



JAN 17 2002

To All Interested Parties:

The purpose of this letter is to provide information about recently enacted legislation and the names of certain fish that may be offered for importation into the United States.

Recently enacted Public Law 107-76, "The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002" contains the following language:

"Sec. 775. None of the funds appropriated or otherwise made available by this Act to the Food and Drug Administration shall be used to allow admission of fish or fishery products labeled wholly or in part as "catfish" unless the products are taxonomically from the family Ictaluridae."

Food and Drug Administration guidance ("The Seafood List, FDA's Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce 1993" as updated) list a number of fish other than from the family Ictaluridae with the term "catfish" in their names. There is considerable interest in both the importing and regulatory communities about labels for these fish when in U.S. commerce.

The governing statute for the naming of food is the Federal Food, Drug, and Cosmetic Act. Under section 403 of that act (21 U.S.C. 343), a food is misbranded if, among other things, its labeling is false or misleading in any particular, it is offered for sale under the name of another food, or its label fails to bear the common or usual name of the food, if any there be. In the United States, commercial, edible fish are typically sold to consumers under common or usual names that are different from their Latin, taxonomic names. For example, fish in the family Ictaluridae bear common or usual names such as Catfish, Channel Catfish, Blue Catfish, and others.

FDA has issued regulations at 21 CFR 102.5 that provide general principles for common or usual names for foods. A common or usual name must accurately identify or describe, in as simple and direct terms as possible, the

basic nature of the food or its characterizing properties or ingredients. It may be a “coined name,” created for the purpose of naming the food. It may not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name.

FDA’s regulations provide that a common or usual name may be established by common usage or by establishment of a regulation. As a practical matter, however, common or usual names for foods tend to be established through common usage.

FDA’s “Seafood List,” mentioned previously, provides agency guidance on common or usual names for fish that meet the provisions of 21 CFR 102. Those non-Ictalurid species that have been listed in the Seafood List as having common or usual names containing the term “catfish,” and are thus affected by the new legislation, are as follows:

Scientific Name	Common Name	Market Name
<i>Arius felis</i>	Hardhead Catfish	Sea Catfish
<i>Arius thalassinus</i>	Giant Catfish	Sea Catfish
<i>Bagre marinus</i>	Gafftopsail Catfish	Sea Catfish
<i>Brachyplatystoma flavicans</i>	Gilded Catfish	Gilded Catfish
<i>Brachyplatystoma Vaillanti</i>	Piramutaba	Piramutaba Catfish or Lualaba Catfish
<i>Clarias Batrachus</i>	Walking Catfish	Walking Catfish
<i>Clarias gariepinus</i>	Sharptooth Catfish	Sharptooth Catfish
<i>Clarias Hybrid (macrocephalus and gariepinus)</i>		
<i>Clarias macrocephalus</i>	Broadhead Catfish	Broadhead Catfish
<i>Heteropneustes fossilis</i>	Stinging Catfish	Stinging Catfish
<i>Mystus aor</i>	Long Whiskered Catfish	Long Whiskered Catfish
<i>Mystus vittatus</i>	Striped Catfish	Striped Dwarf Catfish
<i>Ompok pabda</i>	Pubdah Catfish	Pubdah Catfish
<i>Pangasius bocourti</i>	Basa Catfish	Basa or Basa or Bocourti or Bocourti Catfish
<i>Pangasius gigas</i>	Giant Pangasius	Pangasius, Giant or Mekong Catfish

<i>Pangasius micronemus</i>	Shortbarbel Catfish	Pangasius, Shortbarbel, or Shortbarbel Catfish
<i>Pangasius hypophthalmus</i>	Swai	Swai, Sutchi, Striped Catfish, or Sutchi Catfish
<i>Pinirampus pirinampu</i>	Flat-whiskered Catfish	Flat-whiskered Catfish
<i>Pseudoplatystoma fasciatum</i>	Barred Sorubim	Barred Catfish
<i>Pseudoplatystoma tigrinum</i>	Caparari	Caparari or Tiger Catfish

Importers whose products have alternative common or usual names that do not contain the term “catfish” should consider using those alternative names. If no such alternative name exists, importers may want to consider developing other names for these fish by following the principles in 21 CFR 102.5. In applying those principles to this situation, importers should keep the following in mind:

1. To the extent possible, the name should be informative or descriptive to the consumer. An example of a descriptive name now in use is “orange roughy,” which was developed because the fish has an orange hue and has rough textured scales.
2. The name should not be deceptive or misleading as to the species designated (for example, the fish should not be named a type of halibut) or have a misleading association with such attributes as color, flavor, value, or existing market forms. For example, “peanut butter fish” would likely be deceptive because the fish in question do not have attributes, such as flavor, reminiscent of peanut butter.
3. Names may be close to pre-existing common usage so long as they are adequately identifying or distinguishing, i.e., so that a consumer is not likely to confuse it with another fish. For example, the name “Flat Whiskered Fish” would likely be an acceptable replacement name for the fish currently listed in the Seafood List as “Flat Whiskered Catfish.” However, “Sea Fish” or “Mekong Fish” would not likely be adequate replacements for “Sea Catfish” or “Mekong Catfish” because there are many fish in the sea and in the Mekong, and these names would not adequately identify or distinguish these fish to consumers. (In the case of Mekong Catfish, these fish have also been known as Pangasius Catfish; so a likely adequate replacement name could be Pangasius Fish).

Additionally, coined names should avoid unusual spelling (e.g., Katfish) or splitting of syllables (e.g., Cat Fish) such that the name bears too close a resemblance to the name of another food.

Although pre-review or rulemaking by FDA is not required for the use of names, FDA is available as always to consult on whether a name might be false or misleading or otherwise violative. Individuals who wish to consult with FDA on whether a proposed name might or might not misbrand a fish in accordance with the statute and regulations may do so by contacting:

Ms. Spring Randolph
Consumer Safety Officer
Food and Drug Administration
Center for Food Safety and Applied Nutrition
Office of Seafood
HFS-417, Room 3D-037
5100 Paint Branch Parkway
College Park, MD 20740-3835

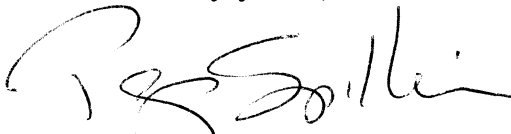
Telephone: 301-436-2301

Fax: 301-436-2599

Email: Srandolph@CFSAN.FDA.GOV

FDA will make every effort to post on the internet new names for fish that are the subject of this letter. The purpose of this posting will be to provide information that might be help avoid the proliferation of contradictory or otherwise confusing names for the same fish. The posting will not be offered as agency guidance or as part of the Seafood List, although the names may be eventually incorporated into the Seafood List as appropriate.

Sincerely yours,



Philip E. Spiller

Director

Office of Seafood

Center for Food Safety and

Applied Nutrition