Calendar No. 880

110TH CONGRESS *2d Session*	SENATE	REPORT 110–420

COMMERCIAL SEAFOOD CONSUMER PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2688

JULY 15, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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COMMERCIAL SEAFOOD CONSUMER PROTECTION ACT

JULY 15, 2008.—Ordered to be printed

Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2688]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2688) to improve the protections afforded under Federal law to consumers from contaminated seafood by directing the Secretary of Commerce to establish a program, in coordination with other appropriate Federal agencies, to strengthen activities for ensuring that seafood sold or offered for sale to the public in or affecting interstate commerce is fit for human consumption, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2688, the Commercial Seafood Consumer Protection Act, is to improve the protections afforded under Federal law to consumers from contaminated seafood by strengthening the National Oceanic and Atmospheric Administration (NOAA) seafood inspection program to ensure that commercially distributed seafood sold in the United States is fit for human consumption. The bill, as reported, addresses comments from a wide variety of stakeholders interested in the bill, including representatives of the fishing and aquaculture industries, conservation organizations, research institutes, the NOAA, the Senate Committee on Health, Education, Labor and Pensions, the Food and Drug Administration (FDA), and the Senate Committee on Finance.

BACKGROUND AND NEEDS

While the FDA is the primary government agency that manages food health and safety, the National Marine Fisheries Service (NMFS) provides the public with information regarding imported seafood products in the United States. The NMFS also conducts a voluntary seafood inspection program on a fee-for-service basis under the authority of the Agricultural Marketing Act of 1946. This program employs approximately 170 people and is entirely funded from fees it collects for its services. It primarily utilizes one NMFS laboratory located in Pascagoula, Mississippi, to test fish samples for a variety of contaminants and antibiotics. On very rare occasions, the NMFS will allow for samples to be verified and inspected at local, certified labs. In addition, approximately 35 foreign facilities on an approved list are certified to perform inspections, and more facilities are being certified. It is important to note, however, that meeting inspection standards at these overseas facilities do not nullify the FDA standards or the mandatory Hazard Analysis and Critical Control Point (HACCP) requirements necessary to pass FDA import standards. All products inspected by facilities certified by NMFS are still subject to inspection by the FDA upon entry into the United States.

In 2005, more than 84 percent of the total fish and shellfish consumed in the United States were imported, compared to 55 percent in 1995. China is the second largest exporter of seafood to the United States, with Canada being the largest. China's seafood imports into the United States were valued at $1.9 billion in 2006, an increase of 193 percent from a value of $550 million in 2001. This bill was prompted in part by the 2007 discovery of tainted Chinese seafood imports that contained illegal antimicrobials, potentially cancer-causing contaminants.

The NMFS seafood inspection program provides services beyond the mandatory HACCP requirements including: vessel and plant sanitation, product inspection, grading and certification, label review, laboratory analysis, training, and consultative and informational services. Participants in the NMFS seafood inspection program may use official marks on compliant products to indicate they are federally inspected. This is vital for U.S. exports to be accepted abroad, particularly in the European Union where a FDA certification is required on all seafood products entering their markets. The NMFS's program provides these certification services for approximately 2,500 foreign and domestic firms annually. The seafood inspection program has been very successful, affecting approximately 20 to 25 percent of domestic and imported seafood consumed in the United States.

In a January 2004 Government Accountability Office (GAO) report titled, "FDA's Imported Seafood Safety Program Shows Some Progress, but Further Improvements are Needed," the GAO recommended that the NMFS provide staff from its seafood inspection program to bolster the FDA's inspection capabilities. Currently, the NMFS is working with the FDA to finalize a Memorandum of Understating (MOU) which includes language authorizing the use of NMFS staff to increase and support the FDA's efforts.

The Committee believes it is important to strengthen the MOU that the NMFS seafood inspection program is finalizing with the

FDA to ensure that the NMFS and the FDA work efficiently and effectively together to ensure seafood sold or offered for sale to the public is fit for human consumption. The Committee believes that an increase in the number of laboratories certified by the FDA in both the United States and in countries that export seafood to the United States is important for increasing our ability to monitor seafood. The Committee believes it is necessary to have increased monitoring over imported seafood; therefore, this bill would establish an optional procedure for dealing with cases where contaminated shipments enter the United States and increase the number of inspectors who are sent to a country or exporter of seafood products to the United States to ensure that the seafood products are of a standard consistent with the requirements established under the Federal Food, Cosmetic, and Drug Act (21 U.S.C. 301 et.seq.). The bill would authorize $15 million for each of fiscal years 2009 through 2013.

LEGISLATIVE HISTORY

S. 2688 was introduced in the Senate on March 4, 2008, by Senator Inouye and is co-sponsored by Senators Stevens, Murkowski, Bill Nelson, and Vitter. The bill was referred to the Committee on Commerce, Science, and Transportation. On April 24, 2008, the Committee considered the bill in an open executive session. Senators Inouye and Stevens offered a substitute amendment, and the Committee, without objection, ordered S. 2688 to be favorably reported with an amendment in the nature of a substitute.

Staff assigned to this legislation include Amanda Hallberg, Democratic professional staff, and Todd Bertoson, Republican senior counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 11, 2008.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2688, the Commercial Seafood Consumer Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tyler Kruzich.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

S. 2688—Commercial Seafood Consumer Protection Act

Summary: S. 2688 would require the Departments of Commerce and Health and Human Services to strengthen federal efforts related to ensuring the safety of commercially distributed seafood.

Based on information from the Department of Commerce, CBO estimates that implementing S. 2688 would cost $66 million over the 2009–2013 period and $9 million after 2013, assuming appropriation of the amounts authorized by the bill. Enacting S. 2688 would not affect direct spending or revenues.

