

## Seafood Standards and Aquaculture Session

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### Uncle Is Moving In

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If upon your arrival home after a hard day's work you were greeted by the announcement that your "uncle" was moving in to live with you, your immediate response might be "the hell you say" . . . or possibly even something more emphatic.

Should you stop to think about it, however, you probably spend more time at work than you do at home with your loved ones — and this fact makes it difficult to understand the long indifference of many people in industry to the forthcoming Federal Fish Inspection legislation. Perhaps the fact that the subject has been before the Congress since 1966 has resulted in such a seeming indifference. Whatever the reason, you can now start to adjust your thinking, for *Uncle Is Moving In* and will soon become a very real part of your everyday business life.

The Wholesome Fish and Fishery Products Act of 1971 is presently the subject of consideration by the Senate. Last May hearings were conducted by the Subcommittee on the Environment of the Senate Commerce Committee. Three bills were officially considered at those hearings — S. 296, S. 700 and S. 1528, but in reality the major portion of the hearings were concerned with a new section of S. 1528 dealing with Surveillance for Dangerous Materials. The proposed bill, as considered last month by the Senate Commerce Committee, was put together by the staff of the Commerce Committee and contained portions from all three original bills, plus some new language tossed in by the staff. For purposes of this report I will refer only to S. 2824 as reported by the Senate Commerce Committee on November 8th. S. 2824 is now before the Senate and is expected to be passed and sent to the House before Congress adjourns.<sup>1</sup>

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<sup>1</sup>S.2824 was passed by the Senate in December 1971 and is now being considered by the House of Representatives.

To fully understand the Wholesome Fish and Fishery Products Act it is essential that you understand that this is not a new law which will stand on its own, but instead is an extensive amendment to the existing Federal Food, Drug and Cosmetic Act (FDC). As such, once enacted, it will be inserted into the FDC Act in a number of various places — and will lose the individuality which it now possesses.

The general objective of the bill is expressed in the Congressional Findings as follows:

It is essential that the health and welfare of consumers be protected by assuring that fish and fishery products distributed to them are of good quality, wholesome, not adulterated, and are properly marked, labeled and packaged.

It is hereby found that all fish and fishery products regulated under the amendments made by this Act are either in interstate or foreign commerce or substantially affect such commerce, and that Federal regulation and cooperation by the States and other jurisdictions as contemplated by this Act (including cooperation through federally approved State programs for control of shellfish growing areas and shellfish harvesting) are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce and to protect the health and welfare of the consumer.

The bill provides that the Secretary (Secretary of Health, Education and Welfare) will survey establishments and vessels to inform himself concerning the operations and sanitary conditions thereof for the purpose of developing adequate standards of good processing practices, including but not limited to sanitation and quality control. Thereafter, the Secretary shall prescribe standards of sanitation and quality control — with the initial regulations to be issued within one year. The initial regulations will become effective one year after they have been issued, with the possibility of an additional one year delay if the Secretary finds that additional time is needed.

Sixty days after the regulations become effective all establishments and vessels must have an official certificate — and from then on that certificate is a must if you are to engage in business. The Secretary shall issue certificates upon application accompanied by “such assurance as may be required” that such establishment or vessel is and will be maintained in compliance with applicable standards. The bill provides that certificates may be suspended, after opportunity for hearings, for failure to comply with requirements. Further, a certificate may be summarily suspended (1) for failure to permit access for inspection or (2) where an inspection discloses conditions which would involve undue risk of imminent harm to consumers.

The original idea behind the proposal for fishery inspection was that it should be patterned after meat and poultry inspection, which have a form of continuous inspection. We would do well, therefore, to ascertain what continuous inspection of fish and fishery products will mean:

The term ‘continuous inspection’ means inspection by an inspector at least once daily while processing or at such less frequent intervals as may be prescribed by the Secretary where he determines that daily inspection cannot reasonably be provided because of the illness, weather, geographical remoteness, the seasonal nature of processing operations or other extreme conditions beyond control. As a part of such inspection the Secretary may further require, at his discretion, that an inspector be on duty at all times during which the processor is operating.

It becomes readily evident from this definition that you are going to see a lot more of Food and Drug Administration (FDA) inspectors than you ever have in the past. This being the case, let us now see how this affects the various segments of the commercial fishing industry. We will begin with establishments.

The term 'establishment' means the premises, buildings, structure, facilities and equipment (including vehicles) used in the processing of fish and fishery products.

The use of the word 'processing' makes it necessary to understand that:

The terms 'process', 'processed' and 'processing', with respect to fish or fishery products, mean to harvest, handle, store, prepare, produce, manufacture, preserve, pack, transport or hold such products.

