

**Written Testimony of Beth Lowell**  
**Deputy Vice President, US Campaigns, Oceana**  
**Senate Finance Committee**  
**“United States-Mexico-Canada Agreement: One Year After Entry into Force”**  
**July 27, 2021**

My name is Beth Lowell, Deputy Vice President for U.S. Campaigns at Oceana. Oceana is an international ocean conservation organization dedicated to protecting the world’s oceans. We work in North, Central, and South America; the European Union; and the Philippines to promote responsible fisheries management and thereby save the oceans and feed the world.

Oceana thanks the committee for the invitation to testify on these matters. After one year in force, Oceana has some outstanding questions and recommendations on how to improve implementation of the United States-Mexico-Canada Agreement (USMCA). While the environment chapter addresses a wide range of issues, my testimony today is focused on fisheries issues.

Seafood is the most highly traded food commodity internationally with vastly complex and often opaque supply chains, requiring governments to use a number of tools to improve fisheries conservation and management, combat IUU fishing, protect those most vulnerable and level the playing field for legal fishermen and trade. The United States should advance a one-government approach, especially in addressing illegal, unreported and unregulated (IUU) fishing, that uses all its tools, including trade agreements like the USMCA.

The USMCA must be paired with other agency-driven actions like the National Oceanic and Atmospheric Administration’s Seafood Import Monitoring Program, other international trade programs, and Custom and Border Protection’s enforcement of the Tariff Act, especially with respect to IUU fishing and forced labor. Working also with the State Department, Department of Defense, Labor, and other agencies, the United States government can forge a unified, coordinated effort to become a global leader in the fight against IUU fishing, forced labor and other human rights abuses. These illegal practices undermine U.S. fishermen, unfairly disadvantage legal fishers who follow the rules, and put seafood tainted by forced labor on the plates of American consumers.

Trade measures, such as the USMCA, can drive positive change for ocean conservation and fisheries management in both importing and source countries. As discussed in this testimony, Oceana in Mexico identified ways that the Mexican government must improve management of their fisheries by adopting documentation and traceability to comply with the requirements of the USMCA as well as other US import requirements like Seafood Import Monitoring Program and bycatch reductions measures.

Overall, the White House, federal agencies and Congress should work together to advance policies to ensure that all seafood is safe, legally caught, responsibly sourced and honestly labeled. Setting the minimum standard that seafood must meet to enter and be sold in the U.S. market will level the playing field for legal fishermen and help drive change in both source and market states.

## Fisheries Subsidies

The environment chapter of the USMCA commendably includes a provision intended to reduce fisheries subsidies. Article 24.20 opens with this statement:

*The Parties recognize that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity.*

This provision takes a step in the right direction toward reducing harmful fisheries subsidies in the United States, Mexico, and Canada and establishes a floor for disciplining these subsidies in future trade agreements.

Many fisheries subsidies—such as tax breaks and fuel subsidies—are concerning from a sustainability perspective because they artificially increase profits and encourage more fishing. These payments are known as harmful subsidies, to distinguish them from government spending on beneficial or ambiguous programs, such as fisheries management or vessel buybacks.

A recent [report](#)<sup>1</sup> released by Oceana shows that the world's top industrial fishing nations are providing subsidies that make distant-water fishing more profitable, drive overcapacity, and shift the risk of overfishing to the waters of other countries. For the first time, harmful subsidies worth billions of dollars from wealthy nations can now be tracked to destinations around the world, including to least developed countries (LDCs) and the high seas.

Distant-water fishing fleets often receive subsidies worth 20 to 40 percent of the catch's value, making it highly probable that they would not be profitable without fisheries subsidies and unfettered access to waters of other nations, including LDCs that can least afford it and where management capacity is often most lacking. The top 10 providers of harmful fisheries subsidies in 2018 are China, Japan, Korea, Russia, the United States, Thailand, Taiwan, Spain, Indonesia and Norway, for a total of \$15.4 billion. Of that total, these nations spent more than \$5.3 billion per year in harmful subsidies for fishing in the waters of 116 other nations.

