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Stopping Illegal Fishing and Seafood Fraudsters: The Presidential Task Force's Plan on Tackling IUU Fishing and Seafood Fraud

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STOPPING ILLEGAL FISHING AND SEAFOOD FRAUDSTERS: THE PRESIDENTIAL TASK FORCE'S PLAN ON TACKLING IUU FISHING AND SEAFOOD FRAUD

Abstract: Worldwide seafood markets have a major problem: too often, the seafood listed on the menu is of a different species than what is served. This phenomenon—known as seafood fraud—and the related practice of illegal, unreported, and unregulated fishing threatens the sustainability of our oceans, poses health risks to consumers, and forces consumers to pay a high price for a cheap product. Previous domestic and international efforts to combat this issue have failed for a number of reasons, including the international nature of the industry, a byzantine supply chain, the large number of entities responsible for combatting the issue, the lack of resources provided to those entities, and the difficulty identifying and differentiating species of seafood. Recent efforts, like an Action Plan promulgated by the Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud, show promise of curbing the issue, but are nevertheless insufficient. This Note argues for a bilateral agreement between the United States and European Union that provides for coordinated programs and enforcement mechanisms.

INTRODUCTION

The last time you ate seafood at a restaurant or from the local market, it is possible that the species you ordered was not the species you ate.¹ Seafood fraud is the practice by which buyers are deceived as to the type, quality, or amount of seafood they purchase.² It is estimated that the practice yields a fif-

¹ See EUGENE H. BUCK, CONG. RESEARCH SERV., RL34124, SEAFOOD MARKETING: COMBATING FRAUD AND DECEPTION 2 (2008); CHARLES M. DUNCAN, HOW SAFE IS OUR FOOD?: EAT, DRINK & BE WARY 61 (2015); BETH LOWELL ET AL., ONE NAME, ONE FISH: WHY SEAFOOD NAMES MATTER, OCEANA 2–3 (July 2015); Margaret A. Young, *International Trade Law Compatibility of Market-Related Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing*, 69 MARINE POL'Y 209, 209 (2016); *Mystery Fish: The Label Said Red Snapper, the Lab Said Baloney*, CONSUMER REPORTS, Dec. 2011, at 18 [hereinafter *Mystery Fish*] (discussing studies that show 20–25% of global seafood is mislabeled); Nicole Lou, *Bait and Switch: The Fraud Crisis in the Seafood Industry*, THE ATLANTIC (Mar. 9, 2015), <https://www.theatlantic.com/business/archive/2015/03/bait-and-switch/388126/> [<https://perma.cc/KS9M-68BG>].

² See DEP'T OF COM., PRESIDENTIAL TASK FORCE ON COMBATING IUU FISHING AND SEAFOOD FRAUD: ACTION PLAN FOR IMPLEMENTING THE TASK FORCE RECOMMENDATIONS 5 (2014) [hereinafter PRESIDENTIAL TASK FORCE]; U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-258, SEAFOOD FRAUD: FDA PROGRAM CHANGES AND BETTER COLLABORATION AMONG KEY FEDERAL AGENCIES COULD IMPROVE DETECTION AND PREVENTION 1 (2009) [hereinafter GAO-09-258]; LOWELL ET AL., *supra* note 1, at 2–3 (describing seafood fraud as encompassing “any illegal activity that misrepresents

teen to forty-eight percent chance that a consumer will receive the wrong fish.³ Accordingly, there is little doubt among experts that seafood fraud cheats consumers and the industry out of billions of dollars annually.⁴

Valued at more than \$132 billion, with a yearly volume of more than 160 million tons, seafood is extremely valuable and highly traded.⁵ The United States imports approximately ninety percent of its seafood at a value of more than twenty billion dollars.⁶ The vast size of the seafood market provides ample opportunity for economic gain from illegal, unreported, and unregulated (“IUU”) fishing practices and seafood fraud.⁷

IUU fishing and seafood fraud cause numerous problems that vary in scope and effect.⁸ The majority of these problems, however, fit into three overarching categories.⁹ First, they inhibit conservation efforts and threaten the ecological

the seafood you purchase”); Stephen Wagner, Note, *When Tuna Still Isn't Tuna: Federal Food Safety Regulatory Regime Continues to Inadequately Address Seafood Fraud*, 20 OCEAN & COASTAL L.J. 111, 112 (2015).

³ LOWELL ET AL., *supra* note 1, at 3 (highlighting studies finding that about one-third of seafood is mislabeled); Jenn Abelson & Beth Daley, *On the Menu, but Not on Your Plate*, BOS. GLOBE (Oct. 23, 2011), http://archive.boston.com/business/articles/2011/10/23/on_the_menu_but_not_on_your_plate/ [<https://perma.cc/VZG5-3RXA>] (reporting the results of a commissioned study where “analyses by the DNA lab and other scientists showed that 87 of 183 [fish products] were sold with the wrong species name—48 percent”).

⁴ See Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, Nov. 22, 2009, at vii [hereinafter PSMA] (arguing that illegal, unreported, and unregulated (“IUU”) fishing leads to global losses of billions of dollars annually for the seafood industry); GAO-09-258, *supra* note 2, at 1 (discussing acceptance within the seafood industry that seafood fraud is an issue); Lou, *supra* note 1 (finding that the widespread nature of seafood fraud leads Americans to overpay for seafood by up to \$25 billion annually).

⁵ Food & Agric. Org. of the U.N., Food Outlook: Biannual Report on Global Food Markets, at 112, U.N. Doc. I5703E/1/05.16 (2016) [hereinafter FAO, Food Outlook Report]; LOWELL ET AL., *supra* note 1, at 2.

⁶ See GAO-09-258, *supra* note 2, at 1 (finding that more than eighty percent of fraudulent seafood is imported); FAO, Food Outlook Report, *supra* note 5, at 112 (valuing the 2014 U.S. seafood market at \$20.3 billion); DUNCAN, *supra* note 1, at 57 (finding that the United States imports 91% of seafood consumed in the country); LOWELL ET AL., *supra* note 1, at 2 (finding greater than 90% of seafood eaten in the United States is imported).

⁷ See GAO-09-258, *supra* note 2, at 1 (finding that financial gain is an underlying motivation for seafood fraud); BUCK, *supra* note 1, at i (finding that “with increased seafood imports and decreased monitoring, fraud and deception in seafood marketing is becoming more widespread”); Miguel Costa Leal et al., *Seafood Traceability: Current Needs, Available Tools, and Biotechnological Challenges for Origin Certification*, 33 TRENDS BIOTECHNOLOGY 331, 331 (2015) (arguing that explosive growth in the seafood industry leads to economic challenges).

⁸ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3 (discussing the environmental and economic impacts of seafood fraud); PSMA, *supra* note 4, at vii (discussing the environmental, economic, and food security impacts of IUU fishing); Wagner, *supra* note 2, at 112 (arguing that seafood fraud has negative economic, health, and environmental impacts).

⁹ See GAO-09-258, *supra* note 2, at 1 (highlighting the negative economic and health impacts of seafood fraud); Danna-Mareè Cawthorn et al., *Fish Species Substitution and Misnaming in South Africa: An Economic Safety and Sustainability Conundrum Revisited*, 185 FOOD CHEMISTRY 165, 165

health of worldwide fisheries.¹⁰ Second, they engender various health risks for individuals consuming mislabeled seafood, including consumption of high levels of mercury and various pathogens.¹¹ Third, they have negative economic impacts as they hurt consumers and sellers by distorting the legal seafood trade and fueling unfair competition.¹²

A variety of factors make it difficult to develop effective domestic and international policies and enforcement mechanisms to combat seafood fraud.¹³ The obstacles include the international nature of the industry, a byzantine supply chain, the large number of entities responsible for combatting the issue, the lack of resources provided to these agencies, and the difficulty identifying and differentiating species of seafood.¹⁴ Despite these obstacles, the Presidential Task Force on Combating IUU Fishing and Seafood Fraud (“Presidential Task Force”) published an Action Plan on March 15, 2015 with various recommendations that hold promise for curbing the problems.¹⁵ Nevertheless, additional action is needed to further increase the chance that the next time you sit down to a seafood dinner, you get what you paid for.¹⁶

(2015) (highlighting the negative environmental and economic impacts); Wagner, *supra* note 2, at 112 (highlighting the negative economic, health, and environmental impacts).

¹⁰ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3; PSMA, *supra* note 4, at vii.

¹¹ See LOWELL ET AL., *supra* note 1, at 3–4. See generally DUNCAN, *supra* note 1 (discussing the various health risks associated with seafood fraud).

¹² See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3; GAO-09-258, *supra* note 2, at 1.

¹³ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; GAO-09-258, *supra* note 2, at 9; Comm. on Fisheries on Its Twenty-Third Session, *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing*, at 1 (June 23, 2001) [hereinafter *IPOA*]; Cawthorn et al., *supra* note 9, at 180 (finding that various measures to combat IUU seafood fraud, including traceability and labeling rules, are unlikely to work “without effective enforcement and appropriately discouraging penalisation”); Leal et al., *supra* note 7, at 332 (finding that the complex nature of the seafood supply chain and the international market require a multifaceted approach to combatting seafood fraud); Young, *supra* note 1, at 215 (finding that combatting IUU fishing requires interaction between various entities and laws).

¹⁴ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8 (discussing the difficulties posed by the long and complex seafood supply chain); GAO-09-258, *supra* note 2, at 9, 25 (discussing the complications posed by the large number of entities involved in combatting IUU fishing and seafood fraud); DUNCAN, *supra* note 1, at 57 (discussing the difficulty in addressing seafood fraud due to the lack of resources provided to relevant agencies); LOWELL ET AL., *supra* note 1, at 7 (finding that because “56 different species of fish can be sold under the acceptable market name of ‘snapper,’ . . . seafood buyers have difficulty differentiating . . . without the use of species-specific names”); Lou, *supra* note 1 (finding that the seafood industry suffers the lack of ability to identify seafood quickly).

¹⁵ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3; KIMBERLY WARNER ET AL., OCEANA REVEALS SHORTFALLS IN PROPOSED TRACEABILITY RULE TO ADDRESS SEAFOOD FRAUD 2 (2016) (finding that the Presidential Task Force on Combating IUU Fishing and Seafood Fraud’s recommendation to create a traceability system is a good first step toward combatting IUU fishing and seafood fraud).

¹⁶ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3. The Presidential Task Force recommendation is split into four parts:

- (1) combatting IUU fishing and seafood fraud at the international level;
- (2) strengthening enforcement and enhancing enforcement tools;
- (3) creating and expanding partner-

Part I of this Note defines IUU fishing and seafood fraud, highlights the dangers posed by the practices, and discusses the barriers to combatting them.¹⁷ Part II provides an overview of international and domestic efforts to combat the issue, including the Presidential Task Force's recent Action Plan.¹⁸ Part III identifies the most promising methods of combatting IUU fishing and seafood fraud, highlights the need for an international solution, and discusses the deficits of the Presidential Task Force's Action Plan.¹⁹ Part III also argues that the best way to combat IUU fishing and seafood fraud in the United States is to coordinate policies and enter into an agreement with the European Union (EU).²⁰

I. AN OVERVIEW OF IUU FISHING AND SEAFOOD FRAUD

A. What Are IUU Fishing and Seafood Fraud?

IUU fishing refers to any fishing performed contrary to relevant domestic and international laws, any unreported or misreported fishing as required by domestic and international law, and any fishing activities performed in areas where there is not applicable domestic or international law.²¹ In addition, IUU fishing encompasses fishing conducted by vessels without a nationality or flying the flag of a country that is not a signatory to a Regional Fishery Management Organization ("RFMO").²²

"Seafood fraud" refers to a variety of deceptive practices that generally include the "substitution, misrepresentation, or mislabeling" of seafood.²³ Although there are many forms of seafood fraud, four of them are most prevalent.²⁴ The first is "species substitution," which occurs when one species of seafood is labeled as a different species.²⁵ The second is "over-treating," which occurs when fishermen or sellers artificially color seafood to feign better quality meat or inject seafood with water to increase weight.²⁶ The third is "transshipping," which occurs when seafood is shipped through another country in order to evade

ships with non-federal entities to identify and eliminate seafood fraud and the sale of IUU seafood products in U.S. commerce; and (4) increasing information available on seafood products through additional traceability requirements.

