



Consumer Federation of America

June 23, 2011

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 2-2127
George Washington Carver Center
5601 Sunnyside Avenue
Beltsville, MD 20705

Re: Docket No. FSIS-2008-0031

To Whom It May Concern:

The Consumer Federation of America (CFA) appreciates the opportunity to comment on the proposed rule from the Food Safety and Inspection Service on Mandatory Inspection of Catfish and Catfish Products (Docket No. FSIS-2008-0031). CFA is an association of nearly 300 organizations that was established in 1968 to advance the consumer interest through research, education and advocacy. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions and food safety organizations. CFA's Food Policy Institute was created in 1999 and engages in research, education and advocacy on food and agricultural policy, agricultural biotechnology, food safety and nutrition.

As part of the 2008 Farm Bill, Congress transferred regulation of catfish from the Food and Drug Administration (FDA) to the Food Safety and Inspection Service (FSIS) at the U.S. Department of Agriculture. The law directed FSIS to regulate catfish consistent with how the agency regulates other species under its jurisdiction. The Farm Bill, however, did not specifically define "catfish," and instead left that definition to be determined by the Secretary of Agriculture. CFA generally supports FSIS' proposed approach to catfish regulation and urges the agency to broadly define catfish to cover all fish of the order Siluriformes.

Consumers expect their food to be safe and that imported food meet the same standards for safety as domestic foods. A recent survey showed that 90 percent of voters favor foreign nations having the same requirements as U.S. standards in regards to the food these nations are exporting.¹ A majority of the fish and seafood consumers eat is imported. According to the Department of Commerce's National Oceanic and Atmospheric Administration, over 80 percent

¹ *Poll Finds Most Americans Favor increased Funding for Stronger Food Safety Oversight*, available at makeourfoodsafesafe.org, May 18, 2011.

of seafood that is consumed in the U.S. is imported, with about half coming from aquaculture.² Regarding catfish specifically, the Foreign Agricultural Service at the U.S. Department of Agriculture (USDA) has reported that in 2008, the U.S. imported 78.3 million pounds of catfish from Asian countries including Vietnam, Thailand, China and Cambodia. In 2009, Vietnam was the largest source of farmed catfish (Pangasiidae family) imports into the United States.³

Production methods differ for imported catfish

Differences in catfish farming practices in foreign countries as well as relaxed food safety and environmental standards in those countries raise concerns for consumers about the quality and safety of catfish being imported to the U.S. In contrast to domestic catfish farming, which is primarily done in ponds, some foreign catfish may be raised in aquaculture systems in polluted waters. These aquaculture systems, principally found in Southeast Asia, consist of net enclosures or floating cages in rivers that are filled and emptied by the continuous flow of river water.⁴ That river water can often be polluted by industries or human activity further upstream.

Increases in imported aquaculture products raises concerns about the presence of illegal drug residues. Fish grown in high-density and crowded confined aquaculture systems can have high rates of bacterial infections and farmers will frequently treat fish with antibiotics and antifungal agents to reduce disease. Yet many of the antibiotic and antifungal agents used in foreign countries are illegal in the U.S. because they can cause cancer, allergic reactions, and antibiotic resistance in humans. Vietnam, for example, allows thirty-eight drugs to be used in aquaculture farming while the U.S. has only approved six.⁵ Drug residues can remain in fish through harvesting, processing and consumption, and are thus a serious concern.⁶ Pelleted feed given to catfish in foreign countries has been found to include unapproved antimicrobials.⁷ The antimicrobial fluoroquinolone, which is prohibited by the FDA in food-producing animals, has been found in imported catfish.⁸

Inspection of catfish under FDA has been found lacking, yet problems have still been identified

Catfish has been previously regulated by the FDA, yet the FDA's approach to regulating catfish has been insufficient. The GAO noted that FDA seafood inspections are limited when compared to "more comprehensive reviews of food safety systems conducted by the EU and the Department of Agriculture's FSIS."⁹ The FDA physically inspects only 1 to 2 percent of imported food, including seafood.

While the FDA has employed an import sampling system that tests imported seafood at ports of entry, the GAO has criticized the FDA's sampling system as limited in scope and ineffectively

² Seafood Safety: FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources, GAO Report, pg. 1. April 2011.

³ GAO Report, pg 15.

⁴ Federal Register, Vol. 76, No. 37. Thursday, February 24, 2011 / Proposed Rules, pgs. 10447-8.

⁵ U.S. Department of Agriculture hearing: *Proposed Rule for Mandatory Inspection of Catfish and Catfish Imports*, May 24, 2011 pg. 49.

⁶ GAO report, pg 1.

⁷ *Id.* at pg. 10437.

⁸ Federal Register, pg. 10437.

⁹ GAO Report, pg 12.

implemented. As a result of lax enforcement, imported seafood products may be reaching consumers that could contain drug residues of drugs not approved for use in the U.S. In 2009, the FDA reported that it conducted drug residue testing on merely one-tenth of one percent of all imported seafood. Nitrofurans are not permitted for use in seafood products in the U.S. due to the carcinogenic effect that this antimicrobial has after prolonged exposure.¹⁰ The FDA claims that testing for nitrofurans is a top priority and yet between 2006 and 2009, the FDA failed to test for this drug. As a result, seafood products, such as catfish, containing unapproved drugs may be entering the country.¹¹ In the absence of adequate federal oversight, some states are taking their own measures. In 2007, Alabama, Mississippi and Louisiana banned the sale of Chinese catfish after finding banned antibiotics in Chinese catfish imports. In 2005, the same states banned Vietnam catfish after detecting antibiotics in catfish imports from that country.¹²

Furthermore, FDA does not require countries to subject their food safety systems to review prior to exporting their products to the U.S. According to the GAO, the agency lacks written operating procedures and an established set of criteria regarding the regulation of a country's farms or the competence of foreign laboratories. In addition, the FDA rarely visits foreign countries to audit their food safety systems or those of the exporting food establishments. For example, the GAO reported that in 2010, the FDA only visited five of 801 fish processing facilities in Vietnam.¹³ The FDA does not visit fish farms in foreign countries to review how fish are raised because aquaculture producers are considered exempt from coverage under FDA's Seafood HACCP regulation.

