

113TH CONGRESS
1ST SESSION

H. R. 1012

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2013

Mr. MARKEY (for himself, Mr. JONES, Mr. BONNER, Mrs. CAPPS, Mr. TIERNEY, and Mr. KEATING) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Agriculture, Natural Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

1 **SEC. 2. SEAFOOD SAFETY.**

2 (a) INTERAGENCY AGREEMENT.—Not later than 180
3 days after the date of the enactment of this Act, the Sec-
4 retary of Commerce and the Secretary of Health and
5 Human Services shall execute a memorandum of under-
6 standing to improve interagency cooperation on seafood
7 safety and seafood fraud prevention, building upon any
8 agreement under section 421(c) of the Federal Food,
9 Drug, and Cosmetic Act (21 U.S.C. 350j(c)), or any other
10 prior agreement. The memorandum shall include provi-
11 sions, performance metrics, and timelines as appropriate
12 to improve such cooperation (acting under provisions of
13 law other than this subsection) to—

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

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

21 (A) inspections of seafood shipments and
22 seafood processing and production facilities by
23 the National Oceanic and Atmospheric Admin-
24 istration and the Food and Drug Administra-
25 tion are not duplicative; and

1 (B) information resulting from examina-
2 tions, testing, and inspections conducted by the
3 Department of Commerce is considered in mak-
4 ing risk-based determinations, including the es-
5 tablishment of inspection priorities for domestic
6 and foreign facilities and the examination and
7 testing of domestic and imported seafood;

8 (3) create a process—

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

17 (B) by which data collected by either of
18 these agencies is shared to maximize efficiency
19 and enforcement of seafood safety efforts; and

20 (C) which may include increased training
21 of National Oceanic and Atmospheric Adminis-
22 tration agents through the existing Food and
23 Drug Administration programs;

24 (4) create a process by which—

1 (A) data collected by inspectors and offi-
2 cers of other Federal, State, or local agencies
3 authorized to conduct inspections of seafood, or
4 inspections of facilities that process or sell sea-
5 food, will be utilized by the Food and Drug Ad-
6 ministration; and

7 (B) data collected by these inspectors and
8 officials is shared with the National Oceanic
9 and Atmospheric Administration and the Food
10 and Drug Administration to maximize efficiency
11 and enforcement of seafood safety efforts; and

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

19 (b) COORDINATION.—

20 (1) NATIONAL SEA GRANT COLLEGE PRO-
21 GRAM.—The Administrator of the National Oceanic
22 and Atmospheric Administration shall ensure that
23 the Administration's seafood inspection activities are
24 coordinated with the national sea grant college pro-

1 gram to provide outreach to the States, consumers,
2 and the seafood industry on seafood safety.

3 (2) INSPECTING TO PREVENT SEAFOOD
4 FRAUD.—The Secretary of Commerce and the Sec-
5 retary of Health and Human Services shall, to the
6 maximum extent practicable, ensure that inspections
7 and tests for seafood safety also collect information
8 for seafood fraud prevention.

9 (c) LIST OF OFFENDERS.—The Secretary of Health
10 and Human Services, in consultation with the Secretary
11 of Commerce, shall develop, maintain, and post on the
12 public Web site of the Department of Health and Human
13 Services a list that—

14 (1) includes, by country, each exporter whose
15 seafood is imported or offered for import into the
16 United States; and

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

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

1 **SEC. 3. SEAFOOD IDENTIFICATION.**

2 (a) LIST OF STANDARDIZED NAMES FOR SEA-
3 FOOD.—

4 (1) UPDATE.—Beginning not later than 180
5 days after the date of the enactment of this Act, the
6 Secretary of Health and Human Services, in con-
7 sultation with the Secretary of Commerce, shall
8 maintain and update as appropriate its “Guide to
9 Acceptable Market Names for Seafood Sold in Inter-
10 state Commerce” as a list of standardized names for
11 identification of seafood at the distribution, mar-
12 keting, and retail stages.

13 (2) CONTENTS.—The list maintained under
14 paragraph (1) shall—

15 (A) include scientific names, acceptable
16 market names, and common or regional names
17 for all seafood species distributed in interstate
18 commerce in the United States, and indicate
19 clearly—

20 (i) which of those names may be used
21 to identify seafood; and

22 (ii) examples of names which con-
23 stitute mislabeling in violation of Federal
24 law;

1 (B) take into account taxonomy, inter-
2 national law and custom, market information,
3 and naming precedence;

4 (C) identify names for seafood as appro-
5 priate only if the Secretary of Commerce deter-
6 mines the names are not likely to confuse or
7 mislead consumers; and

8 (D) include information regarding any con-
9 sumption advisory that has been issued for the
10 seafood.