Id.

¹⁷ See *infra* notes 21–88 and accompanying text.

¹⁸ See *infra* notes 89–166 and accompanying text.

¹⁹ See *infra* notes 167–225 and accompanying text.

²⁰ See *infra* notes 167–225 and accompanying text.

²¹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 4–5; Young, *supra* note 1, at 209.

²² PRESIDENTIAL TASK FORCE, *supra* note 2, at 4.

²³ *Id.* at 5; see LOWELL ET AL., *supra* note 1, at 1 (defining seafood fraud as "any illegal activity that misrepresents the seafood you purchase"); Wagner, *supra* note 2, at 112.

²⁴ GAO-09-258, *supra* note 2, at 1; BUCK, *supra* note 1, at i, 5–8.

²⁵ GAO-09-258, *supra* note 2, at 1; BUCK, *supra* note 1, at 3.

²⁶ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5; GAO-09-258, *supra* note 2, at 1; BUCK, *supra* note 1, at 6–7.

customs requirements.²⁷ The final method is “short-weighting,” which occurs when a processor packages less weight than a label indicates.²⁸ These practices occur at various points along the supply chain—from the collection of seafood to final sale.²⁹

While IUU fishing and seafood fraud are different practices, they overlap in certain respects.³⁰ For example, the mislabeling or substitution of species in seafood fraud may be employed to hide IUU fishing practices, like fishing for threatened species.³¹ Therefore, while international and federal policies leading up to the Presidential Task Force did not explicitly name seafood fraud as a target, the efforts play an important role in combatting it.³²

B. What Are the Effects of IUU Fishing and Seafood Fraud?

IUU fishing and seafood fraud have far-reaching and varied consequences.³³ Most importantly, they have negative health, environmental, and economic effects.³⁴ First, IUU fishing and seafood fraud pose significant health risks to end

²⁷ GAO-09-258, *supra* note 2, at 1; BUCK, *supra* note 1, at 8.

²⁸ GAO-09-258, *supra* note 2, at 1; BUCK, *supra* note 1, at 6.

²⁹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5; GAO-09-258, *supra* note 2, at 1.

³⁰ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 5; Young, *supra* note 1, at 209.

³¹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5.

³² See, e.g., The Magnuson-Stevens Fisher Conservation and Management Act of 1976, 16 U.S.C. §§ 1801–1891d (2012) (addressing IUU fishing while omitting specific language regarding “seafood fraud”); Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, Pub. L. No. 114–81, §§ 101–305, 129 Stat. 649 (same); Council Regulation 1379/2013, 2013 O.J. (L354) 1, 1–21 (EU) (omitting specific “seafood fraud” language); PSMA, *supra* note 4, at i–32 (addressing IUU fishing while omitting specific language regarding “seafood fraud”); United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 8 Sept., 1995, 2176 U.N.T.S. 88, 88–137 [hereinafter Fish Stocks Agreement] (same); United Nations Convention on the Law of the Sea, Dec. 10 1982, 1833 U.N.T.S. 397, 397–581 [hereinafter UNCLOS] (same); Comm’n for the Conservation of Antarctic Marine Living Res., Conservation Measure 10-05, *Catch Documentation Scheme for Dissostichus spp.*, (2014) (no longer in force) [hereinafter CCAMLR Catch Documentation Scheme] (same); PRESIDENTIAL TASK FORCE, *supra* note 2, at 1, 6 (addressing both IUU fishing and seafood fraud); *IPOA*, *supra* note 13, at i–24 (addressing IUU fishing while omitting specific language regarding “seafood fraud”).

³³ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5; GAO-09-258, *supra* note 2, at 1; LOWELL ET AL., *supra* note 1, at 2. Seafood is often processed at sea. PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; LOWELL ET AL., *supra* note 1, at 2. Seafood is cut or ground, packaged, and frozen before crossing borders where it is often subject to tariffs and sold. See Lou, *supra* note 1 (“[L]ess than 1 percent of imported seafood is inspected for mislabeling. This is not for lack of trying. . . . NOAA has fewer than 100 agents who do inspections.”).

³⁴ See GAO-09-258, *supra* note 2, at 1 (arguing that seafood fraud has negative health and environmental effects); Young, *supra* note 1, at 209 (highlighting the various negative effects of IUU fishing, including environmental, economic, and health impacts); *Mystery Fish*, *supra* note 1, at 18 (finding seafood fraud negatively impacts consumers when they are charged more for a cheaper species, when they eat a species that negatively impacts their health, and when they unknowingly purchase a protected species).

consumers.³⁵ For example, a consumer that unknowingly eats a substituted species may consume a greater quantity of a harmful substance, such as mercury.³⁶ This is particularly concerning for pregnant women and young children because the Food and Drug Administration (FDA) recommends the consumption of certain species of fish for their associated health benefits.³⁷ At the same time, the FDA recommends the avoidance of certain seafood species due to their health risks.³⁸ In addition, some species contain toxic elements and higher risks for food-borne illnesses.³⁹ Finally, consumers may eat farm-raised species treated with antibiotics, thereby generating antibiotic resistant bacteria at a higher level and, in turn, increasing the likelihood of certain infections.⁴⁰

Second, IUU fishing and seafood fraud have negative economic consequences.⁴¹ Those economically impacted include end consumers, the government, and various participants in the seafood industry.⁴² For consumers, the negative economic consequences are most pronounced when they pay more for a

³⁵ See DUNCAN, *supra* note 1, at 57 (arguing that decreased inspections coupled with increased seafood consumption leads to greater health risks); *Mystery Fish*, *supra* note 1, at 18 (finding that seafood fraud poses various health risks to consumers); Press Release, *New Traceability Rule Doesn't Go Far Enough to Stop Seafood Fraud in U.S.*, OCEANA (June 7, 2016), <http://oceana.org/press-center/press-releases/new-traceability-rule-doesn%E2%80%99t-go-far-enough-stop-seafood-fraud-us> [<https://perma.cc/YN8T-2YW6>] [hereinafter *Oceana June 7 Press Release*] (discussing one study where 180 mislabeled seafood species were tested and 62% posed health risks).

³⁶ LOWELL ET AL., *supra* note 1, at 3–4; *Mystery Fish*, *supra* note 1, at 18.

³⁷ See LOWELL ET AL., *supra* note 1, at 3–4 (finding that seafood fraud places pregnant women at risk of unknowingly consuming seafood with high mercury levels); *2017 EPA-FDA Advice About Eating Fish and Shellfish*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/fish-tech/2017-epa-fda-advice-about-eating-fish-and-shellfish> [<https://perma.cc/UV2Y-54YJ>] (last updated June 27, 2017) [hereinafter *EPA Guidance*] (finding that certain species of fish and shellfish contain levels of mercury that pose risks to pregnant women and young children). For example, the Food and Drug Administration (FDA) recommends pregnant women eat “Spanish mackerel” for its health benefits but avoid “king mackerel” due to its high mercury content. *Id.* These species, however, are easily confused. LOWELL ET AL., *supra* note 1, at 3–4.

³⁸ See LOWELL ET AL., *supra* note 1, at 3–4; *EPA Guidance*, *supra* note 37.

³⁹ See GAO-09-258, *supra* note 2, at 1 (discussing a 2007 case where puffer fish, which is poisonous and potentially deadly, was incorrectly labeled as monkfish, causing consumers to become ill); LOWELL ET AL., *supra* note 1, at 4–5; Lou, *supra* note 1. In one study, 84% “of white tuna samples were actually escolar—a fish that causes digestive problems—in disguise.” Lou, *supra* note 1.

⁴⁰ DUNCAN, *supra* note 1, at 60; LOWELL ET AL., *supra* note 1, at 6. For example, shrimp, which is the most consumed seafood by volume in the United States, is frequently sold without delineating whether it is farm-raised or wild-caught. LOWELL ET AL., *supra* note 1, at 6. Farm-raised shrimp are treated with antibiotics banned in the United States and contain significantly higher instances of harmful bacteria known to “cause food-borne illness, or even fatalities, including vibrio, e-coli and even MRSA, an antibiotic-resistant form of staphylococcus bacteria.” *Id.*

⁴¹ GAO-09-258, *supra* note 2, at 1; Young, *supra* note 1, at 209; Lou, *supra* note 1; *Mystery Fish*, *supra* note 1, at 18.

⁴² GAO-09-258, *supra* note 2, at 1; Young, *supra* note 1, at 209; Lou, *supra* note 1; *Mystery Fish*, *supra* note 1, at 18, 22.

less expensive fish.⁴³ Catfish substituted for grouper, for example, can cost up to four times the actual price.⁴⁴ Substitution also prevents the U.S. government from collecting valuable tariffs on certain species.⁴⁵ Moreover, the practice distorts the market and allows offenders to engage in unfair competition.⁴⁶ Going forward, increased incidence of seafood fraud could negatively affect consumer confidence and ultimately diminish seafood consumption.⁴⁷ In total, the economic effect is potentially so great that the Presidential Task Force believes IUU fishing endangers economic stability and could lead to international conflict.⁴⁸

Lastly, IUU fishing and seafood fraud present significant threats to the environmental sustainability of fisheries.⁴⁹ The practices inhibit environmentally focused regulatory efforts to manage fisheries responsibly.⁵⁰ In addition, some argue that individuals engaged in IUU fishing are more likely to ignore marine environmental protection measures, leading to further environmental risk.⁵¹ As a result, the mislabeling and substitution of endangered species for abundant species has the potential to desolate fish stocks and hurt the greater marine environment.⁵²

C. What Makes Preventing IUU Fishing and Seafood Fraud So Difficult?

A variety of factors complicate efforts to combat IUU fishing and seafood fraud.⁵³ First, a small number of inspectors are responsible for the massive volume of seafood imported to the United States, resulting in an inability to effec-

⁴³ See Lou, *supra* note 1 (finding that, among the various actors negatively affected by seafood fraud, consumers are particularly affected by seafood fraud because of the inflated prices they pay for seafood).

⁴⁴ *Id.*

⁴⁵ Lou, *supra* note 1; *Mystery Fish*, *supra* note 1, at 22. In one such case, an individual mislabeled Asian catfish as grouper and saved over \$60 million in tariffs. *Mystery Fish*, *supra* note 1, at 22

⁴⁶ PRESIDENTIAL TASK FORCE, *supra* note 2, at 3; Young, *supra* note 1, at 209.

⁴⁷ See BUCK, *supra* note 1, at 1 (finding that increases in occurrences of seafood fraud could negatively impact consumer confidence and ultimately decrease seafood consumption in the United States); Lou, *supra* note 1 (finding that the widespread nature of seafood fraud costs U.S. consumers \$25 billion annually).

⁴⁸ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5.

⁴⁹ NAT'L OCEANIC & ATMOSPHERIC ADMIN., REPORT TO CONGRESS ON IMPROVING INTERNATIONAL FISHERIES MANAGEMENT 9 (2015) [hereinafter NOAA 2015 REPORT]; PRESIDENTIAL TASK FORCE, *supra* note 2, at 3 (finding that IUU fishing and seafood fraud threaten the sustainability of global fisheries and have negative effects on the marine environment); Oceana Press Release, *supra* note 35 (discussing one study where 20% of "180 seafood species identified as imposters . . . face the threat of extinction"); Young, *supra* note 1, at 209 (arguing that IUU fishing plays a major role in global overfishing and hinders current policies designed to make fisheries more environmentally sustainable).

⁵⁰ NOAA 2015 REPORT, *supra* note 49, at 9; PRESIDENTIAL TASK FORCE, *supra* note 2, at 4.

⁵¹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5.

⁵² Lou, *supra* note 1.

⁵³ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8.

tively identify and punish IUU fishing and seafood fraud.⁵⁴ In addition, IUU fishing and seafood fraud are difficult to identify, track, and quantify.⁵⁵ Beyond these inherent difficulties, five fundamental issues are worth noting: the international nature of the trade, a byzantine seafood supply chain, the large number of entities responsible for combatting the issue, the lack of resources provided to these agencies, and the difficulty in properly identifying seafood.⁵⁶ The Presidential Task Force's recent Action Plan accounts for these many issues, but its success depends on international cooperation and its applicability to all steps in the supply chain.⁵⁷

1. International Nature

The first difficulty in addressing IUU fishing and seafood fraud is the fact that such practices often occur in the international realm.⁵⁸ The United States imports approximately ninety percent of its seafood from all parts of the globe,

⁵⁴ See FAO, Food Outlook Report, *supra* note 5, at 112 (the United States imported more than \$18 billion worth of seafood products in 2014); DUNCAN, *supra* note 1, at 57 (discussing that each FDA inspector is technically responsible for physically inspecting fifty-six million pounds of seafood annually); BUCK, *supra* note 1, at i (arguing that instances of seafood fraud are on the rise due to the combination of growing imports and less monitoring).

