of proving forced labor.

Second, it is important to look at the meaning of “forced labor” in the UFLPA and elsewhere. Here is a helpful pull of relevant spots in the laws.

CBP’s Introduction

The Uyghur Forced Labor Prevention Act (UFLPA) establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States. The presumption applies unless the Commissioner of U.S. Customs and Border Protection (CBP) determines, through clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor or that UFLPA does not apply to the goods, wares, or merchandise seeking to be entered into the United States.

Statutory Definition in the Tariff Act

19 U.S.C. § 1307 Convict-made goods; importation prohibited (section 307 of the Tariff Act)

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. “Forced labor,” as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.

CBP Rule for Withholding Imports

19 CFR 42 Findings of Commissioner of CBP

(e) If the Commissioner of CBP finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all port directors accordingly and the port directors shall thereupon withhold release of any such merchandise pending instructions from the commissioner as to whether the merchandise may be released otherwise than for exportation.

CPB 2023 Update: Enforcement of the UFLPA Rebuttable Presumption

Page 10:

The UFLPA establishes a rebuttable presumption, which became effective on June 21, 2022, that the importation of any goods mined, produced, or manufactured wholly or in part in Xinjiang, or produced by an entity on the UFLPA Entity List, is prohibited under 19 U.S.C. § 1307. The Commissioner of CBP may grant an exception to the presumption if an importer meets specific criteria outlined in Section 3(b) of the UFLPA.

UFPLA Section 3(b)**SEC. 3. REBUTTABLE PRESUMPTION THAT IMPORT PROHIBITION APPLIES TO GOODS MINED, PRODUCED, OR MANUFACTURED IN THE XINJIANG UYGHUR AUTONOMOUS REGION OR BY CERTAIN ENTITIES.**

. . . under subsection (a) unless the Commissioner determines—

(1) that the importer of record has—

(A) fully complied with the guidance described in section 2(d)(6) and any regulations issued to implement that guidance; and

(B) completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were mined, produced, or manufactured wholly or in part with forced labor; and

(2) by clear and convincing evidence, that the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor.

CBP Guidance

See the guidance generally; Part II Requesting an Exception to the Rebuttable Presumption (page 9)

Page 15:

E. Evidence Goods Originating in China Were Not Mined, Produced, or Manufactured Wholly or In Part by Forced Labor

Documentation may include, but is not limited to:

- Supply chain map identifying all entities involved in production of the goods;
- Information on workers at each entity involved in the production of the goods in China such as wage payment and production output per worker;
- Information on worker recruitment and internal controls to ensure that all workers in China were recruited and are working voluntarily; and
- Credible audits to identify forced labor indicators and remediation of these if applicable.

Note: The resources listed in Section III of this CBP operational guidance document provide additional information on due diligence, supply chain tracing, and supply chain management measures.

The bottom line is that it is not relevant under UFLPA whether (as the Chinese government and U.S. companies seeking to do business in China are apt to point out) select Xinjiang workers in their plants may be given a wage or attest in interviews with auditors or state media that they are “happy” to have the job, or are provided dorms, meals, vocational training. The relevant point here is that under UFLPA, these workers are categorically seen as part of state-sponsored forced labor because they are not given the true option to decline the work nor to leave the work without serious penalty. (This interpretation is consistent with CBP’s description of labor transfer programs in the UFPLA implementation strategy, pages 19–22. That description relates back to the legal definition: work that is involuntary and performed under the menace of a penalty.) The comparison to keep in mind here is prison labor or child labor or North Korean labor or debt bonded labor. Even if auditors or companies are told that those workers are “happy” and earning, the legal lens through which they are viewed is distinct because of issues of agency and choice. Here again, it is confusing for lawmakers to ask questions about these matters since in fact this is embodied in the laws themselves and it is by no means an interpretive matter of a journalist. Nor does it make much sense for industry to ask journalists to counsel them on how to comply with these laws. If the industries seek to do business in settings where such labor concerns exist, it is likely best for the industries to figure out how and whether they can do so without running afoul of existing laws. The relevant questions for the industry and lawmakers to ask would be for the social auditors: Are they actually inspecting plants for the presence of Xinjiang labor (not what is the definition of forced labor)? Can social auditors actually do legitimate inspections that entail unannounced visits, actual anonymized worker interviews, true investigation of labor conditions in China and if not, are such audits illegitimate tools?

Question. Moving further, where does the onus on industry for compliance end and where does the U.S. Government’s responsibility begin to identify bad actors in the Chinese seafood industry?

Answer. This is a question best answered by scholars or lawmakers but not likely me.

