

GUIDANCE FOR INDUSTRY

Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No.107 - 76, § 755 (2001) regarding Common or Usual Names for Catfish.

OFFICE OF SEAFOOD

CENTER FOR FOOD SAFETY AND APPLIED NUTRITION

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This guidance represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This guidance is part of FDA's implementation of section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No.107 - 76, § 755 (2001). Section 755, which was enacted on November 28, 2001, provides that FDA may not spend any of its 2002 appropriation to allow admission of fish or fish products labeled in whole or in part with the term "catfish" unless the fish are from the *Ictaluridae* family.

Existing guidance ("The Seafood List, FDA's Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce 1993", as updated – located on FDA website at <http://www.cfsan.fda.gov/~frf/seaintro.html>) lists a number of fish from other families with the term "catfish" in their common or usual names. By letter, FDA has already explained that it

would be advisable for those who label these fish to start using alternate common or usual names if they exist. (FDA's Seafood List is one source for alternate names.¹) However, a number of affected species appear, from FDA's review of the Seafood List, not to have any alternate common or usual names.

The naming of food is addressed in the Federal Food, Drug, and Cosmetic Act (Act) in section 403 (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. For those fish that have no alternate common or usual names that do not contain the term "catfish," FDA intends to exercise enforcement discretion with respect to the requirement that a food bear its common or usual name as long as the name of the fish complies in other respects with section 403 of the act and the principles set forth in 21 CFR 102.5.

21 CFR 102.5 provides, among other things, that 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;
- May be a "coined name," created for the purpose of naming the food; and
- May not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name.

¹ FDA tries to keep the Seafood List up-to-date and complete. However, there may be common or usual names that it does not contain.

In applying those principles to this situation, those who label the fish should keep the following in mind:

- 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.
- The name should not be deceptive or misleading as to the species designated. For example, the fish should not be named “halibut,” a common or usual name already used to designate a different species. Further, the name should not 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 does not have attributes, such as flavor, reminiscent of peanut butter.
- 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” (*Pangasius gigas*) 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.