To strengthen Federal consumer protection and product traceability with respect to commercially marketed seafood, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2013

Mr. MARKEY (for himself, Mr. JONES, Mr. BONNER, Mrs. CAPPS, Mr. TIERNEY, and Mr. KEATING) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Agriculture, Natural Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen Federal consumer protection and product traceability with respect to commercially marketed seafood, and for other purposes.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2. SECTION 1. SHORT TITLE.

This Act may be cited as the “Safety And Fraud Enforcement for Seafood Act”.
SEC. 2. SEAFOOD SAFETY.

(a) INTERAGENCY AGREEMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce and the Secretary of Health and Human Services shall execute a memorandum of understanding to improve interagency cooperation on seafood safety and seafood fraud prevention, building upon any agreement under section 421(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350j(c)), or any other prior agreement. The memorandum shall include provisions, performance metrics, and timelines as appropriate to improve such cooperation (acting under provisions of law other than this subsection) to—

(1) identify and execute specific procedures for using authorities granted under the FDA Food Safety Modernization Act (Public Law 111–353) to ensure and improve the safety of commercially marketed seafood in the United States;

(2) maximize the effectiveness of limited personnel and resources by ensuring that—

(A) inspections of seafood shipments and seafood processing and production facilities by the National Oceanic and Atmospheric Administration and the Food and Drug Administration are not duplicative; and
(B) information resulting from examinations, testing, and inspections conducted by the Department of Commerce is considered in making risk-based determinations, including the establishment of inspection priorities for domestic and foreign facilities and the examination and testing of domestic and imported seafood;

(3) create a process—

(A) by which data collected by all seafood inspectors and authorized officers of the National Oceanic and Atmospheric Administration authorized to conduct inspections of seafood shipments, or inspections of facilities that process or sell seafood, will be utilized by the Food and Drug Administration beginning no later than one year after the enactment of this Act;

(B) by which data collected by either of these agencies is shared to maximize efficiency and enforcement of seafood safety efforts; and

(C) which may include increased training of National Oceanic and Atmospheric Administration agents through the existing Food and Drug Administration programs;

(4) create a process by which—
(A) data collected by inspectors and officers of other Federal, State, or local agencies authorized to conduct inspections of seafood, or inspections of facilities that process or sell seafood, will be utilized by the Food and Drug Administration; and

(B) data collected by these inspectors and officials is shared with the National Oceanic and Atmospheric Administration and the Food and Drug Administration to maximize efficiency and enforcement of seafood safety efforts; and

(5) ensure that the National Oceanic and Atmospheric Administration’s Seafood Inspection Program is fully utilized as a third-party auditor pursuant to section 808 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384d) to inspect imported seafood or seafood offered for import originating from any country or exporter.

(b) COORDINATE._—

(1) NATIONAL SEA GRANT COLLEGE PROGRAM.—The Administrator of the National Oceanic and Atmospheric Administration shall ensure that the Administration’s seafood inspection activities are coordinated with the national sea grant college pro-
gram to provide outreach to the States, consumers, and the seafood industry on seafood safety.

(2) Inspecting to Prevent Seafood Fraud.—The Secretary of Commerce and the Secretary of Health and Human Services shall, to the maximum extent practicable, ensure that inspections and tests for seafood safety also collect information for seafood fraud prevention.

(e) List of Offenders.—The Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall develop, maintain, and post on the public Web site of the Department of Health and Human Services a list that—

(1) includes, by country, each exporter whose seafood is imported or offered for import into the United States; and

(2) for each such exporter, tracks the timing, type, and frequency of violations of Federal law relating to seafood safety.

(d) Impact on Existing Food Safety Authority.—Nothing in this section limits the authority of the Secretary of Health and Human Services to execute or enforce food safety laws, including the FDA Food Safety Modernization Act (Public Law 111–353).
SEC. 3. SEAFOOD IDENTIFICATION.

(a) LIST OF STANDARDIZED NAMES FOR SEAFOOD.—

(1) UPDATE.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall maintain and update as appropriate its "Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce" as a list of standardized names for identification of seafood at the distribution, marketing, and retail stages.

