

# Mercury Warning Sign Supermarket Compliance Survey Summary 2003

Sea Turtle Restoration Project

Andy Peri

Marine Species Campaigner

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## Introduction

Under California's Proposition 65, a 1986 consumer right-to-know law, any business selling products that are known to the State of California to contain chemicals known to cause cancer and/or birth defects are required to post warnings notifying customer of such dangers. Mercury is a chemical listed under Proposition 65 and is known to occur at unsafe levels in certain fish products.

Proposition 65 requires supermarkets with 10 employees or more that sell swordfish, shark, king mackerel, tuna and tilefish to properly warn consumers of the presence of mercury in this species. The Attorney General of California has provided supermarkets a sign and posting guidelines that would bring stores selling mercury-contaminated fish into compliance with Proposition 65. These guidelines include:

- A model warning sign with proper language (see page 14 of this document). The warning sign, as recommended by the Attorney General is 8 1/2 X 11 inches in size.
- General information about where the signs should be posted. Signs should be posted "near where fish are sold, in a manner likely to be seen by consumers and associated with the particular fish for sale".
- The locations within the store where signs should be posted. Warning signs "will apply to all types of fish sold in conjunction with the warning, whether they are fresh, frozen or canned"
- Information about sign revisions. The Attorney General states that "If the sign is revised in any manner" [by the supermarket], "we cannot take a position on its adequacy".

## **Background**

In October and November of 2002, Sea Turtle Restoration Project and the As You Sow Foundation conducted an investigative study to determine if and how much mercury was present in various species of tuna and swordfish fish sold in several California Supermarkets. Fish was purchased from major supermarkets, including Cala, Trader Joe's, Albertson's, Safeway, Whole Foods, Costco, Andronico's and one restaurant, Red Lobster and analyzed by a local lab.

Data indicated levels of mercury that frequently exceeded the FDA limit for mercury in seafood; in one sample it exceeded the level by more than 230%.

This data was the basis for a December 2002 notice of intent to sue the grocery stores for violation of Proposition 65. In February 2003, the California Attorney's General office took over the suit which is still pending in the Superior Court of California.

Stores were advised by the Attorney's General Office to begin posting mercury warning signs immediately after the lawsuit was filed to bring them into compliance with Proposition 65. Many individual stores are complying but the majority of stores are failing to post signs or are posting them in places that are not likely to be seen by customers buying mercury-contaminated seafood.

## Survey Methods

Sea Turtle Restoration Project staff and volunteers surveyed 109 California supermarkets to determine compliance with the Proposition 65 and the Attorney's General instructions.

The following California supermarkets were surveyed:

Albertson's Andronico's Baron's Marketplace Bell (Kroger) Costco Draeger's Food 4 Less (Kroger) Gelson's Good Earth Key Market	Molly Stone's Ralph's (Kroger) Raley's Safeway Sam's Club Stater Brothers Trader Joe's United Market Von's Winco Whole Foods
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At each supermarket, every location where fresh, frozen and canned seafood was for sale was surveyed. One four-page survey form was completed for each store visited (see attached). The following information was collected:

- Presence or absence of fish species (swordfish, shark, king mackerel, tilefish and tuna). These species were listed as being high in mercury in a March 2001 FDA Consumer Advisory.
- Presence or absence of mercury warning signs
- Presence of a standard sign (see attached sample)
- Location of sign(s)

- Adequacy of posted signs- were they visible to customers buying shark, tuna, tilefish and king mackerel?

Data sheets were collected by TIRN staff and were entered into spreadsheets and analyzed. The data that is reported in the tables and graph below is based upon the following criteria:

- Stores were assigned as having, “No sign in the frozen area” *and* “No sign in the fresh area” only if listed fish were present and no signs were posted.
- If fish were present and a sign *was* posted but placed in a location that was difficult to see because it was too small, placed too far away from fish, or placed too high or too low to be visible, surveyors indicated that the sign was inadequate.
- If the sign was inadequately placed or if the store had no sign posted (again, when listed fish was present) it was assigned, “No sign (in fresh or frozen) or inadequate signage”.

