Statement of Kimberly G. Gorton
President & Chief Executive Officer
Slade Gorton & Co., Inc.

Statement before the Energy & Commerce Health Subcommittee
"Waste and Duplication in the USDA Catfish Inspection Program"
United States House of Representatives
Washington, D.C.
December 7, 2016

Mr. Chairman, Ranking Member Green, and distinguished members of the Subcommittee, my name is Kim Gorton, and I am the President and Chief Executive Officer of Slade Gorton & Company, a seafood company based in Boston, Massachusetts. I also am the 2016 Chairperson of the National Fisheries Institute, the nation's largest trade association for the commercial seafood industry. I am pleased to have the opportunity to appear before the Subcommittee today on a vitally important topic affecting thousands of businesses, large and small, along the entire seafood value chain.

Slade Gorton & Company is a third generation family business. Our mission is to bring wholesome, nutritious seafood from around the world to America's table in support of well-being and overall quality of life. Our company is one of America's largest distributors and manufacturers of fresh, frozen and premium value-added seafood products, and we provide over 200 million seafood meals to Americans every year. We develop and manage fresh and frozen seafood programs for some of our nation's largest retailers, distributors and chain restaurants. We are proud of our record of supplying healthful and safe seafood to American families in all 50 states for nearly 90 years.

Regarding catfish: our company buys nearly an equal amount of domestic and imported catfish. Our challenge has become that some companies refuse to acknowledge that other species have important markets in the United States also.

Today I would like to articulate the reasons why my company strongly opposes the United States Department of Agriculture catfish inspection program, and why we urge the House of Representatives to immediately take up legislation now before the House that, if enacted, would eliminate this harmful, duplicative program.

Let me begin with some basic facts concerning the Federal Government's regulation of seafood and our industry's role in helping to ensure that the fish Americans eat is safe and wholesome.

U.S. Food and Drug Administration Responsibility

For decades, the Food and Drug Administration ("FDA") has been responsible for regulating the food safety of all seafood in the United States. Indeed, FDA regulates all food safety with the exception of meat, pork, poultry, and processed eggs, which are the responsibility of the USDA's Food Safety and Inspection Service ("FSIS"). In all, FDA has jurisdiction of over 80 percent of

the food Americans eat and oversees food industry subsectors that together contribute $1 trillion to the nation's GDP.

The FDA's regulation of commercial seafood begins of course with the Federal Food, Drug, and Cosmetics Act and includes FDA regulations, the FDA's Current Good Manufacturing Practices, and – arising from all these sources – the Hazard Analysis Critical Control Points program. The seafood "HACCP" program is a critical piece of FDA's food safety approach. It applies to all seafood processors, importers, and wholesalers—foreign and domestic – and directs all FDA-regulated seafood companies to meet specific requirements in a seven-step process:

1. Conduct a hazard analysis and identify preventative measures;
2. Identify critical control points (CCP);
3. Establish critical limits;
4. Monitor each CCP;
5. Establish corrective action to be undertaken when a critical limit deviation occurs;
6. Establish a record keeping system; and
7. Establish verification procedures.

By carefully identifying potential sources of contamination throughout the production process and requiring continuous monitoring, extensive recordkeeping, and verification that control measures are in place, a strong HACCP program ensures a high degree of food safety. As a final measure of food safety assurance, FDA conducts inspections of firms and food products to confirm that HACCP principles are being appropriately applied. I must emphasize that all imported food products are subject to targeted, random FDA inspection when offered for import at U.S. ports of entry, and all seafood exporters to the United States must meet the same Good Manufacturing Practices and maintain the same HACCP plans that a domestic producer must meet and maintain for the same fish. Thus, any claim that FDA subjects domestic seafood to more stringent requirements than it does imported product, or that the FDA approach does not afford U.S. seafood producers a "level playing field" vis-à-vis overseas producers, is simply false.

HACCP requires any problems to be identified and eliminated or mitigated at their source. For imported seafood, that means problems must be fixed thousands of miles from the U.S. border. Importers are required to take steps to verify that their imported products are obtained from foreign processors that fully comply with the Seafood HACCP Regulation. Again, this requirement makes sure that the safety of imported seafood is equivalent to the safety of seafood harvested or processed domestically. And, it is in the best interest of domestic processors to ensure that all of their raw material supplies—from overseas and domestic—are safe and wholesome.