Despite FDA's limited inspection regime for imported seafood, the agency has still identified problems with imported catfish. According to a CFA review of the FDA's import alert database, the FDA has rejected catfish, which had been imported from China, Thailand and Vietnam, a total of 31 times since June 1, 2008, mainly due to unsafe drug residues. Other reasons for rejection include that catfish products were filthy, putrid, contained unsafe food additives or because they tested positive for Salmonella. Considering FDA's limited capacity to adequately oversee catfish imports, the fact that the agency was still able to identify significant problems with imported catfish raises serious concerns about the quality and safety of the imported product.

CFA supports FSIS approach to regulating catfish

CFA generally supports the FSIS approach to regulation of catfish as detailed in the proposed rule. FSIS's proposal would regulate catfish in a similar manner to how the agency regulates meat and poultry products, including sanitation and HACCP requirements for processing facilities, establishment of performance standards, sampling and testing, labeling requirements and continuous inspection of catfish processing facilities. In addition, CFA strongly supports FSIS oversight of the conditions under which catfish are raised and transported to the processing establishment. CFA also supports FSIS' proposed approach for regulating imported catfish. The proposed rule requires a foreign food safety system to be equivalent to the domestic food safety system, and to meet other applicable requirements of the Federal Meat Inspection Act and the

¹⁰ GAO Report, pg. 7.

¹¹ *Id.* at pg. 20.

¹² Mitchell, G. "Alabama, 2 other states ban Chinese catfish over antibiotic use." Associated Press, May 17, 2007.

¹³ USDA Hearing pg. 49.

applicable regulations for catfish establishments. Foreign countries with establishments that wish to export catfish products to the U.S will have to demonstrate via verified documentation that there are laws or other established legal measures which assure compliance with the standards that FSIS will be implementing.¹⁴ FSIS should adequately review each foreign country's food safety system including on-site audits and should publish for public comment its proposal to declare a foreign country equivalent for the purposes of exporting catfish to the U.S. CFA also supports FSIS posting on its website a list of countries that are eligible to export catfish to the U.S., similar to how the agency posts countries eligible for meat and poultry export.

The definition of catfish should cover both domestic and imported catfish

CFA strongly supports a definition of catfish which includes all fish of the order Siluriformes. This would follow established scientific practice and would ensure that all fish that consumers recognize as catfish would be covered under the rule. The Siluriformes order includes the Ictaluridae family of catfish which is primarily found in North America, and the Pangasiidae family of catfish which is principally found in Southeast Asia.¹⁵

In the 2002 Farm Bill, the definition of catfish was classified as only those fish belonging to the Ictaluridae family; however prior to 2002, all Siluriformes were considered catfish. While the 2002 definition was a political decision rather than a scientific one, it is the current definition used by the FDA. Still, catfish of the Pangasiidae family, such as basa and tra, are regularly sold and marketed as "catfish" in the U.S. On March 18, 2011, the FDA published an import alert regarding the misbranding of catfish whereby the imported product claimed to be catfish, but was not of the Ictaluridae family. Because the FDA only inspects a small fraction of imported seafood, it is highly probable that additional Pangasiidae family are being marketed and sold in the U.S. as catfish.

A broad definition would assure that all fish recognized by consumers as catfish would be regulated under the law. A definition of catfish that only encompasses the Ictaluridae family would mean that 70 percent of catfish consumed in the U.S. would be regulated; however such a definition would also mean that only 20 to 25 percent of imported catfish would be regulated. It is essential that new regulations for catfish apply to species being produced domestically and those being imported. It makes no sense for consumers for some catfish to be regulated one way and other types of catfish regulated another.

Furthermore, much of the catfish consumed in the U.S. is purchased in restaurants or other places that are exempt from country of origin labeling where consumers have no means of differentiating between imported or domestic catfish. CFA strongly urges FDA to expand the current definition to include all fish of the order Siluriformes, including both Ictaluridae and Pangasiidae. In addition, FSIS should work with the FDA to clarify the new definition to ensure consistency among the food safety agencies.

Funding for catfish inspection should not reduce funding for meat and poultry inspection

Importantly, FSIS must assure that its new catfish inspection program is adequately funded without jeopardizing funding for FSIS' other inspection programs regarding meat and poultry.

¹⁴ Federal Register, pgs. 10451-2.

¹⁵ *Id.* at pg. 10436.

FSIS had previously asked for and received funding from Congress for its catfish inspection program, but was unable to finalize catfish regulations during that time. In the most recent budget, funding for its catfish inspection program has been zeroed out and FSIS currently has no funding to implement a program. If FSIS anticipates implementing its catfish inspection by 2013, the agency must request sufficient new funding from Congress to adequately develop and administer the program. Funding for catfish inspection, however, should not result in reduced funding for the agency's other critical inspection activities related to meat and poultry.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Chris Waldrop". The signature is written in a cursive, flowing style.

Chris Waldrop
Director, Food Policy Institute