## Survey Results

The table below shows a high level of non-compliance with the State of California's Proposition 65. Overall 73% of supermarkets have either failed to post signs or have posted them in places that are difficult or impossible for customers to see when making purchases of mercury-contaminated seafood in the fresh or frozen sections.

The stores with the highest levels of non-compliance are Kroger-owned Markets with 88% of their stores having no signs posted in their fresh and/or frozen sections.

Canned tuna sections were almost never posted with warning signs with the exception of some Trader Joe's stores and a small number of other stores. The decision not to post may have been influenced by a letter from Del Monte Corporation recommending that supermarkets not post signs in the canned sections of stores (see the California Grocer's Association website at: <http://www.cagrocers.com/images/pdf/delmonteletter.pdf>.)

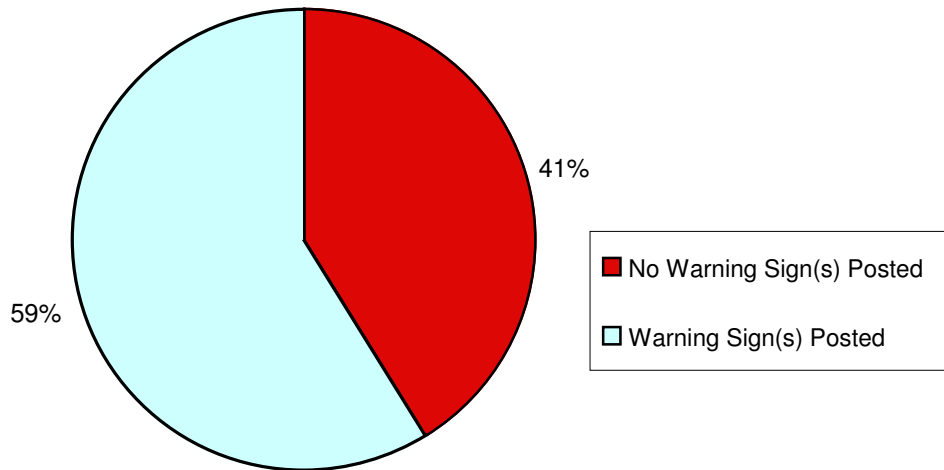
Of all the supermarket chains surveyed, Trader Joe's complied with the law most frequently; Trader Joe's neglected to post signs in 22% of their stores. At the other end of the spectrum was Kroger Stores, which did not post warning signs in 88% of their stores. Overall, 41% of stores did not post warnings in the fresh or frozen sections where contaminated fish are sold.

The table and graphs below summarize data from the 5 major stores named in the Attorney's General lawsuit.