The United States ranked fifth in the world in 2018, providing \$1.1 billion in harmful fisheries subsidies. These findings show that our country has work to do to comply with the spirit and letter of our commitments in the USMCA on fisheries subsidies. While Oceana's recent report did not include Canada and Mexico, research is underway to analyze subsidies from other maritime nations.

The USMCA requires the parties to notify each other of their fisheries subsidies—within one year of the date of entry into force and every two years thereafter—and specifies the information to be provided regarding the subsidies. To the extent that notification under the WTO Subsidies and Countervailing Measures Agreement partially meets this USMCA requirement,<sup>2</sup> the United States and Canada reported

---

Skerritt, Daniel J. and Sumaila, U. Rashid. (2021) *Assessing the spatial burden of harmful fisheries*. Oceana

<sup>2</sup> WTO. *Subsidies and countervailing measures*, [https://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm#dol](https://www.wto.org/english/tratop_e/scm_e/scm_e.htm#dol)

some of the required information on fisheries subsidies as of July 2021; however, the last notification from Mexico is from September 2019.<sup>3</sup> The USMCA also requires the parties to notify each other on an annual basis of any list of vessels and operators engaged in IUU fishing. Since the USMCA entered into force on July 1, 2020, complete information on fisheries subsidies and IUU fishing appears to be overdue; Oceana would like to know whether the parties have submitted the information and when it will be available to the public.

The USMCA also states, “The Parties shall work in the WTO towards strengthening international rules on the provision of subsidies to the fisheries sector and enhancing the transparency of fishing subsidies.” It is discouraging that the negotiations in the WTO on fisheries subsidies have lingered for more than 20 years without resolution. Oceana urges the U.S. government to push on the WTO negotiations to:

- Prohibit harmful subsidies to all fishing and related support activities outside of each member state’s own jurisdiction;
- Call on the largest providers of subsidies to take the largest share of responsibility to eliminate and redirect harmful subsidies into beneficial areas;
- Develop a framework to mitigate harmful fisheries subsidies that is transparent, time bound, performance-based, and has clear standards for reporting data across member states.

## **The Crisis of Illegal, Unreported and Unregulated (IUU) Fishing**

The world’s oceans face a dire threat: illegal, unreported, and unregulated fishing. Across the globe, IUU fishing depletes marine resources, destroys habitats, undermines food security, and frequently drives forced labor and human rights abuses. IUU fishing is off the books and outside the rule of law, compromising responsible and effective fisheries management. IUU fishing hides in the shadows and beyond the horizon, and it thrives on a lack of transparency, limited enforcement, and a complex global supply chain. IUU fishing costs the global seafood industry as much as \$26 billion to \$50 billion every year.

IUU fishing includes fishing without authorization, ignoring quotas, fishing in closed areas or with prohibited gear, catching unmanaged species or failure to report catch to proper authorities. The potential for IUU fishing is especially great on the high seas where fisheries management and enforcement are often insufficient and sometimes inconsistent.<sup>4,5</sup> The same conditions that make the high seas vulnerable to IUU fishing also make it susceptible to other forms of transnational organized crime. IUU fishing has been linked to a range of illicit activities, including document forgery; money laundering; forced labor; and human, drug and wildlife trafficking.<sup>6,7</sup>

---

<sup>3</sup> From the WTO website, the latest notification on subsidies from the United States as of 7/14/2021:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372USA.pdf&Open=True>

From Canada as of 7/8/2021: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N372CAN.pdf&Open=True>

From Mexico as of 9/24/2019: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N315MEX.pdf&Open=True>

<sup>4</sup> National Intelligence Council. (2016) *Global Implications of Illegal, Unreported, and Unregulated Fishing*.

<sup>5</sup> Bondaroff P. (2015) *The illegal fishing and organized crime nexus: illegal fishing as transnational organized crime*. The Global Initiative Against Transnational Organized Crime.

<sup>6</sup> Ibid.

<sup>7</sup> Haenlein C (2017) *Below the Surface. How Illegal, Unreported and Unregulated Fishing Threatens our Security*. Royal United Services Institute.

