

## **Senate Rural and Regional Affairs and Transport References Committee**

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### **Inquiry into the current requirements for labelling of seafood and seafood products**

#### **Joint submission to the inquiry by NSW Food Authority and Fisheries NSW on behalf of the NSW Department of Primary Industries.**

##### **Summary**

##### ***Seafood traceability***

NSW Food Authority believes that the existing harvest, catch, processing and labelling records are adequate to trace seafood through the supply chain.

##### ***Country of origin labelling***

NSW Food Authority recognises that “Made in/Packed in” claims can be ambiguous. Consumers and Australian primary producers would benefit from clear descriptions about the country of origin labelling for key ingredient(s) in manufactured food.

##### ***Seafood names***

Fisheries NSW and NSW Food Authority supports the adoption of Australian Fish Names Standard to assist in consistent description of seafood. The Department also supports industry-led collaboration to address confusion over consumer value claims.

##### ***Labelling at food service businesses***

Mandating additional labelling requirements on the retail food service industry would be an unnecessary burden on NSW industry. Consumers can ask food business to provide additional information about seafood provenance and methods of production. Consumers are protected from false description, misleading or deceptive conduct by food businesses through the Australian Consumer Law and *NSW Food Act 2003*.

##### ***Labelling for imported seafood***

The current labelling laws are adequate. They apply equally to domestic and imported seafood. However note comments above relating to made in/packed in claims.

## **Submissions**

### **a) Whether the current requirements provide consumers with sufficient information to make informed choices, including choices based on sustainability and provenance preferences, regarding their purchases.**

Food offered for sale in Australia must be labelled in accordance with the Australia New Zealand Food Standard Code (the Code). Requirements in the Code, including food labelling, are intended to ensure food is safe and suitable, that food is properly described, correctly and truthfully labelled, and that food can be traced and effectively recalled if problems arise.

The Code is applied nationally under the auspices for the food regulation agreement. The NSW Food Authority (the Authority) is the regulatory agency responsible for ensuring compliance with the *Food Act 2003* (NSW) which applies the Code within NSW.

In addition to food safety compliance, the *Food Act 2003* aims to prevent misleading or deceptive conduct in relation to food offered for sale which includes claims made about food products on labels, packaging and advertising. The Authority has a primary responsibility with respect to food in NSW, however, the Australian Consumer and Competition Commission (ACCC) and NSW Fair Trading enforce the Australian Consumer Law (ACL). The ACL has a general remit to prohibit false or misleading conduct in respect of all goods and services, which includes food, so some legislative overlap may occur.

The Act, the Code and the ACL work together to ensure consumers can make informed choices about the food they buy and are confident that the information is truthful.

### ***Current Requirements***

Seafood in Australia is supplied as a fresh or cooked, packaged or unpackaged product. It is also commonly prepared ready to eat in catering establishments. The Code applies different labelling requirements in each case.

Part 1.2 of the Code contains specific Standards that set out labelling requirements for food. Generally, food must be labelled with the name of the food, a lot or batch code, name and address of the supplier, use by or best before date mark, list of ingredients, identification of warnings or hazards, storage and use instructions, nutritional information and a country of origin declaration.

There are various types of business transactions that are conducted in industry and the level of labelling information varies with each one. At retail sale, if the food is packaged, the label must include all the information from Part 1.2 of the Code. If the food is supplied unpackaged, for example, the sale of food from a display in a shop premises, the only labelling required on a food is the name of the food and the country of origin declaration.

Where food is offered for immediate consumption by restaurants, canteens and similar, no country of origin declaration is required. There is no requirement under the Code to declare the sustainability of food because the Code generally concerns itself with food safety matters. Sustainability of food is considered a consumer value issue. This does not, however, prevent food businesses from voluntarily promoting the sustainability, production

methods or origin of seafood where the code is silent or businesses are exempt noting that truth in labelling provisions already apply as identified above.

### ***Provenance***

Consumers are able to identify and request information about the origin of seafood through mandatory labelling requirements placed on food businesses under the Code. Standard 1.2.11 of the Code sets out the requirements for country of origin labelling (CoOL) for packaged and certain unpackaged foods, including seafood. A declaration must be provided that identifies the country where the seafood was made, produced or grown, or identifying the country where the food was manufactured or packed and that the food is constituted from local and/or imported ingredients.