⁵⁵ PRESIDENTIAL TASK FORCE, *supra* note 2, at 5; GAO-09-258, *supra* note 2, at 1, 9.

⁵⁶ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; GAO-09-258, *supra* note 2, at 25; LOWELL ET AL., *supra* note 1, at 7 (finding that because "56 different species of fish can be sold under the acceptable market name of 'snapper,' . . . seafood buyers have difficulty differentiating . . . without the use of species-specific names"); Lou, *supra* note 1 (finding that the seafood industry is in need of faster species identification methods and tools).

⁵⁷ PRESIDENTIAL TASK FORCE, *supra* note 2, at 3–5; see WARNER ET AL., *supra* note 15, at 18 (finding that "the proposed rule [does not] require information to be available to consumers about the species-specific identity of seafood"); Leal et al., *supra* note 7, at 333 (arguing that the "implementation [of the Task Force's traceability program] is still facing challenges"); Michael Conathan & Avery Siciliano, *The Future of Seafood Security: The Fight Against Illegal Fishing and Seafood Fraud*, CTR. AM. PROGRESS (June 8, 2016, 9:02 AM), <http://www.americanprogress.org/issues/green/reports/2016/06/06/139004/the-future-of-seafood-security-the-fight-against-illegal-fishing-and-seafood-fraud/> [<https://perma.cc/P7ZN-QNTH>] (finding that despite helpful steps to increase transparency and enforcement, the United States needs to do more to protect the future of the seafood supply and seafood industry).

⁵⁸ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8 (finding that despite a variety of international efforts, preventing IUU fishing in international waters is a complicated task); LOWELL ET AL., *supra* note 1, at 2–3 ("The path that seafood travels from its source to the consumer is long, geographically disparate and multi-tiered. . . . Because seafood fraud has been identified throughout the supply chain, simply targeting any particular link would have a limited impact."); David Fagundes, *Crystals in the Public Domain*, 50 B.C. L. REV. 139, 149 (2009) (discussing the legal complexities of international waters); Abelson & Daley, *supra* note 3 (finding that an increase in consumption of foreign seafood has been accompanied by an increase in mislabeling); Conathan & Siciliano, *supra* note 57 (finding that identifying seafood fraud within "U.S. borders is one thing, but when the supply chain expands overseas, it becomes exponentially more difficult").

making its seafood trade international in nature.⁵⁹ The majority of seafood fraud in the United States occurs with this seafood imported from other countries.⁶⁰

The international nature of seafood fraud complicates U.S. efforts to combat it for a variety of reasons.⁶¹ For example, U.S. policies cannot exist in a vacuum because they need to address loose regulations in the countries where the overwhelming majority of seafood originates.⁶² In addition, any U.S. regulatory efforts need to comply with protectionist measures in international trade law.⁶³

2. Complicated Supply Chain

The ninety percent of seafood originating in foreign countries often follows a byzantine supply chain to the United States.⁶⁴ The supply chain complicates efforts to combat seafood fraud due to its length and the processing measures taken along the way.⁶⁵ First, because seafood passes through various entities on its way from the ocean to the plate, and is often not labeled with its country of origin, species substitution and mislabeling are extremely difficult to identify.⁶⁶

⁵⁹ GAO-09-258, *supra* note 2, at 1; DUNCAN, *supra* note 1, at 57; LOWELL ET AL., *supra* note 1, at 2.

⁶⁰ See Abelson & Daley, *supra* note 3 (finding that an increase in consumption of foreign seafood has been accompanied by an increase in mislabeling); Lou, *supra* note 1 (suggesting domestic fisheries largely follow labeling rules). The Presidential Task Force Action Plan notes that “domestic fishery activities are of less concern relative to seafood fraud . . . Domestic fish and fishery products harvested under a federal fisheries management plan have low incidences of species substitution.” *Presidential Task Force*, *supra* note 2, at 7.

⁶¹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 3.

⁶² See *id.*; Anastasia Teletsky, *Symposium, Scuttling IUU Fishing and Rewarding Sustainable Fishing: Enhancing the Effectiveness of the Port State Measures Agreement with Trade Related Measures*, 38 SEATTLE U. L. REV. 1237, 1240 (2015) (finding many vessels register in nations with either ineffective or unenforced fisheries policies); Young, *supra* note 1, at 212 (arguing that combating IUU fishing is complicated by the fact that vessels often operate in international waters); Lou, *supra* note 1 (finding efforts to combat seafood fraud are hindered by the fact that “ninety percent of our fish is imported from countries with loose aquaculture laws, such as Thailand, Indonesia, Canada, China, Ecuador, and Vietnam”).

⁶³ See Young, *supra* note 1, at 212 (finding many measures to combat seafood fraud may be complicated various international trade agreements).

⁶⁴ LOWELL ET AL., *supra* note 1, at 2; *Mystery Fish*, *supra* note 1, at 19.

⁶⁵ LOWELL ET AL., *supra* note 1, at 2; (discussing the various processes that make it difficult to identify species of seafood); *Mystery Fish*, *supra* note 1, at 19 (describing the supply chain and processing measures, including freezing, moving catch between vessels, and mixing species); Abelson & Daley, *supra* note 3 (finding that “because the sea-to-plate process has become so long and complicated, there are more opportunities for fraud and mistakes to take place”).

⁶⁶ DUNCAN, *supra* note 1, at 61 (finding that the vast majority of imported seafood does not have a label identifying its country of origin); BUCK, *supra* note 1, at 3 (discussing the various points along the supply chain where seafood fraud can occur); Abelson & Daley, *supra* note 3 (finding that a variety of individuals along the seafood supply chain can be responsible for seafood fraud); James Wright, *Law and Order: As Seafood Fraud Again Makes Headlines, Enforcement Efforts Finally Seem to Be Ramping Up*, SEAFOOD BUS. MAG., Mar. 2012, at 86 (suggesting that “alteration of the species, production method, or country of origin on seafood packaging labels can happen at any point of the supply chain, from the producer to the importer to the restaurant that prepares it”).

Second, fishermen increasingly process and package their catch at sea, ultimately making it difficult for buyers and regulators to properly identify species.⁶⁷

3. Multiple Entities Charged with Combatting Seafood Fraud

The large number of entities promulgating and enforcing rules further inhibit efforts to combat seafood fraud and IUU fishing.⁶⁸ In the United States, three government agencies are primarily responsible for identifying and deterring seafood fraud: the Department of Homeland Security's Customs and Border Protection (CBP), the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), and the FDA.⁶⁹ In reality, though, there are many other agencies involved.⁷⁰ Moreover, portions of the seafood fraud chain fall outside of the federal government's jurisdiction, requiring further coordination with state and local entities.⁷¹ Finally, governments rely on non-governmental organizations and private industry to combat seafood fraud.⁷² Given the number and variety of actors involved, coordination of policy is critical to successfully eradicating seafood fraud.⁷³ Coordination in such an environment is difficult, however, and has failed thus far.⁷⁴

⁶⁷ PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; LOWELL ET AL., *supra* note 1, at 2; *Mystery Fish*, *supra* note 1, at 19.

⁶⁸ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 1, 3 (discussing the complications that arise from the large number of U.S. entities responsible for combatting seafood fraud); GAO-09-258, *supra* note 2, at 2 (discussing the various U.S. entities responsible for combatting seafood fraud); Young, *supra* note 1, at 212 (arguing that measures to combat the issue are carried out by both governmental and non-governmental entities).

⁶⁹ PRESIDENTIAL TASK FORCE, *supra* note 2, at 3, 8; GAO-09-258, *supra* note 2, at 2. The Government Accountability Office report refers to the National Marine Fisheries Service ("NMFS") instead of the National Oceanic and Atmospheric Administration ("NOAA"). GAO-09-258, *supra* note 2, at 2. NMFS is an office within NOAA, often referred to as "NOAA Fisheries." *About Us*, NOAA FISHERIES, <http://www.nmfs.noaa.gov/aboutus/aboutus.html> [<https://perma.cc/75LT-646C>]. The Presidential Task Force membership consists of eleven separate entities across the federal government and states "the full scope of agency expertise, capacity, and authorities reflected in the Task Force membership are vital to the success of this effort." *Id.*

⁷⁰ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 1, 3.

⁷¹ See *id.* at 5, 9 (finding "cooperation with state and local authorities on addressing seafood fraud is essential" because many parts of the supply chain are "intrastate, or at the local level, and are sometimes outside federal jurisdiction"); *Mystery Fish*, *supra* note 1, at 19 (arguing that the FDA believes the responsibility to combat IUU fishing falls largely to states and local entities).

⁷² See GAO-09-258, *supra* note 2, at 11 (finding private entities within the seafood industry also contribute in efforts to identify and stop seafood fraud); NOAA 2015 REPORT, *supra* note 50, at 14 (discussing the vital importance of public-private partnerships); Young, *supra* note 1, at 212 (arguing that measures to combat the issue are effected by both government and non-government entities).

⁷³ See GAO-09-258, *supra* note 2, at 3. In its report to the Senate, the Government Accountability Office highlighted the fact that "when agencies do not collaborate efficiently and effectively, their individual efforts are carried out in an uncoordinated way, thereby limiting overall effectiveness and efficiency." *Id.*

⁷⁴ See *id.* at 6 ("The federal agencies that share responsibility for detecting and preventing seafood fraud . . . do not efficiently and effectively collaborate with each other.").

4. Lack of Resources

Regulatory entities do not have the resources needed to regulate and enforce policies that combat seafood fraud.⁷⁵ In particular, a lack of funding prevents agencies from successfully carrying out their mandates.⁷⁶ Due in part to a lack of funding, only eighty-five to ninety-two FDA inspectors are responsible for inspecting seafood.⁷⁷ One estimate suggests that each inspector would need to physically check fifty-six million pounds of seafood.⁷⁸ Unsurprisingly, less than two percent of imported seafood is actually inspected.⁷⁹

5. Identifying Seafood

Combating seafood fraud requires the ability to properly identify species.⁸⁰ Unfortunately, current technology and industry practices make proper identification difficult for both experts and consumers.⁸¹ Deoxyribonucleic acid (DNA) testing is typically required to properly identify species, but often takes more than twelve hours to produce a definitive result.⁸² Given the vast amount of seafood presented for inspection, DNA testing is an impractical method for detecting seafood fraud.⁸³

Processing and species-naming practices further hinder efforts to identify seafood.⁸⁴ For example, at-sea processing practices like filleting and freezing remove many of a species identifying features.⁸⁵ In addition, regulations allow a

⁷⁵ See *id.* at 5–6; *Food Safety: Hearing Before the S. Subcomm. on Appropriations*, 110th Cong. 9 (2007) (statement of Thomas Stenzel, President and CEO, United Fresh Produce Association) [hereinafter *Stenzel Testimony*] (arguing that a “lack of proper funding means fewer inspectors, resulting in the federally mandated responsibilities being bypassed”); DUNCAN, *supra* note 1, at 57–58 (discussing the complications posed by insufficient funding); Abelson & Daley, *supra* note 3 (arguing that the lack of testing to identify species is responsible for the widespread nature of seafood fraud).

⁷⁶ See *Stenzel Testimony*, *supra* note 75, at 9; BUCK, *supra* note 1, 9–10; DUNCAN, *supra* note 1, at 58; Lou, *supra* note 1.

⁷⁷ BUCK, *supra* note 1, 9–10; DUNCAN, *supra* note 1, at 57.

⁷⁸ DUNCAN, *supra* note 1, at 58.

⁷⁹ GAO-09-258, *supra* note 2, at 5; DUNCAN, *supra* note 1, at 57; Lou, *supra* note 1.

⁸⁰ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; LOWELL ET AL., *supra* note 1, at 2.

⁸¹ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; LOWELL ET AL., *supra* note 1, at 2.

