

113TH CONGRESS
1ST SESSION

S. 520

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

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2013

Mr. BEGICH (for himself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safety And Fraud En-
5 forcement for Seafood Act”.

6 **SEC. 2. SEAFOOD SAFETY.**

7 (a) INTERAGENCY AGREEMENT.—Not later than 180
8 days after the date of the enactment of this Act, the Sec-
9 retary of Commerce and the Secretary of Health and

1 Human Services shall execute a memorandum of under-
2 standing to improve interagency cooperation on seafood
3 safety and seafood fraud prevention, building upon any
4 agreement under section 421(c) of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 350j(c)), or any other
6 prior agreement. The memorandum shall include provi-
7 sions, performance metrics, and timelines as appropriate
8 to improve such cooperation (acting under provisions of
9 law other than this subsection) to—

10 (1) identify and execute specific procedures for
11 using authorities granted under the FDA Food Safe-
12 ty Modernization Act (Public Law 111–353) to en-
13 sure and improve the safety of commercially mar-
14 keted seafood in the United States;

15 (2) maximize the effectiveness of limited per-
16 sonnel and resources by ensuring that—

17 (A) inspections of seafood shipments and
18 seafood processing and production facilities by
19 the National Oceanic and Atmospheric Admin-
20 istration and the Food and Drug Administra-
21 tion are not duplicative; and

22 (B) information resulting from examina-
23 tions, testing, and inspections conducted by the
24 Department of Commerce is considered in mak-
25 ing risk-based determinations, including the es-

1 establishment of inspection priorities for domestic
2 and foreign facilities and the examination and
3 testing of domestic and imported seafood;

4 (3) create a process—

5 (A) by which data collected by all seafood
6 inspectors and authorized officers of the Na-
7 tional Oceanic and Atmospheric Administration
8 authorized to conduct inspections of seafood
9 shipments, or inspections of facilities that proc-
10 ess or sell seafood, will be utilized by the Food
11 and Drug Administration beginning no later
12 than one year after the enactment of this Act;

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

16 (C) which may include increased training
17 of National Oceanic and Atmospheric Adminis-
18 tration agents through the existing Food and
19 Drug Administration programs;

20 (4) create a process by which—

21 (A) data collected by inspectors and offi-
22 cers of other Federal, State, or local agencies
23 authorized to conduct inspections of seafood, or
24 inspections of facilities that process or sell sea-

1 food, will be utilized by the Food and Drug Ad-
2 ministration; and

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

8 (5) ensure that the National Oceanic and At-
9 mospheric Administration's Seafood Inspection Pro-
10 gram is fully utilized as a third-party auditor pursu-
11 ant to section 808 of the Federal Food, Drug, and
12 Cosmetic Act (21 U.S.C. 384d) to inspect imported
13 seafood or seafood offered for import originating
14 from any country or exporter.

15 (b) COORDINATION.—

16 (1) NATIONAL SEA GRANT COLLEGE PRO-
17 GRAM.—The Administrator of the National Oceanic
18 and Atmospheric Administration shall ensure that
19 the Administration's seafood inspection activities are
20 coordinated with the national sea grant college pro-
21 gram to provide outreach to the States, consumers,
22 and the seafood industry on seafood safety.

23 (2) INSPECTING TO PREVENT SEAFOOD
24 FRAUD.—The Secretary of Commerce and the Sec-
25 retary of Health and Human Services shall, to the

1 maximum extent practicable, ensure that inspections
2 and tests for seafood safety also collect information
3 for seafood fraud prevention.

4 (c) LIST OF OFFENDERS.—The Secretary of Health
5 and Human Services, in consultation with the Secretary
6 of Commerce, shall develop, maintain, and post on the
7 public Web site of the Department of Health and Human
8 Services a list that—

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

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

15 (d) IMPACT ON EXISTING FOOD SAFETY AUTHOR-
16 ITY.—Nothing in this section limits the authority of the
17 Secretary of Health and Human Services to execute or
18 enforce food safety laws, including the FDA Food Safety
19 Modernization Act (Public Law 111–353).

20 **SEC. 3. SEAFOOD IDENTIFICATION.**

21 (a) LIST OF STANDARDIZED NAMES FOR SEA-
22 FOOD.—

23 (1) UPDATE.—Beginning not later than 180
24 days after the date of the enactment of this Act, the
25 Secretary of Health and Human Services, in con-

1 sultation with the Secretary of Commerce, shall
2 maintain and update as appropriate its “Guide to
3 Acceptable Market Names for Seafood Sold in Inter-
4 state Commerce” as a list of standardized names for
5 identification of seafood at the distribution, mar-
6 keting, and retail stages.