Question. Prior to your reporting, would you expect any U.S. seafood company to be able to uncover what you uncovered in a general audit of a Chinese exporter?

Answer. What made our reporting difficult was that we were needing to penetrate these supply chains from the outside, typically with no help from companies; in fact, most often with active resistance from companies. The companies themselves are the ones who have internal access and control over their own supply chains, so, yes, to put it bluntly, the companies can investigate their own supply chains and indeed are required to do so under U.S. law. The companies have direct access to their own full and unfettered transport and trade data (which is vaguely and only partially handed over to government or private databases mined by reporters and NGO's). The companies have the decisionmaking power and leverage to instruct their suppliers in China to allow spot checks and legitimate audits or else those companies will withdraw from China (reporters and NGO's have no such leverage). The companies indeed are the ones who have financially benefited from doing business in contexts like China where labor is cheaper, and this financial benefit puts added responsibility on them to control their supply chains to ensure they are devoid of labor or environmental crimes on their supplier ships or supplier processing plants.

Mandatory human rights due diligence surely would help the industry. While Section 2(d)(6) of the UFLPA requires the FLETF² to provide guidance to importers on conducting due diligence and effective supply chain tracing, there is no requirement for firms sourcing from China to actually undertake due diligence. Mandatory human rights due diligence in global supply chains is emerging across key market states, most notably with the European Union's Directive on Corporate Sustainability Due Diligence.

So, here again, I fear the framing of the question misses the bigger picture: whether it is easy or difficult to weed out forced labor in a product's supply chain is immaterial. The law in the U.S. forbids companies from importing items made with forced labor and therefore companies likely have to only enter countries or markets where they are pretty confident that they can operate in compliance with the law. If there is a reasonable expectation that China might not allow auditors or companies to fully check on compliance with such laws, the real question becomes whether those companies can find ways to fix that problem so that they can operate in those cost-saving settings lawfully.

QUESTIONS FOR THE OUTLAW OCEAN PROJECT FROM SENATOR SULLIVAN

Question. What are some key things to keep in mind when we work with our global partners on seafood supply chains and forced labor?

Answer. Forgive me for answering a question with more questions but such is the proclivity of a journalist. To me, the questions I'd personally be interested to ask of "global partners on seafood supply chains and forced labor" are, for starters, fairly basic ones: Do ports conduct inspections of crews on ships that enter their waters? Do they have proper methods for checking whether forced labor exists? Does the relevant country have a protocol for how they handle instances when they suspect forced labor or when crew seek to be rescued?

Question. What are the most pressing areas of cooperation between us and the other countries who import seafood from China?

Answer. I'd humbly refer this question to the broad array of answers that stakeholders have put forward as potential solutions to the myriad problems our investigation highlighted. On the Solutions page of our website we have put forward a variety of answers that NGOs, academics, industry consultants and associations have posited. See: <https://www.theoutlawocean.com/investigations/china-the-superpower-of-seafood/solutions/>

Question. In your opinion, is this ability to import Russian-origin, Chinese-processed seafood a loophole that should be closed?

Answer. My team and I have not focused on the Russian-Chinese nexus, so I will refrain for now from commenting on this specific matter.

Question. What are your thoughts on expanding efforts to combat IUU fishing at its sources, rather than focusing efforts at the end of the supply chain?

Answer. As a journalism organization, not an advocacy organization, we do not tend to comment on specific pieces of legislation or specific types of solutions promoted by key NGOs or other stakeholders. That said, it strikes me that the definition of IUU likely needs to be adjusted to incorporate the category of illegality that is human rights and labor violations against the workers involved in the fishing process.

QUESTIONS FOR ROBERT STUMBERG, GEORGETOWN UNIVERSITY LAW CENTER,
FROM SENATOR SULLIVAN

1. U.S. Seafood Industry Unfair Competition

Question. What are some key things to keep in mind when we work with our global partners on seafood supply chains and forced labor?

Answer.

- Which of our global partners account for the largest market share of seafood imports that are sourced in China.
- To what extent do domestic fishers and fish processors—in the United States and elsewhere—suffer from unfair and illegal competition from the Chinese distant-water fishing fleet.
- To what extent does over-harvesting by the Chinese distant-water fishing fleet undermine seafood as a sustainable protein resource for domestic consumers in countries around the world.
- To what extent do U.S. seafood distributors and their foreign counterparts trade in forced-labor seafood to supply their domestic customers.

Question. What are the most pressing areas of cooperation between us and the other countries who import seafood from China?