This is required on all packaged food or unpackaged fish whether raw, cooked or processed in any way. As mentioned above, an exemption exists where seafood is offered for immediate consumption at restaurants and other catering establishments. However, the establishment will have been supplied the CoOL information when they purchased the seafood, so can provide at the request of the customer.

The current CoOL framework recognises the contribution of local production and manufacturing, as well as the origin of ingredients. As indicated, this is intended to provide regulatory certainty for manufacturers while also allowing consumers to make informed choices about food they purchase.

Where a product is unprocessed or in its natural state, the Authority considers that CoOL requirements are adequate. For example, imported seafood will usually have a clearly identifiable place of origin and these claims are relatively easy to substantiate.

The Authority recognises that contention exists regarding lack of clarity and ambiguity conveyed by some claims relating to "Made in/Packed in Australia", particularly when combined with qualifying claims such as "from local and imported ingredients". The application of these CoOL claims can be open to broad interpretation and can also be difficult to verify, especially where a product contains many ingredients sourced from a number of countries.

The Authority believes the needs of consumers and Australian primary industries may be better met if the country of origin labelling regime required the key ingredient(s) to be more clearly characterised. Where a product is based on a mixture of local and imported ingredients or significant transformation of principally imported ingredients, then it may be helpful for the CoOL regime to target 'significant ingredients' or 'principal components' of the food. This could include requiring the origin of any key imported ingredients such as seafood to be identified as imported.

### ***Sustainability***

The Code has no labelling requirements regarding sustainability of seafood production. Describing sustainability as a 'consumer value', Blewitt, in *Labelling Logic*<sup>1</sup>, states these values are "*best left to market responses to consumer demand and is best covered by the consumer protection laws*" rather than be government mandated<sup>2</sup>.

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<sup>1</sup> Review of Food Labelling Law and Policy 2011

<sup>2</sup> At Paragraph 6.3 - Page 97; Review of Food Labelling Law and Policy 2011.

The Authority is aware that there are products in the marketplace that make claims in regards to food production techniques, environment or animal welfare. Examples include “sustainably caught” in relation to seafood catches. A number of organisations offer environmental certification programs and allow food producers to promote any accreditation they have rightfully attained. Examples include World Wide Fund for Nature, Marine Stewardship Council, Global GAP and Friend of the Sea. The Authority acknowledges the value of this system since it benefits both the producer and meets consumer values.

Although the Code does not prescribe any requirement to label a food product in this regard, the basic truth in labelling provisions from the Food Act 2003 (NSW) will apply. The claimant will need to be able to substantiate any claim they make.

There are also safeguards provided to consumers through the ACL. Food businesses must ensure the claims they make are truthful and do not mislead or deceive the consumer.

### **b) Whether the current requirements allow for best-practice traceability of product chain-of-custody**

Since its establishment in 2004, the Authority has routinely monitored food industry compliance with the requirements of the Code through audits, inspections and compliance activities, and no more so than in the seafood industry.

The Code, at Standard 4.2.1 – Primary Production and Processing Standard for Seafood, sets out food safety and suitability requirements for seafood, generally from pre-harvesting production. A specific requirement is for the seafood business to maintain sufficient written records to identify the immediate recipient and supplier of seafood. For shellfish products, this traceability must be specific to a nominated harvest area.

The Authority undertakes compliance projects to verify the claims about seafood provenance and to monitor traceability of products. This was tested in a recent investigation into a case of ciguatera poisoning, where a fish was traced from sales, production and catch records, back to a specific vessel.

Recent technological advances and industry innovation have allowed businesses to tailor their marketing to their customers needs by providing information about where the seafood was sourced.

Therefore, the Authority is confident that the existing labelling and record keeping requirements are adequate to trace seafood from the production source through to the supply chain.

**c) The regulations in other jurisdictions, with particular reference to the standards in the European Union (EU) under the common market regulation (EU) No1379/2013 Article 35.**

The Authority understands that the European Union requires specific information on seafood products, by virtue of the common market regulation.

