Is the Seafood Import Monitoring Program (SIMP) Fighting Fraudulent Fish?

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Have you ever sat down at a pricey seafood restaurant, perused the menu, and decided to order yourself the lavender jobfish? No, you say? Well, you may never have ordered it, but chances are you've eaten it. Data published by advocacy group Oceana in 2013 showed that a frightening 59% of seafood sold by restaurants and grocery stores was mislabeled.[1] Less-desirable choices like Greenland turbot and giant perch were swapped in for more expensive fish like sea bass and Florida snapper.[2] How does this happen? 90% of the 50 billion pounds of seafood consumed in the USA every year is imported, but only a small amount is actually inspected by the government; some estimates say only 1-2% of imported seafood is inspected, while other estimates say the figure could be up to 40%.[3] Of the small percentage of seafood that *does* get inspected, only 0.33 ends up being rejected.[4]

More concerning than mislabeling is the fact that the lack of inspection puts consumers' health at risk. Over 80% of tuna samples analyzed by Oceana turned out to be escolar, which can trigger serious digestive issues in some who consume even just a few ounces,[5] and sample of grouper tested by Oceana turned out to be king mackerel, which is high in mercury and on the U.S. Food and Drug Administration's (FDA's) Do Not Eat list for sensitive groups.[6]

Seafood and shellfish are the protein option of choice for some, and have become widely popular at sushi joints, restaurants, and supermarkets nationwide. How can we make the healthiest and safest decisions for ourselves if we can't be sure of what is really on our plate? This article

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[1] *Oceana Study Reveals Seafood Fraud Nationwide*, Oceana, https://oceana.org/sites/default/files/National_Seafood_Fraud_Testing_Results_Highlights_FINAL.pdf (last visited April 7, 2020).
[2] Sarah Gibbens, *What is seafood fraud? Dangerous–and running rampant, study finds*, National Geographic (March 7, 2019), https://www.nationalgeographic.com/environment/2019/03/study-finds-seafood-mislabeled-illegal/.
[3] Deborah Zabarenko, *With Imported Seafood Flooding US, Are Inspections Enough?* Food and Environment Reporting Network (July 8, 2014), https://thefern.org/2014/07/imported-seafood-flooding-us-inspections-enough/.
[4] *Id.*
[5] *Oceana Study*, *supra* n. 1.
[6] *Id.*

examines the Seafood Import Monitoring Program (SIMP) which a federal program designed to address fraud associated with imported seafood products.

What is the Seafood Import Monitoring Program (SIMP)?

In response to increasing concerns over seafood mislabeling, The National Oceanic and Atmospheric Administration (NOAA) enacted the Seafood Import Monitoring Program (SIMP), which was fully effective as of late 2018.[7] SIMP establishes permitting, data reporting, and recordkeeping requirements for the import of a list of thirteen fish and fish products that have been identified as being particularly vulnerable to illegal harvest or seafood fraud. The list includes abalone, Atlantic cod, Atlantic blue crab, dolphinfish/mahi mahi, grouper, red king crab, pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and albacore, bigeye, skipjack, yellowfin, and Bluefin tuna.[8] Pursuant to SIMP, NOAA collects information regarding where, when, and how the seafood was harvested, what species was harvested, the quantity and weight of the catch, and details about the importer of record.[9] It is important to note that SIMP is intended to provide a way for the government to monitor and eradicate instances of illegal, unreported, unregulated (IUU) fishing. The program is not designed to trace the catch after importation as it makes its way through the supply chain for sale to consumers. In other words, SIMP tracks a catch from "boat to dock", but SIMP provides no assurances against seafood being swapped somewhere between the "dock" and our dinner plates.