No regulatory system is perfect, and in a complex supply chain there is always room for improvement. For my company and my competitors across the nation, however, food safety

outcomes under the aegis of FDA speak for themselves. The FDA regulatory structure and approach has helped the seafood industry provide millions of meals *almost every day* without incident.

In terms of detection, the FDA PREDICT ("Predictive Risk-based Evaluation for Dynamic Import Compliance Targeting") system allows the agency to focus in on high-risk food imports while expediting entry for non-violative shipments. When a foodborne illness is detected with respect to a domestic or overseas product, the FDA approach gives our industry and the food industry in general the ability to identify and isolate the problem in the supply chain quickly and precisely. When that is not sufficient, the FDA has a wide range of enforcement options to use in correcting the problem, from collaborative work with the company involved, targeted detention of specific food lots, and narrow regulatory alerts; to 100 percent importer-financed testing and inspection requirements at the border, broad-based mandatory recalls, and civil and criminal punishments that can – and in recent memory have – caused whole companies to shutter their doors. The Food Safety Modernization Act – which of course had its start in this very Committee and which was enacted into law with wide bipartisan support – has substantially enhanced FDA's enforcement tools, making a good system even better.

As someone with decades of first-hand experience in the American seafood industry, I can honestly say that both the regulator and the regulated industry are doing a better job than ever before. That is to the credit of the FDA inspectors across the country and at our ports; to the credit of hundreds of thousands of fishermen, and processing and distribution workers who keep food safety top of mind; and, yes, to the credit of Congress and in particular this Committee for establishing the legislative framework necessary to keep pace with a complex and growing value chain.

2008 FARM Bill Transfers Catfish, and Only Catfish, Oversight from FDA to USDA

Despite this record, in a side deal, Congress in 2008 transferred the responsibility for food safety regulation for catfish from the FDA to the Food Safety and Inspection Service within the USDA. The decision in the 2008 Farm Bill to create a catfish inspection program within FSIS was made behind closed doors and without either debate or findings by Congress as to the need for a change. It is a testament to how poorly-thought out the program was that FSIS delayed publication of a proposed rule until 2011 – nearly three years after the 2008 Farm Bill was passed – and then delayed its final rule until December 2015. If, as announced, FSIS fully implements the program on September 1, 2017, it will have taken almost nine years for the Federal Government to put into place a program its supporters characterize as a food safety emergency.

The program subjects all fish of the Order Siluriformes to continual inspection at any point during the processing of the fish by a FSIS inspector. Further, this would require countries exporting catfish — which equal about 3 percent of all seafood imports — to demonstrate equivalence to U.S. standards. This equivalency process takes on average 5-7 years to achieve.

This program would stop all foreign catfish from coming into the country until that level was achieved. That would mean less fish available to my customers.

USDA Risk Assessment Calls Catfish Low Risk Food

Now if catfish was a high risk fish, this would be understandable, yet the CDC and USDA have cited catfish as a low-risk food. According to the CDC, less than 2 people per year get sick from catfish – meaning you are more likely to get struck by lightning than get sick from catfish (310 people are struck by lightning each year).

Now because of a provision slipped into the Farm Bill (without debate and consideration of the House of Representative's position), one type of fish—catfish (and any fish categorized as a member of the Order siluriformes) has been moved to USDA office of FSIS for inspection. This change was not based on the fact that catfish and its cousins were posing a food safety risk—it was created by supporters of a few domestic catfish suppliers who knew that the USDA regulatory system would effectively block its imported competition (a Vietnamese species known as pangasius) at the border. This program is based solely on the fact that the regulatory differences between USDA and FDA make the product more difficult to import, not that it makes the product safer.

USDA Catfish Program is a Blatant Trade Barrier

Any nation can establish a food safety program different than other nations' programs. However, the United States has been a leader in holding other nations accountable for ensuring that the food safety systems are risk-based, as we have committed to in our treaty agreements. We do so not only in the interest of food safety and public health, but also to ensure that American farm exports are not disadvantaged in emerging markets.

The USDA catfish program meets none of the basic trade obligations: It was not based on a risk assessment; the USDA admits its catfish inspection program will not improve food safety; it is not the least trade restrictive means to achieve its goals; and it is a disguised (if not very well disguised) trade barrier.

The emerging markets to which American farmers seek to export their products are some of the nations that sell us their fish. They have made it clear that they will retaliate against American products, including likely American farm exports, when they win the trade dispute. Why Congress is sacrificing the exports interests of soy, beef, apples, and other farmed products on the altar of catfish is a puzzle to me.

