

SEAFOOD FORUM

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National Institute of Standards and Technology
Gaithersburg, Maryland

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INTRODUCTION

On May 28, 2009 a Forum was held at the National Institute of Standards and Technology (NIST), in Gaithersburg Maryland (agenda attached) to discuss the problem and solutions to short net weight fraud occurring in the Seafood industry. The meeting was a collaborative effort attended by 30 participants (see attached) representing Federal Agencies from Customs and Border Protection (CBP), Food and Drug Administration (FDA), National Marine Fisheries Service (NMFS), National Institute of Standards and Technology (NIST), and the U.S. Department of Agriculture (USDA); State Weights and Measures Officials from California, Florida, Maryland, Minnesota (teleconference), New York, Virginia, and Wisconsin; Trade Associations from American Frozen Food Institute (AFFI), Better Seafood Board (BSB), International Food Distributors Association (IFDA), National Association of Attorney Generals (NAAG), and National Fisheries Institute (NFI). Also participating were industry representatives from Maritime Products International, Pilot Brands, and Shinnecock Ocean Seafood - A Native American Company.

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 and solutions to slow down and stop the problem of short weighing and to maintain the public's trust in the regulatory system.

BACKGROUND

In February, 2009, the U.S. Government Accountability Office (GAO) issued the report - *Seafood Fraud: FDA Program Changes and Better Collaboration among Key Federal Agencies Could Improve Detection and Prevention* (<http://www.gao.gov/new.items/d09258.pdf>). The study found deficiencies in how federal agencies (CBP, FDA, NMFS) enforce regulations for fraudulent practices in the seafood industry. One significant fraudulent practice mentioned in the report was short weighing.

Seafood industry leaders, through the National Fisheries Institute (NFI), have recognized that fraudulent practices such as trans-shipping fish from one country to another to avoid certain duties and tariffs, misidentification of species, and short weighing creates consumer mistrust in the industry as well as unfair trade practices that harm companies who follow the rules. NFI formed the Better Seafood Board (BSB) in 2007 to address these issues. The mission of the BSB is to highlight NFI members as companies that provide honest seafood products and to provide a mechanism for partners in the supply chain to report suspected fraudulent practices.

Industry efforts to fight fraud can only go so far. Government oversight and enforcement is essential to curtail these illegal and unethical practices. Due to limited enforcement of the existing fraud-related regulations, solutions are needed to protect the interests of the consumers and ethical businesses. With that in mind, the Weights and Measures Division of the National Institute of Standards and Technology (NIST), the National Conference on Weights and Measures (NCWM), and the Better Seafood Board (BSB) co-sponsored a one day forum to enhance collaboration between the various agencies and to develop clear solutions to the problem.

PROBLEM

The Better Seafood Board provided an overview of seafood fraud in the industry. This was followed by an industry panel, and concluded with the BSB providing an overview and summary of a February, 2009 report on Seafood Fraud.

Better Seafood Board

The Better Seafood Board (BSB) outlined current fraud practices. The presentation "Addressing Seafood Fraud" (see attached) demonstrated that fraud is not a new problem for the seafood industry. A 1988 report by GAO, an August 8, 2007 Congressional Research Service (CRS) Report for Congress and the February, 2009 GAO report highlighted fraud and deception in the Seafood industry. Misrepresentation (misbranding and adulteration) occur in three primary areas: short weighing, species substitution and trans-shipments to avoid duties. One goal of the BSB, created in 2007 in response to fraud, is to ensure integrity through the development of a process of accountability with its members. The BSB developed a call center for receiving and helping to resolve complaints. Several examples of short weighing offer letters and problems were presented.

Industry Panel

A panel of industry representatives consisting of Maritime International, Pilot Brands, and Shinnecock Ocean Seafood discussed the economic impact seafood fraud and short weighing has had on their company and industry. Below are some of the key points and views made by industry:

- The problem of intentional short weighing is global and not unique to the United States.
- The fraud is an enormously evasive problem because the industry is so fragmented in the number and volume of “players”.
- Fraud is premeditated, organized and intentional in that product is being bought and sold at anywhere from 10% to 35% under the labeled net weight.
- Examples were presented to illustrate that it is difficult for honest companies to compete with competitors who are selling at a lower cost because of intentional short weighing. Those companies trying to do honest business are finding that the perceived “higher cost” of their goods (because they do not defraud) result in lower sales because of the difficulty to compete on the perceived cost basis. It is believed that some companies have resorted to fraudulent practices in order to survive.
- An industry panelist stated that this is clearly criminal activity and should be treated as such.
- It was recognized that short weighing fraud occurs primarily in the food service sector and in non-English speaking retail outlets, but was noted that fraud at retail and other outlets should not be ignored.
- It was mentioned that many end users of fraudulent packaged seafood are not even aware that they are being shorted. Consumers, food service businesses and distributors need to be educated on the definition of net weight and the types of fraud occurring.
- There is a perception that buyers of seafood commonly distrust the Seafood industry, particularly those in the food service and restaurant business.
- Wholesale outlets (e.g. Costco, Price Club and BJ’s) are now selling seafood product in wholesale packages, which are introducing a new level of fraudulent packages into the marketplace. Packages at these new outlets should be inspected by Weights and Measures.

