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April 12, 2016

Mr. Mark Wildman
International Fisheries Division
Office for International Affairs and Seafood Inspection
National Marine Fisheries Service
National Oceanographic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Re: Comments on Proposed Seafood Import Monitoring Program (NOAA-NMFS-2015-0122, Docket No. 150507434-5999-01).

Dear Mr. Wildman:

The undersigned organizations submit these Comments in response to the Seafood Import Monitoring Program, as proposed and described in the Notice of Proposed Rulemaking issued February 5, 2016 by the National Marine Fisheries Service (“NMFS” or “NOAA Fisheries”).

As described in greater detail in the postscript below, FMI, NCCR, NFI, NRA, NRF, and RILA (the “Commenters”) represent companies ranging from small businesses with several employees to the nation’s largest retail, restaurant, and distribution firms. Taken together, the Commenters’ companies employ tens of millions of American workers and provide billions of meals to American families every year. These companies span the length of the global seafood value chain.

The economy of the United States depends on a reliable year-round supply of thousands of food items sourced from trading partners overseas, and the Commenters’ companies are affected by regulatory measures that raise the costs of importing such items. Most food products

have narrow profit margins at the retail level, and thus even minor cost increases incurred to meet new regulatory mandates can threaten the viability of businesses dependent on that supply.

In this case, NOAA Fisheries is establishing a new permitting obligation (the International Fisheries Trade Permit); imposing on an entire industry a permanent, detailed international reporting requirement as to certain, “at risk” seafood species; and setting up a system to handle the voluminous data that will be continuously uploaded to the International Trade Data System (“ITDS”).¹ The agency appears poised to apply this same system to all imported seafood in coming months.²

At the outset, it should be stressed that each of the organizations is committed to ensuring its members catch, process, or sell only legally harvested and legally labeled seafood. The organizations have demonstrated a commitment to legal obligations and have instituted a range of voluntary programs to ensure each segment of the seafood supply chain is acting responsible. Nothing in these comments should suggest that the Commenters are not fully committed to stopping pirate fishing. The Commenters agree with the government’s goal, but utterly disagree with the means proposed to achieve it.

The NMFS proposal raises at least three separate problems. First, the costs incurred by harvesters, overseas processors and exporters, and U.S. seafood importers in attempting to meet the requirements of the Seafood Import Monitoring Program will be borne in part by U.S. retailers and restaurants, in the form of both increased prices and reduced supply. The cost pressures the Program creates, secondly, will undermine the viability of small fishing operations that are integral to seafood sustainability. Finally, the Program will slow the importation process at U.S. ports because of the lengthy data-entry requirement the Program imposes and because of the new enforcement obligation the Program creates for Federal agencies at U.S. ports of entry. These material impacts will negatively affect the millions of customers and guests the Commenters’ companies serve.

A. The Costs Of The Seafood Import Monitoring Program Could Be Significant – And Could Even Cause Seafood Producers Overseas To Stop Exporting To The United States.

First, the cost concern. By way of background, NOAA Fisheries proposes to require importers to collect and then upload to the ITDS a lengthy set of data elements for wild-caught

¹ The “at risk” species are: abalone; Atlantic cod; Pacific cod; grouper; blue crab; King crab; mahi-mahi; red snapper; sea cucumber; shrimp; sharks; swordfish; albacore tuna; bigeye tuna; skipjack tuna; and yellowfin tuna. Though bluefin tuna is not deemed “at risk,” it is nevertheless included within the scope of the proposed rule. 81 Fed. Reg. at 6213.

² “As indicated in the Task Force’s recommendations to the President, it is the goal of the U.S. government ‘to eventually expand the program to all seafood at first point of sale or import.’ The process for expansion will account for, among other factors, consideration of authorities needed for more robust implementation, stakeholder input, and the cost-effectiveness of program expansion.” 81 Fed. Reg. at 6211. The government has consistently promoted this in public as the “first phase” of its plan to mandate this cumbersome program for all imported seafood. See, e.g., <http://www.state.gov/secretary/remarks/2015/10/247900.htm>.

and farmed seafood species deemed “at risk” for illegal, unreported, and unregistered (“IUU”) fishing, seafood fraud, or both. Submission to the ITDS of the necessary data will be a condition of entry into the United States, and merchandise will not enter the U.S. until all required data is submitted. According to the rule, an IFTP holder providing inaccurate or even incomplete data violates the Magnuson-Stevens Fishery Conservation and Management Act.