It is acknowledged that the regulation requires seafood to be labelled with the commercial designation and its scientific name, the production method, i.e caught in freshwater, farmed, the area of catch or farming, and the category of fishing gear used in capture. The Authority agrees this information may be of interest to some consumers.

In NSW, any claims or descriptions regarding species, sustainability and use of gear in catchment may be applied to seafood products if the supplier chooses to do so. The only restriction is that these must be truthful and be substantiated if required. Therefore, if the product is one that meets the perceived consumer values, the supplier may use the claims/descriptions as a marketing tool.

We believe that whilst this information adds value to consumer knowledge, mandating this information may increase the burden on industry in complying with such requirements. However, should businesses wish to label their products with this information, there is nothing preventing them in doing so. The Authority believes consumer values information is best left to market forces and is supported by the Blewitt review into food labelling. As mentioned earlier, if any consumer value claims are made they must be truthful and not mislead consumers.

Therefore, it would be an unnecessary burden on industry to mandate consumer value claims and at this time it is best left to commercial market mechanisms to drive consumer value information.

**d) The need for consistent definitions and use of terms in product labelling, including catch area, species names, production method (including gear category), and taking into account Food and Agriculture Organisation guidelines.**

The Authority considers that industry and consumer interests are enhanced where there is a consistency in the terminology that is used.

The Code requires that seafood be labelled with its prescribed name or a description that is sufficient to indicate the true nature of the seafood. However, this becomes problematic where no prescribed name exists and may lead to confusion by consumers and industry.

In Standard 2.2.3 of the Code reference is made to the Australian Fish Names Standard (AS SSA 5300) within the editorial note. Reference to the Australian Fish Names Standard is a guidance document and does not define or prescribe the use of the standard fish names under the Code and therefore is not enforceable under the NSW Food Act 2003.

Standard fish names assist enforcement where substitution occurs, particularly where high value species are described and are substituted for species of lesser value. For example, the use of the name "Dory" when selling Basa has resulted in enforcement action in NSW. It is for this reason that the Authority supports an approach where consistent terminology is mandatory in the description or naming of seafood.

However, it is acknowledged there are practical limitations to such an approach. In the retail sector businesses are still open to use generic names of "Fish", "Prawns", "Boneless fillet", "Flake" (when selling shark) since these are commonly understood by consumers. Adoption of standard fish names would require extensive education of the retail and food service industry.

Each Australian Fisheries jurisdiction, including NSW, has agreed to adopt the use of standard fish names in legislation and develop advisory publications to reduce confusion among consumers and industry. Fisheries NSW believes the adoption of the Standard should be mandatory.

Despite the absence of a standard for fish names, the Food Authority is able to take enforcement action under the truth in labelling provisions of the Food Act 2003. Similarly the ACCC and NSW Fair Trading enforce the ACL provisions that prohibit false or misleading conduct. The ACL provides assistance to food businesses with the 'safe harbour' defences for country of origin declarations, without any reference to Standard 1.2.11 (Country of Origin) from the Code. The Food Authority believes that the ACL may be the appropriate platform to embed the Australian Fish Names Standard if it is to be adopted.

Both the Food Authority and Fisheries NSW support mandatory adoption of a consistent approach, such as the Australian Fish Names Standard, and considers the ACL as the most appropriate platform for it to sit.

**e) The need for labelling for cooked or pre-prepared seafood products with reference to the Northern Territory's seafood country of origin regulation.**

The Code requires a CoOL declaration for all packaged and most unpackaged seafood, whether cooked, pre-prepared or raw, unless supplied for immediate consumption by restaurants, canteens, caterers or other institutions, where an exemption to comply exists. However, these exempt businesses are able to supply country of origin information to consumers upon request by simply checking the packaging of the product, any accompanying documentation or requesting it from the supplier.

Complaints received by the Authority do not reflect significant industry non-compliance. Despite low complaint levels, the Authority is active in enforcement of CoOL provisions through routine compliance inspections, surveillance and testing.

The Authority is aware of the Northern Territory Government's requirement for fish retailers serving imported seafood for public consumption to clearly identify to the consumer if the product is imported. The results achieved with regards to an increased awareness of the labelling laws, consumers' preferences for locally caught seafood and the value placed on such seafood is similarly noted.

