February 12, 2025
Chris Mufarrige
Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Petition for Investigation into Unfair or Deceptive Acts or Practices by Best Aquaculture Practices and Global Seafood Alliance

Dear Mr. Mufarrige:

In accordance with 16 C.F.R. § 2.2, on behalf of the Oregon Trawl Commission, we hereby submit this petition for investigation. Specifically, this petition alleges that the Global Seafood Alliance ("GSA"), and its farmed seafood certification scheme, Best Aquaculture Practices ("BAP"), engage in deceptive marketing practices by misrepresenting the safety of their certified seafood products.

The Oregon Trawl Commission is a fishermen-funded state commodity group established by the Oregon state legislature in 1963. With roughly 100 fishing vessels, OTC represents Oregon trawl fishermen who produce sustainable, wild-caught seafood, including Pacific whiting, Oregon pink shrimp, and various types of groundfish, such as rockfish, sablefish, and sole. Collectively, OTC's constituents land nearly a quarter of a billion pounds of catch annually, generating approximately $60 million in economic value for fishermen alone.

The Oregon Trawl Commission has set forth below supporting information as is available regarding the alleged violation of law. Based on this request from a member of the public, the

Oregon Trawl Commission respectfully requests the Commission exercise its authority pursuant to 16 C.F.R. § 2.1 to initiate an investigation of BAP and GSA's deceptive practices.

I. INTRODUCTION

The GSA is an international 501(c)(6) organization based in New Hampshire,[1] "dedicated to advancing responsible seafood practices through education, advocacy and third-party assurances."[2] GSA has reported program revenue in excess of $19 million in 2023 and $18 million in 2022.[3] BAP is GSA's certification scheme for farmed seafood products, including farmed tilapia.[4] GSA/BAP advertises that the seafood it certifies is safe and produced in a sustainable manner.[5] It is one of the world's largest and most prominent aquaculture certification groups[6] and certifies over sixty seafood species in forty-three countries.[7] BAP-

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[1] *See* Best Aquaculture Practices, "Who we are," (n.d.), https://www.bapcertification.org/WhoWeAre.

[2] Global Seafood Alliance, "About GSA," ("About GSA") (n.d.), https://www.globalseafood.org/about-gsa/.

[3] ProPublica Nonprofit Explorer, "Global Seafood Alliance Form 990 – 2023," (Nov. 7, 2024), https://projects.propublica.org/nonprofits/organizations/541853030/202443139349303664/full.

[4] *See id.*

[5] Global Seafood Alliance, Five Tips for Being a Smart Seafood Shopper, GLOBAL SEAFOOD ALLIANCE, (May 13, 2019), https://www.globalseafood.org/blog/seafood-shopping-tips/.

[6] *See* Per-Erik Schulze and Randi Storhaug, "Op-ed: Are aquaculture sustainability certifications broken?," *SeafoodSource*, (Apr. 25, 2024), https://www.seafoodsource.com/news/aquaculture/op-ed-are-aquaculture-sustainability-certifications-broken; *see also* Kelly Roebuck, "Behind those 'responsibly farmed' seafood labels," *SeaChoice.org*, (May 28, 2021), https://www.seachoice.org/behind-farmed-seafood-labels/.

[7] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (n.d.), https://www.bapcertification.org/Producers. These figures were derived using filters for "Country" and "Species" within BAP's interactive list of Certified Producers. *See also* Best

certified products are sold across the United States, including in major grocery stores, meal kit companies, and restaurants.[8]

However, contrary to the GSA/BAP's representations, publicly available evidence demonstrates that many of BAP's certified seafood products fail to comply with U.S. food safety standards and contain antibiotics that have been found to have serious, harmful impacts on human health. This petition focuses specifically on tilapia products from China. Tilapia is one of the most popular whitefish in the United States; Americans consume over 200 million pounds each year.[9] China is the leading exporter of tilapia products to the United States, accounting for around 90 percent of U.S. imports of frozen tilapia fillets in 2022.[10] Evidence from the U.S. Food and Drug Administration's ("FDA") enforcement actions, such as import refusals, warning letters, and import alerts, demonstrates that ten of the top 25 shippers of Chinese frozen tilapia fillets by volume in 2023 are BAP-certified. Nonetheless, every single one of these companies

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Aquaculture Practices, "GSA Releases 2023 Annual Report Highlighting Continued Commitment to Responsible Seafood Practices," (Aug. 29, 2024), https://www.globalseafood.org/blog/2023-annual-report/.

[8] *See* Best Aquaculture Practices, "Where to Find" ("BAP Where to Find"), (n.d.), https://bapcertification.org/WhereToFind.

[9] To calculate the total amount of tilapia consumed in the U.S., we combined the total amount of imported tilapia for each year with domestic production. According to USITC Dataweb, imports of tilapia fillets for consumption averaged approximately 223 million pounds (101.2 million kg) from 2020 through January – November 2024. Based on reported estimates, domestic production accounts for about 5 percent of total consumption, bringing the estimated total tilapia consumption to approximately 234 million pounds (106.3 million kg) annually. *See* USITC Dataweb, https://dataweb.usitc.gov/, HTS code 0304.61. *See also* Aquatic Network, "U.S. Tilapia Imports," https://www.aquanet.com/us-tilapia-imports#:~:text=The%20U.S.%20tilapia%20market%20is,75%25%20of%20the%20total%20production.

[10] *See* United Nations FAO Globefish, "Demand for tilapia resumes growth despite higher prices," (Mar. 3, 2023), https://www.fao.org/in-action/globefish/news-events/news/news-detail/Demand-for-tilapia-resumes-growth-despite-higher-prices-/en.

has a history of FDA import refusals for residues of unapproved veterinary drugs and/or other food safety-related issues. Further, several Chinese tilapia producers designated as the most egregious and perpetual offenders of U.S. food safety laws are also BAP-certified. Such evidence demonstrates that GSA/BAP's representations regarding the safety of its certified products are misleading and deceptive.

In 2024, Congress requested that the FTC investigate GSA and BAP following reports of illegal, unreported, and unregulated fishing and forced labor in the seafood supply chain.[11] Specifically, Congress asked for details on how the FTC "ensures that third-party certifications such as BAP are not being used to deceive Americans."[12] In November of the same year, the Corporate Accountability Lab ("CAL"), a Chicago-based non-profit organization, and the Southern Shrimp Alliance ("SSA"), an organization of U.S. shrimp fishermen and processors, filed a petition with the FTC alleging that GSA/BAP deceives and misleads consumers regarding BAP certified shrimp from India.[13] Specifically, the petition alleged that BAP represented that its label is "one of the 'easiest ways to know that your seafood was produced in a safe, responsible, and ethical way.'"[14] "In reality, BAP-certified shrimp production processes are rife

[11] *See* Letter from Raúl M. Grijalva, Garret Graves, Jared Huffman & Melanie A. Stansbury (U.S. House of Representatives Committee on National Resources) to Lina Khan (Chair of the FTC), (Sept. 4, 2024), https://democrats-naturalresources.house.gov/imo/media/doc/2024-08-29_moc_letter_to_ftc_re_iuu_fishing.pdf.

[12] *See id*.

[13] Corporate Accountability Lab, "In November 2024, CAL and the SSA Submitted a Petition to the FTC to Enjoin BAP for Its Misleading and Deceptive Advertising Practices," (Jan. 27, 2025), https://corpaccountabilitylab.org/calblog/2025/1/27/in-november-2024-cal-and-the-ssa-submitted-a-petition-to-the-federal-trade-commission-ftc-to-enjoin-best-aquaculture-practices-bap-for-its-misleading-and-deceptive-advertising-practices.

[14] *Id*.

with labor and environmental abuses."[15] The CAL/SSA petition requested that the FTC conduct an investigation of GSA/BAP practices.[16]

This petition supports CAL/SSA's petition and further augments the petition by providing additional evidence of GSA/BAP's misleading and deceptive advertising practices with respect to imports of tilapia products from China. For the reasons detailed below, the Oregon Trawl Commission respectfully asks the FTC to initiate an investigation of GSA/BAP and its advertising practices.

II. LEGAL STANDARD

A. The FTC Act

Section 5 of the Federal Trade Commission Act ("FTC Act") prohibits "unfair or deceptive acts or practices in or affecting commerce."[17] An act or practice is deceptive where there has been (1) a representation, omission, or practice, (2) which was likely to mislead consumers acting reasonably under the circumstances, and (3) which was material.[18]

On the first element, courts have held that "[d]eception may be found based on the 'net impression' created by a representation."[19] For example, in *FTC v. Brown & Williamson*

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[15] *Id.*

[16] *Id.*

[17] 15 U.S.C. § 45(a)(1).