⁸² See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8; BUCK, *supra* note 1, at 2 (finding that the identification of species often requires DNA testing); Abelson & Daley, *supra* note 3 (finding that consumers frequently are unable to identify seafood species).

⁸³ See Abelson & Daley, *supra* note 3 (finding even high-end chefs have difficulty identifying seafood once it has been filleted); Lou, *supra* note 1.

⁸⁴ See LOWELL ET AL., *supra* note 1, at 2; Leal et al., *supra* note 7, at 332; Teletsky, *supra* note 62, at 1242.

⁸⁵ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8 (finding that “over half of the world’s fish production is processed at sea or soon after landing, which in many cases renders the species unidentifiable without forensic laboratory analysis”); Abelson & Daley, *supra* note 3 (finding seafood fraud can occur at processing facilities where fish are filleted, rendering them indistinguishable from various other species). Processing of seafood at sea includes many practices, including the transformation of

variety of species to be sold under certain common names, making it difficult for consumers to know what they are eating.⁸⁶ To address these difficulties, some argue that requiring “species-specific” names is a crucial step toward combatting seafood fraud and educating consumers.⁸⁷ In combination, the widespread and varied nature of all of the aforementioned barriers to combatting IUU fishing and seafood fraud lead to the conclusion that any efforts to stop these practices need to be multifaceted.⁸⁸

II. LEGAL EFFORTS TO ADDRESS IUU FISHING AND SEAFOOD FRAUD

The United Nations (UN), RFMOs, EU, and United States combat IUU fishing and seafood fraud through a variety of treaties and legislation designed to identify and punish those engaged in these practices.⁸⁹ These various efforts call for the collection and tracking of data, various modes of enforcement, support and training for developing countries, and coordination among domestic and international entities.⁹⁰ Two recent trends show particular promise in the fight against IUU fishing and seafood fraud.⁹¹

First, newer measures increasingly devise and implement traceability programs, which are “market-related measures” that seek to follow seafood from its initial removal from the ocean to its entry point into the market.⁹² Second, newer

“fish to fillet [and] shrimp to cocktail,” which ultimately “obscures the true identity of many types of seafood.” LOWELL ET AL., *supra* note 1, at 2.

⁸⁶ LOWELL ET AL., *supra* note 1, at 3, 6; see Wright, *supra* note 68, at 28 (recognizing highly excessive use of common species names). For instance, it is legal in the United States to sell at least fifty-six distinct species as “snapper.” LOWELL ET AL., *supra* note 1, at 3, 6.

⁸⁷ LOWELL ET AL., *supra* note 1, at 3, 6.

⁸⁸ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 3; Leal et al., *supra* note 7, at 332.

⁸⁹ See, e.g., 16 U.S.C. § 1801(b)(5) (2012); Pub. L. No. 114–81, §§ 101–305, 129 Stat. 649; Council Regulation 1224/2009, 2009 O.J. (L343) 1 (EU) (addressing IUU fishing while omitting specific language regarding “seafood fraud”); Council Regulation 1005/2008, 2008 O.J. (L286) 1, 1 (EU) (same); PSMA, *supra* note 4, at vii; Food and Agriculture Organization of the United Nations Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Nov. 24, 1993, 2221 U.N.T.S. 120, 120 [hereinafter 1993 FAO Compliance Agreement]; 50 C.F.R. §§ 300.323–.325, 600.725 (2016); CCAMLR Catch Documentation Scheme, *supra* note 32, at 1.

⁹⁰ See Council Regulation 1224/2009, *supra* note 89, at 2–4; Council Regulation 1005/2008, *supra* note 89, at 1–5 (calling on EU member states to cooperate and develop regulations targeting the variety of factors that enable IUU fishing); PSMA, *supra* note 4, at vii–viii, 1–2, 9, 12–14, 16; Fish Stocks Agreement, *supra* note 32, at 88, 100, 103, 119; 1993 FAO Compliance Agreement, *supra* note 89, at 120, 126 (calling for coordination amongst member states, data collection, and support to developing nations); UNCLOS, *supra* note 32, at 421, 423 (calling for collaboration and support for developing nations).

⁹¹ See Young, *supra* note 1, at 210.

⁹² See Council Regulation 1379/2013, *supra* note 32, at 5, 11–12; PSMA, *supra* note 4, at 1; CCAMLR Catch Documentation Scheme, *supra* note 32, at 3; PRESIDENTIAL TASK FORCE, *supra* note 2, at 36; Teletsky, *supra* note 62, at 1262; Young, *supra* note 1, at 209–10 (finding that modern efforts to inhibit IUU fishing with market-related measures rely on data that tracks seafood from its source).

policies set up systems for identifying and tracking both countries and specific vessels engaged in IUU fishing and provide means for enforcing policies against offenders through various “port state measures,” including blocking those suspected of engaging in IUU fishing from accessing ports.⁹³ The Presidential Task Force’s Action Plan encompasses these measures, but more work needs to be done to ensure their success.⁹⁴

A. International Efforts to Combat IUU Fishing and Seafood Fraud

1. UN Efforts to Combat IUU Fishing and Seafood Fraud

Four UN treaties lay the foundation for efforts to combat IUU fishing and seafood fraud: the UN Convention on the Law of the Sea (“UNCLOS”); the 1993 UN Food and Agriculture Organization (“FAO”) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels Fishing on the High Seas (“1993 FAO Compliance Agreement”); the 1995 Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“UN Fish Stocks Agreement”); and the 2009 Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing (“PSMA”).⁹⁵

⁹³ See Council Regulation 1224/2009, *supra* note 89, at 43; PSMA, *supra* note 4, at 1; Teletsky, *supra* note 62, at 1243–44 (highlighting modern efforts to combat IUU fishing, including the “primary strategy” of using port state measures); Young, *supra* note 1, at 209 (finding that modern efforts to inhibit IUU fishing with market-related measures rely on data that enables the identification of nations engaged in the practice and the ability to take action against vessels from those nations). In addition, countries are increasingly using “port state measures,” in which those engaged in IUU fishing are denied access to ports of countries participating in a given IUU measure. Young, *supra* note 1, at 209. Specifically, port state measures refer to various requirements that one nation may impose on vessels from another nation before those vessels gain access to ports. FOOD & AGRIC. ORG. OF THE U.N.: FISHERIES & AQUACULTURE DEP’T, Port State Measures: What Are Port State Measures?, <http://www.fao.org/fishery/psm/en> [<https://perma.cc/HV9F-ZV45>]. Such measures might include notice of entry requirements, restrictions on which ports a vessel may use, restrictions of sale of seafood, and inspection requirements. *Id.*

⁹⁴ WARNER, *supra* note 15, at 18 (highlighting specific shortcomings of the traceability program, including the fact that it does not require sellers to identify seafood to consumers by its species-specific name); Leal et al., *supra* note 7, at 333 (finding that the traceability program established by the Task Force has shortcomings); Conathan & Siciliano, *supra* note 57 (finding that the Presidential Task Force’s efforts are a good start, but also concluding that more work needs to be done to protect the global seafood industry); Oceana June 7 Press Release, *supra* note 35 (arguing that “the proposed rule does not increase transparency for the majority of seafood sold in the United States”).

⁹⁵ See generally PSMA, *supra* note 4 (creating a binding international agreement to enhance port state measures that target IUU fishing and seafood fraud); Fish Stocks Agreement, *supra* note 32 (calling on signatories to cooperate in order to ensure more sustainable fishing practices and to target those engaged in IUU fishing); 1993 FAO Compliance Agreement, *supra* note 89 (calling on signatories to cooperate and exchange information in order uphold various conservation and fisheries commitments); UNCLOS, *supra* note 32 (establishing a “legal order for the seas and oceans”).

The UN's recent efforts to combat IUU fishing are grounded in the UNCLOS.⁹⁶ While the UNCLOS does not address IUU fishing directly, it sets out the "basic duty of countries to cooperate in the conservation and management of shared fisheries resources."⁹⁷ Specifically, the UNCLOS calls on states to collect and share statistics on fishing yields and conservation measures from fishing activities within their own "exclusive economic zone."⁹⁸ It also calls for similar measures on the "high seas," requiring signatories to collect the same data required in the exclusive economic zone and to regularly share it with international organizations.⁹⁹

Another major UN initiative related to IUU fishing is the 1993 FAO Compliance Agreement.¹⁰⁰ The 1993 FAO Compliance Agreement expands upon the UNCLOS requirements for nations to coordinate practices and act in accordance with the UNCLOS's conservation efforts.¹⁰¹ In particular, the 1993 FAO Compliance Agreement focuses on efforts to track and punish fishing vessels flouting measures to protect marine life.¹⁰² In order to do so, the agreement requires signatories to collect, track, and share information on vessels flying their flag.¹⁰³ The information required includes the vessel's name, registration information, size, and utilized fishing practices.¹⁰⁴

In 1995, the UN adopted the UN Fish Stocks Agreement, thereby reaffirming and expanding upon the efforts set out in UNCLOS and the 1993 FAO Compliance Agreement.¹⁰⁵ The UN Fish Stocks Agreement reiterated a number

⁹⁶ PSMA, *supra* note 4, at 2; Fish Stocks Agreement, *supra* note 32, at 88; 1993 FAO Compliance Agreement, *supra* note 89, at 120.

⁹⁷ PRESIDENTIAL TASK FORCE, *supra* note 2, at 6; *see* UNCLOS, *supra* note 32, at 421, 441.

⁹⁸ UNCLOS, *supra* note 32, at 418, 421. The UNCLOS defines the "exclusive economic zone" as "an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are government by the relevant provisions of this Convention." *Id.* at 418.

⁹⁹ *See id.* at 442.

¹⁰⁰ 1993 FAO Compliance Agreement, *supra* note 89, at 120.

¹⁰¹ *See id.*; UNCLOS, *supra* note 32, at 442; PRESIDENTIAL TASK FORCE, *supra* note 2, at 6.

¹⁰² *See* 1993 FAO Compliance Agreement, *supra* note 89. The preamble to the agreement acknowledges that vessels take various steps to flout regulations, and the failure to enforce those regulations plays a significant role in preventing their success. *Id.* at pmb1. Article V calls on signatories to work together by sharing data on various vessels engaged in IUU fishing activities. *Id.* at 124.

¹⁰³ *See id.* Specifically, Article IV requires parties to "maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record." *Id.* Moreover, Article VI calls on parties to "make readily available to [Food and Agriculture Organization of the United Nations ("FAO")] the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV." *Id.*

¹⁰⁴ *Id.* at 124–25.

¹⁰⁵ *See* Fish Stocks Agreement, *supra* note 32, at 88; 1993 FAO Compliance Agreement, *supra* note 89, at 120; UNCLOS, *supra* note 32, at 442; PRESIDENTIAL TASK FORCE, *supra* note 2, at 6 (noting that the Fish Stocks Agreement specifies the requirements countries must take to control vessels flying their flag and make sure they do not flout regulations).

of the principles in the previous agreements, including a call for parties to continue collecting, sharing, and streamlining data on fish stocks to ensure progress on conservation goals.¹⁰⁶ Importantly, the UN Fish Stocks Agreement also provides that port states should take legal measures to ensure compliance with various requirements.¹⁰⁷

Building upon the aforementioned efforts, the PSMA created the first set of mandatory criteria precisely targeting IUU fishing.¹⁰⁸ In particular, the PSMA sought to create baseline criteria for nations to use when deciding whether to allow a vessel into a given port.¹⁰⁹ These minimum criteria include specific steps to ensure a given ship does not catch seafood illegally.¹¹⁰ These efforts prevent seafood obtained through IUU fishing from getting to markets, thus diminishing incentives to fish illegally.¹¹¹ In addition, the PSMA calls for the training of inspectors to ensure compliance with the various provisions of the agreement.¹¹² In sum, the PSMA combines many of the efforts and provisions of the previous UN agreements, targeting IUU fishing in a single, legally binding treaty.¹¹³ These various treaties are the foundation for the recent trend toward traceability and port state measures.¹¹⁴

¹⁰⁶ See Fish Stocks Agreement, *supra* note 32, at 100, 103; 1993 FAO Compliance Agreement, *supra* note 89, at 124; UNCLOS, *supra* note 32, at 442. Specifically, Article 14 provides “vessels flying [a party’s] flag [shall] provide such information as may be necessary in order to fulfill their obligations under [the] Agreement.” See Fish Stocks Agreement, *supra* note 32, at 124. In addition, Article 14 requires parties to “cooperate, either directly or through subregional or regional fisheries management organizations or arrangements . . . to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements.” *Id.* at 103–04.

¹⁰⁷ See *id.* at 118–19.

¹⁰⁸ PRESIDENTIAL TASK FORCE, *supra* note 2, at 6. See generally PSMA, *supra* note 4. While the PSMA is the first UN treaty to specifically target IUU fishing, the Food and Agriculture Organization of the United Nations International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (“IPOA”) was an earlier UN effort specifically aimed at IUU fishing. See IPOA, *supra* note 13, at 1. See generally PSMA, *supra* note 4. Among other provisions, the IPOA specifically calls for tracking seafood from its initial harvesting to the final point of sale. IPOA, *supra* note 13, at 7.

¹⁰⁹ PSMA, *supra* note 4, at vii.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 13. Article 17 provides that “[e]ach Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.” *Id.*

¹¹³ See *id.* at 2.

¹¹⁴ See Pub. L. No. 114–81, § 302, 129 Stat. at 664; Council Regulation 1005/2008, *supra* note 89, at 1; PRESIDENTIAL TASK FORCE, *supra* note 2, at 6.

2. Regional Efforts to Combat IUU Fishing

The various UN agreements call on nations to organize RFMOs to combat IUU fishing.¹¹⁵ These regional groups create mandatory international standards designed to combat IUU fishing.¹¹⁶ The measures taken are similar to those under UN agreements, including mandates for reporting, vessel monitoring, enforcement, and inspection mechanisms.¹¹⁷

One example of an RFMO is the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”).¹¹⁸ The CCAMLR’s twenty-five members, including the United States, work to prevent IUU fishing in the Antarctic region.¹¹⁹ Like the various UN agreements, the CCAMLR employs measures to collect data on vessels and species, but adds a degree of specificity not contained in the broader UN agreements.¹²⁰ For example, one CCAMLR initiative targets the *Dissostichus* species.¹²¹ It creates a catch documentation scheme for that species, requiring all parties to “cooperat[e] with CCAMLR . . . to identify the origin of *Dissostichus* spp. landed in, imported into, or exported” into member ports to help ensure adherence with the CCAMLR conservation measures.¹²² Moreover, the CCAMLR requires all parties to inspect every ship carrying the species to ensure compliance with CCAMLR mandates.¹²³ Finally, it requires signatories to inspect at least half of the ships that come to their ports with any species.¹²⁴ The CCAMLR is one of many RFMOs

¹¹⁵ See PSMA, *supra* note 4, at 6; Fish Stocks Agreement, *supra* note 32, at 100; 1993 FAO Compliance Agreement, *supra* note 89, at 125; UNCLOS, *supra* note 32, at 442; IPOA, *supra* note 13, at 9, 20.

¹¹⁶ PRESIDENTIAL TASK FORCE, *supra* note 2, at 6.

¹¹⁷ *Id.*; see PSMA, *supra* note 4, at v, vii–viii, 1–2, 9, 12–14, 16; Fish Stocks Agreement, *supra* note 32, at 88, 100, 103; 1993 FAO Compliance Agreement, *supra* note 89, at 120, 124; UNCLOS, *supra* note 32, at 421; IPOA, *supra* note 13, at 4–5, 9.

¹¹⁸ See *Regional Fisheries Management Organizations*, U.S. DEP’T OF STATE, <https://www.state.gov/e/oes/ocns/fish/regionalorganizations/> [<https://perma.cc/VQF2-9CEZ>] [hereinafter State RFMO Page].

¹¹⁹ Comm’n for the Conversation of Antarctic Marine Living Res., *About CCAMLR*, <https://www.ccamlr.org/en/organisation/about-ccamlr> [<https://perma.cc/LU3J-5ZME>]; State RFMO Page, *supra* note 118.

¹²⁰ Compare PSMA, *supra* note 32, at 28–29 (outlining standards designed to combat IUU fishing), Fish Stocks Agreement, *supra* note 32, at 103 (same), and 1993 FAO Compliance Agreement (same), *supra* note 89, at 124, with CCAMLR Catch Documentation Scheme, *supra* note 32 (highlighting the CCAMLR’s focus on specific fish species).

¹²¹ CCAMLR Catch Documentation Scheme, *supra* note 32.

¹²² *Id.*

¹²³ Comm’n for the Conservation of Antarctic Marine Living Res., *Conservation Measure 10-03, Port Inspections of Fishing Vessels Carrying Antarctic Marine Living Resources* (2015) [hereinafter CCAMLR Port Inspections Scheme].

¹²⁴ *Id.*

enforcing targeted policies in line with the UN agreements that play a key role in combatting IUU fishing.¹²⁵

3. EU Efforts to Combat IUU Fishing and Seafood Fraud

Various EU measures combat IUU fishing and seafood fraud.¹²⁶ Three particularly relevant regulations are the Council Regulation 1005/2008 of 29 September 2008 establishing a Community System to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (“2008 Council Regulation”); Council Regulation 1224/2009 of 20 November 2009 Establishing a Community Control System For Ensuring Compliance with the Rule of the Common Fisher Policy (“2009 Council Regulation”); and Regulation 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Organization of the Markets in Fishery and Aquaculture Products (“2013 Council Regulation”).¹²⁷ These regulations acknowledge the EU’s treaty obligations and lay out specific steps to combat IUU fishing and seafood fraud.¹²⁸

The EU regulations take specific steps to collect information and track seafood through the supply chain.¹²⁹ They also provide for inspection and enforcement mechanisms to combat IUU fishing and seafood fraud.¹³⁰ For example, Article 51 of the 2008 Council Regulation calls for a “mutual assistance program,” with a data collection system that supports efforts to combat IUU

¹²⁵ See, e.g., *General Info*, NW. ATLANTIC FISHERIES ORG., <https://www.nafo.int/About-us> [<https://perma.cc/LT6D-4R99>] [hereinafter NAFO About Us]. For example, the Northwest Atlantic Fisheries Organization (“NAFO”) requires its twelve signatories to ensure vessels “transmit electronically . . . [the] quantity of catch on board by species upon entry into [its] regulatory area” and to ensure sellers label packages from its fishing areas with “only one product . . . [and] one species.” See NAFO Conservation and Enforcement Measures, at 45–46; NAFO About Us, *supra*.

¹²⁶ See generally Council Regulation 1379/2013, *supra* note 32 (establishing a program to create, implement, and enforce common marketing standards, reporting requirements and enforcement mechanisms); Council Regulation 1224/2009, *supra* note 89 (calling for coordination between various EU companies to promote compliance with fisheries policies); Council Regulation 1005/2008, *supra* note 89 (calling on the European Community to “substantially enhance against IUU fishing”).

¹²⁷ See Council Regulation 1379/2013, *supra* note 32, at 1; Council Regulation 1224/2009, *supra* note 89, at 1; Council Regulation 1005/2008, *supra* note 89, at 1.

¹²⁸ See Council Regulation 1379/2013, *supra* note 32, at 1; Council Regulation 1224/2009, *supra* note 89, at 1; Council Regulation 1005/2008, *supra* note 89, at 1. For example, the 2008 Regulation states the EU is a signatory to the UNCLOS, UN Fish Stocks Agreement, and FAO Compliance Agreement, which call on signatories to develop schemes to protect the marine environment and to work together to accomplish this goal. Council Regulation 1005/2008, *supra* note 89, at 1. The regulation further states “in line with its international commitments, . . . the Community should substantially enhance its action against IUU fishing and adopt new regulatory measures designed to cover all facets of the phenomenon.” *Id.* Finally, the 2008 Regulation directly endorses the IPOA. *Id.*

¹²⁹ See, e.g., Council Regulation 1379/2013, *supra* note 32 (establishing a program to create, implement, and enforce common marketing standards, reporting requirements and enforcement mechanisms).

¹³⁰ *Id.* at 5–6; Council Regulation 1224/2009, *supra* note 89, at 43; Council Regulation 1005/2008, *supra* note 89, at 7, 9, 14–23, 25.

fishing.¹³¹ In addition, the 2008 Council Regulation calls for a catch certification mechanism that ensures any seafood entering a market was caught in a manner consistent with relevant regulations.¹³² Specifically, the scheme requires each certificate to include the vessel's name, description of product, species, weight, declarations of transshipment at sea, and authority to fish from the nation of the flag flown by the vessel.¹³³

These information collection and tracking requirements compliment the demands set forth in the 2013 Council Regulation.¹³⁴ The 2013 Council Regulation established concrete standards and systems to combat IUU fishing and seafood fraud.¹³⁵ For example, the 2013 Council Regulation created organizations of individuals in the seafood industry with the authority to enact various catch identification and certification measures.¹³⁶ It also established "common marketing standards," which streamlined marketing practices related to the "size, weight, packing, presentation or labeling of products."¹³⁷ Finally, the 2013 Council Regulation requires that seafood products sold in the EU have labels with the common and scientific name of the species, the way it was captured or farmed, where it was captured or farmed, and whether it underwent certain processing procedures like defrosting.¹³⁸ Importantly, the 2013 Council Regulation says these standards apply to both the 2008 and 2009 Council Regulations, and require that any seafood sold in the EU be compliant with the relevant standards.¹³⁹

In addition to these data collection and tracking measures, the EU provides specific criteria and power for inspection and enforcement.¹⁴⁰ For example, the 2008 Council Regulation required inspection of at least five percent of landing and transshipment operations by non-EU vessels, and required inspection of all vessels found engaged in IUU fishing.¹⁴¹ Adding to these efforts, the 2009 Council Regulation charged the Community Fisheries Control Agency to help create a scheme within the Common Fisheries Program of uniform stand-

¹³¹ See Council Regulation 1005/2008, *supra* note 89, at 25.

¹³² *Id.* at 10.

¹³³ *Id.* at 27.

¹³⁴ See Council Regulation 1379/2013, *supra* note 32, at 12; Council Regulation 1005/2008, *supra* note 89, at 27.

¹³⁵ Council Regulation 1379/2013, *supra* note 32, at 3–6, 10–12.

¹³⁶ *Id.* at 4–5. The 2013 Council Regulation defines a "producer" as "any natural or legal person using means of production to obtain fishery or aquaculture products with a view to placing them on the market." *Id.* at 4.

¹³⁷ *Id.* at 11.

¹³⁸ *Id.* at 12.

¹³⁹ *Id.*

¹⁴⁰ Council Regulation 1224/2009, *supra* note 89, at 43; Council Regulation 1005/2008, *supra* note 89, at 22, 27.

¹⁴¹ Council Regulation 1005/2008, *supra* note 89, at 7, 9.

ards for inspection and control programs targeting IUU fishing.¹⁴² Moreover, it required the Community Fisheries Control Agency to support the EU in creating a training program for fisheries inspectors.¹⁴³ In combination with UN treaties like the PSMA, these measures allow EU member states to successfully identify IUU fishing and seafood fraud and take appropriate action.¹⁴⁴

4. U.S. Federal Efforts to Combat IUU Fishing and Seafood Fraud

a. The Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) is the key piece of U.S. legislation addressing fishing in federal waters. The MSA aims to prevent overfishing and provide safe seafood to consumers.¹⁴⁵ In order to accomplish these aims, the MSA creates eight regional fishery management councils comprised of public and private entities with an interest in the fisheries industry.¹⁴⁶ The MSA requires these councils to create and implement “fishery management plans” that collect relevant data such as the type and quantity of species caught, as well as where and when the species was caught.¹⁴⁷

The MSA also takes specific steps to improve identification, tracking, and consequences for IUU fishing.¹⁴⁸ For example, it calls for a comprehensive registration and data management system to track vessels and their fishing practices.¹⁴⁹ It also creates enforcement mechanisms that identify, label, and track those engaged in IUU fishing practices.¹⁵⁰ In conjunction with these mechanisms, the MSA requires a biennial report to Congress regarding worldwide compliance with various requirements.¹⁵¹ That biennial report contains a list of countries engaged in IUU fishing and any enforcement measures applied to those coun-

¹⁴² Council Regulation 1224/2009, *supra* note 89, at 43. The Common Fisheries Policy is a European Union “framework and set of regulations for common fisheries policy.” See Council Regulation 1379/2013, *supra* note 32, at 1; Council Regulation 1224/2009, *supra* note 89, at 1; *The Common Fisheries Policy (CFP)*, EUR. COMM’N, https://ec.europa.eu/fisheries/cfp_en [<https://perma.cc/3MLE-GFN7>] (last updated Oct. 16, 2017).