(2) CONTENTS.—The list maintained under paragraph (1) shall—

(A) include scientific names, acceptable market names, and common or regional names for all seafood species distributed in interstate commerce in the United States, and indicate clearly—

(i) which of those names may be used to identify seafood; and

(ii) examples of names which constitute mislabeling in violation of Federal law;
(B) take into account taxonomy, international law and custom, market information, and naming precedence;

(C) identify names for seafood as appropriate only if the Secretary of Commerce determines the names are not likely to confuse or mislead consumers; and

(D) include information regarding any consumption advisory that has been issued for the seafood.

(3) AVAILABILITY.—The list maintained under paragraph (1) shall be—

(A) made available to the public on the Web sites of the Department of Health and Human Services and the Department of Commerce; and

(B) updated annually based on the best available scientific and market information.

(4) PUBLIC INPUT.—The Secretary of Health and Human Services shall use its existing citizen petition process in accepting petitions to amend the list maintained under paragraph (1).

(b) SEAFOOD TRACEABILITY REQUIREMENTS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Secretary of Commerce, in
consultation with the Secretary of Health and Human Services, shall implement the following requirements with respect to seafood imported into the United States or otherwise distributed or offered for sale in interstate commerce:

(1) In addition to disclosure of the United Nations Food and Agriculture Organization Major Fishing Area, or a more specific location, in which the fish was caught, of the information required to be submitted to the Secretary of Commerce under section 303(a)(5) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(a)(5)), at a minimum the following information shall be displayed on the packaging of, or otherwise accompany, seafood through processing, distribution, and final sale:

(A) The acceptable market name and scientific name for the seafood species, as specified in the list maintained under subsection (a)(1).

(B) The method of harvest of the seafood including gear type as listed in section 600.725 of title 50, Code of Federal Regulations and defined in section 600.10 of such title.

(C) The date of the catch.
(D) The weight or number, as appropriate, of product for an individual fish or lot.

(2) If seafood has been previously frozen, treated with any substance (other than ice or water) that may affect the true weight of the seafood, or processed in a country other than that in which it was landed or harvested, by any harvester, processor, distributor, or retailer, such information shall be included in the labeling of, or otherwise accompany, the seafood through processing, distribution, and final sale.

(3) If the seafood was farm-raised, that information, along with information regarding the country of cultivation, the location of the aquaculture production area, and the method of cultivation, shall be included in the labeling of, or otherwise accompany, the seafood through processing, distribution, and final sale.

(4) With respect to any information required by paragraph (1) or (2) to be included in the labeling of, or otherwise accompany, seafood, an importer, processor, distributor, or retailer (including a restaurant) may satisfy such requirement by making the information available upon request—

(A) to anyone purchasing the seafood; and
(B) to any Federal, State, or local official authorized to conduct inspections of—

(i) seafood; or

(ii) any facility that processes or sells seafood.

(5) No importer, processor, distributor, or retailer may be found to be in violation of the requirements under this subsection for unknowingly selling a product that was already mislabeled upon receipt, provided that the importer, processor, distributor, or retailer can provide the required product traceability documentation.

(c) Refusal of Admission.—

(1) In general.—Subject to paragraphs (3) and (4), all seafood imported or offered for import originating from an exporter shall be refused admission if—

(A) the Secretary of Commerce finds that any shipment of such seafood appears to be in violation of subsection (b); or

(B) the Secretary of Health and Human Services finds that any shipment of such seafood appears to be in violation of this Act or other applicable Federal laws or regulations.
(2) Import Certification.—For any exporter whose seafood products are refused admission under paragraph (1) based on a prior shipment, the Secretary of Health and Human Services shall determine whether to require, as a condition of granting admission into the United States to an article of seafood originating from such exporter, that such seafood be accompanied by a certification or other assurance under section 801(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(q)).

(3) Allowance of Individual Shipments.—Paragraph (1) does not apply with respect to an individual shipment of seafood originating from an exporter whose products must otherwise be refused admission under such paragraph if the exporter presents evidence to the Secretary of Health and Human Services or the Secretary of Commerce from a laboratory accredited under section 422 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350k), or other equivalent evidence, documenting that the shipment is in compliance with the provisions of subsection (b) and other applicable Federal laws or regulations prohibiting seafood fraud.

(4) Termination of Individual Shipment Screening Requirement.—Paragraph (1) shall
cease to prohibit the admission of seafood originating from an exporter based on a prior shipment if the Secretary of Health and Human Services or the Secretary of Commerce determines that—

(A) each prior shipment whose appearance triggered the application of such paragraph was in fact in compliance with the provisions of subsection (b) and other applicable Federal laws or regulations, including those prohibiting seafood fraud; or

(B) during the preceding 12 months, no shipment of seafood originating from the exporter has triggered the application of paragraph (1).