[18] *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009); *see also FTC v. On Point Cap. Partners, LLC*, 17 F.4th 1066, 1079 (11th Cir. 2021); *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *see also* Federal Trade Commission, *Enforcement Policy Statement on Deceptively Formatted Advertisements*, (n.d.), 1, https://www.ftc.gov/system/files/documents/public_statements/896923/151222deceptiveenforcement.pdf (citing *FTC Statement on Deception*, 103 F.T.C. 174, 175 (1984) (*appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)).

[19] *Stefanchik*, 559 F.3d at 928.

Tobacco Corp.,[20] the D.C. Circuit affirmed a district court's finding that an advertisement's description of cigarette tar content was deceptive even though fine print in the corner of the advertisement truthfully explained how the tar content was measured. The court reasoned that, under the circumstances, consumers were unlikely to read the fine print in the corner of the ad.[21] On the second element — courts have explained that "proof of actual deception is unnecessary"[22] and that the FTC only needs to establish that the representation had a "tendency to deceive" customers.[23] As to the third element, "[a] claim is considered material if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct

[20] *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 42-43 (D.C. Cir. 1985).

[21] *Id.* at 43; *see also Standard Oil Co. of California v. FTC*, 577 F.2d 653, 659 (9th Cir. 1978) (affirming for substantial evidence the FTC's finding that the predominant visual message of an advertisement was misleading, and that it was not corrected by the accompanying verbal message in the advertisements); *cf. FTC v. Figgie Int'l., Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) ("Figgie can point to nothing in statute or case law which protects from liability those who merely imply their deceptive claims; there is no such loophole."); *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1152, 1154 (9th Cir. 1984) ("A determination of false advertising can be based upon deceptive visual representations."); *Am. Home Prods. Corp. v. FTC*, 695 F.2d 681, 687 (3d Cir. 1982) ("'[T]he tendency of the advertising to deceive must be judged by viewing it as a whole'.... The impression created by the advertising, not its literal truth or falsity, is the desideratum.") (quoting *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976)).

[22] *FTC v. FleetCor Techs., Inc.*, 620 F. Supp. 3d 1268, 1289–91 (N.D. Ga. 2022); *FTC v. USA Fin., LLC*, 415 F. App'x 970, 973 (11th Cir. 2011) (citing *FTC v. Cyberspace.Com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006)).

[23] *See FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605–06 (9th Cir. 1993); *Thompson Med. Co., Inc. v. FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986); *FTC v. Lanier Law, LLC*, 194 F. Supp. 3d 1238, 1273–74 (M.D. Fla. 2016) ("Moreover, a 'tendency to deceive' is all that is required, such that proof of actual consumer deception is unnecessary."); *FTC v. Wash. Data Res.*, 856 F. Supp. 2d 1247, 1273 (M.D. Fla. 2012), aff'd, 704 F.3d 1323 (11th Cir. 2013).

regarding, a product."[24] "Express or clearly implied representations 'used to induce the purchase of a particular product or service are presumptively material.'"[25]

B. The FTC Act Applies to Seafood Certification Schemes

The FTC has stated that the ban on deceptive acts or practices under 15 U.S.C. § 45(a)(1) applies to seafood certification schemes. Specifically, in May 2013, the agency submitted a letter to the Marine Stewardship Council ("MSC"), a seafood certification scheme for wild-caught seafood, reminding the MSC that its "Certified Sustainable Seafood" label "when used in the United States, is governed by and must comply with {the FTC Act}."[26] The FTC further instructed that the MSC's seal must be "grounded in sound science, which should be objectively applied."[27] The seal should also "convey information that is truthful . . . and {} does not deceive consumers."[28] The FTC stated that the agency's "Green Guides provide consideration advice on how to avoid such deception."[29] Furthermore, as explained in the Green Guides and Statement of Basis and Purpose, under the FTC Act, advertisers are responsible for both the express and

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[24] *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1190 (N.D. Ga. 2008).

[25] *FTC v. Fleetcor Techs., Inc.*, 620 F. Supp. 3d 1268, 1290 (N.D. Ga. 2022) (citing *Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d at 1190); *see also FTC v. 1st Guar. Mortg. Corp.*, 2011 WL 1233207, at *12–13 (S.D. Fla. Mar. 30, 2011) (noting that representations are material if "they were instrumental in affecting the consumers' decisions to pay for goods and services" and ads that "induce the purchase of a product or service are presumed to be material to consumers as a matter of law").

[26] FTC Letter to Marine Stewardship Council, "Marine Stewardship Council's Fishery Standards Review," at 1, https://www.ftc.gov/sites/default/files/documents/advocacy_documents/federal-trade-commission-letter-marine-stewardship-counsel-concerning-considering-consumer/130531mscletter.pdf (May 30, 2013).

[27] *Id.* at 2.

[28] *Id.*

[29] *Id.*

implied claims taken from their advertisements. Therefore, the MSC seal, as well as its competitors' seal, "should comport with the Green Guides."[30] Finally, the FTC stated, as consistent with the Green Guides described below:

> The MSC, and any other third-party certifier, should consider consumer perception when developing or reviewing a certification system. If a certifier permitted practices that reasonable consumers found inconsistent with their interpretation of the seal, the certifier should change the seal or change the certification process to comport with that understanding. Therefore, the MSC review process should take into account how reasonable consumers will perceive the MSC seal at the retail level.[31]

C. The Green Guides

The Green Guides (formally Environmental Marketing Guides) provide specific guidance on how the FTC Act's ban on deceptive acts or practices applies to environmental claims. As the FTC made clear:

> These guides apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service to individuals. These guides also apply to business-to-business transactions. The guides apply to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.[32]

Under the Green Guides, "{t}o determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys."[33] In

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[30] *Id*.

[31] FTC Letter to Marine Stewardship Council, "Marine Stewardship Council's Fishery Standards Review," https://www.ftc.gov/sites/default/files/documents/advocacy_documents/federal-trade-commission-letter-marine-stewardship-counsel-concerning-considering-consumer/130531mscletter.pdf (May 30, 2013).

[32] 16 C.F.R. § 260.1 ("Green Guides").

[33] Green Guides § 260.2.

addition, "[m]arketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims."[34] To that end, a claim that is literally true but nonetheless deceives or misleads consumers by its implications may be considered a deceptive practice under the FTC Act.[35] Further, an unqualified claim representing, directly or by implication, that a product offers a general environmental benefit is likely to be deceptive because "it is highly unlikely that marketers can substantiate all reasonable interpretations" of the claim.[36]

The Green Guides also provide guidance for "certifications and seals of approval."[37] The Green Guides state that the "use of an environmental certification or seal of approval likely conveys that the product offers a general environmental benefit (*see* § 260.4)" which is "highly unlikely" to be substantiated.[38] The use of the certification or seal, in this case, would constitute deception.[39] To avoid deception, the marketers should only use the certification or seal if it conveys, either through name or some other means, the basis for the certification, or if it is accompanied by "clear and prominent qualifying language that clearly conveys that the certification or seal refers only to specific and limited benefits."[40]

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[34] *See* Green Guides § 260.2 (citing FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984)).

[35] *See* Green Guides § 260.3(c); *see also Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 322 (7th Cir. 1992) ("[E]ven literally true statements can have misleading implications.").

[36] Green Guides § 260.4(b).

[37] Green Guides § 260.6.

[38] Green Guides § 260.6(d).

[39] Green Guides § 260.6(d), (e).

[40] Green Guides § 260.6(d), (e).

III. BACKGROUND ON BAP/GSA

As discussed above, the GSA is an international 501(c)(6) organization based in New Hampshire,[41] "dedicated to advancing responsible seafood practices through education, advocacy and third-party assurances."[42] BAP is GSA's certification scheme for farmed seafood products, including farmed tilapia.[43] BAP is one of the world's largest and most prominent aquaculture certification groups,[44] certifying over sixty seafood species across forty-three countries[45] and generating over $19 million each year for GSA through its program activities.[46]

BAP describes itself as the "only aquaculture certification that encompasses the entire production chain."[47] As of 2023, it certifies over 4,000 seafood producers[48] in 43 countries,[49]

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[41] *See* Best Aquaculture Practices, "Who we are," (n.d.), https://www.bapcertification.org/WhoWeAre.

[42] Global Seafood Alliance, "About GSA," ("About GSA") (n.d.), https://www.globalseafood.org/about-gsa/.