Answer. This is not a question that I have studied recently. Others who spoke to this question before the CECC include Sally Yozell at the Stimson Center and Judy Gearheart at American University's Accountability Research Center.¹ I also recommend the comments filed in March 2023 by the World Wildlife Fund and six other leading conservation and human rights organizations on NOAA's proposed rule to reform the SIMP.²

From work I did years ago, important topics of cooperation included WTO negotiations on subsidies for fishing in international waters and harmonizing the asynchronous approaches to regulating IUU fishing by the United States and the European Union.

Finally, as I noted in my October 24 testimony, Congress directed the Departments of State and Commerce to report on human trafficking, including forced labor, in seafood supply chains. The agencies reported (December 2020) on the need to expand seafood transparency beyond traditional health and environmental concerns, both domestically and in terms of international cooperation. They identified 29 countries that pose a significant risk of forced labor in their seafood supply chains.³ Appendix 4 of the DOS/DOC report includes technical recommendations to deter human trafficking and forced labor outside of U.S. waters. The CECC could ask the multi-agency group focusing on seafood to comment on how the Outlaw Ocean reporting relates to their recommendations and strategy for deterrence.

2. Russia-China Seafood Axis

Question. I have introduced the U.S-Russian Federation Seafood Reciprocity Act of 2023, bipartisan and bicameral legislation to close the loophole that is allowing Russian-origin seafood that has been reprocessed in other countries to be imported into the U.S. What do you think the impact of closing this loophole would be on the forced labor situation in China?

Answer. I have not studied the Russian seafood trade, so I'm not speaking as an expert on this question. That said, anything that reduces Russian demand for products made with forced labor should, in theory, reduce the demand for forced labor within China's seafood sector.

Upon reading S. 2011, I notice that the bill would sunset upon a finding that Russia no longer excludes U.S. seafood from its market (sec. 5). If China's use of forced labor to process seafood outlives that sunset, then the bill's beneficial impact on forced labor would be lost.

¹CECC, Hearings & Roundtables, "From Bait to Plate: How Forced Labor Taints America's Seafood Supply Chain," Witnesses and Submitted Testimony (October 24, 2023), <https://www.cecc.gov/events/hearings/from-bait-to-plate-how-forced-labor-in-china-taints-the-american-seafood-industry>.

²Comment on NOAA-NMFS-2022-0119, RIN: 0648-BK85, submitted by World Wildlife Fund, Oceana, Greenpeace, International Corporate Accountability Roundtable, Azul, Conservation International, and Global Labor Justice/International Labor Rights Fund (March 28, 2023), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0119-2163> (viewed October 21, 2023).

³Report to Congress "Human Trafficking in the Seafood Supply Chain," Section 3563 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), available at <https://www.fisheries.noaa.gov/international/international-affairs/forced-labor-and-seafood-supply-chain> (viewed October 21, 2023).

3. Forced Labor in the Seafood Industry Is a Global Challenge

Question. What are your thoughts on expanding efforts to combat IUU fishing at its sources rather than focusing efforts at the end of the supply chain?

Answer. By end of the supply chain, I assume that you are referring to the UFLPA's ban on forced labor imports into the United States. I have two thoughts about this question.

First, this is not an either/or choice for Congress. There is a strong case for both expanding IUU enforcement **and** importation of processed fish for consumption in the United States.

Second, the policy objective of an import ban (or a procurement ban) is to reduce demand for products processed with forced labor, which in turn, should reduce the demand for forced labor in the first place. So, this may appear to be a policy that touches the "end" of the supply chain, but in fact, it aims at the beginning of the demand cycle for Chinese-processed seafood. The effect would be to shift demand for processing to source countries that do not use forced labor.

QUESTION FOR SALLY YOZELL OF THE ENVIRONMENTAL SECURITY PROGRAM,
STIMSON CENTER, FROM SENATOR SULLIVAN

Question. I have introduced the U.S.-Russian Seafood Reciprocity Act of 2023, bipartisan and bicameral legislation to close the loophole that is allowing Russian-origin seafood that has been reprocessed in other countries to be imported into the U.S. In your opinion, is this ability to import Russian-origin, Chinese-processed seafood a loophole that should be closed?"