IUU fishing vessels are already evading laws, regulations and oversight to gain higher profits and, in some cases, are more willing to further drive down costs by exploiting workers through forced labor.<sup>8,9</sup> The seafood supply chain is complex, opaque and difficult to trace. It starts at sea and follows a winding path from fishing vessel to reefer, from reefer to reefer, from vessel to factories, from factories to processing, out to market, and then onward for global distribution. Human trafficking and forced labor can occur at every step in the supply chain. Human trafficking in fisheries entails the transfer and containment of persons on board vessels, where they are forced to work as crew by means of violence, threat or debt. Human trafficking is the fastest growing transnational criminal enterprise in the world, generating \$150 billion dollars annually and enslaving an estimated 21.9 million people.<sup>10</sup> IUU fishing practices threaten food security, compromise the health of the oceans and fisheries, and undermine fishermen and seafood businesses that play by the rules. Until the government takes stronger measures to keep IUU products out of the United States, our dollars will continue to support the pillaging of the ocean through the seafood we buy. All seafood should be safe, legally caught, responsibly sourced, and honestly labeled.

In February of this year, the U.S International Trade Commission (ITC) issued an important [report](#) on IUU fishing.<sup>11</sup> The ITC economists analyzed the amount of seafood obtained via IUU fishing that is imported into the U.S. and estimated the economic impact of those imports on U.S. commercial fisheries.

The ITC report found that the U.S. imported an estimated \$2.4 billion worth of seafood derived from IUU fishing in 2019—which is almost 11% of total U.S. seafood imports and more than 13% of U.S. imports caught at sea (“wild caught”). Confirming that IUU imports are undermining U.S. fishers, the analysis found that preventing IUU imports from entering the U.S. market “would have a positive effect on U.S. commercial fishers, with estimated increases in U.S. prices, landings (catches of fish), and operating income.”<sup>12</sup> The ITC’s figures include not only wild caught seafood but also catch that is used as feed in aquaculture operations. The ITC used a definition of IUU that includes labor violations as well as factors relating to fisheries management and conservation.<sup>13</sup>

Regarding our partners in the USMCA, the analysis identified Mexico as one of the countries with relatively substantial exports of wild caught IUU seafood to the U.S.<sup>14</sup> The ITC estimated that 25.1% of seafood imports from Mexico to the U.S. were products of IUU fishing. Canada, on the other hand, had one of the lowest estimated IUU shares of imports into the U.S. at 3.4% (wild caught seafood).<sup>15</sup>

### **Seafood Fraud Undermines Responsible Fisheries Management and U.S. Fishers**

Seafood fraud further undermines U.S. fishermen, hinders ocean conservation efforts and cheats consumers. Seafood fraud comes in different forms, including species substitution, improper labeling,

---

<sup>8</sup> United Nations Office on Drugs and Crime. (2011) *Transnational Organized Crime in the Fishing Industry*.

<sup>9</sup> Environmental Justice Foundation. (2010) *All at Sea - The Abuse of Human Rights Aboard Illegal Fishing Vessels*. London.

<sup>10</sup> International Labour Organization. (2014) *Profits and poverty: the economics of forced labour*.

<sup>11</sup> United States International Trade Commission. (2021). [Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries](#), Publication Number 5168, Investigation Number 332-575

<sup>12</sup> United States International Trade Commission. (2021). [News Release: Illegal, Unreported, and Unregulated Fishing Accounts for More Than \\$2 billion of U.S. Seafood Imports](#), Reports USITC, News Release 21-040

<sup>13</sup> United States International Trade Commission. (2021). , February 2021, USITC, p. 17. [Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries](#), p. 17.

<sup>14</sup> ITC report, p. 15.

<sup>15</sup> ITC report, p. 17.

hiding the true origin of the product to avoid tariffs, or other forms of economic fraud like adding extra breading, water or glazing to the product.

