

Calendar No. 880

110TH CONGRESS
2D SESSION

S. 2688

[Report No. 110–420]

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.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2008

Mr. INOUE (for himself, Mr. STEVENS, Mr. NELSON of Florida, Ms. MURKOWSKI, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JULY 15, 2008

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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.

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 “Commercial Seafood
 5 Consumer Protection Act”.

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

7 (a) **IN GENERAL.**—The Secretary of Commerce shall,
 8 in coordination with the Secretary of Health and Human
 9 Services and other appropriate Federal agencies, establish
 10 a program to strengthen Federal activities for ensuring
 11 that commercially distributed seafood in the United States
 12 meets the food quality and safety requirements of Federal
 13 law.

14 (b) **MEMORANDUM OF UNDERSTANDING.**—The Sec-
 15 retary of Commerce and the Secretary of Health and
 16 Human Services shall enter into an agreement within 180
 17 days after enactment of this Act to strengthen cooperation
 18 on seafood safety. The agreement shall include provisions
 19 for—

- 20 (1) cooperative arrangements for examining and
- 21 testing seafood imports;
- 22 (2) coordination of inspections of foreign facili-
- 23 ties;

1 (3) technical assistance and training of foreign
2 facilities for marine aquaculture; technical assistance
3 for foreign governments concerning United States
4 regulatory requirements; and appropriate informa-
5 tion transfer arrangements between the United
6 States and foreign governments;

7 (4) developing a process for expediting imports
8 of seafood into the United States from foreign coun-
9 tries and exporters that consistently adhere to the
10 highest standards for ensuring seafood safety;

11 (5) establishing a system to track shipments of
12 seafood in the distribution chain within the United
13 States;

14 (6) labeling requirements to assure species iden-
15 tity and prevent fraudulent practices;

16 (7) a process by which officers and employees
17 of the National Oceanic and Atmospheric Adminis-
18 tration and National Marine Fisheries Service may
19 be commissioned by the Secretary of Health and
20 Human Services for seafood examinations and inves-
21 tigations conducted under section 801 of the Federal
22 Food, Drug, and Cosmetic Act (21 U.S.C. 381);

23 (8) the sharing of information concerning ob-
24 served non-compliance with United States food re-
25 quirements domestically and in foreign countries and

1 new regulatory decisions and policies that may affect
2 regulatory outcomes; and

3 ~~(9) conducting joint training on subjects that~~
4 ~~affect and strengthen seafood inspection effective-~~
5 ~~ness by Federal authorities.~~

6 **SEC. 3. CERTIFIED LABORATORIES.**

7 Within 180 days after the date of enactment of this
8 Act, the Secretary of Commerce, in consultation with the
9 Secretary of Health and Human Services, shall increase
10 the number of laboratories certified to the standards of
11 the Food and Drug Administration in the United States
12 and in countries that export seafood to the United States
13 for the purpose of analyzing seafood and ensuring that
14 it complies with Federal law. Such laboratories may in-
15 clude Federal, State, and private facilities. The Secretary
16 of commerce shall publish in the Federal Register a list
17 of certified laboratories, and shall update the list, and pub-
18 lish the updated list, no less frequently than annually.

19 **SEC. 4. NOAA LABORATORIES.**

20 In any fiscal year beginning after the date of enact-
21 ment of this Act, the Secretary of Commerce may increase
22 the number and capacity of laboratories operated by the
23 National Oceanic and Atmospheric Administration in-
24 volved in carrying out testing and other activities under
25 this Act to the extent the Secretary determines that in-

1 creased laboratory capacity is necessary to carry out the
2 provisions of this Act and as provided for in appropria-
3 tions Acts.

4 **SEC. 5. CONTAMINATED SEAFOOD.**

5 (a) REFUSAL OF ENTRY.—The Secretary of Health
6 and Human Services shall issue an order refusing admis-
7 sion into the United States of all imports of seafood or
8 seafood products originating from a country or exporter
9 if the Secretary determines, on the basis of reliable evi-
10 dence, that shipments of such seafood or seafood products
11 is not likely to meet the requirements of Federal law.

12 (b) INCREASED TESTING.—If the Secretary deter-
13 mines, on the basis of reliable evidence that seafood im-
14 ports originating from a country may not meet the re-
15 quirements of Federal law, and determines that there is
16 a lack of adequate certified laboratories to provide for the
17 entry of shipments pursuant to section 3, then the Sec-
18 retary shall order an increase in the percentage of ship-
19 ments tested of seafood originating from such country to
20 improve detection of potential violations of such require-
21 ments.

22 (c) ALLOWANCE OF INDIVIDUAL SHIPMENTS FROM
23 EXPORTING COUNTRY OR EXPORTER.—Notwithstanding
24 an order under subsection (a) with respect to seafood orig-
25 inating from a country or exporter, the Secretary may per-

1 mit individual shipments of seafood originating in that
2 country or from that exporter to be admitted into the
3 United States if—

4 (1) the exporter presents evidence from a lab-
5 oratory certified by the Secretary that a shipment of
6 seafood meets the requirements of Federal law;

7 (2) the Secretary, or an entity commissioned to
8 carry out examinations and investigations under sec-
9 tion 702(a) of the Federal Food, Cosmetic, and
10 Drug Act (21 U.S.C. 372(a)), has inspected the
11 shipment and has found that the shipment meets the
12 requirements of Federal law.

13 (d) CANCELLATION OF ORDER.—The Secretary may
14 cancel an order under subsection (a) with respect to sea-
15 food exported from a country or exporter if all shipments
16 into the United States under subsection (c) of seafood
17 originating in that country or from that exporter more
18 than 1 year after the date on which the Secretary issued
19 the order have been found, under the procedures described
20 in subsection (c), to meet the requirements of Federal law.
21 If the Secretary determines that an exporter has failed
22 to comply with the requirements of an order under sub-
23 section (a), the 1-year period in the preceding sentence
24 shall run from the date of that determination rather than
25 the date on which the order was issued.

1 (e) **RELIABLE EVIDENCE DEFINED.**—In this section,
2 the term “reliable evidence” includes—

3 (1) the detection of failure to meet Federal law
4 requirements under subsection (a) by the Secretary;

5 (2) the detection of all seafood products that
6 fail to meet Federal law requirements by an entity
7 commissioned to carry out examinations and inves-
8 tigations under section 702(a) of the Federal Food,
9 Cosmetic, and Drug Act (21 U.S.C. 372(a)) or a
10 laboratory certified under subsection (c);

11 (3) findings from an inspection team formed
12 under section 6; or

13 (4) the detection by other importing countries
14 of non-compliance of shipments of seafood or sea-
15 food products that originate from the exporting
16 country or exporter.

17 (f) **EFFECT.**—This section shall be in addition to,
18 and shall have no effect on, the authority of the Secretary
19 of Health and Human Services under the Federal Food,
20 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with re-
21 spect to seafood, seafood products, or any other product.

22 **SEC. 6. INSPECTION TEAMS.**

23 The Secretary of Commerce, in cooperation with the
24 Secretary of Health and Human Services, may send 1 or
25 more inspectors to a country or exporter from which sea-

1 food exported to the United States originates. The inspec-
 2 tion team will assess whether any prohibited drug, prac-
 3 tice, or process is being used in connection with the farm-
 4 ing, cultivation, harvesting, preparation for market, or
 5 transportation of such seafood. The inspection team shall
 6 prepare a report for the Secretary with its findings. The
 7 Secretary of Commerce shall cause the report to be pub-
 8 lished in the Federal Register no later than 90 days after
 9 the inspection team makes its final report. The Secretary
 10 of Commerce shall notify the country or exporter through
 11 appropriate means as to the findings of the report no later
 12 than the date on which the report is published in the Fed-
 13 eral Register. A country may offer a rebuttal to the assess-
 14 ment within 90 days after publication of the report.

15 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated for each of
 17 fiscal years 2009 through 2013, for purposes of carrying
 18 out the provisions of this Act, \$15,000,000.

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Commercial Seafood*
 21 *Consumer Protection Act”.*

22 **SEC. 2. SEAFOOD SAFETY.**

23 (a) *IN GENERAL.*—*The Secretary of Commerce shall,*
 24 *in coordination with the Secretary of Health and Human*
 25 *Services and other appropriate Federal agencies, establish*

1 *a program, consistent with the international obligations of*
2 *the United States, to strengthen Federal activities for ensur-*
3 *ing that commercially distributed seafood in the United*
4 *States meets the food quality and safety requirements of*
5 *Federal law.*

6 (b) *MEMORANDUM OF UNDERSTANDING.—The Sec-*
7 *retary of Commerce and the Secretary of Health and*
8 *Human Services shall enter into an agreement within 180*
9 *days after enactment of this Act to strengthen cooperation*
10 *on seafood safety. The agreement shall include provisions*
11 *for—*

12 (1) *cooperative arrangements for examining and*
13 *testing seafood imports;*

14 (2) *coordination of inspections of foreign facili-*
15 *ties;*

16 (3) *technical assistance and training of foreign*
17 *facilities for marine aquaculture, technical assistance*
18 *for foreign governments concerning United States reg-*
19 *ulatory requirements, and appropriate information*
20 *transfer arrangements between the United States and*
21 *foreign governments;*

22 (4) *developing a process for expediting imports*
23 *of seafood into the United States from foreign coun-*
24 *tries and exporters that consistently adhere to the*
25 *highest standards for ensuring seafood safety;*

1 (5) *establishing a system to track shipments of*
2 *seafood in the distribution chain within the United*
3 *States;*

4 (6) *labeling requirements to assure species iden-*
5 *tity and prevent fraudulent practices;*

6 (7) *a process by which officers and employees of*
7 *the National Oceanic and Atmospheric Administra-*
8 *tion and National Marine Fisheries Service may be*
9 *commissioned by the Secretary of Health and Human*
10 *Services for seafood examinations and investigations*
11 *conducted under section 801 of the Federal Food,*
12 *Drug, and Cosmetic Act (21 U.S.C. 381);*

13 (8) *the sharing of information concerning ob-*
14 *served non-compliance with United States food re-*
15 *quirements domestically and in foreign countries and*
16 *new regulatory decisions and policies that may affect*
17 *regulatory outcomes; and*

18 (9) *conducting joint training on subjects that af-*
19 *fect and strengthen seafood inspection effectiveness by*
20 *Federal authorities.*

21 **SEC. 3. CERTIFIED LABORATORIES.**

22 *Within 180 days after the date of enactment of this*
23 *Act, the Secretary of Commerce, in consultation with the*
24 *Secretary of Health and Human Services, shall increase the*
25 *number of laboratories certified to the standards of the Food*

1 *and Drug Administration in the United States and in*
 2 *countries that export seafood to the United States for the*
 3 *purpose of analyzing seafood and ensuring that it complies*
 4 *with Federal law. Such laboratories may include Federal,*
 5 *State, and private facilities. The Secretary of Commerce*
 6 *shall publish in the Federal Register a list of certified lab-*
 7 *oratories, and shall update the list, and publish the updated*
 8 *list, no less frequently than annually.*

9 **SEC. 4. NOAA LABORATORIES.**

10 *In any fiscal year beginning after the date of enact-*
 11 *ment of this Act, the Secretary of Commerce may increase*
 12 *the number and capacity of laboratories operated by the*
 13 *National Oceanic and Atmospheric Administration in-*
 14 *volved in carrying out testing and other activities under*
 15 *this Act to the extent the Secretary determines that in-*
 16 *creased laboratory capacity is necessary to carry out the*
 17 *provisions of this Act and as provided for in appropriations*
 18 *Acts.*

19 **SEC. 5. CONTAMINATED SEAFOOD.**

20 *(a) REFUSAL OF ENTRY.—The Secretary of Health*
 21 *and Human Services may issue an order refusing admis-*
 22 *sion into the United States of all imports of seafood or sea-*
 23 *food products originating from a country or exporter if the*
 24 *Secretary determines that shipments of such seafood or sea-*
 25 *food products do not meet the requirements established*

1 *under the Federal Food, Cosmetic, and Drug Act (21 U.S.C.*
 2 *301 et seq.).*

3 (b) *INCREASED TESTING.—If the Secretary determines*
 4 *that seafood imports originating from a country may not*
 5 *meet the requirements of Federal law, and determines that*
 6 *there is a lack of adequate certified laboratories to provide*
 7 *for the entry of shipments pursuant to section 3, then the*
 8 *Secretary may order an increase in the percentage of ship-*
 9 *ments tested of seafood originating from such country to*
 10 *improve detection of potential violations of such require-*
 11 *ments.*

12 (c) *ALLOWANCE OF INDIVIDUAL SHIPMENTS FROM EX-*
 13 *PORTING COUNTRY OR EXPORTER.—Notwithstanding an*
 14 *order under subsection (a) with respect to seafood origi-*
 15 *nating from a country or exporter, the Secretary may per-*
 16 *mit individual shipments of seafood originating in that*
 17 *country or from that exporter to be admitted into the*
 18 *United States if—*

19 (1) *the exporter presents evidence from a labora-*
 20 *tory certified by the Secretary that a shipment of sea-*
 21 *food meets the requirements of Federal law;*

22 (2) *the Secretary, or an entity commissioned to*
 23 *carry out examinations and investigations under sec-*
 24 *tion 702(a) of the Federal Food, Cosmetic, and Drug*
 25 *Act (21 U.S.C. 372(a)), has inspected the shipment*

1 *and has found that the shipment meets the require-*
2 *ments of Federal law.*

3 (d) *CANCELLATION OF ORDER.*—*The Secretary may*
4 *cancel an order under subsection (a) with respect to seafood*
5 *exported from a country or exporter if all shipments into*
6 *the United States under subsection (c) of seafood origi-*
7 *nating in that country or from that exporter more than 1*
8 *year after the date on which the Secretary issued the order*
9 *have been found, under the procedures described in sub-*
10 *section (c), to meet the requirements of Federal law. If the*
11 *Secretary determines that an exporter has failed to comply*
12 *with the requirements of an order under subsection (a), the*
13 *1-year period in the preceding sentence shall run from the*
14 *date of that determination rather than the date on which*
15 *the order was issued.*

16 (e) *EFFECT.*—*This section shall be in addition to, and*
17 *shall have no effect on, the authority of the Secretary of*
18 *Health and Human Services under the Federal Food, Drug,*
19 *and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to*
20 *seafood, seafood products, or any other product.*

21 **SEC. 6. INSPECTION TEAMS.**

22 *The Secretary of Commerce, in cooperation with the*
23 *Secretary of Health and Human Services, may send 1 or*
24 *more inspectors to a country or exporter from which seafood*
25 *exported to the United States originates. The inspection*

1 *team will assess practices and processes being used in con-*
2 *nection with the farming, cultivation, harvesting, prepara-*
3 *tion for market, or transportation of such seafood and pro-*
4 *vide technical assistance related to the requirements estab-*
5 *lished under the Federal Food, Drug, and Cosmetic Act (21*
6 *U.S.C. 301 et seq.). The inspection team shall prepare a*
7 *report for the Secretary of Commerce with its findings. The*
8 *Secretary of Commerce shall make a copy of the report*
9 *available to the country or exporter that is the subject of*
10 *the report and provide a 30-day period during which the*
11 *country or exporter may provide a rebuttal or other com-*
12 *ments on the findings to the Secretary. The Secretary of*
13 *Commerce shall cause the report, together with any com-*
14 *ments submitted to the Secretary by the country or exporter,*
15 *to be published in the Federal Register no later than 60*
16 *days after the inspection team makes its final report.*

17 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

18 *There are authorized to be appropriated for each of*
19 *fiscal years 2009 through 2013, for purposes of carrying*
20 *out the provisions of this Act, \$15,000,000.*

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110TH CONGRESS
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[Report No. 110-420]

A BILL

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.

JULY 15, 2008

Reported with an amendment