11 (3) AVAILABILITY.—The list maintained under
12 paragraph (1) shall be—

13 (A) made available to the public on the
14 Web sites of the Department of Health and
15 Human Services and the Department of Com-
16 merce; and

17 (B) updated annually based on the best
18 available scientific and market information.

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

23 (b) SEAFOOD TRACEABILITY REQUIREMENTS.—Be-
24 ginning on the date that is 180 days after the date of
25 the enactment of this Act, the Secretary of Commerce, in

1 consultation with the Secretary of Health and Human
2 Services, shall implement the following requirements with
3 respect to seafood imported into the United States or oth-
4 erwise distributed or offered for sale in interstate com-
5 merce:

6 (1) In addition to disclosure of the United Na-
7 tions Food and Agriculture Organization Major
8 Fishing Area, or a more specific location, in which
9 the fish was caught, of the information required to
10 be submitted to the Secretary of Commerce under
11 section 303(a)(5) of the Magnuson-Stevens Fishery
12 Conservation and Management Act (16 U.S.C.
13 1853(a)(5)), at a minimum the following informa-
14 tion shall be displayed on the packaging of, or other-
15 wise accompany, seafood through processing, dis-
16 tribution, and final sale:

17 (A) The acceptable market name and sci-
18 entific name for the seafood species, as speci-
19 fied in the list maintained under subsection
20 (a)(1).

21 (B) The method of harvest of the seafood
22 including gear type as listed in section 600.725
23 of title 50, Code of Federal Regulations and de-
24 fined in section 600.10 of such title.

25 (C) The date of the catch.

1 (D) The weight or number, as appropriate,
2 of product for an individual fish or lot.

3 (2) If seafood has been previously frozen, treat-
4 ed with any substance (other than ice or water) that
5 may affect the true weight of the seafood, or proc-
6 essed in a country other than that in which it was
7 landed or harvested, by any harvester, processor,
8 distributor, or retailer, such information shall be in-
9 cluded in the labeling of, or otherwise accompany,
10 the seafood through processing, distribution, and
11 final sale.

12 (3) If the seafood was farm-raised, that infor-
13 mation, along with information regarding the coun-
14 try of cultivation, the location of the aquaculture
15 production area, and the method of cultivation, shall
16 be included in the labeling of, or otherwise accom-
17 pany, the seafood through processing, distribution,
18 and final sale.

19 (4) With respect to any information required by
20 paragraph (1) or (2) to be included in the labeling
21 of, or otherwise accompany, seafood, an importer,
22 processor, distributor, or retailer (including a res-
23 taurant) may satisfy such requirement by making
24 the information available upon request—

25 (A) to anyone purchasing the seafood; and

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

3 (i) seafood; or

4 (ii) any facility that processes or sells
5 seafood.

6 (5) No importer, processor, distributor, or re-
7 tailer may be found to be in violation of the require-
8 ments under this subsection for unknowingly selling
9 a product that was already mislabeled upon receipt,
10 provided that the importer, processor, distributor, or
11 retailer can provide the required product traceability
12 documentation.

13 (c) REFUSAL OF ADMISSION.—

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

18 (A) the Secretary of Commerce finds that
19 any shipment of such seafood appears to be in
20 violation of subsection (b); or

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

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

11 (3) ALLOWANCE OF INDIVIDUAL SHIPMENTS.—
12 Paragraph (1) does not apply with respect to an in-
13 dividual shipment of seafood originating from an ex-
14 porter whose products must otherwise be refused ad-
15 mission under such paragraph if the exporter pre-
16 sents evidence to the Secretary of Health and
17 Human Services or the Secretary of Commerce from
18 a laboratory accredited under section 422 of the
19 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
20 350k), or other equivalent evidence, documenting
21 that the shipment is in compliance with the provi-
22 sions of subsection (b) and other applicable Federal
23 laws or regulations prohibiting seafood fraud.

24 (4) TERMINATION OF INDIVIDUAL SHIPMENT
25 SCREENING REQUIREMENT.—Paragraph (1) shall

1 cease to prohibit the admission of seafood origi-
2 nating from an exporter based on a prior shipment
3 if the Secretary of Health and Human Services or
4 the Secretary of Commerce determines that—

5 (A) each prior shipment whose appearance
6 triggered the application of such paragraph was
7 in fact in compliance with the provisions of sub-
8 section (b) and other applicable Federal laws or
9 regulations, including those prohibiting seafood
10 fraud; or

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

15 (d) PENALTIES.—The Secretary of Commerce shall
16 prevent any person from violating this Act, or any Act to
17 which this section applies, in the same manner, by the
18 same means, and with the same jurisdiction, powers, and
19 duties as though sections 308 through 311 of the Magnu-
20 son-Stevens Fishery Conservation and Management Act
21 (16 U.S.C. 1858 through 1861) were incorporated into
22 and made a part of and applicable to this Act.

