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RESTAURANT COUNTRY OF ORIGIN LABELING (COOL) IS NECESSARY TO PREVENT HEALTH RISKS

I. INTRODUCTION & OVERVIEW

Americans are consuming more seafood than ever before. US per capita seafood consumption reached 16 pounds in 2017, the highest level since 2009.[1] The Food and Drug Administration (FDA) recently changed its Dietary Guidelines for Americans to recommend increases in seafood consumption to 8 ounces per week for the general population, and 8-12 ounces per week for women who are pregnant or breastfeeding.[2] Fish and shellfish provide protein, are low in saturated fat, contain micronutrients, and are high in omega-3 fatty acids important for growth and development.[3] Increased seafood consumption is warranted as long as the seafood being consumed is safe. Unfortunately, increased seafood consumption is predominantly satisfied by imported seafood that very often does not comply with US health and safety standards and pose a significant health risk.

Imported seafood accounts for over 90% of US consumption. Shrimp is the largest consumed seafood and imports satisfy 90-94% of US shrimp demand. Imported seafood is largely grown in aquaculture ponds where veterinary drug use is necessary to prevent mortality and maximize yields. The widespread use of antibiotics and other illegal veterinary drugs in foreign food production has created a serious threat to global public health. Antimicrobial resistance (AMR) prevents common drugs from treating microorganisms (bacteria, fungus, virus or parasite). AMR kills 29,500 Americans each year and is projected to kill 1 million Americans by 2050.[4] In addition to the human toll, the economic cost of AMR could reach $65 billion by 2050.[5] According to the World Health Organization, "[t]he problem is so serious that it threatens the achievements of modern medicine. A post-antibiotic era—in which common infections and

[1] *See* National Marine Fisheries Service, *Fisheries of the United States 2017*.
[2] *See* FDA, *Eating Fish: What Pregnant Women and Parents Should Know* (January 2017), located at https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm393070.htm (last visited April 15, 2019).
[3] *Id.*
[4] *See* US Centers for Disease Control, *Antibiotic Resistance Threats in the United States, 2013* & Organization for Economic Co-operation and Development, *Stemming the Superbug Tide*, OECD Health Policy Series (November 2018).
[5] *Id.*

minor injuries can kill – is a very real possibility for the 21st century."[6] The US Congress acknowledged this crisis and recently appropriated significant funding to the FDA for testing antibiotic resistance in imported seafood.

Louisiana consumers deserve the right to know where their seafood originates. The United States International Trade Commission found that 80% of shrimp consumption occurs at the restaurant level.[7] Seafood country of origin labeling (COOL) exists at the retail level but is conspicuously absent at the restaurant level where most shrimp consumption occurs. All restaurants purchase and receive seafood products with country of origin information. They know from where the seafood they serve originates, yet they choose not to provide that information to their customers. House Bill No. 335 requires Louisiana restaurants to make seafood origin information available, either by printing the information on menus or orally providing it to customers. This legislation is a critical step to ensure that Louisiana consumers have information necessary to make informed choices about seafood consumption in a market dominated by imports that pose serious health risks.

II. IMPORTED SEAFOOD DOMINATES THE US MARKET

International trade in seafood is a massive economic enterprise throughout the world, reaching a total value of $143 billion in 2016.[8] 53% of international seafood trade originates in developing countries, where net export revenues from seafood reached $36 billion in 2016.[9] Seafood industries in these developing nations emerged through generous government support programs providing billions in illegal and trade-distorting subsidies. Seafood exports represent a critical source of foreign exchange earnings and employment in these countries, providing the political and economic incentive for illegal trade practices and flagrant abuse of illegal veterinary drugs to stave off disease and maximize yield. As a result, imported seafood dominates the US market. The US imported $38.4 billion in fishery products in 2017, representing a 7% increase from 2016.[10]

Shrimp stands alone as the largest seafood product imported into the US. The US imported a record 1.5 billion pounds of shrimp in 2017, an increase of 133.6 million pounds over the prior record set in 2016.[11] Imported shrimp accounts for 24% of the total volume and 30.4% of the total value of seafood imports in 2017.[12] A staggering 90-94% of shrimp consumed in the US is imported.[13] Imported shrimp so completely dominates our market that annual imports

