

111TH CONGRESS  
2D SESSION

# S. 3928

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 and other appropriate Federal agencies to strengthen and coordinate those programs and activities.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

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 and other appropriate Federal agencies to strengthen and coordinate those programs and activities.

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”.

1 **SEC. 2. COMMERCIALLY MARKETED SEAFOOD CONSUMER**  
2 **PROTECTION SAFETY NET.**

3 (a) IN GENERAL.—The Secretary of Commerce shall,  
4 in coordination with the Federal Trade Commission and  
5 other appropriate Federal agencies, and consistent with  
6 the international obligations of the United States,  
7 strengthen Federal consumer protection activities for en-  
8 suring that commercially distributed seafood in the United  
9 States meets the food quality and safety requirements of  
10 applicable Federal laws.

11 (b) INTERAGENCY AGREEMENTS.—

12 (1) IN GENERAL.—Within 180 days after the  
13 date of enactment of this Act, the Secretary and  
14 other appropriate Federal agencies shall execute  
15 memoranda of understanding or other agreements to  
16 strengthen interagency cooperation on seafood safe-  
17 ty, seafood labeling, and seafood fraud.

18 (2) SCOPE OF AGREEMENTS.—The agreements  
19 shall include provisions, as appropriate for each such  
20 agreement, for—

21 (A) cooperative arrangements for exam-  
22 ining and testing seafood imports that leverage  
23 the resources, capabilities, and authorities of  
24 each party to the agreement;

1 (B) coordination of inspections of foreign  
2 facilities to increase the percentage of imported  
3 seafood and seafood facilities inspected;

4 (C) standardizing data on seafood names,  
5 inspection records, and laboratory testing to im-  
6 prove interagency coordination;

7 (D) coordination of the collection, storage,  
8 analysis, and dissemination of all applicable in-  
9 formation, intelligence, and data related to the  
10 importation, exportation, transportation, sale,  
11 harvest, processing, or trade of seafood in order  
12 to detect and investigate violations under appli-  
13 cable Federal laws, and to carry out the provi-  
14 sions of this Act;

15 (E) developing a process for expediting im-  
16 ports of seafood into the United States from  
17 foreign countries and exporters that consist-  
18 ently adhere to the highest standards for ensur-  
19 ing seafood safety;

20 (F) coordination to track shipments of sea-  
21 food in the distribution chain within the United  
22 States;

23 (G) enhancing labeling requirements and  
24 methods of assuring compliance with such re-

1           quirements to clearly identity species and pre-  
2           vent fraudulent practices;

3           (H) a process by which officers and em-  
4           ployees of the National Oceanic and Atmos-  
5           pheric Administration may be commissioned by  
6           the head of any other appropriate Federal agen-  
7           cy to conduct or participate in seafood examina-  
8           tions and investigations under applicable Fed-  
9           eral laws administered by such other agency;

10          (I) the sharing of information concerning  
11          observed non-compliance with United States  
12          seafood requirements domestically and in for-  
13          eign countries and new regulatory decisions and  
14          policies that may affect regulatory outcomes;

15          (J) conducting joint training on subjects  
16          that affect and strengthen seafood inspection  
17          effectiveness by Federal authorities;

18          (K) sharing, to the maximum extent allow-  
19          able by law, all applicable information, intel-  
20          ligence, and data related to the importation, ex-  
21          portation, transportation, sale, harvest, proc-  
22          essing, or trade of seafood in order to detect  
23          and investigate violations under applicable Fed-  
24          eral laws, or otherwise to carry out the provi-  
25          sions of this Act; and

(L) outreach to private testing laboratories, seafood industries, and the public on Federal efforts to enhance seafood safety and compliance with labeling requirements, including education on Federal requirements for seafood safety and labeling and information on how these entities can work with appropriate Federal agencies to enhance and improve seafood inspection and assist in detecting and preventing seafood fraud and mislabeling.

(3) ANNUAL REPORTS ON IMPLEMENTATION OF AGREEMENTS.—The Secretary, the Chairman of the Federal Trade Commission, and the heads of other appropriate Federal agencies that are parties to agreements executed under paragraph (1) shall submit, jointly or severally, an annual report to the Congress concerning—

(A) specific efforts taken pursuant to the agreements;

(B) the budget and personnel necessary to strengthen seafood safety and labeling and prevent seafood fraud; and

(C) any additional authorities necessary to improve seafood safety and labeling and prevent seafood fraud.

