LOUIS KEMP SEAFOOD CO.

Tyson

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BY FEDERAL EXPRESS

Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, MD 20852

Re: Docket No. 98P-0968/Declaration of Fish Species in Surimi

Dear Sir/Madam:

Tyson Seafood Group, Inc. (Tyson Seafood) submits these comments in support of the Food and Drug Administration's (FDA) proposed rule to permit the use of "and/or" ingredient labeling in declaring the various fish species that might be present in bulk surimi and surimi-based seafood products. See generally Food Labeling: Declaration of Ingredients 64 Fed. Reg. 17,295 (Apr. 9, 1999).

Tyson Seafood is the leading U.S. manufacturer of bulk surimi and surimi-based seafood products. Tyson Seafood has worked closely with the National Fisheries Institute (NFI), the petitioner in this matter, regarding the appropriate labeling declaration for the fish species component of all surimi products. As discussed more fully below, we are in general agreement with the agency's proposed rule.

Tyson Seafood believes that the petition submitted by NFI fully sets forth the reasons that specific ingredient labeling of the fish species in surimi, in accordance with FDA's compliance policy guide (CPG) governing the labeling of surimi-based seafood products, is impracticable. See generally FDA Compliance Policy Guides Manual § 540.700 (CPG 7108.16) (Oct. 30, 1989). We further believe that these reasons provide FDA with proper basis to authorize "and/or" ingredient labeling of the fish species in surimi under section 403(i) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343(i), as the agency already has done in other ingredient

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labeling contexts, i.e., fats and oils, leavening agents, yeast ingredients, dough conditioners, firming agents, wax and resin coatings on fresh produce, and nutritive sweeteners in soft drinks. See generally 21 C.F.R. § 101.4(b)(14)-(19), (22); 56 Fed. Reg. 2950 (Jan. 6, 1993).

As explained in NFI's petition, the vagaries and unpredictability of fish species availability and the burdens of contingent labeling of surimi-based seafood product make specificity in ingredient labeling impracticable. Due to harvest seasonality and quota limitations, Tyson Seafood, like other industry producers, is unable to adhere to a constant pattern of fish species in making surimi. Furthermore, frozen surimi quickly loses its functionality doing storage, and we are required constantly to adjust overall product formulations to maintain consistent quality. In light of these factors, requirements for specific ingredient labeling of the fish species in surimi impose unwarranted production, logistical, and financial burdens on this industry. We are compelled to maintain and coordinate several inventories of fish-specific surimi and contingent labels specific to the fish used. For example, Tyson Seafood uses as many as 3 different fish species in our products, and we manage approximately 220 unique labels for our various branded and private labeled products. Use of "and/or" ingredient labeling would alleviate unwarranted burdens. Moreover, as noted in comments submitted to this docket by such respected consumer groups as Public Voice for Food & Health Policy and the National Consumers League, this relief would come without loss of label information or other detriment to consumers.

For all these reasons, Tyson Seafood strongly supports FDA's proposed rule for "and/or" ingredient labeling of the fish species in surimi and surimi-based seafood products, and urges the agency to expeditiously promulgate a final rule.

While Tyson Seafood generally supports FDA's proposed rule, we have one serious concern that we urge the agency to address in promulgating the final rule. In the preamble to the proposed rule, FDA suggests that a term such as "fish protein" could be used to designate collectively in ingredient labeling the fish species used in the production of surimi:

> Considering the information presented in the petition regarding the processing of the fish ingredient coupled with other information available to the agency describing the production of surimi . . . the agency believes that a term such as "fish protein" could be used to describe the fish ingredient used in the production of surimi. For example, a manufacturer of processed seafood product that contains surimi could list the various fish species that might be used to produce the surimi in the product's list of ingredients by stating "fish protein (contains one or more of the following: Pollack, cod, and/or pacific [sic] whiting)."

64 Fed. Reg. at 17,297 col. 2-3. Similarly, the text of the proposed rule uses the term "fish protein ingredient[s]" to designate surimi, and uses "fish protein" to demonstrate how an ingredient declaration for surimi might read. 64 Fed. Reg. at 17,298 col. 3.

We are very concerned that these provisions may be read to prescribe use of "fish protein" as the collective ingredient labeling designation for surimi when, in fact, the term was provided by FDA only as an example. NFI's petition did not suggest this term. Moreover, the term does not seem appropriate or suitable for use across all labeling contexts -- in particular, use within the common or usual name of a processed seafood product containing surimi. In this regard, we note that a comment submitted to this docket by the National Marine Fisheries Service Utilization Research Laboratory recommends "fish" as an appropriate collective term. This term similarly has been embraced by others in comments submitted to this docket. It also is consistent with FDA's CPG:

> An additional statement of product identity must appear on the principal display panel such as "A Blend of Fish with _____." The blank is to be filled in with the common or usual name of the ingredient or component, such as "snow crab". Because the fish used in the surimi-base has been decharacterized, the word "fish" is adequate for the statement of product identity. ****

FDA Compliance Policy Guides Manual § 540.700 (Policy paragraph 2). Other collective terms similarly may be more appropriate and suitable than "fish protein."

For these reasons, in promulgating the final rule, Tyson Seafood urges FDA to be flexible, rather than prescriptive, regarding the collective term that should precede parenthetical "and/or" declaration of the fish species that might be present in the surimi. FDA should require only that the surimi ingredient declaration employed not be false or misleading.

Tyson Seafood appreciates this opportunity to comment on the proposed rule and trusts that the agency will seriously consider our recommendations in promulgating the final rule.

Respectfully submitted,

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Vice President -- Surimi Operations

MRC:jdm

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