Species substitution is found around the world. In a review of more than 200 seafood fraud studies by non-government organizations, governments, academic institutions, and journalists, overall one in five fish of the more than 25,000 samples tested worldwide were mislabeled.<sup>16</sup> The reviewed studies found seafood mislabeling in every sector of the seafood supply chain: retail, wholesale distribution, import/export, packaging/processing and landing.<sup>17</sup>

Oceana investigated seafood fraud in the United States, and overall approximately one-third of the more than 1900 seafood samples that we tested were mislabeled. We often found farmed seafood sold as wild caught, imported fish sold as local favorites, less sustainable fish sold as more sustainable options and cheaper fish sold as more expensive selections. For example, Oceana found farmed shrimp sold as wild Gulf shrimp in the Gulf of Mexico region, Asian imported crab inside crab cakes sold as local Chesapeake Bay blue crab and fish imported from Asia and Europe sold as local Great Lakes favorites, like walleye and lake perch.

In Oceana's 2013 nationwide survey, we tested 120 samples of red snapper, and only seven were actually red snapper. That means that U.S. fishermen are selling their red snapper in a market flooded with imposters. They should be getting more for their catch, and consumers are getting ripped off when buying a cheaper substitute like tilapia for red snapper prices.

Seafood fraud can happen anywhere in the seafood supply chain. While Oceana tested at the retail level, the Food and Drug Administration (FDA) found 15 percent of the 174 lots tested at the wholesale level were mislabeled, and the Department of Justice has convicted over a dozen U.S. businesses of importing and distributing 10 million pounds of mislabeled Asian catfish to defraud consumers and avoid tariffs. More recently, a Virginia supplier was convicted of selling millions of dollars of expired foreign crab as fresh local blue crab, putting honest businesses and consumer's health at risk.

IUU fishing and seafood fraud are complex problems that cut across many federal agencies with no clear indication of leadership. Recognizing the need to coordinate the federal government response, the Task Force on Combating IUU Fishing and Seafood Fraud was established in 2014, bringing together 11 federal agencies to develop recommendations to address these issues. The 15 recommendations included international, national, state and local measures, including a traceability program to track seafood from the point of catch to entry into U.S. commerce.

The Seafood Import Monitoring Program (SIMP) requires some imported seafood at risk of illegal fishing and seafood fraud to be accompanied by catch documentation that provides key information about the fish, including who caught it, where it was caught, how it was caught and what specific species it is. This information is used to establish that it was caught in a legal fishery. The seafood must also have documentation that allows it to be traced back to the original point of catch or farm if requested.

The SIMP allowed the United States to enact import controls to help ensure that seafood imported into the United States was legally caught and properly labeled. However, this risk-based program only includes 13 species and species groups—abalone, Atlantic cod, blue crab (Atlantic), dolphinfish (mahi mahi), grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, tunas

---

<sup>16</sup> Warner K, Mustain P, Lowell B, Geren S, Talmage S (2016) Deceptive dishes: seafood swaps found worldwide. Oceana.

<sup>17</sup> Ibid.

(albacore, bigeye, skipjack, yellowfin, and bluefin)—and stops at the U.S border. Seafood mislabeling can happen to all types of seafood and can occur at any stage from the point of catch to the final consumer. To truly stop seafood fraud, all seafood must be traced from boat to plate.

## **The U.S. Needs Stronger Mechanisms to Motivate Other Countries to Address IUU Fishing**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law governing federal fisheries management in the United States. When properly and fully implemented, the MSA is one of the most effective fishery laws in the world today. Since it was first passed in 1976, and through subsequent reauthorizations in 1996 and 2006, the law has helped stop overfishing, protect essential fish habitats and rebuild depleted stocks.

In addition to the domestic fisheries management provisions, the High Seas Driftnet Fishing Moratorium Protection Act (HSDMPA) outlines international actions specifically on IUU fishing, bycatch of protected living marine resources and sharks. Under the HSDMPA, NOAA identifies nations with problematic practices in the biennial report to Congress. NOAA then enters a two-year consultation process with the nation to address the issues for which it was identified. At the end of the two years, a nation is either negatively or positively certified. A positive certification indicates that the nation has addressed the issue. A negative certification may result in import restrictions or denial of port access for fishing vessels.

In the 2019 Biennial Report to Congress<sup>18</sup>, NOAA identified Mexico for having vessels fishing illegally in the Gulf of Mexico. Mexico was also identified for this same issue in 2015 and 2017. Despite being repeatedly identified in the biennial reports, Mexico yet to resolve IUU fishing activity by Mexican vessels. Mexico is a key example of how the HSDMPA does not have the teeth that it needs to lead to real, systematic improvement to a country's management regime.