¹⁴³ Council Regulation 1224/2009, *supra* note 89, at 43.

¹⁴⁴ See Council Regulation 1005/2008, *supra* note 89, at 9; PSMA, *supra* note 4, at 9–10, 12; DUNCAN, *supra* note 1, at 57; Conathan & Siciliano, *supra* note 57.

¹⁴⁵ *Magnuson-Stevens Act (MSA)*, U.S. REGIONAL FISHERY MGMT. COUNCILS, <http://www.fisherycouncils.org/about-the-msa/> [<https://perma.cc/6Q65-Z6ZU>]; *Magnuson-Stevens Fisher Conservation and Management Act*, NOAA FISHERIES, http://www.nmfs.noaa.gov/sfa/laws_policies/msa/ [<https://perma.cc/CFP2-K49H>] [hereinafter *NOAA Fisheries Website*].

¹⁴⁶ 16 U.S.C. § 1801(b)(5) (2012); *NOAA Fisheries Website*, *supra* note 145.

¹⁴⁷ 16 U.S.C. § 1853(a)(5).

¹⁴⁸ *Id.* § 1826h.

¹⁴⁹ *Id.* § 1881(a)–(c).

¹⁵⁰ *Id.* § 1826j(a)–(b).

¹⁵¹ *Id.* § 1826h.

tries.¹⁵² Finally, the MSA recognizes the need for international cooperation to tackle IUU fishing and to prevent fishing methods that negatively impact oceanic resources and harm the U.S. seafood industry.¹⁵³

b. The Presidential Task Force's Action Plan

Expanding upon the MSA, the most recent effort by the United States to combat IUU fishing and seafood fraud is the Presidential Task Force's Action Plan.¹⁵⁴ As the first major effort to explicitly name and target seafood fraud, the Action Plan targets IUU fishing and seafood fraud in four primary ways.¹⁵⁵ Broadly, it calls for international efforts targeting IUU fishing and seafood fraud, improved enforcement mechanisms, coordination with non-governmental actors, and the proliferation of traceability requirements.¹⁵⁶ More specifically, the Action Plan calls for ratification of the PSMA and alignment of best practices in the international community, such as catch documentation and inspection.¹⁵⁷ Additionally, in line with recent UN, RFMO, and EU efforts, the Action Plan calls for the promulgation of regulations to create a "seafood traceability program" that improves collection and analysis of relevant data on IUU fishing and seafood fraud and allows for sharing among entities responsible for regulation and enforcement.¹⁵⁸ In particular, one recommendation calls for a program to track species most affected by IUU fishing and seafood fraud from where they are captured to their entry into the United States.¹⁵⁹ It also provides that these efforts should eventually track all species—not just those particularly affected by IUU fishing and seafood fraud.¹⁶⁰

The final regulation resulting from the Action Plan's recommendation creates a traceability scheme that requires collection of data on imported seafood when it enters the United States, and mandates recordkeeping for seafood products as they enter U.S. markets.¹⁶¹ The regulation targets thirteen species with the intention that data collected prevents access to U.S. markets for seafood that is mislabeled or the product of IUU fishing.¹⁶² Specifically, the regulation requires that all parties importing seafood to the United States provide a identify-

¹⁵² *Id.*

¹⁵³ *Id.* § 1801(a)(12)

¹⁵⁴ PRESIDENTIAL TASK FORCE, *supra* note 2, at 3, 5, 7.

¹⁵⁵ *Id.* at 3.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 10–13. The United States has since ratified the PSMA and the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 implements its provisions domestically. Pub. L. No. 114–81, § 302, 129 Stat. at 664; Conathan & Siciliano, *supra* note 57.

¹⁵⁸ PRESIDENTIAL TASK FORCE, *supra* note 2, at 36.

¹⁵⁹ *Id.* at 36–37.

¹⁶⁰ *Id.*

¹⁶¹ 50 C.F.R. § 300.324.

¹⁶² *Id.* § 300.324(a)(2)–(3).

ing information about the vessel.¹⁶³ In addition, the regulation requires a variety of data on the seafood itself, including the name of species and the amount of the species caught by weight or quantity.¹⁶⁴ Finally, it requires data on the timing and location of a vessel's fishing activity, as well as data regarding any previous transshipments or entries to other ports with the fish on board.¹⁶⁵ The traceability system promulgated in this regulation holds promise for eventually minimizing IUU fishing and seafood fraud.¹⁶⁶

III. RECENT EFFORTS TO COMBAT IUU AND SEAFOOD ARE A GOOD START, BUT MORE WORK IS NEEDED

Recent efforts to curb IUU fishing and seafood fraud demonstrate positive momentum toward combatting the issue.¹⁶⁷ Nonetheless, work remains to be done.¹⁶⁸ The Presidential Task Force's recent Action Plan suffers from important shortcomings.¹⁶⁹ Most notably, the provisions of the traceability program and the port state measures recommendations fail the Presidential Task Force's own call for adoption of best practices and an internationally integrated approach.¹⁷⁰ To correct these shortcomings, the United States and EU should enter into a bilateral agreement that standardizes all aspects of their traceability systems, port state measures, and accompanying enforcement mechanisms.¹⁷¹

¹⁶³ *Id.* § 300.324(b)(1).

¹⁶⁴ *Id.* § 300.324(b)(2).

¹⁶⁵ *Id.* § 300.324(b)(3).

¹⁶⁶ See WARNER, *supra* note 15, at 18 (arguing that the traceability rule presents a "historic" chance to effectively track seafood sold in the United States).

¹⁶⁷ *Id.* at 2; Teletsky, *supra* note 62, at 1251–52; Conathan & Siciliano, *supra* note 57.

¹⁶⁸ See WARNER, *supra* note 15, at 2, 18 (highlighting the rule's failure to require labels with species specific names); Dan Flynn, *NOAA Plans Traceability Regs for Seafood Importers*, FOOD SAFETY NEWS (Feb. 5, 2016), <http://www.foodsafetynews.com/2016/02/traceability-program-for-seafood-importers-announced-by-noaa/#.WKooTU0zWUk> [<https://perma.cc/J7VG-WBXU>] (arguing that the new traceability rule needs to extend past the point of entry to the domestic market); Patrick Mustain & Avery Siciliano, *Fish Stories: Success and Value in Seafood Traceability*, OCEANA 18 (Mar. 2016) (finding that the United States needs to establish a scheme for full traceability as opposed to a scheme that only tracks seafood upon entry to the United States).

¹⁶⁹ *IPOA*, *supra* note 13, at 2 (implying the need for international solutions); Leal et al., *supra* note 7, at 334 (finding that implementation of various IUU fishing regulations has been insufficient); Young, *supra* note 1, at 215 (arguing for a more widespread and coordinated approach to combat IUU fishing).

¹⁷⁰ See 50 C.F.R. §§ 300.323–.325; PRESIDENTIAL TASK FORCE, *supra* note 2, at 10, 12, 36.

¹⁷¹ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 10–13; Young, *supra* note 1, at 215–16 (finding that a shortcoming of previous efforts to combat IUU fishing and seafood fraud was their unilateral nature, and arguing for a more integrated effort).

A. Traceability and Port State Measures Are the Most Effective Ways to Combat IUU Fishing and Seafood Fraud

IUU fishing and seafood fraud require multifaceted solutions.¹⁷² The various strategies to combat the issues include the following: extending efforts to encompass domestic and private entities, enhancing coordination between domestic actors, relying on RFMOs, implementing various trade measures, improving labeling practices, increasing resources and inspections, and providing support to developing nations.¹⁷³ These strategies are widely employed, including in the Presidential Task Force's Action Plan, and should continue.¹⁷⁴ Nevertheless, the United States should narrow its focus to traceability programs and port state measures.¹⁷⁵

Traceability is essential to combatting IUU fishing and seafood fraud for three primary reasons.¹⁷⁶ First, it is a prerequisite to any labeling, tracking, and enforcement measures as it collects the data necessary to identify products of IUU fishing and seafood fraud.¹⁷⁷ Second, it directly combats the difficulties posed by the international nature of the seafood trade by tracking seafood across

¹⁷² See Cawthorn et al., *supra* note 9, at 180 (finding efforts to combat IUU fishing and seafood fraud will be insignificant without proper enforcement and sufficient penalties); Leal et al., *supra* note 7, at 332 (arguing for a coordinated approach); Young, *supra* note 1, at 215 (same).

¹⁷³ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 12, 18, 20, 24, 26, 28, 30, 32, 34 (calling for the use of RFMOs, trade measures, increased resources, an integrated approach between relevant domestic actors, improved naming and labeling practices, and improved enforcement measures); IPOA, *supra* note 13, at 23 (calling for countries to assist developing nations); Young, *supra* note 1, at 212 (calling for the use of trade measures); WARNER, *supra* note 15, at 3, 18 (calling for stronger domestic measures and labeling practices); Mustain & Siciliano, *supra* note 168, at 18 (calling for better labeling practices).

¹⁷⁴ See WARNER, *supra* note 15, at 2 (praising the Presidential Task Force's efforts as a good first step toward preventing IUU fishing and seafood fraud); Conathan & Siciliano, *supra* note 57 (same).

¹⁷⁵ See Cawthorn et al., *supra* note 9, at 180 (linking continuing seafood fraud to ineffective traceability schemes); Leal et al., *supra* note 7, at 333 (arguing that enforcement entities do not have effective tools to track seafood and inform consumers); Teletsky, *supra* note 62, at 1270 (arguing that efforts to stop IUU fishing will rely on effective traceability of seafood and port state measures). Young also suggests that in addition to traceability and port state measures, "states will need to engage with affected trading partners and also affected communities, such as indigenous peoples or small-scale fishers, to ensure an approach that meets its objectives, and to ensure that the measures improve the legality of catch rather than simply diverting illegal catch to other markets." Young, *supra* note 1, at 215.

¹⁷⁶ See Cawthorn et al., *supra* note 9, at 180 (linking continuing seafood fraud to ineffective traceability schemes); Leal et al., *supra* note 9, at 331 (finding that traceability is vital to ensuring compliance with various regulations); Young, *supra* note 1, at 209 (arguing that traceability is particularly important because of the international nature of the seafood industry); Teletsky, *supra* note 62, at 1262 (highlighting the importance of tracing seafood from the ocean to the final point of sale).

¹⁷⁷ See WARNER, *supra* note 15, at 2 (highlighting various benefits of "full-chain traceability"); Young, *supra* note 1, at 212 (finding various measures rely on identification and traceability of seafood species); Teletsky, *supra* note 62, at 1265 (finding traceability is an initial requirement for identifying seafood sourced by illegal means); Mustain & Siciliano, *supra* note 168, at 1, 17 (arguing traceability is an initial requirement for identifying seafood sourced by illegal means and would make perpetrators more accountable).

jurisdictions.¹⁷⁸ Third, it meets consumer demands to know where seafood comes from and allows for the sale of higher quality product at an increased price.¹⁷⁹

While traceability is key to combatting IUU fishing and seafood fraud, effective port state measures are also critically important.¹⁸⁰ First, traceability measures are useless without appropriate port state measures to prevent products of IUU fishing and seafood fraud from reaching markets.¹⁸¹ Second, as the majority of products of IUU fishing and seafood fraud are imported, effective port state measures prevent such products from crossing international borders.¹⁸² The combination of a robust traceability program and effective port state measures is key to combatting IUU fishing and seafood fraud, and chances of success with these methods are greatly increased if they are integrated across borders.¹⁸³

B. Coordination of Traceability and Port State Measures Between the EU and United States Is Key to Combatting IUU Fishing and Seafood Fraud

Given the international and complicated nature of the seafood business, cohesion between nations' traceability programs and port state measures is key to combatting IUU fishing and seafood fraud.¹⁸⁴ More specifically, coordina-

¹⁷⁸ See GAO-09-258, *supra* note 2, at 1 (finding that the majority of U.S. seafood is imported); PRESIDENTIAL TASK FORCE, *supra* note 2, at 7 (finding that domestic fisheries are less of a problem than international fisheries); Young, *supra* note 1, at 209 (finding that market-related measures to combat IUU fishing are particularly important for combatting the IUU fishing that occurs in various jurisdictions). This is particularly important because seafood fraud is less pronounced in the domestic market, and efforts to combat seafood fraud should accordingly be focused on the international market. See PRESIDENTIAL TASK FORCE, *supra* note 2, at 7 (finding that domestic fisheries are less of a problem than international fisheries); Wagner, *supra* note 2, at 111; Lou, *supra* note 1 (finding that domestic actors typically adhere to labeling rules).