[6] *See* World Health Organization, Antimicrobial Resistance, Global Report on Surveillance (2014 Summary).
[7] *See* Certain Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063, 1064, 1066-1068 (Second Review), Final Staff Report (April 12, 2017).
[8] *See* Food and Agriculture Organization of the United Nations, Trade Policy Briefs (No. 28, October 2017).
[9] *Id.*
[10] *See* note 1, *supra*.
[11] *Id.*
[12] *Id.*
[13] *Id.*

actually exceed total US consumption. US shrimp consumption reached 1.43 billion pounds in 2018, while shrimp imports of 1.53 billion pounds entered our market.[14]

III. IMPORTED SEAFOOD POSES SIGNIFICANT HEALTH RISKS

Shrimp aquaculture production has exploded over the past decade resulting in massive amounts of imports entering the US marketplace. Over half of the seafood imported into the US comes from developing countries that do not maintain food safety standards equivalent to the US.[15] Most of the imported product is grown in aquaculture ponds that require introduction of a range of veterinary drugs, including antibiotics, to prevent and treat bacterial conditions. For example, shrimp farms employ chemical agents to control viral, bacterial, fungal, and other pathogens, induce plankton growth, and to inoculate shrimp larvae.[16] The US approves very few antibiotic drugs for aquaculture use. At least 10 banned antibiotics are widely used in foreign aquaculture to stimulate growth and reduce disease incidence, including known carcinogens such as chloramphenicol, nitrofurans, malachite green and simazine.[17]

AMR is one of the growing problems posed by drug use in aquaculture ponds. AMR prevents drugs from treating common microorganisms (bacteria, fungus, virus or parasite). AMR kills 29,500 Americans per year and is projected to kill 1 million Americans by 2050.[18] In addition to the human toll, the economic cost of AMR could reach $65 billion by 2050.[19] Many of these antimicrobials also have genotoxic properties, which means they increase the risk of cancer in humans. In 2009, the US Department of Agriculture, Food Safety and Inspection Service (FSIS) conducted a risk assessment of the dangers associated with drugs in imported catfish. FSIS modeled catfish consumption and hazard concentrations over the course of one year and concluded that applying a more robust inspection program to catfish yielded "a reduction of roughly 175,000 lifetime cancers."[20] Three of the veterinary drugs examined in the FSIS study, gentian violet, malachite green and nitrofurans, are commonly used in shrimp aquaculture.

Despite the health risks associated with imported seafood, the US does a very poor job of protecting consumers by ensuring compliance with our health and safety laws. The FDA imported seafood safety program has two components. First, foreign producers are required to maintain a HACCP program that seeks to ensure basic cleanliness and safety. The HACCP program does not regulate or monitor the use of illegal drugs, and it does not apply to fish farms that are the locus for introduction of illegal drugs. In FY 2016, the FDA inspected only 144

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[14] *Id.*
[15] *See* note 8, *supra*.
[16] *See* Public Citizen, *Chemical Cocktail: The Health Impacts of Eating Farm-Raised Shrimp*, December 2004.
[17] *Id. See also* Lee & Phelps, *Antimicrobial Residues in Farmed Shrimp*, University of Minnesota (September 2014).
[18] *See* note 4, *supra.*
[19] *Id.*
[20] *See* Department of Agriculture, Foods Safety and Inspection Service, Mandatory Inspection of Catfish and Catfish Products (Draft Rule Feb. 10, 2009).

foreign seafood processors for basic HACCP compliance, representing a mere 2% of all seafood processors exporting to the US.[21] The second component of the FDA seafood safety program is the port of entry inspection program. Like HACCP, the port of entry inspection program is woefully inadequate. In FY 2015, FDA examined only 2.2% of all imported seafood and tested only 0.1% of 1 million seafood import entry lines for illegal drugs. Of that 0.1%, 12% of shrimp tested positive for illegal drugs.[22]

Recent problems with illegal drugs found in Indian shrimp vividly demonstrate the need for additional consumer protections. India's shrimp production has seen massive increases over the past decade due primarily to millions in illegal subsidies and widespread use of illegal veterinary drugs to increase production. Unlike the US, the EU has an equivalency agreement with India that requires India to maintain and enforce equivalent health and safety standards. In 2018 EU inspectors uncovered the presence of illegal antibiotics and other drugs in Indian shrimp. As a result, the EU imposed a staggering 50% inspection rate on shrimp from India.[23] Unsurprisingly, shrimp destined for the massive EU single market migrated to the welcoming US market and its limited inspection regime. Indian shrimp imports to the US increased 16.4% during the 3rd quarter of 2018 when compared to the same period in 2017.

