

Congress of the United States

Washington, DC 20515

October 31, 2011

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

According to Consumer Reports, last year Americans spent \$80.2 billion on seafood, \$5 billion more than in 2009. Yet several reports suggest that consumers are routinely and unwittingly overpaying for less valued seafood that is not what it is advertised to be. Last week, The Boston Globe¹ reported that 48 percent of fish in grocery stores, restaurants and seafood markets in the state of Massachusetts are sold with the wrong species name, in many cases substituting cheaper species for the higher priced seafood item that consumers were purchasing. Another investigation by Consumer Reports² issued on October 28th, found that more than one-fifth of seafood bought at retail stores and restaurants in New York, New Jersey, and Connecticut were mislabeled as different species of fish, incompletely labeled, or completely misidentified by employees when sold to consumers. These occurrences have the potential to erode consumer confidence in seafood, potentially lowering American's consumption of seafood and harming the vital fishing industry of the United States.

Seafood fraud not only hurts consumers economically when they pay more for a less expensive and desirable fish, but also has the potential to pose real health risks by obfuscating the true identify of seafood that a consumer may be allergic to or otherwise intolerable of. For example, The Boston Globe investigation identified that many sushi restaurants were selling a type of fish commonly known as escolar, which contains oils that can cause severe gastrointestinal problems, and were advertising it to be a more expensive variety of white tuna. The investigation also uncovered repeated instances where a highly nutritious fish with a high concentration of omega fatty acids, such as wild-caught red snapper, was replaced by a less healthy offering of tilapia.

Mislabeled fish also results in consumers' unknowingly eating imported species of fish, which directly undermines our local fishermen who provide fresh, safe, and sustainable

¹ Jenn Abelson and Beth Daley, "On the menu, but not on your plate." Boston Globe, October 23, 2011. http://articles.boston.com/2011-10-23/business/30313749_1_fish-plate-menu

² <http://www.consumerreports.org/cro/magazine-archive/2011/december/food/fake-fish/overview/index.htm>. This report entitled "Mystery fish" will be printed in Consumer Reports Magazine: December 2011

seafood. Americans enjoy eating domestic seafood because they can have great confidence in its quality and sustainable catch practices. The practice of deceptive mislabeling is not only attack on consumers, but also the American seafood industry that employs hundreds of thousands of Americans. While there are multiple U.S. laws that aim to ensure that seafood is caught in a sustainable and responsible manner, many market-driven conservation efforts depend on consumers' ability to make informed choices to buy particular species or fish harvested using sustainable fishing practices. This effort becomes nearly impossible when fish are mislabeled and undermines the work and incomes of law-abiding fishermen.

Advertising and selling seafood that is mislabeled is not only dishonest, and potentially dangerous, but also would likely be deemed as "unfair and deceptive acts or practices" under Section 5 of the Federal Trade Commission Act (FTCA). We therefore request that you respond to the following questions no later than close of business on November 21, 2011.

1. Does the FTC believe that selling one species of fish that is labeled as another constitutes a violation of Section 5 of the FTCA, which outlaws unfair or deceptive trade acts or practices? If not, why not?
2. If the Commission does believe that such acts or practices may constitute potential violations of the FTCA, what actions, if any, is the FTC taking in response to this matter? If no actions are underway or planned, why not? Has FTC ever investigated this issue in the past? If so, please provide me with copies of any reports that detail such efforts, as well as a list of each such act or practice that was investigated by the FTC in the past ten years, along with the outcome (including any enforcement measures, as applicable) of each such investigation.
3. If any violation of Section 5 of the FTCA did occur in connection with such sales, what penalties would be applicable to the sellers of the mislabeled food product? What powers does the FTC have to halt such practices and ensure that consumers were protected from such frauds?
4. Please describe the manner in which the FTC coordinates its efforts with other Federal and State Agencies that may share jurisdiction or responsibilities in this area. To the extent that such coordination efforts are formalized, please also provide copies of any relevant memoranda of understanding or other similar documents.

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph of Rep. Markey's staff at 202-225-2836 or Bruno Freitas of Rep. Frank's staff at 202-225-5931.

Sincerely,



Edward J. Markey
Member of Congress



Barney Frank
Member of Congress