In contrast, the European Union's IUU regulations empower authorities to issue warnings (yellow cards) that can lead to sanctions (red cards) including banning seafood imports. This rigorous system has improved fisheries management and enforcement<sup>19</sup> in several countries, including South Korea and the Philippines.<sup>20</sup> To be successful, the U.S. must be willing to use sanctions to drive change. The USMCA offers another mechanism for the U.S. to engage with Mexico to compel the government to address IUU fishing in the Gulf of Mexico and in other fisheries.

## **Oceana Report on USMCA Implementation in Mexico**

Oceana in Mexico released a report earlier this month outlining USMCA implementation in Mexico. Oceana recommended that Mexico prioritize and execute the necessary changes to the legal framework and implement the necessary tools to ensure compliance with commitments made at the international level to guarantee a sustainable and competitive fishing sector with practices in accordance with the law.

Since signing the USMCA, the U.S. has imposed measures restricting imports of fish caught in Mexico by Mexican flagged vessels. The first measure was imposed in March 2021, restricting the importation of

---

<sup>18</sup> NOAA Fisheries. (2019) *Improving International Fisheries Management*. Report to Congress

<sup>19</sup> IUU Watch. (2015) *EU Regulation to combat illegal fishing: Third country carding process*.

<sup>20</sup> IUU Watch, EU Carding Decisions, <http://www.iuuwatch.eu/map-of-eu-carding-decisions/>, accessed 7/25/21.

certain fishery products from the Upper Gulf of California by determining that comparability requirements are absent in contrast to those implemented by the United States to ensure protection of endangered species during fishing activities, specifically the vaquita porpoise, a species endemic to the Upper Gulf.<sup>21</sup>

The second trade restriction imposed after the entry into force of the USMCA was also by the United States and applies to the export of wild shrimp from Mexico. This measure was ordered on April 1, 2021. The United States determined that provisions to protect sea turtles in shrimp fisheries, and their enforcement, are not comparable to those applicable in the United States, since an inspection carried out by the U.S. government found numerous shrimp fishing vessels that were not using Turtle Excluder Devices (TEDs). Therefore, for the time being, Mexico has lost its certification to export wild shrimp to the United States.<sup>22</sup>

In addition to the U.S. shrimp export requirement of using TEDs, the use of such devices is also mandatory under rule [NOM-061-SAGPESC/SEMARNAT-2016](#). The Mexican government has announced measures to regain certification for shrimp exports, including training in the use of TEDs and the use of the Satellite Monitoring System for Fishing Vessels (SISMEP) to concentrate inspection and surveillance actions.<sup>23</sup>

Despite the measures announced by the Mexican government to eliminate restrictions on the export of fish species, it is important to strengthen inspection and surveillance actions carried out by Mexican authorities to ensure compliance with conservation measures for endangered species. Likewise, the Mexican government must ensure that the fishing sector that complies with conservation measures has the necessary tools to continue marketing its products. In Article 24.17, the parties undertake the obligation to promote and facilitate trade in sustainably managed and legally harvested fish and fish products. Mexico must enforce traceability as its main tool to comply with this provision and prevent trade restrictions from extending to sustainable and legal products. A traceability standard providing information about each stage of the value chain, from vessel to the final point of sale, would allow verification of which fishery products effectively comply with provisions of species conservation and exclude from the market only those that violate these provisions. Thus, the objective of promoting commercialization of legal and sustainable fishing is achieved.<sup>24</sup>

Lastly, Article 2 of the Environment Cooperation and Customs Verification Agreement commits the parties to trade, import and export only goods and services produced in compliance with Chapter 24. Therefore, Mexico, the United States and Canada must ensure that the products they trade comply with

---

<sup>21</sup> Oceana Mexico, *El T-MEC Y La Pesca: Reporte Sobre el Cumplimiento de las Obligaciones que Asume el Estado Mexicano en Materia Pesquera* at 3, n.2, n.3 (July 1, 2021), [https://mx.oceana.org/sites/default/files/la\\_pesca\\_y\\_el\\_t-mec.pdf](https://mx.oceana.org/sites/default/files/la_pesca_y_el_t-mec.pdf) (*The USMCA and Fishing: Report on Compliance with Obligations Assumed by the Mexican State in Fishing-Related Matters*; English translation available upon request) [hereinafter "*Oceana Mexico USMCA and Fishing Report*"].