Even with the limited number of inspections, the FDA is uncovering shrimp containing illegal drugs. In 2018 the US rejected 53 shrimp entry lines for banned antibiotics. In January 2019 alone the FDA rejected 32 shrimp entry lines from India, 26 of those due to banned antibiotics.[24]

IV. CONSUMERS HAVE THE RIGHT TO KNOW

Consumer demand for safe seafood is already driving change. Congress passed the Food Safety Modernization Act to force the Food and Drug Administration (FDA) to modernize its food safety practices.[25] The US government now mandates country of origin labelling for seafood at retail outlets.[26] Many private retailers like Walmart have taken seafood safety a step further and now require third party certification and traceability for imported seafood.[27] Perhaps

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[21] *See* U.S. Government Accountability Office, *Imported Seafood Safety: FDA and USDA Could Strengthen Efforts to Prevent Unsafe Drug Residues*, GAO-17-443 (September 2017).
[22] *Id.*
[23] *See* P K Krishnakumar, *India Shrimp Exports to EU Continue to Decline Due to Fear of Rejection*, The Economic Times (of India) (October 26, 2018).
[24] *See* India Shrimp Rejections for Antibiotics Spike in January 2019, *https://www.seafoodnews.com/Story/1132147/India-Shrimp-Rejections-for-Antibiotics-Spike-in-January-2019* , (last visited on April 15, 2019).
[25] 21 U.S.C. §2201, et seq.
[26] 7 C.F.R. §60.10, et. seq.
[27] *See* Walmart, *Global Responsibility Report Summary* (2018), available at https://corporate.walmart.com/media-library/document/2018-grr-summary/_proxyDocument?id=00000162-e4a5-db25-a97f-f7fd785a0001 (last visited April 15, 2019).

the biggest development in this area is the FDA menu labeling law that now requires certain restaurants to provide accurate calorie information for all menu items.[28]

While recent imported food safety measures are steps in the right direction, they do not go far enough to protect US consumers who eat, unwittingly or not, imported seafood. Seafood country of origin labeling is limited to retail outlets. Unfortunately, retail outlets account for a very small part of seafood consumption. Even this very narrow consumer protection is unreliable as numerous studies have shown that seafood mislabeling, and fraud, are commonplace throughout retail outlets in the US.

In 2014 an LSU graduate student published her graduate thesis on veterinary drug residues found in aquaculture-raised, commercially-available frozen shrimp. The student purchased 27 samples of imported, farm-raised shrimp from five retail grocery stores in Baton Rouge. Screening was conducted on the samples for chloramphenicol, fluoroquinolones, malachite green, and nitrofurans. 25 out of the 27 samples contained detectable levels of these veterinary drug residues, with 20 samples containing more than one detectable residue. In sum, 92% of the shrimp samples purchased in Baton Rouge tested positive for illegal drug residues.[29]

A 2018 report by the New York State Attorney General's Office uncovered widespread seafood fraud and mislabeling at the retail level. The investigation found that more than one in four (26.92%) seafood purchases was mislabeled and that many samples (27.59%) labelled as wild were in fact farm-raised.[30] Another 2018 study of seafood samples from 287 restaurants, grocery stores and seafood markets in 27 cities across the United States found that 21 percent were mislabeled.[31] Consumer Reports conducted an independent study of imported shrimp to determine the presence of illegal substances. Testers purchased 342 packages of frozen shrimp -- 84 raw and 58 cooked samples—at supermarkets, big box stores and natural food stores in 27 cities across the US. Overall, 60% of the raw shrimp tested positive for bacteria, including vibrio and E. coli., and 11 samples tested positive for illegal antibiotics.[32]

As these studies proved, country of origin labeling at the retail level is ineffective. More importantly, however, it fails to scratch the surface of seafood consumption. 80% of shrimp in the U.S. is consumed at the restaurant level where country of origin is not required. To adequately protect consumers from the health risks associated with imported shrimp, restaurants must provide country of origin information either in writing on their menus or verbally to the customer.

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[28] 42 U.S.C. §343 (q)(5)(H).
[29] *See* Jessica Danielle Johnson, A Thesis: *Detection and Confirmation of Veterinary Drug Residues in Commercially Available Frozen Shrimp*, May 2014.
[30] *See* Office of the New York State Attorney General, *Fishy Business: Seafood Fraud and Mislabeling in New York State Supermarkets*, (December 2018).
[31] *See* Oceana, *Casting a Wider Net: More Action Needed to Stop Seafood Fraud in the United States*, March 2019.
[32] *See* Consumer Reports, *How Safe is Your Shrimp*, (June 2015).