Two Seafood Regulators in Same Facility: Doing the Job USDA Admits FDA Did Well Before

In all practicality, by moving this one type of fish over to a separate regulator for inspection, my business now has to deal with two separate regulators to inspect the products we sell to restaurants, grocery stores, and hospitals. The creation USDA Catfish Inspection Program means that we have one system and process for tuna, tilapia, shrimp, lobster (I could go on, we sell over 100 species) ……. and a completely different system just for catfish. This program is so absurd that it requires my company to have an inspector on site at any time we open a larger box of catfish and place the product in smaller packages for our customers.

FDA-FSIS Memorandum of Understanding Fails to Address Regulatory Duplication

Supporters of this nonsensical program point to an MOU that FDA and FSIS signed in May 2014, and claim that this document addresses the duplication I just explained. Nothing could be further from the truth.

This MOU – MOU 225-14-0009 – commits FDA and FSIS to generate a list of facilities that process both catfish and other seafood. That is unhelpful for two reasons. First, the two agencies were already supposed to compile this list under a previous FDA-FSIS MOU. MOU 225-99-2001 directs each agency "to develop, maintain, and annually update a list of dual jurisdiction establishments (hereinafter "DJEs"), that is, establishments that prepare, pack, hold, or otherwise handle both foods regulated by FSIS and foods regulated by FDA." The new MOU adds nothing to that.

Second, and more importantly, these MOUs do nothing to reduce the burden and cost created by the USDA program in the first place. For the half-dozen or so seafood facilities in the U.S. processing only catfish, this MOU may have some value. But my company and the vast majority of seafood processors around the nation will still have two sets of regulations to meet, and two sets of regulators to contend with. The hassle and expense of USDA inspection remains. Having people in federal agencies generate a blizzard of paper simply to document that fact can only be regarded as a concrete solution here in Washington, D.C.

GAO Calls USDA Program Waste of Taxpayer Dollars

This program is nothing more than a special interest driven boondoggle that reveals a costly tale of misused tax dollars and protectionism. From USDA's own estimates this program will cost $14 million dollars to inspect one type of fish, where there is a world renowned system already inspecting seafood. Moreover, the creation of this program erects a trade barrier. To be blunt, this is a scam, and the Government Accountability Office has even called this program out 10 times since 2011 for waste and duplication.

USDA Catfish Program Eliminates More Than 1.3 Billion Meals

Pangasius, the fish targeted by proponents of the USDA program provides about 1.3 billion meals each year for American families. These are meals that the average person can afford. The

impression from many outside of Washington is that people here eat lobster and caviar, while they are asked to sacrifice. This program feeds that impression. As the U.S. government and public health officials are calling on people to eat more seafood, is it right for Congress to prop up a program that will cause such a massive market disruption and increase prices for families?

Without the supply of imported fish to complement the significant amount of domestic catfish we buy, we could not meet our customers' needs. Lower sales would mean we would be forced to cut or workforce.

Opportunity for Congress to Fix this Problem for Small Business

FDA's system is a universally recognized system to inspect seafood. For almost 20 years, it has proven its ability to minimize food safety risks, as well as its flexibility to be effectively applied in nearly all types and sizes of processing facilities. This system has reduced outbreaks of foodborne illness attributed to fish consumption in the U.S., and according to the CDC, the HACCP principles mandated to ensure safe and sanitary processing of fish is one of the leading potential factors behind this positive trend. As such, when Congress enacted FSMA, it adopted an approach using preventive controls, which is modeled on the Seafood HACCP system.

This begs to ask, if HACCP is good enough to be used as the backbone to the largest Food Safety Law in my lifetime, why isn't it good enough for catfish? There is no answer to that. My next question is, how can Congress fix this issue?

There is currently a Resolution which would return the oversight of catfish back to the Food and Drug Administration—S.J. Res 28. For many of us who wish that Washington would reduce the red tape and waste of tax dollars—this makes sense.

The USDA program is a complete waste of tax dollars. Our government is already squeezing job-creating small businesses, and this program is a needless, costly and duplicative regulation that burdens my company and all other seafood companies. Americans have concluded that the bureaucrats do not care about average people. Ending this program and its bloated USDA payroll will show that Congress is listening and responding to their concerns. It is my hope and the hope of others on this panel that Congress bring this bill up for a vote this week.

Last Sunday night, even Speaker Ryan, in an interview on *60 Minutes*, called for elimination of wasteful and unnecessary regulations. It is time to move from promises to small business to action for small businesses.