(d) Penalties.—The Secretary of Commerce shall prevent any person from violating this Act, or any Act to which this section applies, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though sections 308 through 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858 through 1861) were incorporated into and made a part of and applicable to this Act.

(e) List of Offenders.—The Secretary of Commerce, in consultation with the Secretary of Health and Human Services, shall develop, maintain, and post on the
public Web site of the Department of Commerce a list
that—

(1) includes, by country, each exporter whose
seafood is imported or offered for import into the
United States; and

(2) for each such exporter, tracks the timing,
type, and frequency of violations of Federal law re-
lating to seafood fraud.

(f) INSPECTIONS.—The Secretary of Commerce, in
consultation with the Secretary of Health and Human
Services, shall—

(1) increase, as resources allow, the number of
foreign and domestic seafood shipments that are in-
spected for seafood fraud by National Oceanic and
Atmospheric Administration inspectors and author-
ized officers, including verification of compliance
with the traceability requirements of subsection (b);

(2) ensure that the percentage of seafood ship-
ments inspected during a given year is not lower
than the percentage inspected during the previous
year; and

(3) to the maximum extent practicable, ensure
that inspections and tests for seafood fraud preven-
tion also collect information to support the Secretary
of Health and Human Services in implementing the
seafood safety requirements of the FDA Food Safety Modernization Act (Public Law 111–353).

(g) IMPACT ON EXISTING FOOD SAFETY AUTHORITY.—Nothing in this section shall be construed to limit the authority of the Secretary of Health and Human Services to execute or enforce food safety laws or regulations that may be adopted pursuant to the FDA Food Safety Modernization Act (Public Law 111–353).

SEC. 4. AUTHORITY OF STATES.

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of seafood fraud in violation of subsection (b) or (c) of section 3, the State may bring a civil action on behalf of its residents to enjoin fraud, an action to recover for actual monetary loss or receive $10,000 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated this Act, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence. Nothing in this section shall preclude an individual from bringing a civil action.
SEC. 5. REPORT TO CONGRESS.

Beginning 18 months after the date of the enactment of this Act, and every two years thereafter, the Secretary of Commerce and the Secretary of Health and Human Services, in consultation with the Chairman of the Federal Trade Commission and the heads of other relevant Federal agencies, shall submit jointly a report to the Congress including—

(1) findings with respect to—

(A) the extent and severity of violations of Federal, State, and local law relating to seafood safety and seafood fraud; and

(B) the health and financial impacts of these violations on United States consumers and the United States fishing industry;

(2) an analysis of the lists required to be developed and maintained under sections 2(c) and 3(e);

(3) an analysis of the effectiveness of the memorandum of understanding required by section 2(a) in ensuring that the Department of Commerce and the Department of Health and Human Services work to ensure seafood safety, including an assessment of achieving identified performance metrics and timelines established to reduce duplication of effort and increase collection and integration of inspections data;
(4) an assessment of the technological assets available for addressing seafood safety and fraud, including traceability, and an assessment of the technological gaps and needs that exist;

(5) information related to the implementation of any agreement entered into pursuant to section 2 of this Act or section 421 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350j);

(6) detailed information on the inspection, enforcement, and consumer outreach activities, including the number of inspections, enforcement actions, consumer outreach activities, personnel, and resources utilized by the National Oceanic and Atmospheric Administration, the Food and Drug Administration, and the Federal Trade Commission to carry out this Act, including the degree of coordination of actions to address seafood safety and seafood fraud; and

(7) recommendations on any additional authorities, budget, or personnel necessary to improve seafood safety and prevent seafood fraud.

SEC. 6. PREEMPTION.

Nothing in this Act preempts the authority of a State to establish and enforce requirements for improving sea-
food safety and preventing seafood fraud that are consistent with the requirements of this Act.

SEC. 7. DEFINITIONS.

In this Act:


(2) The term “seafood” means fish, shellfish, and processed fish or shellfish products.
(3) The term ‘‘seafood fraud’’ means the mislabeling or misrepresentation of the information required under this Act or other applicable Federal laws and regulations.