¹⁷⁹ See Cawthorn et al., *supra* note 9, at 165 (finding that consumers are increasingly demanding more information about the seafood they consume); Leal et al., *supra* note 7, at 331–32 (finding that the international nature of the market and increased food safety concerns have led consumers to desire traceability); Mustain & Siciliano, *supra* note 168, at 15, 18 (finding that traceability can satisfy demands for authenticity and quality, thus increasing price).

¹⁸⁰ See Teletsky, *supra* note 62, at 1270 (arguing that efforts to stop IUU fishing will rely on effective traceability of seafood and port state measures).

¹⁸¹ See *id.* at 1265 (finding that required traceability is an initial requirement for identifying illegally caught seafood). Teletsky also finds that “without a reasonable ability to sanction flag states through trade measures, there will be minimal interruption in the current IUU fishing chain.” *Id.* at 1238, 1243–44.

¹⁸² See PSMA, *supra* note 4, at vii (finding that port state measures are effective in inhibiting IUU fishing); Abelson & Daley, *supra* note 3 (linking increases in seafood fraud to the international nature of the trade); Lou, *supra* note 1 (finding international actors are largely to blame for seafood fraud).

¹⁸³ See Leal et al., *supra* note 7, at 332 (arguing for a coordinated approach); Teletsky, *supra* note 62, 1251–52, 1270 (arguing efforts to stop IUU fishing will rely on effective traceability of seafood and port state measures).

¹⁸⁴ See Leal et al., *supra* note 7, at 332 (arguing for an integrated approach); Teletsky, *supra* note 62, at 1262 (finding that because port state measures need to be consistent, it is vital that nations have a coordinated traceability scheme); Young, *supra* note 1, at 216 (calling for coordination of traceabil-

tion of U.S. and EU traceability programs and port state measures would play a vital role in combatting the practices.¹⁸⁵ U.S. and EU coordination is critical because, as the two largest seafood markets in the world, other countries would follow suit in order to maintain access to those lucrative markets.¹⁸⁶

C. EU and U.S. Traceability Programs and Port State Measures Differ in Important Ways

U.S. and EU traceability programs and port state measures have some overlap, but differ in important ways.¹⁸⁷ For example, while the U.S. traceability regulation targets thirteen particular species, the EU regulations seek “full traceability” of *all* species.¹⁸⁸ In addition, the U.S. traceability regulation only traces products to the point of importation.¹⁸⁹ In contrast, the EU regulations provide for specific labeling and certification to track fish all the way to the end consumer.¹⁹⁰

ity requirements). This is especially important in the United States because seafood fraud is much less pronounced in the domestic market, and the majority of seafood fraud in the United States occurs with approximately ninety percent of imported product. GAO-09-258, *supra* note 2, at 1; PRESIDENTIAL TASK FORCE, *supra* note 2, at 7; DUNCAN, *supra* note 1, at 57.

¹⁸⁵ See Young, *supra* note 1, at 215 (finding market-related measures are more effective when nations act in unison); Teletsky, *supra* note 62, at 1262; Conathan & Siciliano, *supra* note 57 (finding a coordinated U.S. and EU approach would engender positive change in the industry).

¹⁸⁶ See LOWELL ET AL., *supra* note 1, at 10 (finding that other nations would likely adopt a common U.S.-EU standard for naming and labeling species); Teletsky, *supra* note 62, at 1263 (finding that other nations would likely adopt a common U.S.-EU reporting standard because of the collective size of their markets); Conathan & Siciliano, *supra* note 57 (finding that the collective size of the U.S. and EU market would drive other nations to adopt a common policy); *Combating Illegal Fishing and Strengthening Seafood Traceability*, FAO REGIONAL OFF. FOR ASIA AND THE PACIFIC (Mar. 22, 2016), <http://www.fao.org/asiapacific/news/detail-events/en/c/396002/> [<https://perma.cc/BB6H-KG6P>] (discussing reliance on EU and U.S. markets and the manner in which EU and U.S. requirements effect those wishing to import seafood into those markets).

¹⁸⁷ See Leal et al., *supra* note 7, at 332 (finding the EU traceability scheme superior to other large markets); Bruno G. Simões & Tobias Dolle, *The Global Combat Against IUU Fishing: The United States Proposes a New Seafood Traceability Program*, 7 EUR. J. RISK REG. 421, 422 (2016) (finding the EU’s catch certification scheme an outlier from other traceability efforts). Compare Council Regulation 1224/2009, *supra* note 89, at 4 (establishing concrete traceability requirements), and Council Regulation 1005/2008, *supra* note 89, at 10, 27 (same), with Magnuson-Steven Fishery Conservation and Management Act; Seafood Import Monitoring Program, 81 Fed. Reg. 88,975, 88,982 (Dec. 9, 2016) (to be codified at 50 C.F.R. § 300, 600) [hereinafter Seafood Import Monitoring Program] (finding that there are important differences between EU and U.S. traceability programs).

¹⁸⁸ See Council Regulation 1224/2009, *supra* note 89, at 4, 24; 50 C.F.R. § 300.324(a)(2)–(3); Young, *supra* note 1, at 210. Specifically, Article 58 of Council Regulation 1224/2009 provides “all lots of fisheries and aquaculture products shall be traceable at all stages of production, processing and distribution, from catching or harvesting to retail stage.” Council Regulation 1224/2009, *supra*, at 24. In contrast, the regulation specifies that only “the following species or species groups are subject to this Seafood Traceability Program . . .” 50 C.F.R. § 300.324(a)(2)–(3).

¹⁸⁹ See 50 C.F.R. § 300.324(b)–(e); PRESIDENTIAL TASK FORCE, *supra* note 2, at 36.

¹⁹⁰ See Council Regulation 1379/2013, *supra* note 32, at 11 (calling for “common marketing standards” that use information collected due to the traceability requirements to label seafood); Coun-

Similarly, the United States and EU have areas of overlap and difference in regard to their port state measures.¹⁹¹ Both the United States and EU are parties to the PSMA.¹⁹² Therefore, the United States and EU must inspect vessels coming into their ports, share results of those inspections, deny access to their ports for vessels engaged in IUU fishing, and notify other nations and RFMOs of that denial.¹⁹³ In addition, both parties employ a system to identify and punish perpetrators of IUU fishing and seafood fraud.¹⁹⁴ Both the United States and EU seem to hold back from fully enforcing these measures, and often warn nations engaged in IUU fishing instead of barring them from entry.¹⁹⁵

There are also important differences between the EU and U.S. approach to IUU fishing and seafood fraud.¹⁹⁶ First, their efforts to identify and punish perpetrators of IUU fishing are separate, and thus their lists of nations are different.¹⁹⁷ In addition, because the PSMA does not require specific inspection

cil Regulation 1224/2009, *supra* note 89, at 24 (providing for traceability “from catching or harvesting to retail stage”) (emphasis added); 50 C.F.R. § 300.324(b)–(e).

¹⁹¹ See Council Regulation 1005/2008, *supra* note 89, at 9 (calling for mandatory inspection of 5% of vessels); 50 C.F.R. § 300.324(d) (stating vessels “may be selected for inspection”); PSMA, *supra* note 4, at 9–10, 12 (binding signatories to shared efforts on port state measures); *Blue Growth Blog: Port State Measures Agreement Enters Into Force as International Treaty*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/blogs/blue-growth-blog/port-state-measures-agreement-enters-into-force-as-international-treaty/en/> [<https://perma.cc/Q8D4-9QXV>].

¹⁹² Pub. L. No. 114–81, 129 Stat. at 664 (implementing legislation for the PSMA); Press Release, European Commission, Statement by Commissioner Vella Welcoming New Global Agreement to Fight Illegal, Unreported, and Unregulated Fishing (June 3, 2016), http://europa.eu/rapid/press-release_STATEMENT-16-2022_en.htm [<https://perma.cc/CP2X-9QNQ>].

¹⁹³ PSMA, *supra* note 4, at 9–10, 12. Specifically, Article 11 provides that “a Party shall deny . . . [a] vessel the use of the port for landing, transshipping, packaging and processing of fish . . . [if] the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing.” *Id.* at 9. Article 11 then provides “where a Party has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision.” *Id.* at 10. Furthermore, Article 12 provides “Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.” *Id.* Finally, Article 15 provides “each Party shall transmit the results of each inspection to the flag State of the inspected vessel.” *Id.* at 12.

¹⁹⁴ See 16 U.S.C. § 1826h (2012 & Supp. IV 2016); Council Regulation 1224/2009, *supra* note 89, at 43; Council Regulation 1005/2008, *supra* note 89, at 22, 27; Young, *supra* note 1, at 211.

¹⁹⁵ See Susan C. Morse, *Safe Harbors, Sure Shipwreck*, 49 U.C. DAVIS L. REV. 1385, 1420–21 (2016) (finding that the threat of various international sanctions prevents the EU from blocking port access for vessels from specific nations); Young, *supra* note 1, at 209, 211 (finding the efficacy of U.S. trade sanctions and its willingness to use them is questionable because nations named in the initial 2013 list of countries violating IUU fishing requirements reappeared on the 2015 list without additional consequence).

¹⁹⁶ See PSMA, *supra* note 4, at 10–12; Council Regulation 1005/2008, *supra* note 89, at 9; 50 C.F.R. § 300.324(d); Young, *supra* note 1, at 209, 211.

¹⁹⁷ See NOAA 2015 REPORT, *supra* note 49, at 23–29; Nat’l Oceanic & Atmospheric Admin, Report to Congress on Improving International Fisheries Management 18–32 (Jan. 2013); Young, *supra* note 1, at 209, 211. In the 2013 and 2015 reports mandated by the MSA, the states listed as having vessels engaged in IUU fishing were Colombia, Ecuador, Ghana, Italy, Korea, Mexico, Nica-

targets, the U.S. and EU inspection schemes differ, with more specific requirements in the EU.¹⁹⁸

If the United States is going to solve the issues of IUU fishing and seafood fraud with a traceability program and port state measures, an international approach is needed.¹⁹⁹ While coordination between many nations would be very difficult to accomplish, direct coordination with the EU has particular promise.²⁰⁰ For that approach to work, efforts need to address the mismatch between U.S. and EU policies.²⁰¹

D. A Bilateral Instrument Between the United States and EU Would Make a Significant Stride in Combatting IUU Fishing and Seafood Fraud

While there is little doubt that an international, multilateral approach is needed, the United States should focus its attention on collaborating with the EU to implement a bilateral agreement.²⁰² That bilateral agreement should incorporate three goals: a single traceability system, specific standards for the various mandates of the PSMA, and the specific delineation of eliminating seafood fraud as a goal of the agreement.²⁰³

ragua, Nigeria, Panama, Portugal, Spain, Tanzania and Venezuela. *Id.* Meanwhile, through the 2008 Council Regulation, the EU has given formal notice to the following countries: Belize, Cambodia, Guinea and Sri Lanka, Thailand, and more. *Id.* at 209.

¹⁹⁸ See PSMA, *supra* note 4, at 9–12; Council Regulation 1005/2008, *supra* note 89, at 9; 50 C.F.R. § 300.324(d). For example, the U.S. proposed traceability regulations provide that “import shipments of fish or fish products subject to this program *may be selected for inspection.*” 50 C.F.R. § 300.324(d) (emphasis added). In contrast, Council Regulation 1005/2008 requires inspection of “at least 5% of landing and transshipment operations by third country vessels,” and “mandatory inspection of certain vessels violating certain rules against IUU policies.” Council Regulation 1005/2008, *supra* note 91, at 9.

¹⁹⁹ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 12 (calling for an internationally integrated approach to combatting IUU fishing and seafood fraud); Leal et al., *supra* note 7, at 332 (same); Teletsky, *supra* note 62, at 1262 (same).