Requiring all importers of all at-risk species to provide all the specified information for every container arriving at U.S. ports will unquestionably raise the price of seafood at every stage in the value chain, including for consumers. Harvesters and aquaculturists will have to develop the necessary data. In many designated at-risk fisheries, such as mahi-mahi, numerous vessels fish for several days, land their catch, and sell it to different buyers. Those buyers either represent, or sell to, primary processors, who accumulate product from many different vessels and then either export it or sell it to secondary processors – who themselves may source from multiple supplier-processors. When it is ready for shipping to the U.S., that product may be combined with other, related seafood products in a single container. By the time an individual container arrives at a U.S. port, it often contains multiple items from multiple processors and from dozens or even hundreds of harvesters.³

Each unique data set for such a container is, in NMFS’s lexicon, a “harvest event.” For some at-risk species, a single container will have thousands of unique harvest events, each one requiring a completed model form and separate ITDS uploading process. Importers will have to manually complete and submit each such form, an entirely new cost. To do so, importers must have accurate and complete Import Monitoring Program data provided by the relevant exporters. Those exporters will charge a premium for providing this data, because they will be charged a premium by the harvester or seafood farmer for the information in the first place.

Thus, the Program at the very least will impose new costs on importers, to pay for:

1. Obtaining the required data from exporters shipping product to the U.S.;
2. The data entry process at the U.S. port of entry;
3. Training for employees conducting that process;
4. Audits of the information supplied by exporters, to ensure accuracy and completeness;
5. Longer lead times for release of containers holding at-risk fish;
6. Higher insurance premiums to protect IFTP holders from legal exposure for inaccurate or incomplete data, and to account for the risk that U.S. officials will seize noncompliant at-risk seafood; and

³ It is essential to recognize that each of the boats at the start of this process operate under a system of government fishery management requirements. If the United States feels that a government’s regulatory system can be improved, it should use the tools available to encourage such improvements.

7. Higher compliance costs for retailers and restaurants for their own audits and related programs aimed at ensuring that suppliers are providing at-risk products fully compliant with NMFS requirements.

Because the NMFS proposal applies to all at-risk imports without exception, these costs will impact every seafood importer, every container, every at-risk product, and every retail or restaurant customer, without any showing by Federal officials at the port that the seafood in a given shipment is even suspected of having been illegally harvested, farmed, or mislabeled. It is the working understanding of the Commenters that the NMFS proposal applies to all imports, including U.S.-harvested imports after processing elsewhere, and re-exports; however, clarity on the proposal as it relates to further processing of the product would help ensure better understanding of the scope of the proposal .

These costs will be significant. Consider the attached graphic showing the predicted burden on U.S. importers to bring minced Atlantic cod into the U.S. for use in ubiquitous fish fingers.

Fish fingers are derived from minced cod. Processors of fish fingers by containers of cod, with each shipment containing 52,000 pounds of mince fish. To generate 52,000 pounds of mince requires the capture of 4,160,000 pounds of cod, because 50% of cod in the North Atlantic goes to the salted fish markets (for bacalao, for instance). The other 50% (or the remaining 2,080,000 pounds) is used to form fillets, loins, and portions. About 2.5% of the remaining half goes to mince cod. In-shore cod boats catch about 400 pounds of cod each day. Therefore, to generate the required cod for the single container of mince cod would require 10,400 “boat days” or “harvest events.”

In recent OMB-approved guidance, NMFS determined it takes 5 minutes to complete a form calling for data less complex than what the Import Monitoring Program requires.⁴ Applying this number to the Atlantic cod example, it will take 867 hours to complete the necessary 10,400 forms for this single container. A clerk, with all associated expenses included, costs \$31.25 per hour.⁵ The financial burden for tracking the minced cod to go into these fish sticks will be \$27,083.