1 (c) MARKETING, LABELING, AND FRAUD REPORT.—

2 Within 1 year after the date of enactment of this Act, the  
3 Secretary and the Chairman of the Federal Trade Com-  
4 mission shall submit a joint report to the Congress on con-  
5 sumer protection and enforcement efforts with respect to  
6 seafood marketing and labeling in the United States. The  
7 report shall include—

8 (1) findings with respect to the scope of seafood  
9 fraud and deception in the United States market  
10 and its impact on consumers;

11 (2) information on how the National Oceanic  
12 and Atmospheric Administration and the Federal  
13 Trade Commission can work together more effec-  
14 tively to address fraud and unfair or deceptive acts  
15 or practices with respect to seafood;

16 (3) detailed information on the enforcement and  
17 consumer outreach activities undertaken by the Na-  
18 tional Oceanic and Atmospheric Administration and  
19 the Federal Trade Commission during the preceding  
20 year pursuant to this Act; and

21 (4) an examination of the scope of unfair or de-  
22 ceptive acts or practices in the United States market  
23 with respect to foods other than seafood and wheth-  
24 er additional enforcement authority or activity is  
25 warranted.

1 (d) NOAA SEAFOOD INSPECTION AND MARKING CO-  
2 ORDINATION.—

3 (1) DECEPTIVE MARKETING AND FRAUD.—The  
4 National Oceanic and Atmospheric Administration  
5 shall report deceptive seafood marketing and fraud  
6 to the Federal Trade Commission pursuant to an  
7 agreement under subsection (b).

8 (2) APPLICATION WITH EXISTING AGREE-  
9 MENTS.—Nothing in this Act shall be construed to  
10 impede, minimize, or otherwise affect any agreement  
11 or agreements regarding cooperation and informa-  
12 tion sharing in the inspection of fish and fishery  
13 products and establishments between the Depart-  
14 ment of Commerce and the Department of Health  
15 and Human Services in effect on the date of enact-  
16 ment of this Act. Within 6 months after the date of  
17 enactment of this Act, the Secretary of Commerce  
18 and the Secretary of Health and Human Services  
19 shall submit a joint report to the Congress on imple-  
20 mentation of any such agreement or agreements, in-  
21 cluding the extent to which the Food and Drug Ad-  
22 ministration has taken into consideration informa-  
23 tion resulting from inspections conducted by the De-  
24 partment of Commerce in making risk-based deter-  
25 minations such as the establishment of inspection

1 priorities for domestic and foreign facilities and the  
2 examination and testing of imported seafood.

3 (3) COORDINATION WITH SEA GRANT PRO-  
4 GRAM.—The Administrator of the National Oceanic  
5 and Atmospheric Administration shall ensure that  
6 the NOAA Seafood Inspection Program is coordi-  
7 nated with the Sea Grant Program to provide out-  
8 reach to States, consumers, and the seafood industry  
9 on seafood testing, seafood labeling, and seafood  
10 substitution, and strategies to combat mislabeling  
11 and fraud.

12 **SEC. 3. CERTIFIED LABORATORIES.**

13 Within 180 days after the date of enactment of this  
14 Act, the Secretary, in consultation with the Secretary of  
15 Health and Human Services, shall increase the number  
16 of laboratories certified to the standards of the Food and  
17 Drug Administration in the United States and in countries  
18 that export seafood to the United States for the purpose  
19 of analyzing seafood and ensuring that the laboratories,  
20 including Federal, State, and private facilities, comply  
21 with applicable Federal laws. Within 1 year after the date  
22 of enactment of this Act, the Secretary of Commerce shall  
23 publish in the Federal Register a list of certified labora-  
24 tories. The Secretary shall update and publish the list no  
25 less frequently than annually.



1 **SEC. 4. NOAA LABORATORIES.**

2 In any fiscal year beginning after the date of enact-  
3 ment of this Act, the Secretary may increase the number  
4 and capacity of laboratories operated by the National Oce-  
5 anic and Atmospheric Administration involved in carrying  
6 out testing and other activities under this Act to the extent  
7 that the Secretary determines that increased laboratory  
8 capacity is necessary to carry out the provisions of this  
9 Act and as provided for in appropriations Acts.

10 **SEC. 5. CONTAMINATED SEAFOOD.**

11 (a) REFUSAL OF ENTRY.—The Secretary of Health  
12 and Human Services may issue an order refusing admis-  
13 sion into the United States of all imports of seafood or  
14 seafood products originating from a country or exporter  
15 if the Secretary determines that shipments of such seafood  
16 or seafood products do not meet the requirements estab-  
17 lished under applicable Federal law.

18 (b) INCREASED TESTING.—If the Secretary of  
19 Health and Human Services determines that seafood im-  
20 ports originating from a country may not meet the re-  
21 quirements of Federal law, and determines that there is  
22 a lack of adequate certified laboratories to provide for the  
23 entry of shipments pursuant to section 3, then the Sec-  
24 retary may order an increase in the percentage of ship-  
25 ments tested of seafood originating from such country to

1 improve detection of potential violations of such require-  
2 ments.