23 (e) LIST OF OFFENDERS.—The Secretary of Com-
24 merce, in consultation with the Secretary of Health and
25 Human Services, shall develop, maintain, and post on the

1 public Web site of the Department of Commerce a list
2 that—

3 (1) includes, by country, each exporter whose
4 seafood is imported or offered for import into the
5 United States; and

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

9 (f) INSPECTIONS.—The Secretary of Commerce, in
10 consultation with the Secretary of Health and Human
11 Services, shall—

12 (1) increase, as resources allow, the number of
13 foreign and domestic seafood shipments that are in-
14 spected for seafood fraud by National Oceanic and
15 Atmospheric Administration inspectors and author-
16 ized officers, including verification of compliance
17 with the traceability requirements of subsection (b);

18 (2) ensure that the percentage of seafood ship-
19 ments inspected during a given year is not lower
20 than the percentage inspected during the previous
21 year; and

22 (3) to the maximum extent practicable, ensure
23 that inspections and tests for seafood fraud preven-
24 tion also collect information to support the Secretary
25 of Health and Human Services in implementing the

1 seafood safety requirements of the FDA Food Safety
2 Modernization Act (Public Law 111–353).

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

9 **SEC. 4. AUTHORITY OF STATES.**

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

1 **SEC. 5. REPORT TO CONGRESS.**

2 Beginning 18 months after the date of the enactment
3 of this Act, and every two years thereafter, the Secretary
4 of Commerce and the Secretary of Health and Human
5 Services, in consultation with the Chairman of the Federal
6 Trade Commission and the heads of other relevant Fed-
7 eral agencies, shall submit jointly a report to the Congress
8 including—

9 (1) findings with respect to—

10 (A) the extent and severity of violations of
11 Federal, State, and local law relating to seafood
12 safety and seafood fraud; and

13 (B) the health and financial impacts of
14 these violations on United States consumers
15 and the United States fishing industry;

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

18 (3) an analysis of the effectiveness of the
19 memorandum of understanding required by section
20 2(a) in ensuring that the Department of Commerce
21 and the Department of Health and Human Services
22 work to ensure seafood safety, including an assess-
23 ment of achieving identified performance metrics
24 and timelines established to reduce duplication of ef-
25 fort and increase collection and integration of in-
26 spections data;

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

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

9 (6) detailed information on the inspection, en-
10 forcement, and consumer outreach activities, includ-
11 ing the number of inspections, enforcement actions,
12 consumer outreach activities, personnel, and re-
13 sources utilized by the National Oceanic and Atmos-
14 pheric Administration, the Food and Drug Adminis-
15 tration, and the Federal Trade Commission to carry
16 out this Act, including the degree of coordination of
17 actions to address seafood safety and seafood fraud;
18 and

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

22 **SEC. 6. PREEMPTION.**

23 Nothing in this Act preempts the authority of a State
24 to establish and enforce requirements for improving sea-

1 food safety and preventing seafood fraud that are con-
2 sistent with the requirements of this Act.

3 **SEC. 7. DEFINITIONS.**

4 In this Act:

5 (1) The term “other applicable Federal laws
6 and regulations” means Federal statutes, regula-
7 tions, and international agreements (other than this
8 Act) pertaining to the importation, exportation,
9 transportation, sale, harvest, processing, or trade of
10 seafood, including the Magnuson-Stevens Fishery
11 Conservation and Management Act (16 U.S.C. 1801
12 et seq.), the Lacey Act Amendments of 1981 (16
13 U.S.C. 3371 et seq.), the Federal Food, Drug, and
14 Cosmetic Act (21 U.S.C. 301 et seq.), the FDA
15 Food Safety Modernization Act (Public Law 111–
16 353), the Fair Packaging and Labeling Act (15
17 U.S.C. 1451 et seq.), subtitle D of the Agricultural
18 Marketing Act of 1946 (7 U.S.C. 1638 et seq.),
19 parts 60 and 65 of title 7, Code of Federal Regula-
20 tions (or any successor regulations), and part 123 of
21 title 21, Code of Federal Regulations (or any suc-
22 cessor regulations).

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

1 (3) The term “seafood fraud” means the
2 mislabeling or misrepresentation of the information
3 required under this Act or other applicable Federal
4 laws and regulations.

○