<sup>22</sup> *Oceana Mexico USMCA and Fishing Report* at 4, n. 5, n. 6.

<sup>23</sup> *Oceana Mexico USMCA and Fishing Report* at 4., n. 7.

<sup>24</sup> *Oceana Mexico USMCA and Fishing Report* at 5.

conservation efforts for vulnerable and endangered species, as well as fishery products that are not derived from illegal fishing.<sup>25</sup>

To verify this, Mexico must implement a traceability system for fishery products that collects and provides information along the whole value chain, from capture to commercialization. Today, Mexico lacks this tool even though Article 119 Bis 9 of the General Law of Sustainable Fisheries and Aquaculture (LGPAS) mandates implementation of a traceability system for fishery resources for human consumption, from point of origin to the final destination.<sup>26</sup>

Oceana outlined specific measures that the Mexican government must adopt to allow for continued trade with the U.S. and avoid of commercial sanctions, such as the one imposed on the Upper Gulf of California and on Mexican shrimp. Among these measures is the adoption of traceability standards providing information about each stage of the value chain, from vessel to the ultimate selling point. This would allow verification of which fishery products effectively comply with provisions of species conservation and exclude from the market only those that violate these provisions. Thus, the objective of promoting commercialization of legal and sustainable fishing is achieved and prevents trade restrictions from extending to sustainable and legal products.<sup>27</sup>

Specifically, to fully comply with the USMCA, Mexico should:

- **Approve a traceability standard** that allows government authorities and the fishing sector to verify the legal origin of products and prevent market entry to illegal fishing, caught in violation of the rules for protection of vulnerable species, without a permit or in prohibited areas.
- **Promote transparency of fishing vessel data** as a tool to combat illegal fishing, so that the data are understandable and publicly accessible through Global Fishing Watch.
- **Have updated, public and coincident information and data** on fishing vessels that have fishing permits and carry out such activities.
- **Sign and ratify the Agreement on Port State Measures** or incorporate into the regulatory framework provisions that incorporate the obligations set forth in the PSMA to combat illegal fishing.
- **Reform the General Law of Fisheries and Aquaculture** integrating provisions that contemplate restoration of overexploited fisheries and require the fishing authority to implement actions for conservation and restoration of fish species.
- **Ensure that subsidies granted to the fishing sector do not contribute to the overexploitation of fisheries** or are directed to vessels that have engaged in illegal fishing activities. Also, direct the subsidies granted to strengthen the fishing sector, encourage sustainable fishing practices and adequate management of existing fisheries.
- **Conduct an evidence-based analysis** of percentages in fisheries where this practice represents a risk, establish maximum bycatch percentages, as well as ensure the use of fishing gear and devices that minimize bycatch of endangered species.<sup>28</sup>

---

<sup>25</sup> *Oceana Mexico USMCA and Fishing Report* at 5.

<sup>26</sup> *Oceana Mexico USMCA and Fishing Report* at 5.

<sup>27</sup> *Oceana Mexico USMCA and Fishing Report* at 5.

<sup>28</sup> *Oceana Mexico USMCA and Fishing Report* at 16.



## Putting the USMCA Agreement to Work

The Environment Chapter of the USMCA includes articles on Marine Wild Capture Fisheries; Sustainable Fisheries Management; Conservation of Marine Species; Fisheries Subsidies; Illegal, Unreported, and Unregulated (IUU) Fishing; and Conservation and Trade. Together these provisions, if fully implemented, would improve fisheries management systems to prevent overfishing and overcapacity, reduce bycatch of non-target species and marine wildlife, and protect habitat. The agreement also outlines that the U.S., Mexico and Canada shall adopt or maintain measures to prohibit the practice of shark finning. The agreement prevents subsidies to IUU fishing vessels or for fishing on an overfished stock.