⁴ Special Instructions for Gillnet Vessel Owners, Greater Atlantic Regional Fisheries Office, NMFS, at 4 (<https://www.greateratlantic.fisheries.noaa.gov/aps/permits/forms/2016vesselgillnettagforminstructions.pdf>). In cost estimates filed in a separate docket, NMFS arrives at different conclusions but concedes that the data entry process will impose substantial costs on filers. See Supporting Statement: NMFS Implementation of Seafood Traceability Program (http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201602-0648-003). NMFS in that document estimates that a data entry employee costs employers \$15/hour for pay, benefits, and overhead. That level of overall compensation cannot be true in major port cities such as Los Angeles and Seattle, and, as state minimum wages increase, will be illegal.

⁵ This is based on total per employee costs of \$65,000 annually. See, e.g., <http://www1.salary.com/CA/Los-Angeles/Administrative-Assistant-I-salary.html> and <http://web.mit.edu/e-club/hadzima/how-much-does-an-employee-cost.html>.

Suggesting that a burden of this magnitude will not find its way into the prices consumers pay for seafood is inaccurate. Industry will respond to these new costs either by increasing retail prices, searching out lower-cost seafood options – i.e., fish that are not yet covered by the Program – or moving away from seafood. That is especially the case with respect to the 2/3 of U.S. seafood consumption that takes place outside the home. Because both the seafood importer and the restaurant and foodservice at the end of the supply chain are likely to be small businesses – 70 percent of restaurants nationwide are single-unit operators – simply absorbing higher costs is untenable.

The NMFS draft proposal ignores all of this. Neither the NPRM itself nor the initial regulatory flexibility analysis considers any of these costs, concluding instead that impacts on prices for affected products “are expected to be minor.”⁶

The Initial Regulatory Flexibility Analysis blithely concludes that seafood exporters to the U.S. will be able to provide the required data at minimal cost because they are already implementing a supposedly similar program put in place by the European Union. NMFS itself, however, concedes that the EU’s IUU regulations “do not include a traceability scheme equivalent to that as contemplated by the IUU Task Force and as proposed in this rule,” and that those regulations do not apply to farmed seafood at all.⁷

In fact, the EU’s IUU regulations primarily involve government-to-government collaboration and information-sharing. It is true that exporters shipping to the EU must provide certain data related to their EU-bound wild-capture product, but that information is not traceable at all and primarily relates to harvest – not to landing, post-harvest processing, and cross-border shipping. Similarities between the EU system and the NMFS proposal in any event do not lessen the costs associated with the ITDS data entry process, which cannot be satisfied through a “cut and paste” of existing information, no matter how comparable to the Import Monitoring Program proposed here.

NOAA Fisheries also claims companies are already collecting this information voluntarily for commercial reasons.⁸ Some companies collect information similar to – but certainly not the same as – that mandated by the Program, but not all or even a majority do so. Additionally, what is done for commercial reasons should not by virtue of that be required by government. For instance, some retailers and restaurants choose to source food products produced and labeled as “organic,” because consumers perceive organic foods as healthy and sustainable. Those businesses can make that choice, and then reverse it, as they see fit. The entirely rational choice to meet the demand for organic foods among American consumers – and to do it for certain products but not for others – is a commercial decision that should not be required by permanent, across-the-board Federal fiat.

⁶ Initial Regulatory Flexibility Analysis, at 6-7. This is all the more striking given that NMFS does acknowledge some of these costs in the “Supporting Statement: NMFS Implementation of Seafood Traceability Program” filed in a separate docket.

⁷ 81 Fed. Reg. at 6218; Initial Regulatory Flexibility Analysis, at 7.

⁸ See, e.g., Initial Regulatory Flexibility Analysis, at 7.