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

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

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

16 (ii) examples of names which con-
17 stitute mislabeling in violation of Federal
18 law;

19 (B) take into account taxonomy, inter-
20 national law and custom, market information,
21 and naming precedence;

22 (C) identify names for seafood as appro-
23 priate only if the Secretary of Commerce deter-
24 mines the names are not likely to confuse or
25 mislead consumers; and

1 (D) include information regarding any con-
2 sumption advisory that has been issued for the
3 seafood.

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

6 (A) made available to the public on the
7 Web sites of the Department of Health and
8 Human Services and the Department of Com-
9 merce; and

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

12 (4) PUBLIC INPUT.—The Secretary of Health
13 and Human Services shall use its existing citizen pe-
14 tition process in accepting petitions to amend the
15 list maintained under paragraph (1).

16 (b) SEAFOOD TRACEABILITY REQUIREMENTS.—Be-
17 ginning on the date that is 180 days after the date of
18 the enactment of this Act, the Secretary of Commerce, in
19 consultation with the Secretary of Health and Human
20 Services, shall implement the following requirements with
21 respect to seafood imported into the United States or oth-
22 erwise distributed or offered for sale in interstate com-
23 merce:

24 (1) In addition to disclosure of the United Na-
25 tions Food and Agriculture Organization Major

1 Fishing Area, or a more specific location, in which
2 the fish was caught, of the information required to
3 be submitted to the Secretary of Commerce under
4 section 303(a)(5) of the Magnuson-Stevens Fishery
5 Conservation and Management Act (16 U.S.C.
6 1853(a)(5)), at a minimum the following informa-
7 tion shall be displayed on the packaging of, or other-
8 wise accompany, seafood through processing, dis-
9 tribution, and final sale:

10 (A) The acceptable market name and sci-
11 entific name for the seafood species, as speci-
12 fied in the list maintained under subsection
13 (a)(1).

14 (B) The date of the catch.

15 (C) The weight or number, as appropriate,
16 of product for an individual fish or lot.

17 (2) If seafood has been previously frozen, treat-
18 ed with any substance (other than ice or water) that
19 may affect the true weight of the seafood, or proc-
20 essed in a country other than that in which it was
21 landed or harvested, by any harvester, processor,
22 distributor, or retailer, such information shall be in-
23 cluded in the labeling of, or otherwise accompany,
24 the seafood through processing, distribution, and
25 final sale.

1 (3) If the seafood was farm-raised, that infor-
2 mation, along with information regarding the coun-
3 try of cultivation, the location of the aquaculture
4 production area, and the method of cultivation, shall
5 be included in the labeling of, or otherwise accom-
6 pany, the seafood through processing, distribution,
7 and final sale.

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

14 (A) to anyone purchasing the seafood; and

15 (B) to any Federal, State, or local official
16 authorized to conduct inspections of—

17 (i) seafood; or

18 (ii) any facility that processes or sells
19 seafood.

20 (5) No importer, processor, distributor, or re-
21 tailer may be found to be in violation of the require-
22 ments under this subsection for unknowingly selling
23 a product that was already mislabeled upon receipt,
24 provided that the importer, processor, distributor, or

1 retailer can provide the required product traceability
2 documentation.

3 (c) REFUSAL OF ADMISSION.—

4 (1) IN GENERAL.—Subject to paragraphs (3)
5 and (4), all seafood imported or offered for import
6 originating from an exporter shall be refused admis-
7 sion if—

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

11 (B) the Secretary of Health and Human
12 Services finds that any shipment of such sea-
13 food appears to be in violation of this Act or
14 other applicable Federal laws or regulations.

15 (2) IMPORT CERTIFICATION.—For any exporter
16 whose seafood products are refused admission under
17 paragraph (1) based on a prior shipment, the Sec-
18 retary of Health and Human Services shall deter-
19 mine whether to require, as a condition of granting
20 admission into the United States to an article of
21 seafood originating from such exporter, that such
22 seafood be accompanied by a certification or other
23 assurance under section 801(q) of the Federal Food,
24 Drug, and Cosmetic Act (21 U.S.C. 381(q)).

1 (3) ALLOWANCE OF INDIVIDUAL SHIPMENTS.—
2 Paragraph (1) does not apply with respect to an in-
3 dividual shipment of seafood originating from an ex-
4 porter whose products must otherwise be refused ad-
5 mission under such paragraph if the exporter pre-
6 sents evidence to the Secretary of Health and
7 Human Services or the Secretary of Commerce from
8 a laboratory accredited under section 422 of the
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
10 350k), or other equivalent evidence, documenting
11 that the shipment is in compliance with the provi-
12 sions of subsection (b) and other applicable Federal
13 laws or regulations prohibiting seafood fraud.