[43] *See id*.

[44] *See* Per-Erik Schulze and Randi Storhaug, "Op-ed: Are aquaculture sustainability certifications broken?," *SeafoodSource*, (Apr. 25, 2024), https://www.seafoodsource.com/news/aquaculture/op-ed-are-aquaculture-sustainability-certifications-broken; *see also* Kelly Roebuck, "Behind those 'responsibly farmed' seafood labels," *SeaChoice.org*, (May 28, 2021), https://www.seachoice.org/behind-farmed-seafood-labels/.

[45] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (n.d.), https://www.bapcertification.org/Producers. These figures were derived using filters for "Country" and "Species" within BAP's interactive list of Certified Producers. *See also* Best Aquaculture Practices, "GSA Releases 2023 Annual Report Highlighting Continued Commitment to Responsible Seafood Practices," (Aug. 29, 2024), https://www.globalseafood.org/blog/2023-annual-report/.

[46] ProPublica Nonprofit Explorer, "Global Seafood Alliance Form 990 – 2023," (Nov. 7, 2024), https://projects.propublica.org/nonprofits/organizations/541853030/202443139349303664/full.

[47] Best Aquaculture Practices, "Best Aquaculture Practices," (n.d.), https://bapcertification.org/index.html (last visited Oct. 29, 2024).

including 360 hatcheries, 2,905 farms, 153 feed mills, and 541 plants.[50] Among BAP's 4,000 plus certified seafood producers covering 66 different species, 207 of the certified producers participate in the tilapia supply chain, 106 of which are based in China.[51] Although BAP-certified tilapia producers represent a relatively small proportion of all BAP-certified companies, GSA reporting indicates that tilapia farms reported an annual production volume of 350,197 metric tons in 2021, making tilapia the third highest in production volume among BAP-certified species at the farm level.[52]

BAP-certified products are sold at grocery stores, restaurants, cafes, and by caterers around the United States.[53] BAP's self-professed "impact" includes 23 billion meals made with BAP-certified seafood.[54] According to BAP's website, over 150 retail and food service companies worldwide are publicly committed to sourcing seafood from BAP-certified

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[48] *See* Global Seafood Alliance, "GSA Annual Report 2023," (Aug. 2024), https://info.globalseafood.org/2023-annual-report.

[49] *See* Best Aquaculture Practices, "GSA Releases 2023 Annual Report Highlighting Continued Commitment to Responsible Seafood Practices," (Aug. 29, 2024), https://www.globalseafood.org/blog/2023-annual-report/

[50] *See* Global Seafood Alliance, "GSA Certification Programs Grew 18% in 2023, with 91% Retention Rate," (Feb. 22, 2024), https://www.globalseafood.org/blog/gsa-certification-programs-2023-growth/.

[51] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (n.d.), https://www.bapcertification.org/Producers.

[52] *See* Global Seafood Alliance, "BAP Program Grew 8.6 Percent in 2021, Certified Facilities Retention Rate at Five-Year High," (Jan. 25, 2022), https://www.globalseafood.org/blog/bap-program-2021-results/.

[53] *See* Best Aquaculture Practices, "Where to Find" ("BAP Where to Find"), (n.d.), https://bapcertification.org/WhereToFind.

[54] Best Aquaculture Practices, "Keeping Fish in Our Future," (n.d.), https://www.bapcertification.org. BAP does not specify whether the 23 billion meals figure represents an annual estimate or the cumulative total since BAP's inception.

facilities.[55] Indeed, BAP-certified products can be found at major grocery stores in the United States, such as those owned by Ahold Delhaize, including its Food Lion and Hannaford banners; Albertsons; Aldi; Amazon and Whole Foods; BJ's Wholesale Club; Cub; Giant Eagle; HEB; Kroger; Lidl; Lunds & Byerlys; Meijer; Metro; Price Chopper and Market 32; Publix; Save a Lot Food Stores; Schnucks; Southeastern Grocers; Sprouts Farmers Market; Supervalu; Target; Trader Joe's; Wakefern and ShopRite; Walmart and Sam's Club; Wegmans; and WinCo Foods.[56] Meal kit companies, including Green Chef, Hello Fresh, EveryPlate, and Factor 75 also sell BAP-certified products.[57] Additionally, BAP-certified products can be found at restaurants, such as Balducci's, Brinker International (which owns Chili's Grill & Bar and Maggiano's Little Italy), Captain D's Seafood Kitchen, and Red Lobster; at entertainment parks, including Disney, Seaworld Parks & Entertainment, and Seatopia; and on-site restaurant companies and distributors, including Bon Appétit Management Company, Gordon Food Service, Harvest Food Distributors, Reinhart Food Service, Sodexo, Sysco, Topco, United Natural Foods, and U.S. Foods.[58]

IV. BAP'S REPRESENTATIONS

GSA/BAP makes representations to consumers and grocery stores that BAP-certified products are safe to consume in two ways: (1) through the BAP certification scheme; and (2) through GSA/BAP's public statements posted on its website and social media on what it means to be BAP certified.

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[55] *See* Best Aquaculture Practices, "Who we are," (n.d.), https://www.bapcertification.org/WhoWeAre, (last visited Oct. 29, 2024).

[56] *See* BAP Where to Find.

[57] *See* BAP Where to Find.

[58] *See id*.

A. Representation through BAP's Certification Scheme

According to materials published on its website, BAP certifies seafood products according to the "BAP Standards and Guidelines," a set of social and environmental standards for different stages of the supply chains – feed, hatcheries, aquaculture farms, and processing facilities.[59]

To assure buyers that the BAP-certified products follow BAP's Standards and Guidelines, BAP claims that all of its certified facilities underwent a rigorous certification process and are subject to stringent audits to ensure constant compliance. Specifically, according to BAP's website, to become and remain certified, an applicant must comply with all standards under each pillar. Figure 1 demonstrates the BAP certification process.[60]

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[59] *See* Best Aquaculture Practices, "Program Standards," (n.d.), https://www.bapcertification.org/Standards; see also *See* Best Aquaculture Practices, "Feed Mills Standard," ("BAP Feed Mills Standard") (Dec. 9, 2024), https://www.bapcertification.org/Downloadables/pdf/standards/BAP%20-%20Feed%20Mills%20-%20Issue%203.2%20-%2009-December-2024.pdf; Best Aquaculture Practices, "Hatchery Standard," ("BAP Hatchery Standard") (Jan. 30, 2023), https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20Hatchery%20Standard%20-%20Issue%202.1%20-%2030-January-2023.pdf; Best Aquaculture Practices, "Aquaculture Facility Certification BAP Farm Standard," ("BAP Farm Standard") (Feb. 7, 2023), https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20BAP%20Farm%20Standard%20-%20Issue%203.1%20-%2007-February-2023.pdf; Best Aquaculture Practices, "Seafood Processing Standard (SPS)," ("BAP Processing Standard"), https://bspcertification.org/Downloadables/pdf/standards/PI%20-%20Standard%20-%20Seafood%20Processing%20Standard%20-%20Issue%205.1%20-%2016-November-2020.pdf.

[60] *See* Best Aquaculture Practices, "What We Do Certification," (n.d.)., https://www.bapcertification.org/WhatWeDo; *see also* BAP Feed Mills Standard at 3; Farm Standard at 5 – 7; BAP Processing Standard at 10.

After the initial certification, the certified facilities must go through an annual audit to maintain the certification.[61] In addition, BAP also represents that it ensures constant compliance by conducting random or unannounced audits at least once every three years or more often if there are compliance concerns.[62]

Figure 1. *BAP Certification Process*

Once a facility is certified, BAP allows marketers to use different iterations of its logo on their packaging and marketing materials.[63] One of these logos has a "star-based" ranking system where each star refers to a specific part of the production process that has been BAP certified.[64] Obtaining four stars means that all four parts of the production, for example – feed,

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[61] *See* BAP Feed Mills Standard at 11; BAP Hatchery Standard at 4; BAP Farm Standard at 4; BAP Processing Standard at 11. *See also* Best Aquaculture Practices, "Requirements for Certification Bodies Offering Certification Against the Criteria of the Global Aquaculture Alliance Best Aquaculture Practices Standards," ("BAP Requirements for Certification Bodies") (Nov. 20, 2024), at 32, https://www.bapcertification.org/Downloadables/pdf/PI%20-%20Policy%20-%20BAP%20CB%20Requirements%20Document%20-%20Issue%2014.8%20-%2018-September-2020.pdf.