Better Seafood Board – GAO Report Summary

The Better Seafood Board provided a brief overview and summary of the February, 2009 GAO report on Seafood Fraud. The purpose of the GAO report was to review the actions Federal agencies take to detect and prevent seafood fraud, as well as the extent of agency collaboration. The types of fraud identified include trans-shipping to avoid customs duties, species substitution, over treating to increase water content, adding excessive ice to increase weight and short weighing. GAO found that Federal agencies (CBP, FDA, and NMFS) do not collaborate effectively to share information or coordinate resources. GAO recommended that guidance on seafood labeling for the 2004 Food Allergen Labeling and Consumer Protection Act (FALCPA) be updated, that Seafood Hazard Analysis and Critical Control Point (HACCP) regulations be amended to include control of economic fraud issues, and that goals, strategies and mechanisms for information and resource sharing among agencies be developed.

OVERSIGHT

Representatives from Food and Drug Administration (FDA), Customs and Border Protection (CBP), National Marine Fisheries Service (NMFS) and the State of Wisconsin Weights and Measures Division, discussed their roles, authority, and oversight of seafood. The regulatory roles are discussed below.

Food and Drug Administration

FDA reported that sampling programs are in place primarily to address food safety issues (including species substitution). This includes visual inspections of international imports at the border as well as inspections of plants domestically. FDA further reported that inspections are not done at retail or food service establishments. FDA's authority covers all adulterated and misbranded product. It was noted that a high priority is placed on food safety and limited resources make it difficult to expand into short weighing issues. FDA is working to gain a better understanding that will help address short weighing. FDA is discussing the possibility of developing a system that will identify and signal when economic fraud may be occurring. FDA asked for assistance from industry and state weights and measures programs to provide them as much detailed information as possible when problems occur. FDA will work to "get the word out" to industry that they are enforcing short weighing as a useful means of deterrence.

Customs and Border Protection

The CBP, which controls all U.S. ports of entry, recognized that short weighing has never really been a CBP priority. CBP focus is primarily on duties, transshipments of product and country of origin labeling. CBP stated that it assists other government agencies regarding the enforcement of their policies and regulations. The CBP appreciated being alerted to the problem of short weighing and will look into ways they can assist other government agencies regarding this problem. The CBP requested that they be contacted in the event known fraud is taking place. The CBP home page on their website was mentioned as one way to allow interested parties to submit (anonymously or otherwise) allegations of fraud.

National Marine Fisheries Service

NMFS reported that it provides a seafood inspection service program for industry. This is done at a fee and is voluntary; though to participate a company must agree to abide by the requirements of the program. NMFS inspects about 1/3 of all seafood consumed in the United States. NMFS noted that they are increasingly being asked to provide in-plant inspections in overseas facilities. They indicated that although this is currently cost prohibitive, the agency is considering ways of expanding its overseas presence. NMFS is committed to taking higher levels of enforcement action on economic fraud. They are reviewing ways to improve current standards, such as improving communications with FDA in notifying them of violations, and developing (follow up) programs to ensure companies are making changes and corrections to product found in violation. NMFS also acknowledged its lack of communication with CBP and the opportunity for improvement in this area.

State Weights and Measures

The Chief of Wisconsin's Weights and Measures Program discussed the use of NIST Handbook 133 "Checking the Net Content of Packaged Goods" as the basis of most states' test procedures for checking glazed and frozen block seafood net content. It was explained that each state decides whether to adopt and follow HB 133 test procedures into their laws and regulations. It was mentioned that the frequency of testing seafood varies by state, and that overall, it generally encompasses a small portion of all product inspections occurring in state weights and measures programs. In addition, it was noted that it is up to each state to determine enforcement action and this determination is often made on a case by case basis. The states represented at the meeting indicated that very little testing is done with glazed and frozen seafood because of the length of time it takes to perform a test, and because of the expense of the test due to the samples being destroyed. Weights and Measures inspectors primarily test at retail but will investigate complaints in food service establishments. To limit the time and cost, audit testing is usually done first as a screening tool to identify questionable product. The Wisconsin Weights and Measures Chief gave a presentation on the HB 133 test procedures on deglazing (see attached presentation "Ice Glazed Seafood: State Testing and Enforcement"). The state found that performing inspections more routinely has been effective and impactful at reducing short net weight problems.

GROUP DISCUSSION SUMMARY

The afternoon was spent in group discussion, exploring ways to better work together, identifying the obstacles and determining the support required to eliminate short weighing fraud. Five primary questions were explored:

1. Is there agreement that seafood fraud (short weighing) is a problem?
2. Is there a correlation between intentional economic fraud and food safety?
3. Does government have the tools and authority (legislative, regulatory, resources, appropriation) to be effective against seafood fraud?
4. What Seafood industry actions (e.g. education) are required?
5. What needs to occur to achieve effective collaboration between federal agencies?

Is there agreement that seafood fraud (short weighing) is a problem?