All of this will make the United States a more expensive place for seafood producers to do business. Producers for whom the U.S. is not the only market and whose U.S. business waxes and wanes with economic conditions, currency flows, and seasonal demand will be faced with a choice of whether to take on the burden of collecting, tracking, and reporting the required data as to any fish that may *potentially* ship to American customers, or to abandon the U.S. market and avoid the costs and uncertainties the NMFS proposal introduces. Some overseas harvesters will choose to focus on faster-growing markets lacking this regulatory uncertainty. The resulting loss of supply in turn will drive up U.S. seafood prices still more.

NOAA Fisheries contends that “the volume of products likely to be diverted away from the U.S. would be less than 1% of current imports.”⁹ This estimate, based on the demonstrably flawed assumption that information already provided to EU officials will reduce new compliance costs attributable to the Monitoring Program, is surely wrong. Even if it is correct, that still represents a diversion of at least \$202,000,000 of supply away from the U.S. every year, making it that much more difficult to meet the demand of American consumers.¹⁰ Expansion of the Monitoring Program to all imports will almost certainly hasten the trend.

B. The Seafood Import Monitoring Program Could Undercut Overseas Seafood Sustainability And The Artisanal Fishing Communities That Help Ensure Sustainability.

The compliance burden for the NMFS proposal will extend back to at-risk harvesters and farmers in fisheries and ponds around the world. As with most any regulatory mandate, larger producers will be able to comply with the Monitoring Program more easily than their small competitors, by managing the operational challenges the Program represents and more effectively allocating to their U.S. partners the newly-imposed compliance burden. Lacking the economies of scale of larger producers, small seafood companies in the developing world in particular will face this new regulatory obligation with little room to maneuver.

Take blue crab – alleged by NMFS to be at-risk for seafood fraud alone – as an example. Blue crab is harvested in countries such as Mexico and Venezuela by artisanal fishermen taking very small boats out every day and returning at night. These aptly-named day boats are limited to a daily catch of 60 kilograms, with a yield of 15 kilograms of crab meat. Applying the Import Monitoring Program to this product will force thousands of fishermen to generate the required data every day for any customer who *might* choose to export that 15 kilos – 33 pounds – of crab meat to a U.S. customer. Fishermen dependent on U.S. demand will either comply or go out of business. If their costs increase enough, their crab will be uncompetitive to comparable seafood not deemed “at-risk,” and they will go out of business regardless.

This dynamic applies, for example, to mahi-mahi fishermen from Peru and Mexico, wild-capture shrimp harvesters from India, and Pacific cod fishermen from Canada – all of them in the

⁹ Initial Regulatory Flexibility Analysis, at 6.

¹⁰ According to NMFS, the United States in 2014 imported \$20.2 billion in seafood. *See Imports and Exports of Fishery Products Annual Summary, 2014 Revised* (<http://www.st.nmfs.noaa.gov/Assets/commercial/trade/Trade2014.pdf>).

at-risk universe. In each category, the compliance burden of the NMFS proposal will advantage larger boats and larger companies and will undercut small, independent fishermen.

In raising costs on the artisanal fishermen least capable of adjusting to a complex new mandate, the Import Monitoring Program perversely undermines the very sustainability NOAA Fisheries and the Administration claim to support. In some fisheries – such as mahi-mahi from South America – better financed global competitors using larger vessels capable of longer trips to fishing grounds will have an advantage in the U.S. market. In other fisheries where the nature of the resource requires small vessels fishing close to shore – such as blue crab from Mexico and wild-capture shrimp from India – these small fishermen may well abandon the water for work at which they can turn a profit. Either way, artisanal fishing and the coastal communities regarded as integral to ensuring seafood sustainability will suffer.