[62] *See* BAP Farm Standard at 4; BAP Processing Standard at 11. *See also* BAP Requirements for Certification Bodies at 30 – 31.

[63] *See* Best Aquaculture Practices, "BAP Logo Use Requirements," ("BAP Logo Use Requirements") (Aug. 29, 2023), https://bapcertification.org/Downloadables/pdf/BAP%20-%20BAP%20Logo%20Use%20Requirements%20-%20Issue%202.7%20-%2029-August-2023.pdf at 10.

[64] *Id.* at 10.

hatcheries, farms, and processing facilities – are BAP certified.[65] As shown in Figure 2, consumers can look at the stars and determine which part of the production process is produced at BAP-certified facilities.[66]

Figure 2. *BAP Star Logo Anatomy*

The logo is also required to contain a certification number, which consumers can use to search through BAP's website to find out more information about their seafood products and to determine where in the production process certification occurred.[67] Per BAP's guidelines, when marketers use the BAP logo without the star designation, they are required to have their certification number "listed clearly" on the package, as shown in Figure 3.[68]

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[65] *See id*.

[66] Best Aquaculture Practices, "BAP Logo Use Requirements," (2021) at 10, https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20Policy%20-%20BAP%20Logo%20Use%20Requirements%20-%20Issue%202.4%20-%2018-March-2021.pdf.

[67] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (n.d.), https://www.bapcertification.org/Producers.

[68] Best Aquaculture Practices, "BAP Logo Use requirements," (2021) at 18, https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20Policy%20-%20BAP%20Logo%20Use%20Requirements%20-%20Issue%202.4%20-%2018-March-2021.pdf.

***Figure 3**. BAP Logo Without Star Designation*

As stated on BAP's website, each set of BAP Standards and Guidelines is driven by four pillars: social accountability, environmental responsibility, food safety, and animal health and welfare.[69] For food safety specifically, BAP standards across all four stages of the supply chain make explicit that antimicrobials, antibiotics, and chemicals that are unapproved or prohibited in importing countries shall not be used. For example, BAP's hatchery, farm, and processing standards all contain similar language barring the use of antimicrobials, antibiotics, or chemicals in "feeds, pond additives, or any other treatment" that are "prohibited in producing or importing countries."[70] These three standards also clearly prohibit the use of chloramphenicol and nitrofuran antibiotics, which are "proactively prohibited for use in food production in all

[69] *See* Best Aquaculture Practices, "The BAP Label," (n.d.), https://bap.globalseafood.org/bap-label.

[70] BAP Hatchery Standard at 1.5 at 10; *see also* BAP Farm Standard at 1.6 at 11; BAP Processing Standard at 2.3.14 at 23.

countries."[71] These standards further explain that "[o]ther drugs and chemicals such as antibiotics, malachite green…and hormones" are proactively banned in specific countries, such as in the United States, and are not to be used in exports to those countries.[72] To further ensure compliance with its food safety standards, BAP-certified hatcheries and farms are mandated to keep "lists of antimicrobial agents prohibited for use in the country where production occurs as well as in the country or countries representing the primary markets for farmed aquatic animals."[73]

As mentioned above, China is the leading exporter of tilapia products to the United States, accounting for around 90 percent of U.S. imports of frozen tilapia in 2022.[74] As such, according to the BAP standards, U.S. laws govern the types of antimicrobials, antibiotics, or chemicals allowed in tilapia production.[75] In the United States, the FDA is responsible for regulating the safety of farmed seafood pursuant to the Food, Drug, and Cosmetic Act and the Food Safety Modernization Act.[76] In particular, the FDA regulates the use of veterinary drugs,

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[71] BAP Hatchery Standard at 12 – 13; *see also* BAP Farm Standard at 13; BAP Processing Standard at 3.2.14 at 23 and Annex 4 – Table III at 61.

[72] BAP Hatchery Standard at 12 – 13; *see also* BAP Farm Standard at 13; BAP Processing Standard at 3.2.14 at 23 and Annex 4 – Table III at 61.

[73] BAP Hatchery Standard at 13; *see also* BAP Farm Standard at 13.

[74] *See* United Nations FAO Globefish, "Demand for tilapia resumes growth despite higher prices," (Mar. 3, 2023), https://www.fao.org/in-action/globefish/news-events/news/news-detail/Demand-for-tilapia-resumes-growth-despite-higher-prices-/en.

[75] BAP Hatchery Standard at 1.5 at 10; *see also* BAP Farm Standard at 1.6 at 11; BAP Processing Standard at 2.3.14 at 23.

[76] *See* U.S. Food and Drug Administration, "Aquacultured Seafood," (n.d.), https://www.fda.gov/food/seafood-guidance-documents-regulatory-information/aquacultured-seafood#:~:text=If%20a%20seafood%20product%20tests,the%20firm%20and%20the%20product.

also referred to as animal drugs, including antibiotics as well as hormones and steroids.[77] Under FDA guidelines, farm-raised seafood sold in the U.S. must be free from unapproved animal drug residues.[78] Unapproved veterinary drug residues are considered unsafe for human consumption for various reasons, such as their known or suspected carcinogenicity, presence of mutagens, or inclusion of antimicrobials that can promote antimicrobial resistance[79] to medications critical for human health.[80] Specifically, several veterinary drugs habitually used in aquaculture, including chloramphenicol, nitrofurazone (and other nitrofurans), malachite green, steroids, and hormones, are classified by the FDA as "high enforcement priority" and are unapproved for use in all farmed fish due to concerns such as those mentioned above.[81]

Put differently, according to BAP's standards, BAP labels on tilapia products from China destined for the United States create a representation that these products do not contain traces of any of the unapproved antibiotics described above.

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[77] *See* U.S. Food and Drug Administration, "Activities for the Safety of Imported Seafood," (Feb. 2023), https://www.fda.gov/media/165447/download?attachment.

[78] U.S. Food and Drug Administration, "Aquacultured Seafood," (n.d.), https://www.fda.gov/food/seafood-guidance-documents-regulatory-information/aquacultured-seafood#:~:text=If%20a%20seafood%20product%20tests,the%20firm%20and%20the%20product.

[79] *See* Luria Leslie Founou et al., "Antibiotic Resistance in the Food Chain: A Developing-Country Perspective," Frontier in Microbiology, (Nov. 23, 2016), https://doi.org/10.3389/fmicb.2016.01881; Hansa Y. Done, "Does the Recent Growth of Aquaculture Create Antibiotic Resistance Threats Different from those Associated with Land Animal Production in Agriculture?," The AAPS Journal, 17:3, (May 2015), https://doi.org/10.1208/s12248-015-9722-z.

[80] U.S. Food and Drug Administration, "Fish and Fishery Products Hazards and Controls," Chapter 11: Aquaculture Drugs, (June 2022), at 11-4 – 11-5, https://www.fda.gov/media/80297/download. *See also* 21 C.F.R. § 510.110(c).

[81] *Id.* at 5.

B. Representation through BAP's Public Statements

In addition to the claims BAP makes through its label, BAP has repeatedly made statements to further promote the safety of its certified products. For example, BAP repeatedly states that BAP-labeled products are "safe."[82] This claim appears directly on BAP's homepage, as well as on its "Who We Are" page, as shown in Figures 4[83] and 5,[84] respectively. GSA/BAP even provides a definition of "safe" on its website, defining it as, "[t]he condition of being protected from or unlikely to cause danger or risk. GSA standards address food-safety issues of drug and chemical management, microbial sanitation, hygiene, harvest, and transport."[85]

Figure 4. *BAP Homepage*

[82] *See e.g.*, Best Aquaculture Practices, "Keeping Fish Best Aquaculture Practices, "Our Logo," (2023), https://bapcertification.org/OurLogo; Best Aquaculture Practices, "The BAP Label," (2025), https://bap.globalseafood.org/bap-label.

[83] Best Aquaculture Practices, "Home," (n.d.), https://bapcertification.org/Home

[84] Best Aquaculture Practices, "Who We Are," (2023), https://bapcertification.org/WhoWeAre.

[85] Global Seafood Alliance, "Glossary," (n.d.), https://www.globalseafood.org/glossary/?__hstc=74129677.800b1c84deaeef06450e26727c01749c.1737566561008.1738352179168.1738354455010.12&__hssc=74129677.1.1738354455010&__hsfp=3988306244.

