

111TH CONGRESS
2D SESSION

H. R. 6075

To amend the Magnuson-Stevens Fishery Conservation and Management Act to require payment of costs, fees, and expenses incurred by certain prevailing parties in proceedings under such Act from sums received as fines, penalties, and forfeitures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2010

Mr. TIERNEY (for himself, Mr. FRANK of Massachusetts, Mr. KUCINICH, Mr. DELAHUNT, Mr. JONES, and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to require payment of costs, fees, and expenses incurred by certain prevailing parties in proceedings under such Act from sums received as fines, penalties, and forfeitures, 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 “Ensuring Fairness for
5 Fishermen Act”.

1 **SEC. 2. PAYMENT OF COSTS, FEES, AND EXPENSES IN-**
2 **CURRED BY CERTAIN PREVAILING PARTIES.**

3 (a) USE OF SUMS RECEIVED AS FINES, PENALTIES,
4 AND FORFEITURES.—Section 311(e) of the Magnuson-
5 Stevens Fishery Conservation and Management Act (16
6 U.S.C. 1861(e)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3) and moving such paragraph 2 ems to the
9 left, so that the left margin of such paragraph is
10 aligned with the left margin of such section; and

11 (2) by inserting after paragraph (1) the fol-
12 lowing new paragraph:

13 “(2)(A) Payment shall be made from the sums de-
14 scribed in paragraph (1) in the case of any amount award-
15 ed—

16 “(i) under section 504 of title 5, United States
17 Code, to a prevailing party other than the United
18 States in an adjudication by the Secretary under
19 section 308 of this Act, notwithstanding any provi-
20 sion to the contrary in such section 504;

21 “(ii) under section 2412 of title 28, United
22 States Code, to a prevailing party other than the
23 United States—

24 “(I) in a civil action for review of action by
25 the Secretary in an adjudication under section

1 308 of this Act, notwithstanding any provision
2 to the contrary in such section 2412; or

3 “(II) in a civil forfeiture action under sec-
4 tion 310 of this Act, notwithstanding any provi-
5 sion to the contrary in such section 2412; and

6 “(iii) under subsection (d) of section 309 of this
7 Act to a defendant who is a substantially prevailing
8 party in a criminal action under such section.

9 “(B) If the sums described in paragraph (1) available
10 to the Secretary or the Secretary of the Treasury on the
11 date of the award of an amount described in subparagraph
12 (A) are not sufficient to pay the full amount awarded, pay-
13 ment shall be made under such subparagraph to the extent
14 of the availability of such sums, and the remainder of the
15 amount shall be paid—

16 “(i) in the case of an award described in clause
17 (i), (ii)(I), or (ii)(II) of such subparagraph, as pro-
18 vided under section 504 of title 5 or section 2412 of
19 title 28, United States Code, as the case may be,
20 without regard to this paragraph; or

21 “(ii) in the case of an award described in clause
22 (iii) of such subparagraph, out of any general appro-
23 priation for payment of judgments against the
24 United States.”.

1 (b) ATTORNEY FEES OF SUBSTANTIALLY PRE-
 2 VAILING CRIMINAL DEFENDANTS.—Section 309 of such
 3 Act (16 U.S.C. 1859) is amended by adding at the end
 4 the following new subsection:

5 “(d) ATTORNEY FEES OF SUBSTANTIALLY PRE-
 6 VAILING DEFENDANTS.—A defendant who is a substan-
 7 tially prevailing party in a criminal action under this sec-
 8 tion may be awarded reasonable attorney fees.”.

9 **SEC. 3. CERTAIN USES OF SUMS RECEIVED AS FINES, PEN-**
 10 **ALTIES, AND FORFEITURES NO LONGER AU-**
 11 **THORIZED.**

12 (a) IN GENERAL.—Section 311(e)(1) of the Magnu-
 13 son-Stevens Fishery Conservation and Management Act
 14 (16 U.S.C. 1861(e)(1)) is amended—

- 15 (1) by striking subparagraph (B);
- 16 (2) by striking subparagraph (C); and
- 17 (3) by striking subparagraph (F).

18 (b) CONFORMING AMENDMENTS.—Such section is
 19 further amended—

- 20 (1) in subparagraph (D)—
 - 21 (A) by adding “and” at the end; and
 - 22 (B) by redesignating such subparagraph as
 - 23 subparagraph (B); and
 - 24 (2) in subparagraph (E)—

1 (A) by striking “; and” and inserting a pe-
2 riod;

3 (B) by redesignating such subparagraph as
4 subparagraph (C); and

5 (C) by moving such subparagraph 2 ems to
6 the left, so that the left margin of such sub-
7 paragraph is aligned with the left margin of
8 subparagraph (B), as redesignated by para-
9 graph (1)(B).

10 **SEC. 4. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except as otherwise provided, the
12 amendments made by this Act take effect on the date of
13 the enactment of this Act.

14 (b) ATTORNEY FEES OF SUBSTANTIALLY PRE-
15 VAILING CRIMINAL DEFENDANTS.—

16 (1) IN GENERAL.—The amendment made by
17 section 2(b) applies with respect to criminal actions
18 brought on or after the date of the enactment of this
19 Act.

20 (2) PAYMENT IN CASE OF PRE-ENACTMENT
21 CRIMINAL ACTIONS BROUGHT AFTER ESTABLISH-
22 MENT OF ASSET FORFEITURE FUND.—

23 (A) IN GENERAL.—Not later than 180
24 days after the date of the enactment of this
25 Act, the Secretary of Commerce shall establish

1 a process for making payments from the
2 amount set aside under subparagraph (B) of
3 reasonable attorney fees to defendants who are
4 substantially prevailing parties in criminal ac-
5 tions brought under section 309 of the Magnu-
6 son-Stevens Fishery Conservation and Manage-
7 ment Act (16 U.S.C. 1859) during the period
8 beginning on November 28, 1990, and ending
9 on the day before the date of the enactment of
10 this Act. Such process shall—

11 (i) require application by a defendant
12 seeking such a payment; and

13 (ii) provide for the proration of such
14 payments if the amount so set aside is in-
15 sufficient to provide for payment of all
16 such fees for all such defendants.

17 (B) FUNDS SET ASIDE.—Not later than
18 180 days after the date of the enactment of this
19 Act, from the sums described in section
20 311(e)(1) of the Magnuson-Stevens Fishery
21 Conservation and Management Act (16 U.S.C.
22 1861(e)(1)) that the Secretary of Commerce de-
23 termines are available, the Secretary shall set
24 aside an amount the Secretary considers fair

1 and appropriate to be used for payments under
2 this paragraph.

3 (c) CERTAIN USES OF SUMS RECEIVED AS FINES,
4 PENALTIES, AND FORFEITURES NO LONGER AUTHOR-
5 IZED.—

6 (1) REWARDS FOR PROVISION OF INFORMA-
7 TION.—The amendment made by section 3(a)(1)
8 does not apply to payment of rewards for informa-
9 tion that was provided before the date of the enact-
10 ment of this Act.

11 (2) INVESTIGATION AND ENFORCEMENT EX-
12 PENSES.—The amendment made by section 3(a)(2)
13 does not apply to payment of expenses incurred be-
14 fore the date of the enactment of this Act.

15 (3) REIMBURSEMENT TO FEDERAL AND STATE
16 AGENCIES.—The amendment made by section
17 3(a)(3) does not apply to payment of reimburse-
18 ments under agreements entered into before the date
19 of the enactment of this Act.

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