That result is compounded by the fact that, as overseas producers divert their harvest from the U.S. market, the strain on U.S. fisheries in turn could increase. Applying the NMFS proposal to Atlantic cod, for instance, will not improve the capabilities of Iceland, Norway, and Russia to root out any IUU fishing in their waters, but by incentivizing their fishermen to refuse to sell to U.S. customers, the proposal *will* lead to calls for higher quotas on vulnerable Atlantic cod stocks in U.S. waters.¹¹

C. There Is A Need for Continued Interagency Coordination on Single Window.

As discussed in the Department’s proposal, Executive Order 13659 (“EO 13659”) sets forth a vision for a “single window” that would provide a benefit to both the trade and those participating federal government agencies by providing a simpler, more efficient portal for trade use. Issued in February 2014, EO 13659 requires all federal agencies with authority over imports to utilize CBP’s International Trade Data System (ITDS) and ACE to electronically submit import-related data for clearance through a “single window.” Since then, numerous federal agencies, including NMFS, have been working closely with CBP to develop the ACE Deployment Schedule, which establishes a timeline and requirements for each participating government agency (“PGA”). The PGAs take a risk-based approach to targeting and enforcement and have included sufficient time for pilot projects to test both the agency’s and company’s readiness to use the system in the ACE Deployment Schedule.

The federal government and the private sector have both spent, and continue to spend, significant resources to prepare for the conversion to ACE this year. However, the additional data elements NMFS proposes could have an impact on ACE deployment, as well as the significant cost to companies to implement, especially given the likely expansion of the Import Monitoring Program to all imported seafood.

It is critical that this proposal ensure legitimate trade is not impacted by the final rule. Affected companies need adequate time to develop internal processes and coordinate internal compliance programs, including working with their customs brokers and vendors, and for tests to

¹¹ To be clear, the United States has never alleged that any IUU fishing is taking place in these countries’ cod fisheries. Indeed, the NOAA Fisheries historically has made allegations of IUU fishing against a total of five countries in connection with only three fish – tuna, toothfish, and shark.

be run on any new filing requirements. The potential impacts on the customs clearance process, and the operational implementation of the proposed rule should be clarified by NMFS and CBP prior to finalization so that importers can manage their supply chains appropriately. At a minimum, NMFS should provide for an effective date that will allow enough time for adequate coordination between the agency, CBP and affected importers to ensure that new requirements can be handled.

Conclusion

NOAA Fisheries has rightly identified IUU fishing as a challenge requiring attention from governments around the world. The Commenters and their members have taken a variety of actions to tackle this challenge and more generally to improve sustainability in seafood and numerous other sectors. The proposed Import Seafood Monitoring Program, however, is unlikely to effectively detect and deter IUU fishing, even as it imposes significant new costs and liabilities on the seafood supply chain. This new regulatory burden will have the unintended consequence of harming the small fishing communities least able to manage Program compliance, and in the U.S. will mean yet more regulatory red tape for the importers and small restaurants and retailers that feed American families. As restaurants and retailers nationwide grapple with higher labor costs, health insurance premiums, and other pressures on their bottom line, the Federal government should look for ways to address the IUU fishing challenge other than making food more expensive.

The Commenters

The **Food Marketing Institute** proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit www.fmi.org and for information regarding the FMI foundation, visit www.fmifoundation.org.

The **National Council of Chain Restaurants**, a division of the National Retail Federation, is the leading organization exclusively representing chain restaurant companies. For more than 40 years, NCCR has worked to advance sound public policy that serves restaurant businesses and the millions of people they employ. NCCR members include the country's most respected quick service and table-service chain restaurants.

For more than 65 years, the **National Fisheries Institute** has been the nation's leading advocacy organization for the seafood industry. From responsible aquaculture, to a marketplace supporting free trade, to ensuring consumers have the facts on the sustainability and health benefits of fish and shellfish, NFI and its members support and promote sound, science-based public policy, as well as engaging in every step of bringing fish from the boat or farm to dining room tables.

Founded in 1919, the **National Restaurant Association** is the leading business association for the restaurant industry, which comprises 1 million restaurant and foodservice outlets and a workforce of 14 million employees. NRA represents the industry in Washington, D.C., and advocates on its behalf. NRA also operates the industry's largest trade show ([NRA Show](#) May 21-24, 2016, in Chicago); leading food safety training and certification program ([ServSafe](#)); unique career-building high school program (the NRAEF's [ProStart](#)); as well as the [Kids LiveWell](#) program promoting healthful kids' menu options. For more information, visit Restaurant.org and on Twitter [@WeRRestaurants](#), [Facebook](#) and [YouTube](#).