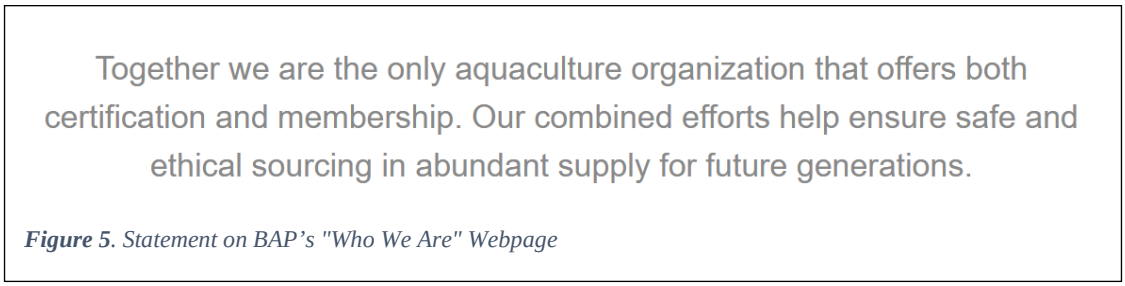

Figure 5*. Statement on BAP's "Who We Are" Webpage*

GSA has also made claims on its website about the ways BAP "mitigate[s] food safety risks," such as through "screening products for residues of antibiotics, drugs, and other compounds" and "requiring a withdrawal period to ensure that there are no antibiotics present in farmed seafood when harvested."[86] Moreover, BAP describes its food safety pillar as covering risks such as "proper sanitation, product handling and transport confirmed by product inspections."[87] BAP has also made statements on its social media accounts concerning the safety of its certified products. Figure 6 includes a BAP Facebook post dated June 2024, celebrating World Food Safety Day.[88] The post includes an image with a caption presenting the ways in which BAP addresses food safety including "[s]creening products for residues of antibiotics, drugs and other compounds," "[m]onitoring the FDA alerts and import refusals," and "[e]nsuring proper sanitation procedures[.]"[89] Like BAP's label, these statements imply that its certified

[86] Global Seafood Alliance, "How do BAP Standards Address Food Safety?" (June 7, 2020), https://www.globalseafood.org/blog/food-safety/.

[87] Best Aquaculture Practices, "The BAP Label," (n.d.), https://bap.globalseafood.org/bap-label/.

[88] Best Aquaculture Practices, Facebook (Facebook Post), https://www.facebook.com/photo/?fbid=861889855976409&set=pb.100064662073696.-2207520000.

[89] *Id*.

seafood does not contain any harmful antibiotics or veterinary drugs, or pose any other food safety risks.

***Figure 6**. BAP Facebook Post (June 7, 2024)*

V. BAP'S REPRESENTATIONS ARE FALSE AND MISLEADING

A. Evidence Contradicts BAP's Representation that its Certified Products are Safe to Consume

Under the FTC Act, BAP has engaged in misleading and deceptive practices by using its certification label and public statements to lead consumers to believe its certified products are safe to consume when evidence suggests otherwise.

1. FDA's Enforcement Actions Contradict BAP's Representation that its Certified Products are Safe and Comply with Food Safety Laws of the Importing Country

Evidence from FDA regulatory actions, such as import refusals, warning letters, and import alerts, demonstrate that, contrary to BAP's claims, many BAP-certified products have

been found by U.S. enforcers to be unsafe for U.S. consumers because they either contained traces of unapproved animal drugs, including antibiotics, or exhibited other food safety issues.

a. *A Number of BAP-Certified Companies Are Listed on FDA's Import Alerts*

Under section 801 of the Food Drug & Cosmetic Act, the FDA has the duty to ensure the safety of imported seafood through foreign facility inspections and import controls. The FDA enforces the law through various measures, including the issuance of Import Alerts. In particular, the FDA maintains a so-called "Red List." Companies are placed on the Red List when there is a "history of known violations."[90] Placement on the Red List means that when products from these companies are offered for import, they "will be detained and refused unless the importer can overcome the appearance of violation(s) by demonstrating to the FDA that the product does not have the violation(s) listed on the import alert."[91] In essence, companies on the Red List represent the most egregious and repeat offenders of U.S. food safety laws.

A review of the FDA's Import Alerts reveals that a handful of BAP-certified Chinese tilapia shippers are red-listed under various Import Alerts. For example, Guangdong Yujia Seafood Co., Ltd., Guangxi Baijia Food Co., Ltd., and Maoming Haiyi Foods Co., Ltd. are all BAP-certified tilapia producers[92] currently listed under Import Alert 16-124 due to the presence

[90] *See* U.S. Food and Drug Administration, "Import Alerts," (Oct. 9, 2024), https://www.fda.gov/industry/actions-enforcement/import-alerts#:~:text=Import%20Alerts%20are%20used%20to,or%20otherwise%20physically%20examine%20it.

[91] *See id*.

[92] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (2023), https://www.bapcertification.org/Producers. BAP certification can be found by searching a company's name or searching company-specific BAP numbers P10186, P10424, and P11004 using BAP's Certified Producer database.

of unapproved drugs in their tilapia shipments.[93] Specifically, Maoming Haiyi Foods Co., Ltd. has been on the list for the presence of the antibiotic sulfadiazine since 2020, while Guangdong Yujia Seafood Co., Ltd. was added in 2022 for the same reason.[94] Guangxi Baijia Food Co., Ltd. was added in 2024 for the presence of antibiotics ciprofloxacin and enrofloxacin.[95] Tilapia products from Guangxi Baijia Food Co., Ltd. have been listed on Import Alert 16-129 for containing synthetic antibiotics, known as nitrofurans, since October 2023.[96] Lastly, the BAP-certified company Zhaoqing Evergreen Aquatic Product Science and Technology Co., Ltd.[97] is currently listed under Import Alert 16-81 for the presence of salmonella.[98]

Given these companies continued presence on these Red Lists, these tilapia producers have not taken the steps necessary to demonstrate to the FDA that they have addressed the issues that led to their listing. Accordingly, these companies demonstrate the misleading and deceptive nature of BAP's representations that any products bearing the BAP label are safe to consume, as the FDA's actions conflict with BAP's claims that tilapia products from these certified entities are safe.

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[93] *See* U.S. Food and Drug Administration, "Import Alert 16-124," (Jan. 29, 2025), accessed February 7, 2025, https://www.accessdata.fda.gov/cms_ia/importalert_27.html.

[94] *See id*.

[95] *See id*.

[96] *See* U.S. Food and Drug Administration, "Import Alert 16-129," (Jan. 14, 2025), accessed February 7, 2025, https://www.accessdata.fda.gov/cms_ia/importalert_31.html.

[97] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (2023), https://www.bapcertification.org/Producers. BAP certification can be found by searching the company's name or searching the company-specific BAP number P10141.

[98] *See* U.S. Food and Drug Administration, "Import Alert 16-81," (Jan. 23, 2025), accessed February 7, 2025, https://www.accessdata.fda.gov/cms_ia/importalert_49.html.

b. *Many Top Chinese Tilapia Shippers to the U.S. Continued to be BAP-Certified Despite Having a History of FDA Refusals and Other Regulatory Violations*

The Oregon Trawl Commission reviewed Chinese tilapia producers whose products did reach U.S. consumers and found that many top shippers by volume are BAP certified but have been subject to multiple FDA refusals.

Different from Import Alerts, FDA import refusals are shipment detainments that are made on a case-by-case basis when a shipment is inspected and found to violate FDA laws and regulations.[99] We conducted an analysis of Chinese frozen tilapia fillets imported into the U.S. in 2023. The top 25 shippers by volume were identified using data from the global trade data platform Panjiva.[100] This list was then cross-referenced with BAP certification records[101] and FDA import refusal data for tilapia products containing unapproved veterinary drug residues and other food safety issues.[102]

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[99] *See* U.S. Food and Drug Administration, "Import Refusals," (2024), https://www.fda.gov/industry/fda-import-process/import-refusals#:~:text=A%20refusal%20is%20FDA's%20final,FDA%20Action%20(Refusal%20Notice).

[100] Panjiva, https://panjiva.com, search term for HTS code "0304.61, Fish fillets; frozen, tilapias (Oreochromis spp.)." Results for year 2023 were filtered to include only shipments from China and consigned in the United States.

[101] Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (2023), https://www.bapcertification.org/Producers. Companies were identified by downloading BAP's list of certified producers and searching the names of the top shippers of Chinese frozen tilapia fillets sourced from Panjiva. *See id*.