14 (4) TERMINATION OF INDIVIDUAL SHIPMENT
15 SCREENING REQUIREMENT.—Paragraph (1) shall
16 cease to prohibit the admission of seafood origi-
17 nating from an exporter based on a prior shipment
18 if the Secretary of Health and Human Services or
19 the Secretary of Commerce determines that—

20 (A) each prior shipment whose appearance
21 triggered the application of such paragraph was
22 in fact in compliance with the provisions of sub-
23 section (b) and other applicable Federal laws or
24 regulations, including those prohibiting seafood
25 fraud; or

1 (B) during the preceding 12 months, no
2 shipment of seafood originating from the ex-
3 porter has triggered the application of para-
4 graph (1).

5 (d) PENALTIES.—The Secretary of Commerce shall
6 prevent any person from violating this Act, or any Act to
7 which this section applies, in the same manner, by the
8 same means, and with the same jurisdiction, powers, and
9 duties as though sections 308 through 311 of the Magnu-
10 son-Stevens Fishery Conservation and Management Act
11 (16 U.S.C. 1858 through 1861) were incorporated into
12 and made a part of and applicable to this Act.

13 (e) LIST OF OFFENDERS.—The Secretary of Com-
14 merce, in consultation with the Secretary of Health and
15 Human Services, shall develop, maintain, and post on the
16 public Web site of the Department of Commerce a list
17 that—

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

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

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

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

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

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

20 (g) IMPACT ON EXISTING FOOD SAFETY AUTHOR-
21 ITY.—Nothing in this section shall be construed to limit
22 the authority of the Secretary of Health and Human Serv-
23 ices to execute or enforce food safety laws or regulations
24 that may be adopted pursuant to the FDA Food Safety
25 Modernization Act (Public Law 111–353).

1 **SEC. 4. AUTHORITY OF STATES.**

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

16 **SEC. 5. REPORT TO CONGRESS.**

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

24 (1) findings with respect to—

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

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

7 (2) an analysis of the lists required to be devel-
8 oped and maintained under sections 2(c) and 3(e);

9 (3) an analysis of the effectiveness of the
10 memorandum of understanding required by section
11 2(a) in ensuring that the Department of Commerce
12 and the Department of Health and Human Services
13 work to ensure seafood safety, including an assess-
14 ment of achieving identified performance metrics
15 and timelines established to reduce duplication of ef-
16 fort and increase collection and integration of in-
17 spections data;

18 (4) an assessment of the technological assets
19 available for addressing seafood safety and fraud, in-
20 cluding traceability, and an assessment of the tech-
21 nological gaps and needs that exist;

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

1 (6) detailed information on the inspection, en-
2 forcement, and consumer outreach activities, includ-
3 ing the number of inspections, enforcement actions,
4 consumer outreach activities, personnel, and re-
5 sources utilized by the National Oceanic and Atmos-
6 pheric Administration, the Food and Drug Adminis-
7 tration, and the Federal Trade Commission to carry
8 out this Act, including the degree of coordination of
9 actions to address seafood safety and seafood fraud;
10 and

11 (7) recommendations on any additional authori-
12 ties, budget, or personnel necessary to improve sea-
13 food safety and prevent seafood fraud.

14 **SEC. 6. PREEMPTION.**

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

19 **SEC. 7. DEFINITIONS.**

20 In this Act:

21 (1) The term “other applicable Federal laws
22 and regulations” means Federal statutes, regula-
23 tions, and international agreements (other than this
24 Act) pertaining to the importation, exportation,
25 transportation, sale, harvest, processing, or trade of

1 seafood, including the Magnuson-Stevens Fishery
2 Conservation and Management Act (16 U.S.C. 1801
3 et seq.), the Lacey Act Amendments of 1981 (16
4 U.S.C. 3371 et seq.), the Federal Food, Drug, and
5 Cosmetic Act (21 U.S.C. 301 et seq.), the FDA
6 Food Safety Modernization Act (Public Law 111–
7 353), the Fair Packaging and Labeling Act (15
8 U.S.C. 1451 et seq.), subtitle D of the Agricultural
9 Marketing Act of 1946 (7 U.S.C. 1638 et seq.),
10 parts 60 and 65 of title 7, Code of Federal Regula-
11 tions (or any successor regulations), and part 123 of
12 title 21, Code of Federal Regulations (or any suc-
13 cessor regulations).

14 (2) The term “seafood” means fish, shellfish,
15 and processed fish or shellfish products.

16 (3) The term “seafood fraud” means the
17 mislabeling or misrepresentation of the information
18 required under this Act or other applicable Federal
19 laws and regulations.

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