The Authority understands that the Northern Territory produces iconic seafood species including a single-species of barramundi and mud crabs which makes a large contribution to the local economy. In NSW the seafood produced is a diverse range of many species which does not have the same demand for protection of a particular species. Therefore, mandating CoOL at restaurant level may add burden to industry without any benefit at retail level.

Nothing prohibits a NSW restaurant from promoting their seafood as local or product of Australia. Again, the truth in labelling provisions apply to any description added to seafood

to protect consumers against false or misleading claims. Also, consumers may request CoOL information for the purchase if they wish to do so, and the business must provide it.

Therefore, the Authority believes the current labelling requirements for seafood are adequate and that mandating additional information would be an unnecessary cost burden to industry.

**f) Recommendations for the provision of consumer information as determined through the Common Language Group process conducted by the Fisheries Research and Development Corporation.**

The Food Authority is aware that the Fisheries Research and Development Corporation (FRDC) has established the Common Language Group and acknowledges its work in framework development for agreed language and positions on key issues affecting the seafood industry. The Authority supports any industry-led collaborative approach to addressing issues that affect national concerns about consumer values.

The Authority provides an integrated food regulation system from primary product through to point of sale. Part of the framework includes consultation with any interested stakeholder parties to address any areas of common interest. As identified in this submission, it is evident that the Australian seafood industry would benefit from using common terminology.

Regarding terms relating to sustainability, fish stock levels, fishing gear used in capture and similar, the Authority believes these consumer values are best left to market forces and mechanisms to determine their suitability on products. Ultimately, consumers will not purchase a product if they perceive it to fail in meeting their consumer values, and any descriptions and claims made in this respect are subject to the truth in labelling provisions.

If the Common Language Group make any recommendations that would benefit the seafood industry, consumers and assist enforcement, the Authority will be happy to provide feedback to any proposals submitted for comment.

**g) Whether current labelling laws allow domestic seafood producers to compete on even terms with imported seafood products;**

According to Fisheries Research and Development Corporation, 72% of fish and shellfish flesh consumed in Australia is imported. Some imports, examples include scallops and squid, are imported to complement equivalent local goods in periods of low supply. A 2013 Consumer Survey<sup>3</sup>, related to (e) above, found that many factors influence consumers when purchasing seafood: freshness, support for local industry, country of origin, species, sustainability, other menu options, price, region of origin and whether wild or farmed<sup>4</sup>.

Australian seafood has an excellent reputation as a high quality, safe and sustainable product. As a result, to achieve this local seafood may be more expensive for consumers. The nutritional benefits of regular consumption of seafood are well documented. Whilst the

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<sup>3</sup> The Consumer Survey of Awareness of the Northern Territory Seafood Labelling Laws and the Commercial Seafood Industry  
<sup>4</sup> At page 7

Authority believes that NSW consumers prefer to buy Australian, the associated higher cost may result in buyers opting for a cheaper, imported alternative to ensure they still have access to seafood as a fundamental part of their diet. The Authority has not seen any evidence to suggest that imported seafood is of inferior quality or any less nutritious than locally produced seafood.

Imported seafood is subject to the same rigorous requirements applicable to composition and labelling. The Commonwealth Department of Agriculture is responsible for ensuring food complies with the Code at the point of entry into Australia. The labelling laws do not differentiate between local or imported seafood and apply evenly to any food product sold in NSW. All products must be labelled with an Australian or New Zealand business address and it is this supplier that takes responsibility for complying with the law. A batch or lot code must be applied to either product to allow for traceability to the seafood source, whether this is local, another State or abroad. Therefore, any importer must ensure the product complies with the Code and be labelled appropriately in exactly the same manner as the local producer.

Industry promotion and marketing of the Australia brand may, in fact, advantage local suppliers that sell premium labelled "Product of Australia" seafood compared with those selling imported varieties.

Regardless of origin, all food sold in NSW must be safe, suitable and correctly labelled.

As these requirements apply equally to domestic and imported food, the Authority believes domestic seafood producers are able to compete on equal terms with imported seafood products.

#### **h) Any related matters**

The Authority believes that all issues relating to this submission have been addressed.