[102] U.S. Food and Drug Administration, "Import Refusals," (2024), https://datadashboard.fda.gov/ora/cd/imprefusals.htm. FDA Import Refusal data was filtered under column "Product Code and Description" for all tilapia products except those that are value-added or further processed including tilapia, cold smoked; tilapia, hot smoked; tilapia, breaded; tilapia, cakes, balls. Data was then filtered under column "Refusal Charges" for antibiotic refusal reference codes including: 72, 2860, 2900, 3220, and 3885 and other food safety-related reference codes including: 9 (salmonella), 249 (filthy), 306 (insanitary), 337 (off

As demonstrated in Figure 7 below, ten of the top 25 shippers of Chinese frozen tilapia fillets in 2023 are BAP-certified. Nonetheless, all of these companies have a history of FDA import refusals for residues of unapproved veterinary drugs and/or other food safety-related issues. These companies are listed below:

1. Tongwei Hainan Aquatic Products Co., Ltd.[103]
2. Hainan Xintaisheng Industry Co., Ltd.[104]
3. Hainan Sky Blue Ocean Foods Co., Ltd.[105]
4. Hainan Qinfu Foods Co., Ltd.[106]
5. Zhanjiang Shuanghu Food Co., Ltd.[107]
6. Hainan Xiangtai Fishery Co., Ltd.[108]

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odor). This information is also available on each company's FDA firm profile. *See* U.S. Food and Drug Administration, "Firm/Supplier Evaluation Resources," (n.d.), https://datadashboard.fda.gov/ora/fd/fser.htm.

[103] *See* U.S. Food and Drug Administration, "Firm Profile for Tongwei Hainan Aquatic Products Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3013274008&/identity/3013274008.

[104] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Xintaisheng Industry Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3006690752&/identity/3006690752.

[105] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Sky Blue Ocean Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3004816804&/identity/3004816804.

[106] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Qinfu Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3007972736&/identity/3007972736.

[107] *See* U.S. Food and Drug Administration, "Firm Profile for Zhanjiang Shuanghu Food Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3010417987&/identity/3010417987.

[108] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Xiangtai Fishery Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3005222276&/identity/3005222276.

7. Hainan Golden Springs Foods Co., Ltd.[109]

8. Gain Ocean Food Co., Ltd.[110]

9. Zhanjiang Chaohui Aquatic Food Co.[111]

10. Guangdong Gourmet Aquatic Products[112]

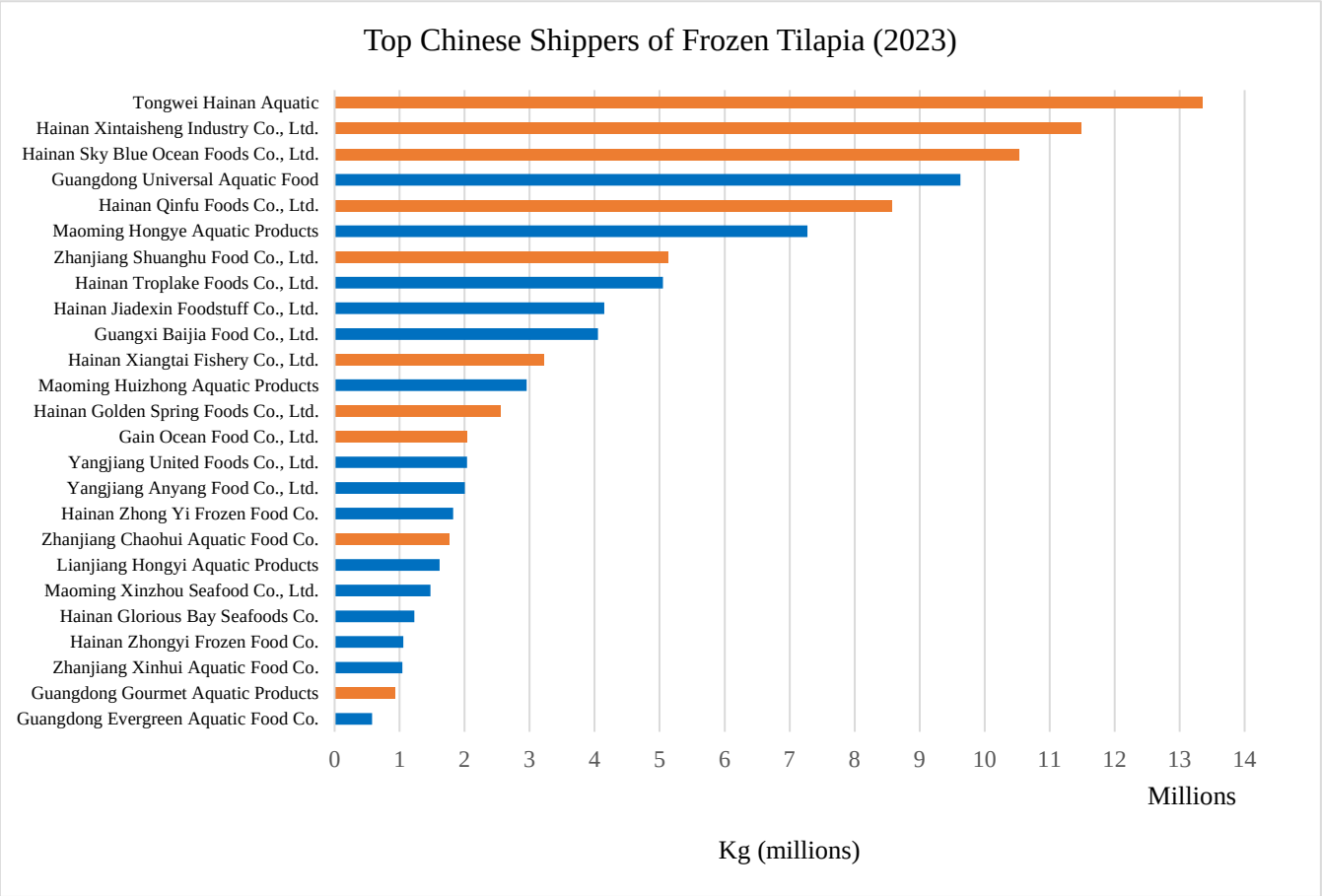
[109] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Golden Springs Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3004254552&/identity/3004254552.

[110] *See* U.S. Food and Drug Administration, "Profile for Gain Ocean Food Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3010819562&/identity/3010819562.

[111] *See* U.S. Food and Drug Administration, "Firm Profile for Zhanjiang Chaohui Aquatic Food Co.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3007991734&/identity/3007991734.

[112] *See* U.S. Food and Drug Administration, "Firm Profile for Guangdong Gourmet Aquatic Products," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3010246583&/identity/3010246583.

Figure 7. *Top Chinese Shippers of Tilapia to U.S. (2023) by Volume with BAP Certification and FDA Import Refusals, highlighted in orange*



Source: Panjiva, https://panjiva.com, the search term for HTS code "0304.61, Fish fillets; frozen, tilapias (Oreochromis spp.)." Results for year 2023 were filtered to include only shipments from China and consigned in the United States.

Seven out of the ten companies have had tilapia shipments refused for containing unapproved veterinary drugs, which the FDA considers unsafe for human consumption.[113] This includes Tongwei Hainan Aquatic Products Co., Ltd., Hainan Xintaisheng Industry Co., Ltd.,

[113] *See* FDA Refusal Charge Code 2860. "The article is subject to refusal of admission pursuant to Section 801(a)(3) [of the Food, Drug, and Cosmetic Act] in that it appears to contain a new animal drug (or conversion product thereof) that is unsafe within the meaning of Section 512."

Zhanjiang Shuanghu Food Co., Ltd, Hainan Xiangtai Fishery Co., Ltd., Hainan Golden Spring Foods Co. Ltd., Gain Ocean Food Co., Ltd., and Guangdong Gourmet Aquatic Products.

Out of these companies with refusals related to unapproved veterinary drugs, Hainan Golden Springs Foods Co., Ltd., in particular, has undergone the most FDA on-site facility inspections among the identified companies.[114] These inspections include one that resulted in a determination of Official Action Indicated ("OAI"), the FDA's most severe classification, indicating significant regulatory violations requiring formal action. In 2022, the FDA issued a warning letter to Hainan Golden Springs, citing serious violations of seafood Hazard Analysis and Critical Control regulations for its frozen tilapia fillets.[115] These regulatory actions were in addition to two import refusals for filth in 2019 and the presence of new, unapproved animal drugs in 2020.[116] Despite these violations, Hainan Golden Springs Foods Co., Ltd. continues to be BAP-certified.

The remaining three companies of the top ten BAP-certified shippers – Hainan Sky Blue Ocean Foods Co. Ltd., Hainan Qinfu Foods Co. Ltd., and Zhanjiang Chaohiu Aquatic Food Co.

