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Bree Evans

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**Nothing Shellfish About It: Why the FDA Needs to Update The Seafood List to Require Geographic Origin and Species-Specific Shrimp Labeling**

*By Bree Evans*

Imagine you are seated at a nice restaurant down by the wharf where you live. You are celebrating a job offer, out for a romantic night with your partner, or just craving some salt air and a great meal. You would expect the shrimp tacos brought to your table to be fresh and local—the fishing boats are docked just across the boardwalk. But the seafood brought to your table seems off somehow, not quite the same as you remembered it. Unfortunately, this experience is more common than you might think, and it’s getting harder to know how fresh and local your seafood really is. The worldwide ubiquity of shrimp has made this kind of seafood particularly susceptible to consumer confusion as to the geographic origin and species of shrimp.

This article will first look at the problem of shrimp labeling in the United States, will address the primary legal regimes under which shrimp is regulated, and will recommend the Food and Drug Administration adopt regulations mandating the use of species and geographic-origin labeling of shrimp.

**I. Background**

In 2014, an *Oceana* study genetically tested shrimp in producing and consuming cities in the United States and found that 30% of shrimp were mislabeled, misleading, or mixed/mystery. Moreover, all shrimp labeled “Ruby Red” or “rock shrimp” was mislabeled. In New York, 43% of shrimp were misrepresented, and over 50% of the “wild shrimp” was actually farmed shrimp. Seafood fraud is a growing global problem and includes mislabeling or other types of deceptive marketing with respect to quality, quantity, origin, and species.

Not all sources of shrimp are susceptible to this type of fraud. According to a recent Presidential Task Force Report, “[d]omestic fish and fishery products harvested under a federal fisheries management plan have low incidences of species substitution . . . [s]imilarly, state-managed fisheries have a high incidence of compliance . . .” This suggests domestically-harvested shrimp are accurately labeled. However, in 2017, the United States’ imported shrimp industry was worth $6.5 billion, and an estimated 92.5% of shrimp consumed in the United States is imported. Therefore, it is likely that problems in the labeling of shrimp are predominantly traceable to imported products.

**II. Analysis**

The Food and Drug Administration (FDA) is responsible for ensuring that shrimp is properly labeled. Additionally, under the Food Allergen Labeling and Consumer Protection Act of 2004, seafood retailers are required to declare the species of crustacean shellfish on food labels.

To help producers properly market their food, the FDA has produced a *Guide to Acceptable Market Names for Seafood*, commonly known as *The Seafood List*. There are fifty-eight listed shrimp species on *The Seafood List*. Of the fifty-eight listed species on *The Seafood List*, there are only a handful of acceptable market names: most are “Shrimp,” “Shrimp or Prawn,” “Shrimp or Brown Shrimp,” and “Shrimp or Pink Shrimp.” As a consumer, you are only likely to see one of those few labels while you could potentially be eating any number of hundreds of different species.

In fact, there are 470 shrimp and prawn species listed through the United States’ Seafood Import Monitoring Program (SIMP), administered jointly by the National Marine Fisheries Service (NMFS) and Customs & Border Protection (CBP). Through the SIMP program imported shrimp must be accompanied by harvest and landing data, and importers must maintain chain-of-custody records. Unfortunately, however, SIMP is not oriented for consumers because the program does not require labeling, and the information collected is confidential under the program’s authorizing statute, the Magnuson-Stevens Act.

While perhaps useful as a marketing designation, the term “shrimp” tells a consumer absolutely nothing about the product’s origin. “Shrimp” is a huge catch-all term that traditionally signaled to consumers the type of crustacean they were purchasing. But today’s consumers operate in a far more sophisticated and global market, and want to know whether their shrimp was sustainably sourced, whether it was likely produced using child and/or slave labor, or whether it has a massive carbon footprint because it was cheaper to catch it in Mexico, then ship it to China, and then ship it back to the United States. The Monterey Bay Aquarium’s Seafood Watch analysis for shrimp includes eight best choice designations, fifty-nine good choice designations, and forty-four avoid designations; the rating system also assesses the industry for various sustainability factors including overfishing, impact on other species (i.e. endangered turtles caught in nets), use of pesticides and antibiotics, and includes purchase recommendations for types of seafood and where it should be coming from. In all, there’s a lot to research when buying shrimp, and this process could be made simpler through species and geographic-origin labeling. Moreover, the burden on industry in changing labeling requirements will be minimal because importers are already providing this information through the SIMP program.

* J.D. Candidate, American University Washington College of Law 2020
### III. Recommendation

Critically, under the Federal Food Drug & Cosmetic Act, a food is to be “misbranded” if its labeling is false or misleading, such as when “the name is the same as the name of another species or is confusingly similar to the name of another species and it is not reasonably encompassed within a group of species so named.”21 Because seafood markets globally sell hundreds of species of shrimp, it is unlikely generalized “shrimp” designations will satisfy this misbranding standard. Applying labels that contain species designation and country of origin information would be a critical step forward in informing consumers about their food, could make domestic shrimp more competitive in the market,22 and could help reduce the global carbon footprint of the industry.23 Since the species-reporting information of SIMP is part of data protected by the confidentiality provisions of the Magnuson-Stevens Act, the FDA would need to independently impose geographic-origin and species-specific labeling requirements under its own authorities.24 The most basic mandate of the Federal Food, Drug, and Cosmetic Act is that the head of the FDA shall promulgate regulations setting reasonable standards of identity and quality, in the interest of promoting honesty and fair dealing for consumers.25 According to the FDA, it appears to have the requisite statutory authority to implement regulations that would require geographic-origin and species-specific shrimp labeling.

Further, the FDA’s adoption of species and geographic origin labeling of shrimp could help resolve a criticized shortcoming of domestic seafood regulation. In 2009 a Government Accountability Office report condemned CBP, NMFS, and the FDA for not effectively collaborating with each other in fighting seafood fraud.26 The FDA’s adoption of species-specific labeling could be the start of the collaborative effort, would make detecting species substitution easier, could help flag repeat offenders faster, and will make eating shrimp a less stressful endeavor.

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**ENDNOTES**

2 Id.
3 Id.
4 Presidential Task Force on Combating IUU Fishing and Seafood Fraud, Action Plan for Implementing the Task Force Recommendations (2014) (distinguishing between illegal, unreported, and unregulated (IUU) fishing), and seafood fraud, as defined by the United States Government).
5 See generally id.
6 Id. at 7.
10 21 U.S.C. § 343(w)(1)-(2) (requiring products containing major allergens, including Crustacean shellfish, to be labeled to the level of species; a product that is not labeled this way is deemed mislabeled).
12 Id. (distinguishing common names and scientific names from acceptable market names).
13 Id.

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13 Id.
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