The FDA is also involved in monitoring and inspecting seafood. The FDA responded to "reports in recent years" of widespread mislabeling by DNA testing seafood to see how bad the problem truly was. The agency's findings indicate that seafood is labeled correctly 85% of the time.[10] While tempting to take one side or the other, it is important to note that testing methods differed. The FDA collected samples from the wholesale distribution chain, prior to retail sale,[11] while Oceana's samples were collected from retail locations as they would be sold directly to consumers.[12] The disparity evidences the issue of mislabeling and fraud occurring somewhere between import and consumer sale. Oceana's numbers clearly demonstrate that mislabeling and fraud are happening somewhere between import and consumer sale, but the federal government's rebuttal does nothing to explain where and how mislabeling/fraud is occurring or what is being done to pursue a solution.

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[7] *Seafood Import Management Program Facts*, NOAA Fisheries, https://www.fisheries.noaa.gov/international/seafood-commerce-certification/seafood-import-monitoring-program-facts (last visited April 7, 2020).
[8] *Id*.
[9] *Id*.
[10] *FDA DNA Testing at Wholesale Level to Evaluate Proper Labeling of Seafood Species*, U.S. Food and Drug Admin., https://www.fda.gov/food/seafood-guidance-documents-regulatory-information/fda-dna-testing-wholesale-level-evaluate-proper-labeling-seafood-species (last visited April 7, 2020).
[11] *Id*.
[12] Oceana, *supra* n. 1; *Casting a Wider Net: More Action Needed to Stop Seafood Fraud in the United States*, Oceana, https://usa.oceana.org/publications/reports/casting-wider-net-more-action-needed-stop-seafood-fraud-united-states (last visited April 7, 2020).

Is SIMP effective?

A 2018 follow up to Oceana's 2013 report showed that seafood fraud was still running rampant in the U.S. One in five of samples tested by Oceana in the 2018 study were mislabeled, and one in three of the restaurants and markets where samples were purchased sold mislabeled seafood.[13]

So, is SIMP working to effectively reduce instances of seafood fraud? The answer seems to be no, but this is not because SIMP itself is flawed. SIMP wasn't designed for consumers in the first place, which NOAA acknowledges, stating that SIMP is "not a labeling program, nor is it consumer facing."[14] It only tracks thirteen species out of the hundreds of species harvested and destined for global markets, and the information collected pursuant to the program, while useful, is intended to track irresponsibly sourced seafood to its source, not to police seafood fraud occurring after is brought to shore and sold.

However, NOAA and SIMP are not without their successes, especially in reducing overfishing. Federal programs like SIMP, in conjunction with the Magnuson-Stevens Act, have allowed the United States to drastically reduce unsustainable fishing practices and bring populations of at-risk species back to healthy levels.[15] Unfortunately for consumers, SIMP appears to do little to ensure that the seafood on our plate is what we think it is.

Other countries have taken a targeted approach to tackling mislabeling and seafood fraud with consumers in mind. The European Union's Atlantic Area Program found that stricter policies regarding supply chain transparency contributed to the reduction of mislabeled seafood. In 2015, they claimed that their years-long study showed a decrease in seafood mislabeling from 40% of samples tested to just 4.9%.[16] Although some may accuse SIMP of failing to increase confidence in consumer's ability to purchase seafood without suspicion of fraud, SIMP was never intended to protect consumers or monitor seafood as it moves through the supply chain. Perhaps the way forward is to focus investigative efforts on tracking seafood from import to the point of retail sale. Until then, we might still unwittingly be ordering lavender jobfish.

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[13] *Casting a Wider Net*, *supra* n. 12.
[14] *Seafood Import Management Program Facts*,, *supra* n. 7.
[15] Dr. Kathryn Sullivan, *America's astounding progress in ending overfishing*, Nat'l Oceanic and Atmospheric Admin. (April 13, 2016), https://www.noaa.gov/news/americas-astounding-progress-in-ending-overfishing.
[16] University of Exeter, *'Fish fraud' across Europe in decline, study shows*, Phys.org (Dec. 2, 2015), https://phys.org/news/2015-12-fish-fraud-europe-decline.html.