[114] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Golden Springs Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3004254552&/identity/3004254552.

[115] *See* U.S. Food and Drug Administration, "Warning Letter for Hainan Golden Spring Foods Co. Ltd.," (May 4, 2022), https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/hainan-golden-spring-foods-co-ltd-629972-05042022.

[116] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Golden Springs Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3004254552&/identity/3004254552.

– have had tilapia imports refused for food safety violations unrelated to animal drug residues, such as for salmonella and filth.[117]

In sum, the FDA enforcement actions reveal the deceptive and misleading nature of BAP's representations that its certified products follow the laws of the importing country and are safe for consumers.[118]

2. BAP's Representation that Its Certified Products are Safe is Contradicted by Objective Evidence

The FDA enforcement actions, including Import Alerts and refusals, reveal that many BAP-certified tilapia producers use "unapproved animal drugs." This term encompasses antibiotics that are commonly used in Chinese tilapia aquaculture.[119] Studies have shown that the use of these antibiotics in aquaculture may have serious harmful impacts on human health.

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[117] *See* U.S. Food and Drug Administration, "Firm Profile for Hainan Sky Blue Ocean Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3004816804&/identity/3004816804; U.S. Food and Drug Administration, "Firm Profile for Hainan Qinfu Foods Co., Ltd.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3007972736&/identity/3007972736; U.S. Food and Drug Administration, "Firm Profile for Zhanjiang Chaohui Aquatic Food Co.," (n.d.), https://datadashboard.fda.gov/ora/firmprofile.htm?FEIs=3007991734&/identity/3007991734.

[118] *See, e.g.*, BAP Hatchery Standard at 1.5 at 10; *see also* BAP Farm Standard at 1.6 at 11; BAP Processing Standard at 2.3.14 at 23.

[119] *See* Monterey Bay Aquarium Seafood Watch, "Tilapia – China," (Nov. 14, 2018), available for download at https://www.seafoodwatch.org/recommendation/tilapia/nile-tilapia-1988?species=228. Seafood Watch rated tilapia from China "Critical" for chemicals including antibiotics. *See also* Min Zhou, Shen Yu, Bing Hong, Juan Li, Han Han, Guang Qie, Antibiotics control in aquaculture requires more than antibiotic-free feeds: A tilapia farming case, *Environmental Pollution*, Volume 268, Part B, 2021, 115854, https://doi.org/10.1016/j.envpol.2020.115854; Department of Health and Human Services, "Fish and Fishery Products Hazards and Controls Guidance," (June 2022 Edition) at Chapter 11, p.5, available for download at https://www.fda.gov/food/seafood-guidance-documents-regulatory-information/fish-and-fishery-products-hazards-and-controls.

For example, in May 2024, it was reported that the FDA issued an import alert for Chinese tilapia producer Hainan Eternal Springs Fisheries Co., a BAP-certified company,[120] after discovering that the company's imports contained excessive levels of chloramphenicol.[121] Chloramphenicol residues in aquaculture products have been shown to bioaccumulate in humans, increasing the risk of developing cancer, gray baby syndrome, and aplastic anemia, a potentially irreversible and fatal bone marrow disease.[122]

Other commonly used veterinary drugs in Chinese tilapia farms include malachite green, a fungicide, and nitrofurans, a class of antibiotics.[123] Malachite green is associated with "public health hazards" and is recognized as a carcinogen and a "multi-organ toxin" for a "wide range of aquaculture and terrestrial animals."[124] Extensive evidence also highlights the carcinogenic

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[120] *See* Best Aquaculture Practices, "BAP Certified Aquaculture Producers," (2023), https://www.bapcertification.org/Producers. BAP certification can be found by searching the company's name or searching the company-specific BAP number P10233.

[121] *See* Mark Godfrey, "US FDA import alert, ongoing supply crunch test China's tilapia sector, SeafoodSource, (June 12, 2024), https://www.seafoodsource.com/news/supply-trade/fda-alert-amid-ongoing-supply-crunch-tests-china-s-tilapia-sector#:~:text=The%20U.S.%20Food%20and%20Drug,Hainan%20Eternal%20Springs%20Fisheries%20Co.

[122] *See* Rueben Chukwuka Okocha et al., "Food safety impacts of antimicrobial use and their residues in aquaculture," *Public Health Reviews*, 39(21), (2018), https://doi.org/10.1186/s40985-018-0099-2; Emmanuel Sunday Okeke et al., "Antibiotic resistance in aquaculture and aquatic organisms: a review of current nanotechnology applications for sustainable management," *Environmental Science and Pollution Research International*, 29(46), (2022), https://doi.org/10.1007/s11356-022-22319-y;

[123] The FDA's Import Alerts 16-124 and 16-129 identify the presence of drugs like malachite green and nitrofurans in red-listed tilapia products from numerous Chinese companies. *See* U.S. Food and Drug Administration, "Import Alert 16-124," https://www.accessdata.fda.gov/cms_ia/importalert_27.html; U.S. Food and Drug Administration, "Import Alert 16-129," https://www.accessdata.fda.gov/cms_ia/importalert_31.html.

[124] Shivaji Srivastava et al., "Toxicological effects of malachite green," *Aquatic Toxicology*, 66(3), at 324, (2004), https://doi.org/10.1016/j.aquatox.2003.09.008. *See also* Yan

effects of nitrofurans, which are used in aquaculture production and frequently found in aquaculture products for human consumption.[125] GSA/BAP recognizes that the use of these antibiotics in tilapia aquaculture presents serious health risks for humans. Indeed, its own standards recognize that the use of chloramphenicol and nitrofuran antibiotics are "proactively prohibited for use in food production in all countries."[126] The presence of veterinary drug residues in BAP's certified products, as found by the FDA, demonstrate that BAP's label and public statements assuring that its certified products comply with safety standards and are safe to consume are deceptive and in violation of the FTC Act.

B. BAP's Logo is Deceptive Because it is Overly Broad

BAP's logo is deceptive in and of itself because it creates a general impression that the certified product is superior to uncertified products and offers a general benefit without any qualifying language.

As discussed above, under the Green Guides, the "use of an environmental certification or seal of approval likely conveys that the product offers a general environmental benefit (*see* §

Jiang et al, "Distribution and depuration of the potentially carcinogenic malachite green in tissues of three freshwater farmed Chinese fish with different food habits," *Aquaculture*, 288(1–2), (2009), https://doi.org/10.1016/j.aquaculture.2008.10.025.; Sandra J. Culp and Frederick A. Beland, "Malachite Green: A Toxicological Review," *Journal of the American College of Toxicology*," 15(3), (1996), https://doi.org/10.3109/10915819609008715.

[125] *See, e.g.*, Guangxin Yang et al., "Research progress on metabolites of nitrofurazone in aquatic products," Heliyon, 10(8), (Apr. 30, 2024), https://doi.org/10.1016/j.heliyon.2024.e29735; European Food Safety Authority, "Scientific Opinion on nitrofurans and their metabolites in food," EFSA Journal 13(6):4140, (2015), https://sitesv2.anses.fr/en/system/files/6605-EFSA-2015-CONTAM-Scientific%20Opinion%20on%20nitrofurans%20and%20their%20metabolites%20in%20food.pdf.

[126] BAP Hatchery Standard at 12 – 13; *see also* BAP Farm Standard at 13; BAP Processing Standard at 3.2.14 at 23 and Annex 4 – Table III at 61.

260.4)" which is "highly unlikely" to be substantiated.[127] The use of the certification or seal, in this case, would constitute deception.[128] To avoid deception, the markets should only use the certification or seal if it conveys, either through name or some other means, the basis for the certification, or if it is accompanied by "clear and prominent qualifying language that clearly conveys that the certification or seal refers only to specific and limited benefits."[129]

BAP's logo fails to comply with the FTC's guidance. It does not provide any qualification regarding how the products were certified and what specific benefit the certification provides. BAP's acronym logo, which marketers may choose to use instead of the logo containing the star designation (Figure 8),[130] is particularly deceptive, as it does not include any information about which part of the tilapia production process was BAP certified.

Figure 8. *BAP Acronym Logos*

[127] Green Guides § 260.6(d).

[128] Green Guides § 260.6(d), (e).

[129] Green Guides § 260.6(d), (e).

[130] Best Aquaculture Practices, "BAP Logo Use requirements," (2021) at 21, https://www.bapcertification.org/Downloadables/pdf/BAP%20-%20Policy%20-%20BAP%20Logo%20Use%20Requirements%20-%20Issue%202.4%20-%2018-March-2021.pdf.