The IUU fishing provisions includes requirements to implement port state measures; support monitoring, control, surveillance and enforcement including deterring nationals and flagged vessels from engaging in IUU fishing and addressing transshipments. Each Party shall maintain a vessel documentation scheme and promote the use of International Maritime Organization numbers or comparable unique vessel identifiers for vessels operating outside of its national waters to enhance transparency of fleets and traceability of fishing vessels. The U.S., Canada and Mexico are also to develop and maintain publicly available an easily accessible registry data of vessels flying its flag and support a Global Registry of Vessels, among other measures.

The USMCA provides a mechanism for the general public to take action if they believe an environmental law is not being effectively enforced by the United States, Mexico, or Canada. The USMCA includes provisions (Articles 24.27 and 24.28) allowing anyone in one of the three countries to file a Submission on Enforcement Matters with the Secretariat of the Commission for Environmental Cooperation.<sup>29</sup> While this mechanism existed under NAFTA, under the USMCA, the timeframes for the process have been shortened, the scope of environmental laws has been narrowed to those enacted, promulgated, or enforced by the central level of government (so, state, provincial, or local laws are not included), and the scope of eligible submitters is no longer limited to residents or NGOs in the territory of one of the three countries; instead, *anyone* in any of the three countries can file a Submission on Enforcement Matters.

If adequately substantiated, Submissions on Enforcement Matters about government failures to enforce environmental laws require responses from relevant government agencies and can result in a factual record that government representatives from all three countries must review and consider. Such Submissions under NAFTA have proven successful in getting governments to take necessary actions to protect the environment.<sup>30</sup> Since the USMCA went into effect on July 1, 2020, two Submissions have been made: the first, filed in December 2020, asserts that the Mexican Ministry of Environment and Natural Resources and other environmental agencies are failing to effectively enforce provisions to protect loggerhead turtles in both the Atlantic and Pacific oceans,<sup>31</sup> and the second, filed in February 2021, asserts that a Port Authority in Canada failed to effectively enforce the Canadian Environmental

---

<sup>29</sup> USMCA, arts. 24.27 and 24.28.

<sup>30</sup> See, e.g., Sumidero Canyon II Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/sumidero-canyon-ii/> (resulting in the closure of a limestone quarry damaging the Sumidero Canyon National Park in Chiapas, Mexico); BC Mining Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/bc-mining/> (resulting in greater public participation and transparency regarding the protection of fish and fish habitat from the impacts of mining in British Columbia).

<sup>31</sup> Loggerhead Turtle Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/loggerhead-turtle/>.

Assessment Act when considering expansion of a marine port on the Pacific Coast of British Columbia.<sup>32</sup> As these examples demonstrate, this USMCA mechanism offers the public a viable way to gain leverage to advance policies for protecting marine life and our oceans.

Oceana is considering how we can use this process to ensure the United States, Mexico and Canada are enforcing their own environmental laws.

### **Funding for NOAA for USMCA Implementation**

As part of the USMCA Supplemental Appropriations Act, NOAA received an additional \$16 million to implement the agreement. Specifically, NOAA was provided \$8 million for engagement with the Government of Mexico to combat illegal, unreported and unregulated fishing and to enhance implementation of the Seafood Import Monitoring Program. The other \$8 million was to carry out section 3 of the Marine Debris Act. The funds for both are available until September 30, 2023. Oceana recommends that there be more reporting and transparency in how that money has been spent to date and how NOAA plans to spend the remaining funds.

In June, NOAA issued a report on the implementation of SIMP and outlined limited progress with the program and highlighted limited investment of resources and dedicated staff for the program. Oceana remains concerned that NOAA is not building the SIMP program effectively and efficiently to allow the U.S. to stop imports of illegal seafood. It is not clear how NOAA has spent the \$8 million dedicated to enhance implementation of SIMP or increase engagement with the Government of Mexico. If money remains, NOAA should prioritize expanding SIMP to all seafood and ensuring the information collection by SIMP is the right information in a format that allows for data analysis to identify shipments of high risk of IUU fishing, seafood fraud, forced labor and other human rights abuses to guide risk-based targeting for inspections, audits and enforcement.