A careful study of these definitions reveals that a lot of people who never considered themselves as being a part of the commercial fishing industry now find themselves covered by this act, including warehousemen, truckers and others.

The bill provides for inspection of establishments as follows:

For the purpose of preventing the use in interstate commerce of fish or fishery products which are adulterated or misbranded, the Secretary shall cause to be made, by inspectors appointed or commissioned by him for that purpose, a continuous inspection of each establishment where fish or fishery products are processed for interstate commerce.

Let us now look at vessels, which are defined for purposes of this fish inspection bill as follows:

The term 'vessel' means a vessel, as defined in section 3 of title I, United States Code, which is engaged primarily in the processing of fish for landing and human consumption in any State.

This is typical Washington lawyer talk and requires that you must look up another law to find out what a vessel is. Should you bother to refer to section 3 of title I, United States Code, you will learn that:

The word 'vessel' includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

The type of inspection contemplated for vessels differs somewhat from that applicable to establishments as the bill provides that:

For the purpose of preventing adulterated fish or fishery products from being introduced into interstate commerce, the Secretary may require, whenever he considers it appropriate, inspections, by inspectors appointed or commissioned by him, of such fish or fishery products at dockside. The Secretary, at his discretion, may further require that adequate inspections be made by such inspectors of vessels processing fish or fishery products for interstate commerce.

The bill provides that any inspector appointed or commissioned under the act shall at any reasonable time have access to any establishment or vessel where fish or fishery products are processed. It further provides that denial of access to such inspector shall be grounds for suspension of your certificate of registration. It also provides for sampling, detention and reinspection of fish or fishery products at any establishment or vessel, as well as providing for condemnation of products found to be adulterated.

There is at least one provision of the bill with which few would disagree, that being the provision which states that the cost of inspection shall be borne by the United States, except that the cost of overtime and holiday pay for inspection service performed at the convenience of the establishment and not owing to conditions of harvesting or processing beyond the control of the establishment, shall be borne by the establishment.

The bill authorizes an official mark which *may* be used on labels or packages, however, it does not make the use of such official mark mandatory. The bill also carries provisions relating to labeling and packaging which some students of the bill interpret to require premarket clearance of labels and packaging. Of course, in addition to this bill your labels and packages must still comply with the Fair Packaging and Labeling Act. The bill does provide that established trade names which are not false or misleading are permitted.

A sometimes overlooked provision of the bill deals with "storage or handling regulations" and specifies:

Regulations issued pursuant to subsection (a) shall include standards prescribing conditions under which fish or fishery products capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing or transporting, in or for interstate commerce, or importing, such articles.

Senator Hart and others who originally proposed fishery inspection legislation soon found that one of the major problems arose from the fact that imports of fishery products account for over 60% of the total supply as consumed in the United States. In an effort to be fair to the domestic industry the bill provides that:

No fish or fishery products which are capable of use as human food shall be imported into the United States if such articles are adulterated or misbranded or otherwise fail to comply with all the inspection, good processing practice, and other provisions of this subpart and regulations issued thereunder applicable to such articles in interstate commerce within the United States.

That sounds real good, however, there is the real problem of ascertaining compliance. The bill further provides that the Secretary, after consultation with the Secretary of State, shall establish regulations for the inspection of foreign establishments which process fish or fishery products for importation into the United States. In event our inspectors are refused access to any foreign country or foreign establishment, the Secretary of the Treasury shall issue an order prohibiting imports from that foreign country or foreign establishment, as the case may be. These new and added provisions came out of the Senate Commerce Committee discussions on the bill, and have not previously been seen by the domestic industry. Since the United States is an importer of fish or fishery products it becomes absolutely necessary that these provisions of the bill be studied carefully, for we do need the continuity of supply from foreign sources.

The bill provides that foreign systems which are at least equal to our own may be certified. It also provides that at least an annual inspection, investigation and evaluation of the foreign system will be conducted. Products imported into the United States are still fully subject to dockside inspection, and FDA has by its past testimony indicated that it planned to step-up the degree of dockside inspection.

The Secretary may issue regulations as to the records required to be maintained concerning the receipt, delivery, sale, movement or disposition of fishery products, as well as records bearing upon sanitation and quality control in establishments or vessels, or relating to labeling. Such records must be maintained for two years, and must be made available for copying on request. The Secretary may also by regulation require reports.

The bill carries a provision for the "administrative detention of fish or fishery products" for a period of up to a week during which time the product cannot be moved.

The bill carries certain exemptions including (1) the processing by any person of fish of his own raising or harvesting exclusively for use by him and members of his household and his nonpaying guests and employees provided such person does not engage in the business of buying or selling fish or fishery products capable of use as human food, (2) retail dealers selling directly to consumers and (3) fish houses and cold storage facilities in which no processing is performed except unloading, icing and shipment. In the exemption for retail dealers there is also an exemption for trucks. There is some question as to whether this exempts the entire trucking industry or whether it applies only to trucks of fish peddlers, and the report would tend to indicate the latter.

