What is fish mislabeling?

Mislabeling, also known as "misbranding" is a violation of federal and state food safety laws. It can involve the illegal misrepresentation of species, weight of the fish, country of origin, as well as harvesting areas. A nine-year review by the national Seafood Inspection Laboratory found that 37% of fish from randomly selected vendors across the US were mislabeled.

Why is mislabeling a problem?

According to the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement, "In addition to making consumers pay more for cheaper, less desirable species, fraud negatively affects consumer confidence in seafood, which further undercuts local fisherman's profits. Seafood fraud also harms the US economy as a whole because individuals who illegally import seafood avoid paying tariffs." Problems can arise from substitution at the restaurant level, misrepresentation by the restaurant supplier, or product misidentification in the harvesting and processing system.

What are Massachusetts officials doing to address fish mislabeling?

The Massachusetts Department of Public Health (MDPH) and the Department of Fish and Game (MDFG) Division of Marine Fisheries are working together with federal officials to identify fish mislabeling and to prosecute those involved in fraudulent activities.

How is the sale of fish regulated in Massachusetts?

State and local agencies in Massachusetts share jurisdiction in regulating the sale of fish. These agencies include:

- **The MDFG Division of Marine Fisheries**, which issues commercial fishing permits and seafood dealer permits, and inspects for compliance with Marine Fisheries regulations (322 CMR 1-15).
- **MDPH's Bureau of Environmental Health Food Protection Program**, which issues licenses for food processing and/or distribution at wholesale, and inspects for compliance with regulations for Good Manufacturing Practices (105 CMR 500) and Fish and Fishery Products (105 CMR 533).
- **Local Boards of Health**, which issue licenses for restaurants and retail food stores and inspect for compliance with the Retail Food Code (105 CMR 590)

What should local health officials do if they suspect fish of being mislabeled in a retail food establishment?

- Review and retain the establishment's invoices and/or bills for the past 30 days and compare the species listed with those offered for sale on the menu or retail display case.
- When possible, take photos of suspected mislabeled fish products and/or labels.
- Identify possible Food Code (105 CMR 590) violations:
  - 3.601.12: Accurate representation of food
  - 8.406.11: Timeframe for corrections
  - 590.015 (B): hold on food from unapproved source not accurately represented
- Contact the MDPH Food Protection Program Seafood Unit Supervisor at (617) 983-6712 with questions and reports.

Do federal agencies play a role?

Yes, federal agencies which share jurisdiction include:

- **The US Food and Drug Administration (FDA)**, which regulates seafood whether it is imported or harvested and processed domestically. FDA also has a useful guide that provides acceptable market names for seafood. A link is included in the "Resources" section of this brochure.
- **The National Marine Fisheries Service**, which provides fee-for-service inspection services for the seafood industry.
- **The US Customs and Border Protection**, which inspects seafood imports at the border.
- **The US Department of Justice**, which supports federal agencies which prosecute seafood fraud.
- **NOAA's Office of Law Enforcement (OLE)**, which enforces the Lacey Act.

What is the Lacey Act?

The Lacey Act "is one of the primary laws OLE uses to investigate seafood fraud and other cases. The Lacey Act makes it illegal to falsely label a product that has been or is intended to be imported, exported, transported, sold, purchased, or received from a foreign country or is transported in interstate or foreign commerce."

Is fish mislabeling a health issue?

While mislabeling of fish is generally more of a consumer fraud issue than one that impacts health, there have been some instances in which mislabeling results in food safety concerns. For example, in 2007 a California firm imported puffer fish (which contains a deadly toxin) and labeled it monkfish. Concerns over consumption of escolar have also been raised. Escolar is a type of snake mackerel that can cause illness in some individuals, particularly if large quantities are consumed.

What are the health effects associated with consuming Escolar?

Escolar fish can naturally contain gempylotoxin, an indigestible oil made up of high amounts of wax esters. Although the gempylotoxin in Escolar is considered 'non-toxic', humans are unable to digest the gempylotoxin oil due to this high composition of wax esters. As a result some people who consume Escolar fish can experience undesirable gastrointestinal effects including diarrhea, passage of an oily yellow or orange substance, nausea, vomiting, abdominal pain, and headache.

Are there federal rules against the sale of Escolar?

FDA does not prohibit retail food establishments from serving or selling escolar, but recommends that "escolar should not be marketed in interstate commerce."

Resources

- **FDA Seafood List for acceptable market names that can be used to label fish products in interstate commerce:** www.accessdata.fda.gov/scripts/search_seafood/index.cfm
- **MA Department of Marine Fisheries regulations:** www.mass.gov/dfwele/dmf/commercialfishing/cmr_index.htm
- **MA Department of Public Health Regulations:** www.mass.gov/eohhs/gov/laws-regs/dph
- **Food Protection Program wholesale regulations:** www.mass.gov/eohhs/gov/laws-regs/dph/regs-e-h/public-health-regulations-food-safety.html
- **Massachusetts retail food code:** www.mass.gov/eohhs/docs/dph/regs/105cmr590.pdf

  www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode1999/default.htm
- **Massachusetts Seafood Availability:** www.mass.gov/dfwele/dmf/publications/dmf_seafood_availability.pdf

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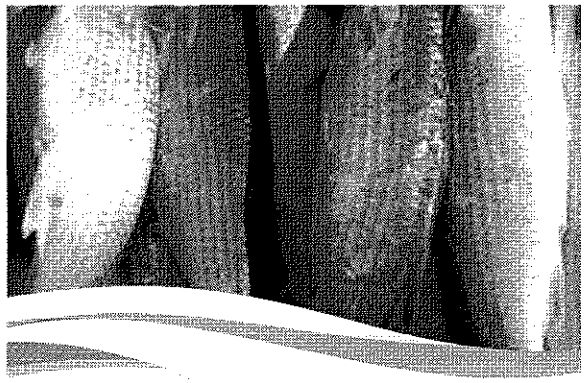

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Important Facts for Health Inspectors and Retail Food Establishments

BUREAU OF ENVIRONMENTAL HEALTH
FOOD PROTECTION PROGRAM
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH