Calendar No. 297

112TH CONGRESS *2d Session*	SENATE	REPORT 112–131

COMMERCIAL SEAFOOD CONSUMER PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 50

JANUARY 26, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

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COMMERCIAL SEAFOOD CONSUMER PROTECTION ACT

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

REPORT

[To accompany S. 50]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 50) to strengthen Federal consumer product safety programs and activities with respect to commercially-marketed seafood, by directing the Secretary of Commerce to coordinate with the Federal Trade Commission (FTC) and other appropriate Federal agencies to strengthen and coordinate those programs and activities, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 50, the Commercial Seafood Consumer Protection Act, is to improve the protections afforded under Federal law to consumers from contaminated seafood by strengthening the National Marine Fisheries Service (NMFS) Seafood Inspection Program (SIP), within the National Oceanic and Atmospheric Administration (NOAA), to ensure that commercially distributed seafood sold in the United States is fit for human consumption.

BACKGROUND AND NEEDS

According to NOAA in the Department of Commerce, 84 percent of the finfish and shellfish consumed in the United States in 2010 was imported (compared to 55 percent in 1995), and of the seafood imported into the United States, approximately 50 percent is pro-

duced by aquaculture.[1] China and Thailand are the largest exporters of seafood to the United States, accounting for roughly 23 percent and 16 percent of U.S. seafood imports, respectively.[2] In monetary terms, U.S. seafood imports from China were valued at $2.4 billion in 2010, an increase of 336 percent from $550 million in 2001.[3]

While the Food and Drug Administration (FDA) is the primary government agency that manages food safety and food health issues, NOAA's NMFS provides the general public with information regarding seafood products that are imported into the United States, and also conducts a voluntary SIP. The SIP works with the seafood industry to improve the overall quality and marketability of seafood and ensure that all processing firms are compliant with FDA and Department of Commerce regulations. It operates under the authority of the Agricultural Marketing Act of 1946[4] and the Fish and Wildlife Act of 1956[5] and ostensibly coordinates its efforts with those of FDA under a long-standing memorandum of understanding (MOU) between NOAA and FDA.[6] The SIP offers a variety of services to industry, most notably inspection and testing of seafood products and certifying compliance with Hazard Analysis Critical Control Point (HACCP) requirements. The SIP employs approximately 170 people and operates on a fee-for-service basis. Presently, it is funded entirely by the fees it collects for its services and uses no appropriated funds for its operation.

NMFS maintains the in-house scientific capability to support seafood inspection and product quality testing services at its National Seafood Inspection Laboratory in Pascagoula, Mississippi. On very rare occasions, NMFS also will allow samples to be verified and inspected at local, certified labs. In addition, 40 foreign facilities on an approved list are certified to perform inspections, and more facilities are being certified by the SIP. It is important to note that meeting inspection standards at these overseas facilities does not nullify FDA standards or the mandatory HACCP requirements necessary for importation. All products inspected at NMFS-certified facilities are still subject to inspection by FDA upon entry into the United States.

The SIP provides services beyond HACCP certification and product inspection and testing, including vessel and plant sanitation, label review, laboratory analysis, training, and consultative and informational services. Those who participate in the SIP may use official marks on complying products, which indicate they were federally inspected. This is vital to U.S. exports to certain markets; for example, the European Union requires a certification label on all imported seafood products. The SIP provides these certification services for approximately 2,500 foreign and domestic firms annually. Based on 2008 per capita consumption data, approximately 34

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[1] National Oceanic and Atmospheric Administration. National Marine Fisheries Service, FishWatch-U.S. Seafood Facts: Trade (Sept. 8, 2010), http://www.nmfs.noaa.gov/fishwatch/trade_and_aquaculture.htm.

[2] *Id.*

[3] National Marine Fisheries Service, Fisheries Statistics & Econ. Div., Trade Balance by Country: China, 2010 (April, 2011), http://www.st.nmfs.noaa.gov/pls/webpls/trade_balance_c.results?qyear=2010&qcountry=5700&qoutput=TABLE.

[4] Agricultural Marketing Act of 1946, 7 U.S.C. §§1621-1638d (2010).

[5] Fish and Wildlife Act of 1956, 16 U.S.C. §§ 742a-742j (2009).

[6] Memorandum of Understanding Between U.S. Dept. of Commerce Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Service and U.S. Dept. of Health, Education, & Welfare Food & Drug Admin. (1974).

percent of seafood consumed in the United States is certified under the auspices of the SIP.[7] By all accounts, the SIP is regarded as an effective and successful program for assuring the quality, wholesomeness, safety, proper labeling, and marketability of fish and fishery products.

In January 2001, a report by the Government Accountability Office (GAO) first raised concerns about the effectiveness of FDA's seafood safety inspection program and the adequacy of FDA inspection and laboratory resources.[8] In its recommendations, GAO focused on means by which FDA might better leverage its resources in order to provide greater assurance that seafood—particularly imported seafood—is safe.[9] One of the key reasons for the 1974 MOU between NMFS and FDA was to enhance FDA's efficient use of its inspection resources by minimizing FDA inspections of firms already inspected by NMFS.[10] The MOU states, among other things, that FDA will:

> Recognize that the NMFS service provided in connection with the voluntary inspection of fishery processing establishments contributes to the protection of consumers and aids FDA in enforcement of pertinent statutes. The NMFS inspection service will not diminish FDA's authority to inspect but should minimize FDA inspections in establishments under NMFS contract inspection. In this regard, NMFS inspectors shall routinely notify contract establishments of pertinent FDA requirements, advise them on how to comply and verify compliance. NMFS inspectors may not act as FDA inspectors but their inspections and consultations with FDA should reduce the necessity for FDA inspections.[11]

In March 2005, one of several follow-up reports by GAO concluded that FDA had not yet fulfilled this and other commitments under the 1974 MOU with NMFS and that, in some cases, FDA was still unnecessarily duplicating NMFS inspections.[12] Roughly a year earlier, in a 2004 report requested by several Members of this Committee, GAO noted ongoing concerns expressed by FDA regarding its limited resources and competing priorities.[13] GAO recommended in response that NMFS put SIP personnel at FDA's disposal to bolster FDA's provision of various services, potentially including inspections of foreign firms, importer inspections, port-of-entry examinations and sample collections, and laboratory analyses.[14] FDA did not pursue this strategy with NMFS.

In January 2007, GAO added the Federal oversight of food safety to its list of high-risk areas needing broad-based transformation, largely because of continued ineffective coordination and inefficient

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[7] Nat'l Marine Fisheries Service, Fisheries of the United States 2009, at 83 (2010).
[8] *See* U.S. Gov't Accountability Office, Food Safety: Federal Oversight of Seafood Does Not Sufficiently Protect Consumers (2001).
[9] *Id.* 58.
[10] Memorandum of Understanding between U.S. Dep't of Commerce Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Service & U.S. Dep't of Health, Education, & Welfare Food & Drug Admin. (1974).
[11] *Id.*
[12] U.S. Gov't Accountability Office, Oversight of Food Safety Activities: Federal Agencies Should Pursue Opportunities to Reduce Overlap and Better Leverage Resources (2005).
[13] U.S. Gov't Accountability Office, Food Safety: FDA'S Imported Seafood Safety Program Shows Some Progress, But Further Improvements Are Needed 29 (2004).
[14] *Id.*

use of resources.[15] As a part of that 2007 update to its high-risk list, GAO reiterated its recommendation that FDA consider using SIP personnel to augment FDA's inspection capacity.[16] In February 2009, GAO reported that FDA and NMFS still had not begun to work together and recommended that the agencies collaborate in order to enhance their use of inspection resources and Federal oversight of seafood.[17] The 2009 report included the following passage, which is instructive in understanding the nature, scope, and impacts of this ongoing deficiency:

> Not only does the lack of collaboration create inefficient information sharing between the key federal agencies, it also creates overlapping agency efforts and inefficient use of government resources. NMFS and FDA have similar inspection programs—NMFS inspects facilities, on request, for health, safety, and economic integrity issues, while FDA focuses its inspections on health and safety concerns. However, an FDA official said that the agency is not sure whether it can rely on NMFS inspections, in part due to concerns about potential conflicts of interest because NMFS is paid by industry to conduct its inspections. FDA has identified these potential conflicts as an impediment to fully using NMFS inspection efforts in the past. In our 2004 report on FDA's imported seafood safety program, we stated that an official raised concerns about potential conflicts of interest with NMFS inspections, but that other officials thought that these concerns could be addressed in an agreement between the two agencies. We recommended that FDA and NMFS develop a MOU that, in part, would use and leverage NMFS inspection services to more efficiently and effectively monitor the safety of imported seafood. In response, FDA stated that there were already three MOUs between FDA and NMFS that dealt with seafood safety and inspection operations, but that it would explore additional opportunities to better leverage NMFS inspection resources and more efficiently and effectively protect the public health. Among the three MOUs, the 1974 MOU between FDA and NMFS stated, in part, that NMFS would provide FDA with information on establishments under contract with it, and that such inspections and consultations with FDA should diminish the need for FDA inspections. Despite FDA's statements and the provisions in its 1974 MOU, FDA still does not take into account whether NMFS has already inspected a facility when FDA determines which facilities it will inspect. For example, from 2005 through 2008, NMFS inspected one facility we visited at least four times a year, yet FDA also inspected it in 2005, 2006, and 2008. Furthermore, neither agency found any significant issues during their inspections of this facility. Overall, in fiscal year 2007, FDA inspected 120 facilities that were also inspected by NMFS, while FDA had not inspected 1,464 other facilities since before fiscal year

[15] U.S. Gov't Accountability Office, High-Risk Series: An Update (2007).
[16] *Id. 29.*
[17] U.S. Gov't Accountability Office, Seafood Fraud: FDA Program Changes and Better Collaboration Among Key Federal Agencies Could Improve Detection and Prevention (2009).

> 2003. Also during fiscal year 2007, NMFS inspected 88 facilities that FDA either had not inspected within the same fiscal year or had not inspected at all. In its technical comments to our draft report, FDA stated that it is currently negotiating an MOU with NMFS that is intended to address its concerns about potential conflicts of interest.[18]

On October 26, 2009, NOAA and FDA did, in fact, enter into a revised MOU, the stated purpose of which is, "Cooperation and information sharing in the inspection of fish and fishery products and establishments."[19] The revised MOU reflects a mutual agreement that "[e]ach agency will take advantage of the inspectional capabilities of the other to achieve the maximum utilization of resources, when appropriate and as resources permit."[20] In support of this mutual commitment, the revised MOU also states that NMFS will "[p]rovide information to FDA concerning specific establishments or products that have been inspected by NMFS relevant to compliance with FDA requirements, when requested by FDA," and will "[p]erform sample analysis and/or conduct inspections of fish and fishery product processors, as appropriate, on FDA's request and upon mutual agreement."[21]

In another development intended to improve seafood safety, on January 4, 2011, the President signed into law the FDA Food Safety Modernization Act (FSMA).[22] FSMA was intended as a comprehensive modernization of FDA in order to enhance food safety, and included two provisions specific to seafood safety and oversight. First, it amended the Federal Food, Drug, and Cosmetic Act[23] (FFDCA) to provide permissive authority for the Secretary of Health and Human Services (HHS), the Secretary of Commerce, the Secretary of Homeland Security, the Chairman of the FTC, and the heads of other appropriate agencies to enter into such agreements as may be necessary or appropriate to improve seafood safety.[24] Second, it provided permissive authority for the Secretary of Commerce, in coordination with the Secretary of HHS, to send one or more inspectors to a country or facility of an exporter from which seafood is imported into the United States to assess practices and processes used in connection with the farming, cultivating, harvesting, preparation, and transportation of seafood.[25] In addition to these two seafood-specific provisions, FSMA amended the FFDCA to require the Secretary of HHS to establish a program for the testing of food by accredited laboratories, and to establish a publicly available registry of HHS-recognized accreditation bodies and the laboratories accredited by those bodies to perform food testing and import sampling.[26]

Despite the potential of the revised MOU and FSMA to increase interagency coordination, GAO concluded in April 2011, in yet another follow-up report to Members of this Committee, that FDA

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[18] *Id.* 28-29.
[19] Memorandum of Understanding between U.S. Department of Commerce National Oceanic and Atmospheric Admin. and U.S. Department of Health and Human Services Food and Drug Admin., 74 Fed. Reg. 58027 (Nov. 10, 2009).
[20] *Id.* 58032.
[21] *Id.* 58030.
[22] FDA Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2010).
[23] Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-399a (2009).
[24] FDA Food Safety Modernization Act § 201(a).
[25] FDA Food Safety Modernization Act § 306(b).
[26] FDA Food Safety Modernization Act § 202(a).

and NMFS still have made only limited progress in implementing their revised 2009 MOU, and FDA still has yet to take advantage of NMFS inspection resources.[27] Specifically, GAO reported that FDA has yet to fully meet its responsibility under the revised MOU to utilize NMFS foreign and domestic inspection resources in a systematic manner.[28] By effectively utilizing NMFS inspection resources to help minimize its own inspection responsibilities, GAO observed, FDA could inspect other facilities that have not yet been inspected.[29] GAO noted that FSMA "provides FDA with new authorities that *may* enable it to more comprehensively review a foreign county's seafood safety system and implement the practices that other entities employ to ensure the safety of imported seafood products."[30] However, GAO went on to observe that:

> To facilitate consideration and implementation of a different oversight approach to ensure the safety of imported seafood, FDA must utilize its current resources in the most efficient manner. However, FDA is not efficiently using its resources when it does not effectively implement the 2009 MOU with NMFS and fully utilize the resources of NMFS' Seafood Inspection Program, an agency dedicated specifically and solely to ensuring the quality and safety of seafood.[31]

In light of these most recent findings by GAO, it is worth noting that, although FSMA represents a sweeping and sorely needed overhaul of the Nation's food safety system, there are certain things FSMA does not do.

FSMA does not require, but instead merely permits, HHS, the Department of Commerce, and other appropriate departments and agencies to enter into interagency agreements in order to improve seafood safety. It also does not include within the scope of that permissive authority the ability to: strengthen cooperation on seafood labeling or seafood fraud; coordinate the collection and analysis of, or share, information on the movement of seafood in commerce in order to detect and investigate violations of Federal law; or engage in outreach to private testing laboratories, the seafood industry, and the public to enhance seafood safety and prevent fraud and mislabeling.

Furthermore, while FSMA includes authority for FDA to recognize accredited food testing laboratories and to increase the number of laboratories qualified to perform food testing generally, FSMA does not seek to take advantage of the expertise and ability of the SIP (working in consultation with FDA) to increase the number of laboratories specializing in seafood testing that are certified to FDA standards, or to expand testing activities at its National Seafood Inspection Laboratory. In all likelihood this is because the subject matter is beyond the scope of modernizing FDA's food safety authorities.

Finally, FSMA does not (nor was it intended to) include any significant measures to address the growing problem of mislabeling

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[27] Gov't Accountability Office, Seafood Safety: FDA Needs to Improve Oversight of Imported Seafood and Better Leverage Limited Resources 23 (2011).
[28] *Id.*
[29] *Id.*
[30] *Id.* 27 (emphasis added).
[31] *Id.* 27-28.

and substitution of seafood products in the stream of commerce, such as through the establishment of a list of standardized seafood names to facilitate seafood identification.

SUMMARY OF PROVISIONS

S. 50 would, if enacted into law, strengthen and expand interagency coordination with respect to seafood safety and inspection and consumer fraud. Importantly, it is intended to complement the FFDCA as amended by FSMA, not compete with or undermine it. It would require the Department of Commerce, the FTC, and other appropriate Federal agencies to strengthen consumer protection activities for ensuring the safety and quality of commercially distributed seafood in the United States. It would address the almost 40 years of poor coordination and cooperation between agencies charged with ensuring seafood quality and safety (which according to GAO, still exists to the present day) by mandating that the Secretary of Commerce and other Federal agencies execute memoranda of understanding for, among other things, cooperative examination and testing of seafood that leverage agencies' resources, capabilities, and authorities.

S. 50 would take advantage of the seafood testing expertise of the SIP and its National Seafood Inspection Laboratory by authorizing the Secretary of Commerce, in consultation with the Secretary of HHS, to engage in a targeted effort to increase the number of U.S. and foreign laboratories certified to FDA standards (similar to the manner in which the SIP already certifies compliant U.S. and foreign seafood facilities). The bill also would authorize the Secretary of Commerce to increase the number and capacity of laboratories operated by the SIP, to the extent the Secretary determines such increases are necessary and funding is appropriated to do so.

To further enhance the Nation's ability to protect consumers from contaminated seafood imports, the bill would prescribe a strict process for the Secretary of Commerce to follow upon a determination by the Secretary of HHS that a shipment of seafood is contaminated upon entry into the United States. It also would authorize the Secretary of Commerce to increase the number of inspectors sent abroad to a country or exporter of seafood products to the United States to ensure the seafood products are in compliance with Federal law.

Finally, S. 50 would help detect and combat seafood mislabeling and fraud by requiring the development and publication, by joint rulemaking proceeding by the Secretary of Commerce and the Secretary of HHS, of a standardized list of names for seafood to aid distributors, retailers, and consumers in identifying seafood products.

LEGISLATIVE HISTORY

S. 50 was introduced by Senator Inouye on January 25, 2011, and is cosponsored by Senators Snowe, Vitter, and Begich. On June 8, 2011, the Committee met in open Executive Session and by voice vote ordered that the bill be reported favorably without amendment. A previous version of this legislation, S. 2688, was introduced and ordered to be reported favorably in the 110th Congress.

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:

S. 50—Commercial Seafood Consumer Protection Act

Summary: S. 50 would require the Secretary of Commerce to coordinate and administer certain activities to enhance the safety of seafood products sold in the United States. The bill also would modify existing provisions that authorize the Secretary of Health and Human Services (HHS) to refuse entry of seafood imports. Finally, S. 50 would direct the Secretary of HHS to enter into memoranda of understanding and other agreements to strengthen interagency cooperation on seafood safety.

Based on historical information, expert opinion, and information provided by the affected agencies, CBO estimates that implementing S. 50 would cost $80 million over the 2012–2016 period, assuming appropriation of the necessary amounts. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 50 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 50 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 550 (health).

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	20	20	15	15	15	85
Estimated Outlays	15	19	16	15	15	80

Basis of Estimate: For this estimate, CBO assumes that S. 50 will be enacted near the beginning of fiscal year 2012 and that the necessary amounts will be appropriated for each year. Estimated outlays are based on historical spending patterns for similar programs.

Department of Health and Human Services Activities

S. 50 would modify existing provisions that authorize the Secretary of HHS to refuse entry of seafood imports. Under current law, importers are required to prove that all shipments meet import requirements, and the Food and Drug Administration (FDA) can refuse entry of shipments that fail to appear to meet those requirements. This bill would increase the burden of proof on FDA for such refusals by requiring the agency to prove that a seafood shipment does not meet the import requirements. CBO assumes that such a change would require FDA to conduct additional sampling, testing, and holding of shipments that otherwise would have been refused entry based on appearance.

S. 50 also would permit FDA to allow import shipments to enter the country if FDA finds that the shipment or conditions of manu-

facturing meet the import requirements. CBO assumes that provision would result in additional inspections of foreign facilities to ensure shipments meet the conditions of the manufacturing requirements.

Based on historical information and expert opinion, CBO estimates that implementing S. 50 would cost $80 million over the 2012–2016 period assuming appropriation of the necessary amounts. While this estimate reflects CBO's best judgment on the basis of available information, that projected cost is an expected value of outcomes for future seafood import problems and is subject to a great deal of uncertainty. The costs of testing are likely to vary depending on the product, the length of time to complete testing, and whether or not foreign manufacturing facilities will need to be inspected.

S. 50 also would direct the Secretary of HHS to enter into memoranda of understanding and other agreements to strengthen interagency cooperation on seafood safety. Under current law, the FDA is already engaging in such interagency activities. Thus, CBO anticipates that those provisions would have no significant budgetary impact.

Department of Commerce Activities

S. 50 would require the Secretary of Commerce to coordinate and administer certain multi-agency activities to enhance the safety of seafood products. Because the bill contains several provisions that require the Secretary to carry out activities that are required under current law, CBO estimates that implementing those provisions would not affect the federal budget. The bill also would require the Secretary to prepare several reports related to the execution of certain multi-agency agreements and measures taken to enhance consumer protection and enforcement activities related to seafood safety. Based on information regarding the cost of producing similar reports, CBO estimates that the costs of carrying out those activities would not be significant.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 50 contains no intergovernmental or private-sector mandates as defined in UMRA. Because the bill would codify existing policy for identifying seafood, it would not impose a new enforceability duty on tribal or private seafood manufacturers.

Estimate prepared by: Federal Costs: Ellen Werble and Jeff LaFave; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Mann Randall.

Estimate approved by: Holly Harvey, 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. 50, as reported, would refine and improve current statutory authorities for an existing NOAA program which operates on a vol-

untary, fee-for-service basis. The bill would have little, if any, regulatory impact.

ECONOMIC IMPACT

S. 50, as reported, would improve seafood safety and, in so doing, would reduce consumption of contaminated seafood. S. 50 also would reduce fraud, deception, and unfair business practices that currently impact U.S. businesses and consumers. The legislation is therefore not expected to have a negative 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. NOAA and FDA paperwork requirements would likely increase slightly as a result of the enhanced authorities and rulemaking and reporting requirements provided in the bill.

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 provide that this Act may be cited as the "Commercial Seafood Consumer Protection Act."

Section 2. Commercially marketed seafood consumer protection safety net

This section would require the Secretary of Commerce, in coordination with the FTC and other appropriate Federal agencies and consistent with U.S. international obligations, to strengthen Federal consumer protection activities for ensuring that commercially distributed seafood meets applicable Federal food quality and safety requirements. It would require the Secretary of Commerce and other appropriate Federal agencies to enter into memoranda of understanding to strengthen interagency cooperation on seafood safety, seafood labeling, and seafood fraud. These memoranda would be required to include provisions, as appropriate, for:

- Examination and testing of imported seafood;
- Inspection of foreign facilities;
- Standardizing data on seafood names, inspection records, and laboratory testing;
- Coordinating and sharing information in order to detect and investigate violations under applicable Federal laws;
- Developing a process for expediting imports of seafood into the United States from foreign countries and exporters that

consistently adhere to the highest standards for ensuring seafood safety;

• Coordinating the tracking of shipments of seafood in the distribution chain within the United States;

• Enhancing labeling requirements and methods of assuring compliance with such requirements to clearly identify species and prevent fraudulent practices;

• Commissioning of NOAA officers and employees to examine seafood on behalf of other agencies;

• Sharing of information concerning non-compliance and new regulation;

• Joint training on subjects related to seafood inspection; and

• Outreach to private testing laboratories, industry, and the public on Federal efforts to enhance seafood safety and compliance with labeling requirements.

The Secretary of Commerce, the Chairman of the FTC, and the heads of other appropriate Federal agencies would be required to report annually to Congress on specific efforts undertaken pursuant to these agreements, as well as the budget, personnel, and any additional authorities needed to improve seafood safety and labeling and prevent seafood fraud. Separately, the Secretary of Commerce and the Chairman of the FTC would be required to submit a joint report to Congress within one year after the date of enactment of this Act on consumer protection and enforcement efforts with respect to seafood marketing and labeling in the United States.

Section 3. Certified laboratories

This section would require the Secretary of Commerce, in consultation with the Secretary of HHS, to increase the number of laboratories certified to the standards of 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 authorize the Secretary of Commerce to increase the number and capacity of NOAA laboratories that are involved with the NMFS SIP.

Section 5. Contaminated seafood

This section would establish a strict procedure for dealing with cases where contaminated shipments of seafood are found entering the United States or there is reliable evidence suggesting that seafood from a given country is not likely to meet Federal standards. It would allow the Secretary of HHS to refuse imported contaminated seafood and to 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 is laboratory evidence that a shipment meets the requirements of Federal law. The Committee notes that section 801(a) of the FFDCA has long provided the Secretary of HHS with the authority to refuse admission into the United States of food or other articles if it *appears* that they are, inter alia, manufactured, processed, or packed under unsanitary conditions,

adulterated, or misbranded.[32] Section 5(a) of S. 50 would permit the Secretary of HHS to refuse admission of shipments of seafood if the Secretary *determines* that they do not meet the requirements of Federal law. It is not the intent of the Committee that a violation of Federal law be proven or otherwise formally determined to have occurred in order for the Secretary of HHS to exercise the authority granted under section 5(a). Rather, it is the intent of the Committee that section 5(a) be read and interpreted in conformity with the longstanding appearance standard established by section 801(a) of the FFDCA. Under section 5(a), the Secretary of HHS would be authorized to issue an order refusing admission into the United States of imports of seafood or seafood products if it appears to the Secretary that shipments of such seafood or seafood products do not meet the requirements established under applicable Federal law.

Section 6. Inspection teams

This section would authorize the Secretary of Commerce, in cooperation with the Secretary of HHS, to send inspectors overseas to assess the methods used by seafood exporters to ensure they are compatible with Federal law and report on their findings.

Section 7. Seafood identification

This section would direct the Secretary of Commerce and the Secretary of HHS to initiate a joint rulemaking proceeding to develop and make public a list of standardized names for seafood identification purposes at distribution, marketing, and consumer retail stages.

Section 8. Definitions

This section would define the terms, "applicable Federal laws," "appropriate Federal agencies," and "Secretary" for purposes of the Act.

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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[32] Federal Food, Drug, and Cosmetic Act § 801(a), 21 U.S.C. § 381 (2009).