²⁰⁰ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 8 (finding that even though international efforts already exist, preventing IUU fishing and seafood fraud in international waters is still difficult); Simões & Dulle, *supra* note 187, at 424 (discussing the challenges of adopting international measures); Teletsky, *supra* note 62, at 1263 (finding that other nations would likely adopt a common U.S.-EU reporting standard because of the collective size of their markets); Conathan & Siciliano, *supra* note 57 (same).

²⁰¹ See Council Regulation 1224/2009, *supra* note 89, at 4; Council Regulation 1005/2008, *supra* note 89, at 10, 27; 50 C.F.R. § 300.324; Leal et al., *supra* note 7, at 332; PRESIDENTIAL TASK FORCE, *supra* note 2, at 12; Teletsky, *supra* note 62, at 1270; Young, *supra* note 1, at 216.

²⁰² See NGUYEN QUYNH VAN, TRACEABILITY SYSTEM OF FISH PRODUCT—LEGISLATION IMPLEMENTATION IN SELECTED COUNTRIES 71 (2004) (calling for a multilateral approach); PRESIDENTIAL TASK FORCE, *supra* note 2, at 16 (calling for multilateral trade agreements); Simões, *supra* note 187, at 424 (calling for a multilateral approach); Teletsky, *supra* note 62, at 1262–63 (finding that other nations would likely adopt a common U.S.-EU reporting standard because of the collective size of their markets); Conathan & Siciliano, *supra* note 57 (calling for the United States to partner with the EU).

²⁰³ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 13 (calling for a multilateral catch documentation scheme); Cawthorn et al., *supra* note 9, at 165 (finding that consumers are increasingly de-

First, the United States and EU should create one traceability program that mirrors the current EU requirements.²⁰⁴ The system should seek “full traceability,” meaning the scheme would track seafood from where it was caught to the final point of sale and require specific labeling standards.²⁰⁵ The EU requirements show quantifiable signs of success, suggesting the method works.²⁰⁶ Moreover, storage in one system would make it easier for the United States and EU to identify threatened species, addressing one of the environmental concerns of IUU fishing, and also identify vessels in violation of various rules.²⁰⁷ Finally, because this type of system has brought about successful results in the EU, this would accomplish the goal of Recommendation Two of the Presidential Task Force’s Action Plan to adopt best practices.²⁰⁸

Second, the United States and EU should agree to specific standards for the various mandates of the PSMA.²⁰⁹ Unlike current measures, the United States and EU should begin by agreeing upon specific requirements for inspections.²¹⁰ This would ensure that all vessels know they are just as likely to be inspected in either market, and prevent them from choosing a market based on a lower likelihood of inspection.²¹¹ Moreover, the United States and EU should agree to maintain a joint list of perpetrators of IUU fishing and seafood fraud.²¹² This would

mandating more information about the seafood they consume); Leal et al., *supra* note 7, at 332, 335 (highlighting consumer responses to seafood fraud and finding that efforts will only work if buyers require more information about their seafood).

²⁰⁴ See Council Regulation 1379/2013, *supra* note 32, at 11–12; Leal et al., *supra* note 7, at 332 (finding that the EU has a stronger traceability scheme than other nations); Teletsky, *supra* note 62, at 1263 (finding that other nations would likely adopt a common U.S.-EU reporting standard because of the collective size of their markets); Conathan & Siciliano, *supra* note 57 (finding that the United States should mimic EU efforts to address international fishing problems).

²⁰⁵ See WARNER, *supra* note 15, at 3, 18 (finding regulators should require full traceability and more specific naming requirements); Flynn, *supra* note 168 (suggesting that traceability programs should be comprehensive and follow all seafood from the moment it is caught to the time it is finally sold); Mustain & Siciliano, *supra* note 168, at 18 (finding that the United States needs to require traceability from the moment seafood is caught to the time it is finally sold).

²⁰⁶ See DUNCAN, *supra* note 1, at 57; Conathan & Siciliano, *supra* note 57.

²⁰⁷ See Leal et al., *supra* note 7, at 335 (finding inconsistent data storage and testing methods inhibit efforts to prevent IUU fishing and seafood fraud); Teletsky, *supra* note 62, at 1263 (finding that any documentation system will ultimately need to be coordinated across nations).

²⁰⁸ See PRESIDENTIAL TASK FORCE, *supra* note 2, at 13; DUNCAN, *supra* note 1, at 57; Conathan & Siciliano, *supra* note 57.

²⁰⁹ See PRESIDENTIAL TASK FORCE *supra* note 2, at 10–12; Teletsky, *supra* note 62, at 1263 (finding that any documentation system will ultimately need to be coordinated across nations); Young, *supra* note 1, at 215 (finding efforts need to be coordinated because trade measures are hindered by a lack of coordination when perpetrators seek out the most advantageous market).

²¹⁰ See Council Regulation 1005/2008, *supra* note 89, at 9; 50 C.F.R. § 300.324(b)–(e); Young, *supra* note 1, at 215; Conathan & Siciliano, *supra* note 57.

²¹¹ See Teletsky, *supra* note 62, at 1244 (finding that it is a recent phenomenon that nations rely on port state measures to fight IUU fishing and stop vessels from selecting ports with more relaxed regulations).

²¹² See Young, *supra* note 1, at 215 (finding that nations have an interest in coordinating market measures to combat IUU fishing and preventing illegally obtained seafood from reaching markets).

solve the problem of “port hopping,” where vessels blocked from one nation’s ports simply utilize another.²¹³ Furthermore, instead of issuing warnings to countries on that list, which have proven ineffective, the United States and EU should follow through with fully blocking access to port for countries engaged in IUU fishing practices.²¹⁴ Given the combined size and value of the U.S. and EU markets, doing so for even a short period of time would likely lead to a change in practices.²¹⁵

Finally, unlike previous agreements, but like the Presidential Task Force’s Action Plan, an agreement between the United States and EU should name seafood fraud as a particular target of the agreement.²¹⁶ This relatively simple effort may spark an awareness in consumers that leads to self-policing from vessels that have an economic incentive to meet consumer demands.²¹⁷ In turn, this may lead private industry to impose its own requirements, eliminating the resource conundrum currently faced by governments.²¹⁸

A bilateral agreement between the United States and EU with these three goals has great potential to overcome the deficits of the Presidential Task Force’s Action Plan.²¹⁹ The Presidential Task Force’s Action Plan hints at such a solution

²¹³ See *id.* at 211 (finding the efficacy of U.S. trade sanctions and its willingness to use them is questionable because nations named in the initial 2013 list of countries violating IUU fishing requirements reappeared on the 2015 list without additional consequence); Teletsky, *supra* note 62, at 1244; Conathan & Siciliano, *supra* note 57.

²¹⁴ See Young, *supra* note 1, at 209, 211.

²¹⁵ See Conathan & Siciliano, *supra* note 57 (finding that the collective size of the U.S. and EU markets would drive other nations to adopt a common policy).

²¹⁶ See Mustain & Siciliano, *supra* note 168, at 1, 15 (finding traceability can be profitable because it allows sellers to promote authenticity and quality of seafood, ultimately allowing them to demand a higher price). See generally 16 U.S.C. §§ 1801–1891d (2012); Council Regulation 1379/2013, *supra* note 32; Council Regulation 1224/2009, *supra* note 89; Council Regulation 1005/2008, *supra* note 89; PSMA, *supra* note 4; Fish Stocks Agreement, *supra* note 32; 1993 FAO Compliance Agreement, *supra* note 89; UNCLOS, *supra* note 32; PRESIDENTIAL TASK FORCE, *supra* note 2.

²¹⁷ See Cawthorn et al., *supra* note 9, at 165 (finding consumers are increasingly interested in the origin and sustainability of the food they purchase); BUCK, *supra* note 1, at 9 (highlighting increasing media attention to the issue of seafood fraud and arguing that it may lead to government action); Mustain & Siciliano, *supra* note 168, at 1, 15 (finding traceability can be profitable because it allows sellers to promote authenticity and quality of seafood, ultimately allowing them to demand a higher price)

²¹⁸ See GAO-09-258, *supra* note 2, at 5–6 (discussing the limits and shortcomings of government efforts to address seafood fraud); Stenzel Testimony, *supra* note 75, at 9 (discussing the inadequacy of government funding and inspection); Leal et al., *supra* note 7, at 335 (finding that consumer demand for traceability will be key to combatting IUU fishing and seafood fraud); Mustain & Siciliano, *supra* note 168, at 1, 15 (discussing various incentives for the seafood industry to implement traceability requirements); *Mystery Fish*, *supra* note 1, at 19 (finding that “inspectors aren’t trained to differentiate among fish species . . . they focus their limited resources on food safety”); Wagner, *supra* note 2, at 122.

²¹⁹ See VAN, *supra* note 202, at 70; WARNER, *supra* note 15, at 18; Leal et al., *supra* note 7, at 333; Teletsky, *supra* note 62, at 1262–63; Young, *supra* note 1, at 215–16; Mustain & Siciliano, *supra* note 168, at 1, 15; Conathan & Siciliano, *supra* note 57.

in Recommendation Four, calling for negotiators of the Transatlantic Trade and Investment Partnership agreement between the United States and EU to target IUU fishing in particular, including port state measures.²²⁰ Those negotiations should certainly continue, but the Presidential Task Force should press for the specificity discussed in the three goals.²²¹ That being said, the combination of clear efforts by the United States and EU to combat IUU fishing and seafood fraud, as well as bipartisan support on the issue within the United States, suggests there is an opportunity to pursue a separate agreement.²²² Recognizing the difficulty of securing a bilateral agreement, the United States and EU, at the very least, should work to coordinate policies in the aforementioned ways.²²³ The governments agreed to work together in the past, but need to coordinate on specific terms.²²⁴ Doing so may be the crucial step that increases the likelihood that the name on the menu matches the food on the plate.²²⁵

CONCLUSION

IUU fishing and seafood fraud threaten human health, the environment, and livelihoods. To date, the complexities of these problems inhibited the success of various multilateral, regional, domestic, and private efforts. Against that background, the Presidential Task Force's Action Plan is a step in the right direction. The plan has the right ingredients, namely, numerous efforts that continue the worldwide trend toward traceability programs and port state measures. For these programs to work, however, they need further reach into the domestic market and cohesion with the rest of the world.

The first step in this process should be the creation of a bilateral agreement between the United States and EU that standardizes traceability programs and port state measures. In addition, the United States and EU need to take a firm and collective stance against vessels and nations engaged in IUU fishing, following through on threats to prevent their entry to market. In so doing, the U.S.'s

²²⁰ PRESIDENTIAL TASK FORCE, *supra* note 2, at 16.

²²¹ *See id.*; *see also* VAN, *supra* note 202, at 70; Teletsky, *supra* note 62, at 1262–63; Young, *supra* note 1, at 215–16; Mustain & Siciliano, *supra* note 168, at 1, 15; Conathan & Siciliano, *supra* note 57.

²²² *See IPOA*, *supra* note 13, at 1; Teletsky, *supra* note 62, at 1263; Conathan & Siciliano, *supra* note 57 (calling for policy makers to “leverage the bipartisan support for stronger enforcement authority to fight IUU fishing and seafood fraud globally”).

²²³ *See* VAN, *supra* note 202, at 70; Teletsky, *supra* note 62, at 1263; Young, *supra* note 1, at 215–16; Mustain & Siciliano, *supra* note 168, at 1, 15.

²²⁴ *See* Teletsky, *supra* note 62, at 1263 (finding that coordination between the United States and Europe should set standard reporting requirements); Press Release, NOAA Fisheries, Joint Statement Between the European Commission and the United States Government of Efforts to Combat Illegal, Unreported and Unregulated (IUU) Fishing, (Sept. 7, 2011) (announcing the U.S.'s and EU's mutual efforts to adopt the IPOA and PSMA).

²²⁵ *See* Teletsky, *supra* note 62, at 1270; Young, *supra* note 1, at 215–16; Conathan & Siciliano, *supra* note 57; Mustain & Siciliano, *supra* note 168, at 1, 15.

and EU's collective value to the world seafood market will likely spark change. Importantly, this agreement should explicitly name seafood fraud as the problem. Stories of seafood fraud and subsequent efforts for change suggest that citizens demand action when they believe their wallets or their health are on the line. In combination, this recipe would be a great leap toward ensuring that when it comes to seafood, we get what we order.

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