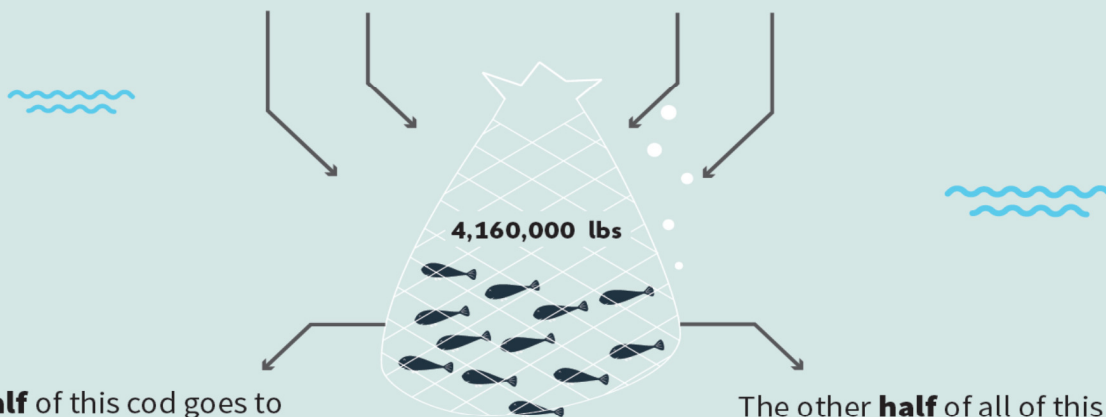
National Retail Federation (NRF) is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's [This is Retail](#) campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation.

The **Retail Industry Leaders Association (RILA)** is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Attachment – Cod Supply Chain and Burden of Proposed IUU Traceability Program

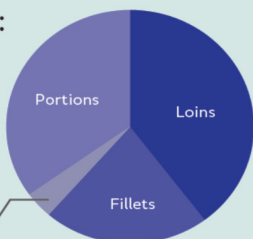
10,000 LABELS UNDER THE SEA

10,400 boats each catch 400lbs of cod every day



Half of this cod goes to markets in Europe, Asia, and North America:

- fillets
- loins
- portions
- mince block

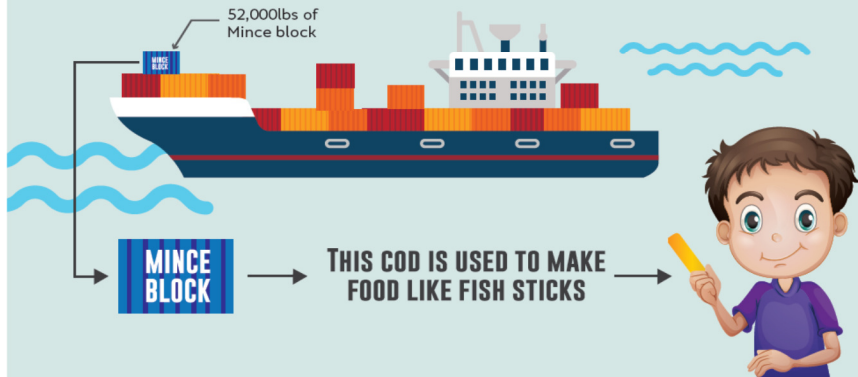


Mince block is only 2.5%, or 52,000lbs

The other **half** of all of this cod goes directly to the salted cod market, also known as Bacalhau. This market is primarily found in Spain and Portugal.



Mince block is just one small part of the huge cod industry. And yet, to fill even a **single** shipping container requires the equivalent of 10,400 trips from small fishing vessels called “day boats.” Each one of these catches is a “harvest event.” Each one would have to be logged and tracked. If one assumes each logging would take only five minutes, the **paperwork alone** would amount to almost all the profit on the fish caught.



A single container of mince block requires paperwork for 10,400 harvest events.



1 Clerk @ \$31.25/hr

867 hours to complete forms



\$27,083

worth of
paperwork