Instead of explaining concrete environmental benefits, BAP's logo simply conveys a general sense to consumers that BAP-certified products are better than non-certified ones. Such a representation deceives consumers and violates the FTC's guidance and laws.

VI. BAP CERTIFICATION IS MATERIAL TO CONSUMERS' PURCHASING DECISIONS

BAP's representations, through its label and public statements, are material to the consumers because this certification affects consumers' purchasing decisions.[131]

As an initial matter, many of the largest grocery stores in the United States maintain some form of a "sustainable" purchasing policy where they assure the safety and sustainability of their food to consumers. To that end, these grocery stores set certain standards and requirements for their suppliers. For farmed seafood, they all list BAP certification as one way of meeting their "sustainability" requirements.

For example, Ahold Delhaize USA's "Sustainable Seafood Commitment" states that it is "committed to sourcing only seafood from fisheries and farms that are well managed to ensure that fish populations remain healthy, and fishing and farming methods have a minimum environmental and social impact. All seafood we sell, whether it's fresh, frozen, or canned, must meet important sustainability criteria." For farmed seafood, the company requires suppliers to

[131] "A representation is considered 'material' if it 'involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.'" Lina M. Khan, Rebecca Kelly Slaughter, Christine S. Wilson, Alvaro M. Bedoya, In the Matter of Intuit Inc., 7, (Jan. 31, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/d09408commissionopiniondenyingmsd.pdf.

obtain "{f}arm-level certification" and lists BAP as an example.[132] Ahold Delhaize USA owns Food Lion, the Giant Company, Giant Food, Hannaford, and Stop & Shop.[133]

Similarly, Albertsons Companies' "Responsible Seafood Policy and Commitments" requires suppliers of farmed seafood to report "certification type and certification code" for fish farms, feedmills, and hatcheries. BAP is one of the certification types listed as an acceptable example.[134] Brands owned by Albertsons Companies include Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market, Haggen, Carrs, Kings Food Markets, and Balducci's Food Lovers Market.[135]

Kroger Co.'s Seafood Sustainability Policy states that "{f}or farm-raised seafood in our Seafood Department, we rely on third-party certification standards to increase the environmental sustainability of the species we procure. Our goal is to continue sourcing 95% or more of farm-raised seafood in our Seafood Department from farms that are Best Aquaculture Practices (BAP) 2-star or greater certified, Aquaculture Stewardship Council (ASC) certified or GLOBALG.A.P. certified."[136] Brands owned by Kroger Co. include: Baker's, City Market, Dillons, Food 4 Less, Foods Co, Fred Meyer, Fry's Gerbes, Jay C Food Store, King Soopers, Kroger, Mariano's Metro

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[132] Ahold Delhaize USA, "Sustainable Seafood Commitment," https://giantfood.com/pages/sustainable-seafood.

[133] Ahold Delhaize, United States, https://www.aholddelhaize.com/brands/.

[134] Albertsons Companies, "Responsible Seafood Policy and Commitments," https://s29.q4cdn.com/239956855/files/doc_downloads/2022/12/2022_AlbertsonsCompaniesSEL_Combined.pdf.

[135] Albertsons Companies, "About ACI," https://www.albertsonscompanies.com/about-aci/overview/default.aspx.

[136] Kroger, "Seafood Sustainability Policy," https://www.thekrogerco.com/wp-content/uploads/2018/12/The-Kroger-Co_Seafood-Sustainability-Policy_2018-July.pdf.

Market, Pay-Less Super Markets, Pick'n Save, QFC, Ralphs, Ruler, and Smith's Food and Drug.[137]

Finally, Walmart U.S. and Sam's Club publicly state that "{b}y 2025, based on price, availability, quality, customer demand, and unique regulatory environments across {their} global retail market," the company will:

> require all fresh and frozen, farmed and wild seafood suppliers to source from fisheries who are:
>
> - Third-party certified as sustainable using Marine Stewardship Council (MSC) or Best Aquaculture Practices (BAP), or certified by a program which follows the FAO Guidelines and is recognized by the Global Sustainable Seafood Initiative (GSSI) as such. For our farmed supply, we expect suppliers to ensure sustainable production and sourcing throughout the supply chain, including final processing plant, farms, hatcheries and feed mills.
>
> OR
>
> - Actively working toward certification or in a Fishery Improvement Project (FIP) or Aquaculture Improvement Project (AIP) that has definitive and ambitious goals, measurable metrics, and time bound milestones.[138]

In other words, for these grocers, BAP certification representing that the certified products are produced in an ethical, safe, and sustainable manner is material to their purchasing decision and decision to provide shelf space for these products.

The grocery stores' decision to advertise and provide so-called "sustainable" seafood, in turn, originates from the belief that such an attribute influences consumers' purchasing choices. Indeed, one study shows that consumers see a claim about sustainability as an overarching

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[137] Kroger, "Kroger Family of Companies," https://www.kroger.com/i/kroger-family-of-companies.

[138] Walmart, "Walmart Policies and Guidelines," Section IV.1 Fresh and Frozen Seafood, https://corporate.walmart.com/policies.

representation that can convey many beneficial attributes, with the most "decisive elements of sustainability in aquaculture" being "the minimal use of hormones and drugs."[139] Another study found that 72.2% of respondents considered "sustainability" important in seafood purchasing decisions.[140] Respondents rated "food safety" and "traceability" as important factors in their purchasing decisions.[141]

More specifically, eco-labels such as BAP have been shown to have a positive impact on consumer attitudes.[142] One study analyzing consumers' willingness to purchase seafood marked with the Marine Stewardship Council certification, an ecolabel for wild-caught seafood, found that 56% of respondents stated that they "always or regularly look for ecolabels when buying seafood."[143] In this study, consumers were found more likely to purchase products bearing the

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[139] Katrin Zander & Yvonne Feucht, Consumers' Willingness to Pay for Sustainable Seafood Made in Europe, 30 J. INT'L FOOD & AGRIBUSINESS MARKETING, 251, (Dec. 22, 2017), https://www.tandfonline.com/doi/full/10.1080/08974438.2017.1413611#d1e1055.

[140] Illinois-Indiana Sea Grant, Seafood Survey Results: Consumer Purchase Preferences, Purdue University, MICH. STATE UNIV. & S. ILL. UNIV., (2021), https://iiseagrant.org/publications/seafood-survey-results-consumer-purchase-preferences/.

[141] *Id.*

[142] *See* Aniel Kumar and Rituparna Basu, Do eco-labels trigger green product purchase intention among emerging market consumers?, JOURNAL OF INDIAN BUS. RSCH., (July 2023), 466–492 ,https://www.researchgate.net/publication/372573774_Do_eco-labels_trigger_green_product_purchase_intention_among_emerging_market_consumers; see generally, Ha Thu Ngyuen & Hieu Trung Le, The effect of agricultural product eco-labelling on green purchase intention, MGMT. SCI. LETTERS (Apr. 20, 2020), Kyriakos et al., Ecolabels and the Attitude–Behavior Relationship towards Green Product Purchase: A Multiple Mediation Model, SUSTAINABILITY, (May 16, 2021), https://www.researchgate.net/publication/341111830_The_effect_of_agricultural_product_eco-labelling_on_green_purchase_intention.

[143] Julia Bronnmann et al., Measuring Motivations for Choosing Ecolabeled Seafood: Environmental Concerns and Warm Glow, UNIV. OF WIS. PRESS, (Aug. 2021), https://muse.jhu.edu/pub/19/article/840410.

MSC label compared to similar products without an ecolabel.[144] This was due to the perception that these products are more sustainable.[145]

VII. CONCLUSION

As demonstrated in this petition, GSA/BAP's acts violate section 5 of the FTC Act (15 U.S.C. § 45). Specifically, through its certification label and public statements, GSA/BAP deceptively represents that its certified tilapia products are safe to consume when evidence suggests that many BAP-certified products have been found by U.S. federal government agencies to be unsafe for U.S. consumers because they either contained traces of unapproved animal drugs, including antibiotics, or exhibited other food safety issues. Finally, GSA/BAP's representations are material because they are likely to affect the consumers' choice of whether or not they purchase certain tilapia products in grocery stores.

For these reasons, consistent with 16 C.F.R. § 2.1, the Oregon Trawl Commission respectfully requests that the FTC initiate an investigation into the advertising practices of GSA/BAP.

Respectfully submitted,

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[144] *Id.*

[145] *Id.*