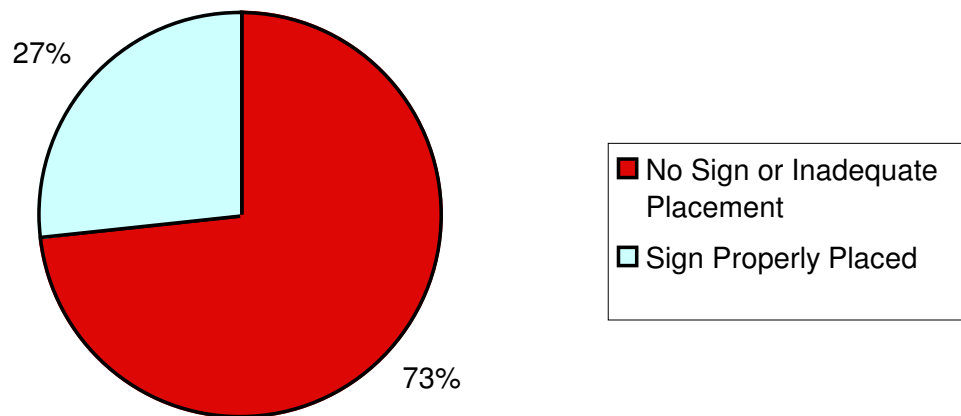
## Data Summary Table

<p><b>All Stores Combined (n=109)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 41%</li> <li>• No Warning Signs in canned seafood area 93%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 73%</li> </ul> <p><b>Albertson's (n=21)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 29%</li> <li>• No Warning Signs in canned seafood area 100%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 48%</li> </ul> <p><b>Kroger (n=16)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 88%</li> <li>• No Warning Signs in canned seafood area 100%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 88%</li> </ul> <p><b>Safeway (n=37)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 41%</li> <li>• No Warning Signs in canned seafood area 100%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 81%</li> </ul>	<p><b>Trader Joe's (n=9)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 22%</li> <li>• No Warning Signs in canned seafood area 44%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 78%</li> </ul> <p><b>Whole Foods (n=4)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 25%</li> <li>• No Warning Signs in canned seafood area 100%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 75%</li> </ul> <p><b>Other Stores (n=22)</b></p> <ul style="list-style-type: none"> <li>• No Warning Signs in fresh or frozen seafood area 32%</li> <li>• No Warning Signs in canned seafood area 91%</li> <li>• No Warning Signs (in fresh or frozen) or inadequate Signage 73%</li> </ul>
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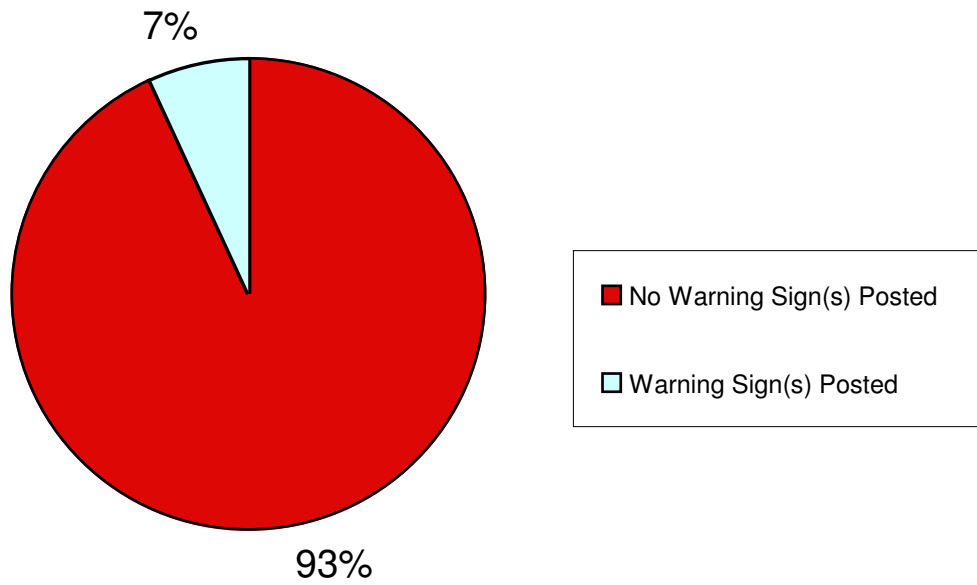
### California Supermarkets Not Posting Signs in the Fresh or Frozen Sections



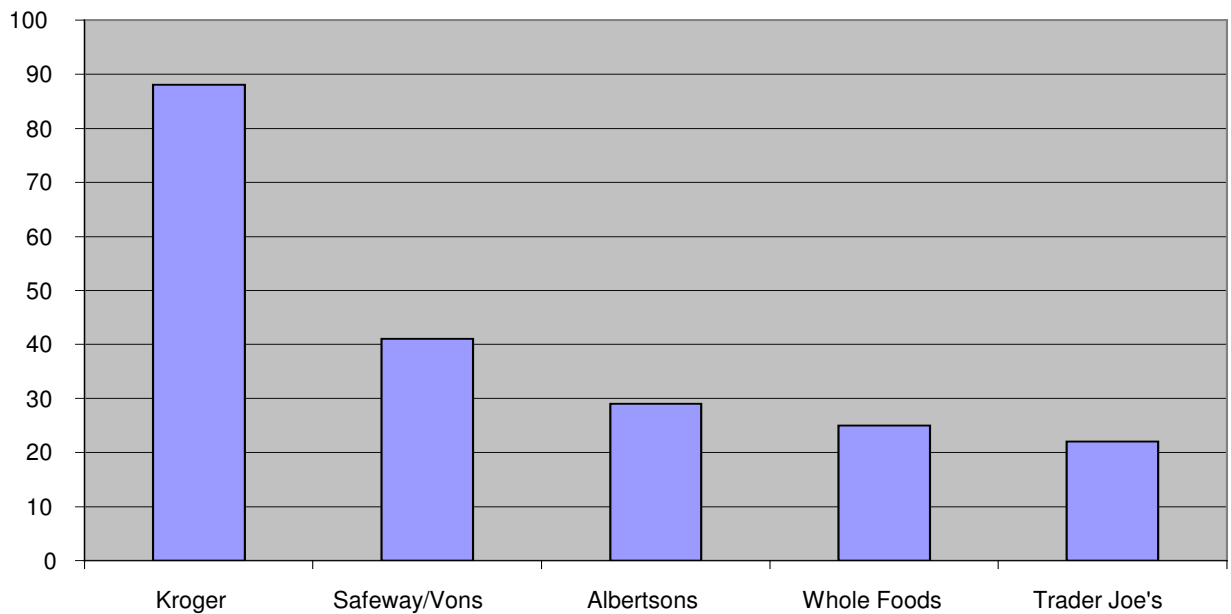
### Percentage of Supermarkets Not Posting Mercury Warning Signs or Posting Signs Inadequately in Fresh or Frozen Sections