Answer. Thank you for your question on closing the loophole of importing Russian-origin, Chinese-processed seafood. To answer your question in short, yes, this is a significant loophole that needs to be closed. With the ongoing war in Ukraine, ensuring an effective ban on the importation of Russian seafood and seafood products would strike an economic blow to Russia. In 2021, Russia was the eighth-largest exporter of seafood to the U.S., with \$1.2 billion worth of crab, cod, pollock, and other fish,¹ including \$900 million in king crab, entering U.S. markets.² Halting illegal and mislabeled Russian seafood from entering the United States would serve the American people well, increasing domestic revenue, growing jobs, and benefiting fishing communities at home. Furthermore, American consumers do not want to buy rebranded Russian catch, and U.S. chefs do not want to serve it.³

That said, the scope of the issue is far larger than just targeting Russian-caught, Chinese-processed seafood. The legislative solution needs to go beyond a timebound, Russian-only fix. A solution to the larger problem at hand, including a legislative one, needs to address the issues that allow any illegal seafood, not just illegal Russian seafood laundered through China, to enter U.S. markets. In 2019 alone, the International Trade Commission estimated that \$2.4 billion worth of illegally harvested products entered the U.S. market,⁴ accounting for 11 percent of U.S. seafood imports.⁵ Just under 40 percent of U.S.-caught seafood is processed overseas and re-imported into the United States; the door is wide open for American-caught products to be commingled alongside Russian and other illegally harvested and mislabeled seafood.

As the second largest importer of seafood in the world, the U.S. has the responsibility to play a leadership role in eradicating Illegal, Unreported, and Unregulated (IUU) fishing and seafood fraud. There are several effective and realistic ways to accomplish these goals to prevent "Putin's Pollock" and other illegal seafood from entering American homes, grocery stores, restaurants, school lunch programs, military bases, and prisons.

¹Laine Welch. "Ban on U.S. purchases of Russian seafood opposed by some national food marketers." Anchorage Daily News. March 1, 2022, <https://www.adn.com/business-economy/2022/02/28/ban-on-us-purchases-of-russian-seafood-opposed-by-some-national-food-marketers/> (Accessed October 31, 2023).

²Rachel Sapin. "U.S. seafood industry backs Russia seafood ban, but says clarity is needed on its impact." IntraFish. March 11, 2022, <https://www.intrafish.com/opinion/us-seafood-industry-backs-russia-seafood-ban-but-says-clarity-is-needed-on-its-impact/2-1-1183613> (Accessed October 31, 2023).

³Desrochers, "New poll finds U.S. voters want assurances merchants are selling legally caught seafood"; Oceana, "American Voters Want to End Illegal Fishing & Seafood Fraud"; and Clark, "Chefs Urge Congress: End Illegal Fishing & Labor Violations."

⁴United States International Trade Commission, "Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries," Renee Berry et al., (Washington, 2021). <https://www.usitc.gov/publications/332/pub5168.pdf>.

⁵ITC Report, p. 11.

Legislation could be tailored to prevent illegally harvested and mislabeled seafood from entering the United States. In October 2023, the European Parliament approved new fisheries control rules requiring digital catch certification on all EU-flagged vessels without exceptions and full traceability on all seafood throughout the supply chain. Small vessels will receive certain exceptions until 2030. With full traceability and digitization, systems can quickly provide accurate data and information to law enforcement and fisheries management authorities so they can act. In the U.S., these actions could include working with Customs to enforce Tariff Act prohibitions on the importation of products created with forced labor or issuing a withhold release order (WRO) to prevent the entry of an imported product into the U.S. market. Additionally, it assures consumers that the seafood they are purchasing is legal and accurately labelled, while also rewarding those in the fishing industry who follow the rules.

By legislating a more comparable system to that of the EU, industry would not have to meet the requirements of different traceability systems around the globe. Japan is implementing a seafood traceability program and others will join soon including South Korea and Australia. It is critical to bring U.S. seafood trade monitoring programs into alignment with their international counterparts to reduce the burden on law-abiding industry and eliminate loopholes for illegally harvested seafood to reach the market.

A comprehensive traceability system in the United States that tracks all seafood through the supply chain, would put an end to masked illegally harvested fish products sold in the United States. This precisely is what NOAA's Seafood Import Monitoring Program initially set out to accomplish: to be a comprehensive risk-based seafood traceability system. Yet, 6 years after being implemented, the Seafood Import Monitoring Program covers only 45 percent of U.S. seafood imports and excludes several species that are at high risk of illegal harvesting and mislabeling, such as pollock, salmon, and squid.

The Seafood Import Monitoring Program is at a pivotal moment, and there are several paths, whether through legislative or executive action, to expand and improve the program. Such action would provide consumers with confidence that the seafood they consume is safe, legal, and sustainable, and would go a long way toward ensuring all parts of the fishing industry are fair and equitable, especially for the harvesters, processors, and merchants who follow the rules. I commend you for your legislation and recommend expanding the bill to prevent and deter all illegal seafood, beyond just Russian-caught and Chinese-processed seafood, from entering the United States.

These big challenges merit thoughtful solutions. Stopping illegal seafood, including that of Russian origin, requires a comprehensive and flexible seafood tracking system. Both Congress and the Administration have the power to make that a reality.