Forum participants were in agreement that economic fraud is occurring in the Seafood industry and that a concerted effort must be taken to address this practice. It was also agreed that intentional short weighing of 10% to 35% creates a significant economic impact to consumers and the government (e.g. tax revenue) and threatens regulatory integrity and equity in the market place.

Is there a correlation between intentional economic fraud and food safety?

Discussion ensued as to the correlation between intentional economic fraud and food safety. The argument was made that if a company willfully cheats customers and cuts corners in one area, that other areas such as food safety controls may also be overlooked. Discussion centered on the benefit of focusing on short net weight as a tool to identify companies with poor practices that could lead to food safety issues. Taking enforcement action on companies that practice short weighing will also have a positive impact on food safety. Federal agencies (FDA in particular) were challenged to consider this strategy and approach as part of their enforcement activities. NMFS will be looking into ways to assist smaller companies in providing net weight testing services at a discount.

Does government have the tools and authority (legislative, regulatory, resources, appropriation) to be effective against seafood fraud?

Overall, the CBP, FDA, and NMFS believed they currently have the legislative authority to be effective. Discussion centered around the need for clarity on interpretations of current laws with examples being discussed such as; Can water that is added as glazing, and which is identified as part of the products description and as an ingredient, be included in the net weight? What constitutes a marinade? Should glazing standards (% and quality of glaze) be developed to promote ease of net content checking? One specific scenario discussed was "if a label states that the contents contains fish and water, and the content of fish is 32 kg and the glaze is 8 kg, can the package be sold as a 40 kg net weight package? FDA requested that the best approach to answering these questions is to pose specific questions in writing directly to the FDA. FDA will then review and provide an official response back to the industry or regulatory agency with clarity and guidance. The BSB will undertake a review of questions that need clarification and submit them to FDA.

Discussion continued on how to develop risk profiles of companies that may be violators. Use of prior violations was identified as one source, but it was noted that broad enforcement should be a collaborative Federal agency effort in order to be most effective. FDA "import alerts" were also identified as an effective tool to identify seafood fraud. NMFS discussed the justification and use of "market orders" as a tool. The group acknowledged that this is a difficult process to implement and that other options should first be explored.

Publicizing company violations was also seen as an effective deterrent to fraud. It was noted that highly publicized cases by media and FDA's re-issuing (see attached) of their 1991 letter regarding the fraudulent practice of including glaze as part of the weight of frozen seafood have had a very positive impact in changing behavior.

Another suggestion was to set up an industry compliance testing program for seafood product with requirements that, if met, would receive a "stamp of approval". The biodiesel industry's Fuel Quality System was used as an example.

There was consensus among Forum participants that the use of deterrents would be the most effective method due to limited resources of government agencies, the amount of product in the marketplace, and the fragmentation of the industry. Identifying the most effective deterrents would be one goal.

What Seafood industry actions (e.g. education) are required?

The group discussed ways the industry could benefit from education. An action such as the re-issuing of the 1991 FDA letter was seen as being an effective educational tool. The BSB agreed to take on this assignment in working with Federal, state and local agencies as well as with other trade associations in identifying effective methods of communication, types of information that should be communicated and the various sources with whom the information should be shared.

What needs to occur to achieve effective collaboration between federal agencies?

Participants agreed that there needs to be a national seafood fraud workgroup formed to continue discussion and collaboration between Federal and state agencies. The goal of the workgroup would be to plan, coordinate and implement a collaborative investigative and enforcement effort between state and Federal agencies. NIST will follow-up with this request to coordinate a conference call or meeting.

SUMMARY OF ACTION ITEMS and NEXT STEPS

- All participants will share knowledge gained from this Forum with their respective agency, company, or trade association in an effort to continue creating awareness of seafood fraud and in seeking solutions to the problem.
- States and industry will provide FDA with as much detailed information as possible when problems occur. Those present from FDA and CBP offered to be the contact persons.
- FDA will work to publicize to the industry that there will be greater enforcement activity in the area of short weighing. FDA will look into such areas as publicizing cases where seafood fraud is found, with the intent of being a deterrent to future activity of this kind. FDA will also review the correlation between short net weight cases and food safety to determine whether this should be considered part of FDA enforcement activities.
- CBP will look for ways to work closer with FDA regarding enforcement of policies and regulations that impact seafood fraud.
- NMFS will continue to look for opportunity for greater voluntary industry compliance specifically in its overseas inspections of plants. In addition, ways to assist small companies domestically will be reviewed. NMFS will also consider ways to improve current standard communications with FDA in notifying them of violations and developing (follow up) programs to ensure companies are making changes and corrective action to seafood products found in violation. NMFS enforcement office will become more involved with economic fraud.

- BSB will determine which regulatory guidelines and regulations need clarification and provide a list of these questions to the FDA for response. BSB will work with the Federal agencies, states and local agencies, trade associations and industry to identify effective educational tools.
- NIST will coordinate a conference call with FDA, CBP, NMFS and state weights and measures programs so that those involved with investigative and enforcement activities can coordinate their efforts in addressing seafood fraud.