The bill provides that regulations will be issued covering fish or fishery products not intended for human food. Such products must be denatured or otherwise identified as required by regulations, except if they are naturally inedible by humans.

The opportunity for hearing and judicial review of denial, withholding, suspension or withdrawal of certificates, as well as instances bearing upon the withholding of approval of labeling or packaging are set forth in detail on pages 24-26. In short, you have the right to appeal to the Secretary any decision which adversely affects you, and if the Secretary does not grant relief you can take the matter into the courts. The bill also authorizes the Secretary to issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence.

Like the meat and poultry inspection programs, this bill envisions that states which establish and maintain a program at least equal to the federal program can administer the program, and Uncle Sam will put up 50% of the cost of such a program. If within two years the states do not come up with an acceptable program, then the Secretary can superimpose the provisions of the federal program upon intra-state activities within the affected state. Even if a state has an approved program of its own, there are also provisions permitting the Secretary to apply the federal program to any establishment within the state when there is cause to do so. Inspection of establishments in any state processing fish or fishery products solely for distribution in such state is also authorized under the guise of checking upon the effectiveness of the state program. Thus, for practical purposes, this inspection bill covers both INTRA and INTER-STATE operators.

Research through grants or contracts with public or private agencies, including studies, experiments and demonstrations, are authorized (1) to improve sanitation practices and (2) to develop improved techniques of surveillance and inspection.

The bill provides for a "National Advisory Committee" of not more than 21 members. The majority of the members shall have no economic interest in the commercial fisheries industry and shall be drawn from the public (including persons representative of consumer and environmental protection organizations who must make up not less than one-third of the membership).

Probably one of the least known yet most far-reaching provisions of this bill is entitled "Surveillance for Dangerous Materials" (beginning on page 37) and applies to *all foods*. Remember, this entire bill amends and will become part of the Federal Food, Drug and Cosmetic Act, and that act defines 'food' thusly:

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum and (3) articles used for components of any such article. [Sec. 201 (f)]

This section starts off brilliantly by stating that in order to protect consumers from the dangers of dangerous materials which may be found in food, there will be an intensive screening system for the detection of such materials in food. The term 'dangerous material' means any material which there is reason to believe might reach toxic levels in significant quantities of food so as to threaten human health. The term 'intensive screening' means that level of surveillance required to provide reasonable assurance that the presence of dangerous materials in food does not constitute an unreasonable threat to human health. To the extent practicable, such research shall utilize data on human exposure which relates to consumption patterns and the accumulative effect on human metabolism.

It is provided that not more than 180 days following enactment the Secretary will propose regulations specifying all dangerous materials and the screening procedures to be followed. Regulations can be amended not only by action of the Secretary but also upon petition of any interested party. Hearings on objections to the proposed regulations or changes thereof are provided for. The level of research and testing can be increased at any time there is a threat to the public health. Analyses to determine the presence and amount of dangerous materials in food shall utilize the best available technology. It is provided that the results of any analyses or research shall be made available to the public except when the Secretary determines that disclosure of such information would result in competitive injury. There is reasonable question as to whether pet foods are covered, even though the report tends to indicate that they are not.

The only section of this bill which does not amend the Federal FDC Act is the section as added about the Fisheries Loan Fund, and this would amend the Fish and Wildlife Act of 1956 to make the loan provisions applicable to establishments and by providing \$35-million initial capital, which is 15-million more than presently is in the loan fund. Remember, however, the 40-thousand dollar maximum loan restriction still applies.

In summary let us now examine what we are about to receive. The proposed legislation only sets forth the broad guidelines. The legislation will be implemented by regulations issued by the Secretary. All canner organizations have constantly stressed that such regulations should be subject to the General Administrative Provisions of the FDC Act and specifically that Sec. 701 (e), (f) and (g) should be applicable to regulations proposed by the Secretary. The staff of the Senate Commerce Committee constantly objected to this, indicating that it made it too difficult for the Secretary to issue regulations. It is our contention that these safeguards are needed to protect those being regulated, for as we now see the bill you don't have much to say about the regulations. Congress is delegating "law making" authority to the Secretary. It is only just that those who will be affected should at least have the right and opportunity to comment upon the regulations before they take effect.

The chances of doing anything about this bill at the Senate level are about nil. Remember, however, it still must be considered by the House. Do yourself a favor — get a copy of S. 2824, study it and then communicate your thoughts to not only your elected representative but also to your trade associations.

Uncle is moving in! You are on the verge of getting all of the government for which you have been paying. This is a luxury you may not enjoy!