3 (c) ALLOWANCE OF INDIVIDUAL SHIPMENTS FROM  
4 EXPORTING COUNTRY OR EXPORTER.—Notwithstanding  
5 an order under subsection (a) with respect to seafood orig-  
6 inating from a country or exporter, the Secretary may per-  
7 mit individual shipments of seafood originating in that  
8 country or from that exporter to be admitted into the  
9 United States if—

10 (1) the exporter presents evidence from a lab-  
11 oratory certified by the Secretary that a shipment of  
12 seafood meets the requirements of applicable Federal  
13 laws; and

14 (2) the Secretary, or other agent of a Federal  
15 agency authorized to conduct inspections of seafood,  
16 has inspected the shipment and has found that the  
17 shipment and the conditions of manufacturing meet  
18 the requirements of applicable Federal laws.

19 (d) CANCELLATION OF ORDER.—The Secretary may  
20 cancel an order under subsection (a) with respect to sea-  
21 food exported from a country or exporter if all shipments  
22 into the United States under subsection (c) of seafood  
23 originating in that country or from that exporter more  
24 than 1 year after the date on which the Secretary issued  
25 the order have been found, under the procedures described

1 in subsection (c), to meet the requirements of Federal law.  
2 If the Secretary determines that an exporter has failed  
3 to comply with the requirements of an order under sub-  
4 section (a), the 1-year period in the preceding sentence  
5 shall run from the date of that determination rather than  
6 the date on which the order was issued.

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

12 **SEC. 6. INSPECTION TEAMS.**

13 (a) INSPECTION OF FOREIGN SITES.—The Secretary,  
14 in cooperation with the Secretary of Health and Human  
15 Services, may send 1 or more inspectors to a country or  
16 exporter from which seafood exported to the United States  
17 originates. The inspection team shall assess practices and  
18 processes being used in connection with the farming, cul-  
19 tivation, harvesting, preparation for market, or transpor-  
20 tation of such seafood and may provide technical assist-  
21 ance related to the requirements established under appli-  
22 cable Federal laws to address seafood fraud and safety.  
23 The inspection team shall prepare a report for the Sec-  
24 retary of Commerce with its findings. The Secretary of  
25 Commerce shall make a copy of the report available to

1 the country or exporter that is the subject of the report  
2 and provide a 30-day period during which the country or  
3 exporter may provide a rebuttal or other comments on the  
4 findings to the Secretary.

5 (b) DISTRIBUTION AND USE OF REPORT.—The Sec-  
6 retary shall provide the report to the Secretary of Health  
7 and Human Services as information for consideration in  
8 making risk-based determinations such as the establish-  
9 ment of inspection priorities of domestic and foreign facili-  
10 ties and the examination and testing of imported seafood.  
11 The Secretary shall provide the report to the Executive  
12 Director of the Federal Trade Commission for consider-  
13 ation in making recommendations to the Chairman of the  
14 Federal Trade Commission regarding consumer protection  
15 to prevent fraud, deception, and unfair business practices  
16 in the marketplace.

17 **SEC. 7. SEAFOOD IDENTIFICATION.**

18 (a) STANDARDIZED LIST OF NAMES FOR SEAFOOD.—  
19 The Secretary and the Secretary of Health and Human  
20 Services shall initial a joint rulemaking proceeding to de-  
21 velop and make public a list of standardized names for  
22 seafood identification purposes at distribution, marketing,  
23 and consumer retail stages. The list of standardized names  
24 shall take into account taxonomy, current labeling regula-  
25 tions, international law and custom, market value, and

1 naming precedence for all commercially distributed sea-  
2 food distributed in interstate commerce in the United  
3 States and may not include names, whether similar to ex-  
4 isting or commonly used names for species, that are likely  
5 to confuse or mislead consumers.

6 (b) PUBLICATION OF LIST.—The list of standardized  
7 names shall be made available to the public on Depart-  
8 ment of Health and Human Services and the Department  
9 of Commerce websites, shall be open to public review and  
10 comment, and shall be updated annually.

11 **SEC. 8. DEFINITIONS.**

12 In this Act:

13 (1) APPLICABLE FEDERAL LAWS.—The term  
14 “applicable laws and regulations” means Federal  
15 statutes, regulations, and international agreements  
16 pertaining to the importation, exportation, transpor-  
17 tation, sale, harvest, processing, or trade of seafood,  
18 including the Magnuson-Stevens Fishery Conserva-  
19 tion and Management Act, section 801 of the Fed-  
20 eral Food, Drug, and Cosmetic Act (21 U.S.C. 381),  
21 section 203 of the Food Allergen Labeling and Con-  
22 sumer Protection Act of 2004 (21 U.S.C. 374a), and  
23 the Seafood Hazard Analysis and Critical Control  
24 Point regulations in part 123 of title 21, Code of  
25 Federal Regulations.

1           (2) APPROPRIATE FEDERAL AGENCIES.—The  
2       term “appropriate Federal agencies” includes the  
3       Department of Health and Human Services, the  
4       Federal Food and Drug Administration, the Depart-  
5       ment of Homeland Security, and the Department of  
6       Agriculture.

7           (3) SECRETARY.—The term “Secretary” means  
8       the Secretary of Commerce.