### **Collaboration and Capacity Building**

The United States established via regulations the Seafood Import Monitoring Program in 2016. SIMP requires catch documentation and traceability requirements for some species at risk of IUU fishing and seafood fraud. Since SIMP, both Canada and Mexico have begun work on establishing similar documentation and traceability requirements for seafood. As parties to the agreement and major seafood producing and importing nations, the USMCA should incentivize all three governments to work together to harmonize requirements for catch documentation and traceability. The United States could help advise Mexico and Canada on how best to establish their programs and provide lessons learned from the creation of SIMP. And the United States, Mexico and Canada should work with other major market states to align programs and harmonize requirements. For example, the USMCA countries should harmonize our programs with the European Union's IUU regulation that requires catch documentation and traceability for all seafood and has been in force for over a decade. Japan recently passed legislation and is working to develop their IUU programs as well.

---

<sup>32</sup> Fairview Terminal Submission on Enforcement Matters, <http://www.cec.org/submissions-on-enforcement/registry-of-submissions/fairview-terminal/>.

## **US Government Action on IUU Fishing**

The transparency provisions, specifically on developing a publicly available registry, requiring IMO or other unique vessel numbers and supporting a Global Record of Vessels, is an area where the U.S. has made little progress. NOAA should push to advance transparency in our own vessel registries, including by requiring that US vessels secure IMO numbers when available, so we can then ask our trading partners to do the same.

Technology tools provide additional cost-effective measures to improve monitoring and transparency of fishing vessels. The U.S, Canada and Mexico should increase transparency by requiring fishing vessels to carry and continuously transmit Automatic Identification System (AIS) devices. AIS provides vessel identity, location and course data that allows for greater maritime domain awareness and visibility in behavior at sea. AIS data allows for management authorities to use the data in verification of catch documentation and for identifying shipments at high risk of IUU fishing, forced labor and other human rights abuses for further inspections, audits and enforcement.

The USMCA is one tool that the US government can use to combat IUU fishing and USTR is one agency. The Biden Administration should take a one-government approach on IUU fishing, building upon a foundation of the SIMP and other measures to ensure that all seafood sold in the U.S. is safe, legally caught, responsibly sourced and honestly labeled. This requires:

- Expanding SIMP to all species so that all seafood entering the U.S. provides catch documentation and can be traced back to a legal source.
- Extending traceability requirement through the full supply chain. This can be accomplished by finalizing the Food and Drug Administration's pending rule on food traceability that includes almost all seafood.
- Increasing transparency requirements for fishing vessels and making transparency a condition of import.
- Using the information collected via the various trade programs, including SIMP, more efficiently and effectively to better target shipments with the highest risk for screening, audits and enforcement and close our market to illegal products.
- Improving coordination, collaboration and information-sharing across the federal agencies to better target countries and shipments with the highest risk of illegal fishing, seafood fraud and forced labor.
- Building into the programs that address IUU fishing measures to allow the U.S. to also identify and block shipments of products produced using forced labor and other human rights abuses.
- Reduce harmful fishing subsidies in the U.S., discipline fisheries subsidies in all future trade agreements, and push for an agreement in the WTO to end harmful fishery subsidies.

## **Conclusion**

After one year, there has been some progress in the implementation of the USMCA, but more needs to be done. USMCA countries should take a hard look to ensure that we are all implementing the agreement. For example, Mexico can improve documentation and traceability of fisheries to both

comply with the SIMP and improve market access. Canada can advance their seafood traceability requirements.

Trade agreements like the USMCA and trade programs like SIMP help level the playing field for US fishermen. The United States must ensure that legality is a condition of import. SIMP is first step in that direction, but more needs to be done to close loopholes in that program and integrate other efforts within the federal government.

The Biden Administration and Congress have an opportunity to craft a one government approach to combating IUU fishing which includes trade agreements, import controls—including requiring catch documentation and traceability for all seafood, expanded transparency of fishing, enhancing our nation-based efforts to drive change and building in tools that allow the U.S. to identify shipments produced using forced labor. Overall, these programs can help ensure that all seafood sold in the U.S. is safe, legally caught, responsibly sourced and honestly labeled.