**United States House of Representatives
Congressional-Executive Commission on China**

“Truth in Testimony” Disclosure Form

In accordance with Rule XI, clause 2(g) of the Rules of the House of Representatives, witnesses are asked to disclose the following information. Please complete this form and attach it to your written testimony and it may be made publicly available in electronic format.

1. Date of Hearing:

2. Hearing Title:

3. Your Name:

4. Organization, organizations, or government entity you are representing:

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6. Are you an active registrant under the Foreign Agents Registration Act (FARA)?
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Knowingly providing material false information to this commission, or knowingly concealing material information from this commission, is a crime (18 U.S.C. 1001). This form may be made part of the hearing record.

Witness Signature

Date

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*Witness Biographies***Ian Urbina, Director and Founder of The Outlaw Ocean Project**

Ian Urbina is the Director of The Outlaw Ocean Project, a non-profit journalism organization based in Washington, DC that produces investigative stories about human rights and environment and labor concerns on the two thirds of the planet covered by water. Before founding The Outlaw Ocean Project, Urbina spent roughly 17 years as a staff reporter for *The New York Times*. He has received various journalism awards, including a Pulitzer Prize, two George Polk Awards, and an Emmy. Several of his investigations have also been converted into major motion pictures.

Greg Scarlatoiu, Executive Director of the Committee for Human Rights in North Korea

Greg Scarlatoiu is the Executive Director of the Committee for Human Rights in North Korea (HRNK). For 10 years, he has been a visiting professor at Hankuk University of Foreign Studies and Yonsei University. Scarlatoiu is Vice President of the International Council on Korean Studies (ICKS). He has been a Radio Free Asia Korean columnist for 20 years. Scarlatoiu holds a Master of Arts in Law and Diplomacy from the Fletcher School, Tufts University, and a Master of Arts and Bachelor of Arts from Seoul National University's Department of International Relations. He completed the MIT Seminar XXI Program for U.S. national security leaders in 2016–2017. Scarlatoiu was awarded the title "Citizen of Honor, city of Seoul," in January 1999. Born and raised in communist Romania, he is a naturalized U.S. citizen. Scarlatoiu is fluent in Korean, French and Romanian.

Robert Stumberg, Professor of Law at Georgetown University

Robert Stumberg is a professor of law at Georgetown University, where he directs the Harrison Institute for Public Law. The Institute works with public officials and coalitions on community development, health and food, trade policy, and human rights for workers. His published work includes "Turning a Blind Eye? Respecting Human Rights in Government Purchasing" (coauthor, ICAR 2014) and "Transparency: See and Be Seen," a forthcoming chapter in *Business, Human Rights, and Sustainable Development*, editors Jahid Hossain Bhuiyan and M. Rafiqul Islam (Leiden: Brill 2023). BA, Macalester College; JD, Georgetown University; LL.M., Georgetown University.

Sally Yozell, Director of the Environmental Security Program at the Stimson Center

Sally Yozell is a Senior Fellow and Director of the Environmental Security Program at the Stimson Center, a security research institute based in Washington, DC. Her research examines environmental factors that have the potential to undermine the security of individuals, communities, and nations across the globe. Ms. Yozell leads a team that explores the links between environmental degradation and the loss of natural resources, and how these issues can threaten and undermine economic, food, and ecological security. They conduct research and develop global security strategies to combat IUU fishing, thwart illicit networks, put an end to forced labor and human rights abuse in the seafood industry, and work to increase transparency throughout the seafood supply chain.

Ms. Yozell also oversees CORVI, the Climate and Ocean Risk Vulnerability Initiative, a program that works with coastal cities and island states to build resilience in communities threatened by the climate crisis. CORVI is a place-based and data-driven decision support tool for leaders who need to make smart climate investments to improve the safety and security of coastal cities and island states. CORVI is now operating in 15 cities around the world.

Prior to joining Stimson, Ms. Yozell managed the Our Ocean Conferences for the U.S. State Department (2014–2016) and continued to serve as an advisor to Our Ocean Conference host governments (2017–2019). She also served as a Senior Advisor to former U.S. Secretary of State John Kerry, during which time she co-chaired the Presidential Task Force on Illegal, Unreported, and Unregulated Fishing and Seafood Fraud. Previously, she was the Director of Policy and Deputy Assistant Secretary at the National Oceanic and Atmospheric Administration. Ms. Yozell led marine programs at The Nature Conservancy and Battelle Memorial Institute and worked for almost a decade in the U.S. Senate. She holds an MPA from Harvard University and a BA from the University of Vermont.