### California Supermarkets Not Posting Warning Signs in Sections Where Canned Tuna is Sold



### Percentage of Supermarkets Not Posting Mercury Warning Signs in Fresh and/or Frozen Sections (by Corporation)



## Form Used by STRP Volunteers for Mercury Warning Sign Survey

### *General Information*

- 1) Date: \_\_\_\_\_
- 2) Your Name: \_\_\_\_\_
- 3) Address: \_\_\_\_\_
- 4) City, State, Zip: \_\_\_\_\_
- 5) Phone number: \_\_\_\_\_
- 6) Email address: \_\_\_\_\_
- 7) I am 18 years old or older [  ]
- 8) If you are under the age of 18, please have the following signed by a parent or guardian: I authorize my child to perform the following data survey for STRP.  
Signature: \_\_\_\_\_
- 9) If you have a digital camera please photograph the fish counters and signage. Did you photograph the visit? [  ] yes [  ] No
- 10) Name of Establishment: \_\_\_\_\_
- 11) Address: \_\_\_\_\_
- 12) City: \_\_\_\_\_ State: \_\_\_\_\_
- 13) Type of store (circle one or more)-
  - a) Supermarket
  - b) Restaurant
  - c) Fish market
  - d) Other \_\_\_\_\_

### **Fresh Fish Section Information**

- 14) What fish are being sold?  
[  ] Swordfish [  ] Shark [  ] Tuna [  ] King Mackerel [  ] Tilefish (Golden Snapper)
- 15) Is a Prop 65 mercury sign posted? [  ] YES [  ] NO  
**If no signs are posted skip to question 21.**
- 16) How many signs are there? \_\_\_\_\_
- 17) Is the sign a standard sign (see the attached copy of a standard sign (approximately 8 1/2 X 11)? [  ] YES [  ] NO If no, what does it say, what size is it?

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18) Sign Location(s):  On display case  Other  
If not on display case, please describe where?

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19) Are Prop 65 signs **readable** while standing in front of the area where swordfish shark, tuna, king mackerel or tilefish (golden snapper) are displayed (is the text readable and how visible are signs when standing in front of counter, etc)?

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20) Do you think that fish is adequately labeled to alert the public about mercury in fish? Why or why not?

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21) **Please take a photo** of the fish counter with the signs in view (or the absence of signs) if swordfish, shark, tuna, king mackerel or tilefish are being sold. If the signs are standard 8 1/2x11 and are properly placed, don't bother taking a photo. Photo taken?  Yes  No

## Frozen Fish Section Information

22) What fish are being sold?

Swordfish  Shark  Tuna  King Mackerel  Tilefish (Golden Snapper)

23) Is a Prop 65 mercury sign posted?  YES  NO  
**If no signs are posted skip to question 29.**

24) How many signs are there? \_\_\_\_\_

25) Is the sign a standard sign (see the attached copy of a standard sign (approximately 8 1/2 X 11)?  YES  NO  There is no sign posted If no, what does it say, what size is it?

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26) Sign Location(s):  On display case  Other  
If not on display case, please describe where?