S. 2688 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

By directing the Secretary of Health and Human Services to enter into a cooperative agreement with the Secretary of Commerce and modifying the Food and Drug Administration's (FDA's) authority to regulate seafood safety, the bill could impose new mandates on the private sector as defined in UMRA. However, CBO cannot determine whether the aggregate direct cost of complying with those mandates, if any, would exceed the annual threshold established in UMRA ($136 million in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2688 is shown in the following table. The costs of this legislation fall within the budget functions 300 (natural resources and environment) and 550 (health).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	15	15	15	15	15	75
Estimated Outlays	9	12	15	15	15	66

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2009 and that the authorized amounts will be appropriated near the start of each year. Estimates of outlays are based on historical spending patterns for similar activities.

S. 2688 would require the Departments of Commerce and Health and Human Services to strengthen federal efforts related to ensuring the safety of commercially distributed seafood. Based on information from the Department of Commerce, CBO expects that funds authorized to be appropriated by the bill would be used to increase the number of domestic and international laboratories that inspect seafood. Funds also would be used to send inspection teams to countries that export seafood to the United States to assess practices used in the farming of seafood for export. Assuming appropriation of the authorized amounts ($15 million annually over the 2009–2013 period), CBO estimates that implementing S. 2688 would cost $66 million over that period and $9 million after 2013.

Estimated impact on State, local, and tribal governments: S. 2688 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

Estimated impact on the private sector: Section 2 of the bill would direct the Secretary of Health and Human Services to enter into a cooperative agreement with the Secretary of Commerce to address and coordinate various regulations in order to improve seafood safety. Efforts to carry out the agreement could lead to more stringent requirements on importers, exporters, sellers, and distributors of seafood. For example, section 2 would direct the agencies to include a provision in their agreement to establish a domestic tracking system for seafood shipments. A tracking system could require recipients and distributors of shipments to provide additional information. Because the provisions of the agreement depend on the future actions of FDA and the National Oceanic and Atmospheric Administration, CBO cannot determine whether they would result in new private-sector mandates. Further, section 5 of the bill would modify FDA's current authority to regulate seafood safety by authorizing the agency to use additional procedures for handling seafood imports. The extent to which these provisions would result in new private-sector mandates is also unclear.

CBO has no basis for predicting what new procedures the agencies would set under the bill, if any, or whether those procedures would impose additional requirements on the seafood industry. Therefore, CBO cannot determine whether the aggregate direct cost of complying with new private-sector mandates that may arise as a result of the bill would exceed the annual threshold established in UMRA ($136 million in 2008, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Tyler Kruzich and Jeffrey LaFave; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Number of persons covered

S. 2688, as reported, would authorize appropriations to continue and expand an existing NOAA program. This bill would have little, if any, regulatory impact.

Economic impact

This bill, as reported, would provide authorization of $15 million for each fiscal year from 2009 through 2013 for NOAA to carry out the purpose of this bill. These funding levels are not expected to have an inflationary impact on the Nation's economy.

Privacy

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens.

Paperwork

The reported bill would not increase paperwork requirements for the private sector. The NOAA and the FDA's paperwork require-

ments may increase slightly due to increasing the certification of laboratories and the report the inspection teams are required to publish with their findings.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would establish the short title of this Act as the "Commercial Seafood Consumer Protection Act."

Section 2. Seafood safety

This section would require the Secretary of Commerce, in coordination with the Secretary of Health and Human Services, to strengthen Federal activities for ensuring compliance and quality with regard to commercially distributed seafood.

Additionally, this section would require the Secretary of Commerce and the Secretary of Health and Human Services to enter into an MOU to create an infrastructure that would provide a better system for importing safe seafood. This agreement would include provisions on how to achieve the following:

- Examine and test imported seafood;
- Inspect foreign facilities;
- Provide technical assistance and training to foreign facilities and governments;
- Expedite seafood imports from countries with consistently high standards;
- Generate a shipment tracking system;
- Create labeling requirements;
- Commission NOAA officers and employees to examine seafood;
- Share information concerning non-compliance and new regulation; and
- Conduct joint training on subjects related to seafood inspection.

Section 3. Certified laboratories

This section would require the Secretary of Commerce, in consultation with the Secretary of Health and Human Services, to increase the number of laboratories certified to the standards of the FDA to analyze seafood both in the United States and in foreign nations that export seafood to the United States.

Section 4. NOAA laboratories

This section would increase the number and/or capacity of NOAA laboratories that are involved with the NMFS service seafood inspection program.

Section 5. Contaminated seafood

This section would establish an optional procedure for dealing with cases where contaminated shipments are found entering the United States or if the Secretary determines that seafood from a given country is not likely to meet Federal standards. It would allow the Secretary of Health and Human Services to refuse imported contaminated seafood and/or request increased testing of seafood originating from countries where there is reasonable evidence of contamination. It would allow individual shipments to be admitted into the United States if there was laboratory evidence that the shipment is consistent with the requirements Federal Food, Cosmetic, and Drug Act (21 U.S.C. 301 et.seq.).

Section 6. Inspection teams

This section would authorize the Secretary of Commerce and the Secretary of Health and Human Services to send inspectors overseas to assess the methods used by seafood exporters to ensure they are consistent with the requirements Federal Food, Cosmetic, and Drug Act (21 U.S.C. 301 et.seq.).

Section 7. Authorization of appropriations

This section would authorize the appropriation of $15,000,000 for each fiscal year from 2009 through 2013 to implement the provisions of S. 2688.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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