

Weights and Measures Connection

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Seafood Fraud – Where are We Now?

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Fraud continues to be a serious concern within the U.S. Seafood Industry. It occurs in three primary areas: short weighing, species substitution, and trans-shipments to avoid duties. It is estimated that consumers purchase \$25.8 billion of seafood to eat at home and \$54.0 billion in food service purchases (i.e., restaurants) every year¹. That is over \$79.8 billion dollars of seafood purchased annually by consumers. If 2 % of the weight of the \$79.8 billion of seafood purchased annually is ice, where proper tare is not taken, the annual loss to consumers would be \$1.6 billion. This also creates unfair business competition.

On May 28, 2009, a Seafood Forum was held at the National Institute of Standards and Technology (NIST), to discuss the problem and possible solutions to short net weight fraud occurring in the Seafood industry. The meeting was co-sponsored by the National Conference on Weights and Measures (NCWM), the National Institute of Standards and Technology (NIST) and the Better Seafood Board (BSB)/National Fisheries Institute (NFI). The forum was attended by 30 participants representing key Federal Agencies, State Weights and Measures officials (seven states represented), Trade Associations, National Association of Attorney Generals (NAAG), and industry.

<http://ts.nist.gov/WeightsAndMeasures/seafood-forum.cfm>

The purpose of the meeting was to achieve three primary objectives:

1. To clearly define the problem and economic impact from short net weight fraud.
2. To provide understanding of each agency's role, responsibility, authority, enforcement, and oversight of seafood and net content compliance.
3. To develop a plan for clear and immediate action to slow down and eventually eliminate the problem of short weighing and to maintain the public's trust in the regulatory system.

This led to a multi-state (17 states) investigation in January and February of 2010. A significant amount of awareness was generated with industry, consumers and government, as states shared their findings through press releases and enforcement action. The NCWM also published a press release (http://ncwm.net/sites/default/files/about/press/2010/2010_03_29_Seafood_Investigation.pdf) titled "National Investigation Exposes Fraud in Seafood Labeling".

UPDATES

Efforts continue on all fronts to combat seafood fraud and to protect consumers and businesses. Below is the latest update from the various federal and state agencies on their efforts and progress, along with other new developments.

STATES

States continue to ask for and are being trained on ice deglazing procedures. A number of states reported that they are continuing to routinely check seafood, in particular seafood frozen with an ice glaze. State programs are encouraged to develop a relationship and partnership with federal agencies by sharing information and results with both their local Food and Drug Administration (FDA) and Customs and Border Protection (CBP).

For FDA, the best point of contact is the state's local District office, Director of Investigations Branch. If a state has not already identified a contact, information is available on FDA's website (<http://www.fda.gov/ICECI/Inspections/IOM/ucm124008.htm>) that will assist in this effort.

For CBP, an allegation of commercial trade fraud is best handled through CBP's online web portal that was specifically designed for this purpose. It can be found on CBP's website (<http://www.cbp.gov/xp/cgov/trade/>) under the Trade tab, in the lower left corner, click on "e-Allegations," which links directly to CBP's "Online Trade Violation Reporting System."

FOOD AND DRUG ADMINISTRATION (FDA)

FDA reported they are reviving their Seafood Compliance Program. FDA recognizes that economic integrity is a big problem and a new mandate has been added to address this issue. Plans are underway to implement ongoing maintenance programs and special assignments. The new FDA Commissioner, Dr. Margaret A. Hamburg, has indicated that she expects to increase the level of enforcement on issues of economic fraud such as short weight. FDA is expected to carry out more enforcement actions against U.S. companies and their exporter partners.

Frozen Marinades on Seafood – The NIST Office of Weights and Measures has received a number of calls from states as to whether a frozen "marinade" glaze on seafood is tare or part of the net weight. FDA addressed this in an October 2009 warning letter sent to a company in response to a violation at the company's seafood processing facility.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm186807.htm>

Below is an excerpt:

"FDA collected samples of your Shell-On Shrimp, Peeled and Deveined Shrimp, and Cooked Tail-On Shrimp products during the inspection of your facility. These frozen shrimp products are adulterated within the meaning of Section 402(b)(4) of the Act [21 U.S.C. § 342(b)(4)], in that an ice glaze and/or a frozen "marinade" glaze containing water, citric acid, and salt, has been added to increase the products' bulk or weight. Section 402(b)(4) of the Act provides that a food is adulterated if any substance has been added or packed with it to increase its bulk or weight. Furthermore, your Shell-On Shrimp, Peeled and Deveined Shrimp, and Cooked Tail-On Shrimp are misbranded within the meaning of Section 403(e)(2) of the Act [21 U.S.C. § 343(e)(2)], and Section 4(a)(2) of the Fair Packaging and Labeling Act (FPLA) [15 U.S.C. § 1453(a)(2)], in that they fail to bear an accurate statement of the net quantity of contents because they include the weight of the ice glaze or frozen marinade in the net quantity of contents."

CUSTOMS AND BORDER PROTECTION (CBP)

CBP continues to look into ways they can assist other government agencies regarding short weighing violations. CBP has requested that they be contacted in the event illegal import activity is known or suspected fraud is taking place. They can be contacted through their online "e-Allegations" trade violation reporting system <http://www.cbp.gov/xp/cgov/trade/>.

NATIONAL MARINE FISHERIES SERVICES (NMFS)

NMFS reported that they are increasingly being asked to provide in-plant inspections in overseas facilities. They are introducing regulations that would give them greater authority in this area and are committed to taking higher levels of enforcement action on economic fraud.

NATIONAL FISHERIES INSTITUTE (NFI)

NFI continues to seek government oversight for net weight compliance. In addition, the Better Seafood Board has been working with a number of individual industries (i.e., such as the snow crab suppliers in Korea), to ensure a uniform understanding of U.S. net weight regulations and testing methodologies.

Other New Developments

FOOD SERVICE INDUSTRY

The two major Food Service suppliers in the United States, Sysco and US Foods, are committed to reducing fraud in the seafood industry for product controlled through their distribution channels.² The food service industry represents the suppliers that deliver to restaurants and other similar establishments where a majority of fraud is believed to take place. These companies have given notice to suppliers that they expect 100 % compliance with regard to proper labeling and ensuring net contents meet or exceed the declared quantity. Letters are being sent out annually by each company to their suppliers with firm and clear language informing their suppliers that they will not tolerate product misbranded in any way, setting an expectation that all products must be in compliance with federal, state, and local laws and regulations.

“CONSUMERS REPORTS” MAGAZINE

Consumers Reports met with NFI and FDA in a collaborative effort to inform and educate consumers on seafood fraud. A recent article appeared in the December 2011 issue titled “Mystery Fish”. NIST OWM also met with the senior staff of Consumers Reports to talk about seafood fraud as well as many other relevant weights and measures issues.

NIST OFFICE OF WEIGHTS AND MEASURES

Webinar

A 1.5 hour webinar entitled “Good Quantity Control Practices – Protect Yourself from Short-Weighing” was presented to the seafood industry. It is available on the NIST website (<http://www.nist.gov/pml/wmd/metric/seafood-webinar.cfm>) as a resource for both industry and regulators. The webinar talks about ways to root out short-weight seafood from the supply chain and explains how to set up quality and quantity assurance programs to protect from short-weighing. Topics cover:

- The legal requirements for net quantity of contents.
- The “12 Good Quantity Control Practices,” as outlined in NIST Handbook 130, Uniform Laws and Regulations.
- How to ensure accurate net contents by controlling the four primary components of a packaging system and the factors involved in ensuring accurate net quantity.
- The criteria for evaluating quantity control processes and packaging systems.

If you have any additional comments, or for more information, please contact David Sefcik at dsefcik@nist.gov or call (301) 975-4868.

Endnotes:

¹ National Marine Fisheries Services, Statistical Division, 2010 Annual Report

² Certain commercial entities, equipment, or materials may be identified in this document in order to describe an experimental procedure or concept adequately. Such identification is not intended to imply recommendation or endorsement by the National Institute of Standards and Technology, nor is it intended to imply that the entities, materials or equipment are necessarily the best available for the purpose.”