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27) Are Prop 65 signs **readable** while standing in front of the area where swordfish shark, tuna, king mackerel or tilefish (golden snapper) are displayed (is the text readable and how visible are signs when standing in front of counter, etc)?

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28) Do you think that fish is adequately labeled to alert the public about mercury in fish? Why or why not?

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29) **Please take a photo** of the frozen section with the signs in view (or the absence of signs) if swordfish, shark, tuna, king mackerel or tilefish are being sold. If the signs are standard 8 1/2 x 11 and are properly placed, don't bother taking a photo. Photo taken?  Yes  No

## Canned Section Information

30) What fish are being sold?

Swordfish  Shark  Tuna  King Mackerel  Tilefish (Golden Snapper)

31) Is a Prop 65 mercury sign posted?  YES  NO  
**If no signs are posted skip to question 37.**

32) How many signs are there? \_\_\_\_\_

33) Is the sign a standard sign (see the attached copy of a standard sign (approximately 8 1/2 X 11)?  YES  NO  There is no sign posted If no, what does it say, what size is it?

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34) Sign Location(s):  On display case  Other  
If not on display case, please describe where?

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35) Are Prop 65 signs **readable** while standing in front of the area where swordfish shark, tuna, king mackerel or tilefish (golden snapper) are displayed (is the text readable and how visible are signs when standing in front of counter, etc)?

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36) Do you think that fish is adequately labeled to alert the public about mercury in fish? Why or why not?

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37) **Please take a photo** of the canned section with the signs in view (or the absence of signs) if swordfish, shark, tuna, king mackerel or tilefish are being sold. If the signs are standard 8 1/2x11 and are properly placed, don't bother taking a photo. Photo taken?  Yes  No

Please return to:

Sea Turtle Restoration Project

P.O. Box 400

Forest Knolls, CA 94933

or

Fax: 415-488-0372 (if you took digital photos please email or send disk via USPS)

Questions: [andy@seaturtles.org](mailto:andy@seaturtles.org); for more info: Phone: 415-488-0370 x104 More information about the campaign, [www.seaturtles.org](http://www.seaturtles.org)

# WARNING!

Nearly all fish and seafood contain some amount of mercury and related compounds, chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. Certain fish contain higher levels than others.

Pregnant and nursing women, women who may become pregnant, and young children **should not eat** the following fish:

**SWORDFISH · SHARK · KING MACKEREL · TILEFISH**

They should also limit their consumption of other fish, including **fresh or frozen tuna**.

**Fish and seafood** can be an important source of nutrients and an important part of a balanced diet. However, the federal Food and Drug Administration advises pregnant and nursing women and women who may become pregnant to limit their consumption of fish to no more than 12 ounces per week.

Fish that tend to have little or no mercury include salmon (fresh, frozen, or canned), shrimp, and scallops. Mercury levels in canned tuna vary, but on average are lower than levels in many other fish. Chunk or chunk light tuna has less mercury than solid white or chunk white tuna.

The California Department of Health Services ("DHS") recommends certain steps you can take to reduce mercury exposure:

- Eat a variety of different types of fish;
- Eat smaller fish rather than older, larger fish;
- Begin following these guidelines one year before becoming pregnant.

For more information consult the following websites:

U.S. Food and Drug Administration ("FDA") [www.cfsan.fda.gov](http://www.cfsan.fda.gov)

U.S. Environmental Protection Agency [www.epa.gov/mercury](http://www.epa.gov/mercury)

California Department of Health Services  
[www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/mercury\\_in\\_fish.html](http://www.dhs.ca.gov/ps/deodc/ehib/ehib2/topics/mercury_in_fish.html)

or call the FDA toll-free at **1-888-SAFEFOOD (1-888-728-3366)**.

Official Mercury Warning Sign from the  
State of California Attorney's General Office  
Actual Size 8 1/2 X 11

For more information on mercury or about Sea Turtle Restoration Project, please contact:

Andy Peri

Sea Turtle Restoration Project

415 488 0370 x104 or

[andy@seaturtles.org](mailto:andy@seaturtles.org)

[www.seaturtles.org](http://www.seaturtles.org) (click *Program and Campaigns* then *Mercury, Swordfish and Sea Turtles Campaign*)