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[Report No. 112–131]

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.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. INOUE (for himself, Ms. SNOWE, Mr. VITTER, Mr. BEGICH, Mrs. GILLIBRAND, Mr. KERRY, Mr. SCHUMER, Mr. WHITEHOUSE, Mrs. BOXER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportaion

JANUARY 26, 2012

Reported by Mr. ROCKEFELLER without amendment

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”.

6 **SEC. 2. COMMERCIALLY MARKETING SEAFOOD CONSUMER**
7 **PROTECTION SAFETY NET.**

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

16 (b) INTERAGENCY AGREEMENTS.—

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

23 (2) SCOPE OF AGREEMENTS.—The agreements
24 shall include provisions, as appropriate for each such
25 agreement, for—

1 (A) cooperative arrangements for exam-
2 ining and testing seafood imports that leverage
3 the resources, capabilities, and authorities of
4 each party to the agreement;

5 (B) coordination of inspections of foreign
6 facilities to increase the percentage of imported
7 seafood and seafood facilities inspected;

8 (C) standardizing data on seafood names,
9 inspection records, and laboratory testing to im-
10 prove interagency coordination;

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

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

1 (F) coordination to track shipments of sea-
2 food in the distribution chain within the United
3 States;

4 (G) enhancing labeling requirements and
5 methods of assuring compliance with such re-
6 quirements to clearly identify species and pre-
7 vent fraudulent practices;

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

15 (I) the sharing of information concerning
16 observed non-compliance with United States
17 seafood requirements domestically and in for-
18 eign countries and new regulatory decisions and
19 policies that may affect regulatory outcomes;

20 (J) conducting joint training on subjects
21 that affect and strengthen seafood inspection
22 effectiveness by Federal authorities;

23 (K) sharing, to the maximum extent allow-
24 able by law, all applicable information, intel-
25 ligence, and data related to the importation, ex-

1 portation, transportation, sale, harvest, proc-
2 essing, or trade of seafood in order to detect
3 and investigate violations under applicable Fed-
4 eral laws, or otherwise to carry out the provi-
5 sions of this Act; and

6 (L) outreach to private testing labora-
7 tories, seafood industries, and the public on
8 Federal efforts to enhance seafood safety and
9 compliance with labeling requirements, includ-
10 ing education on Federal requirements for sea-
11 food safety and labeling and information on
12 how these entities can work with appropriate
13 Federal agencies to enhance and improve sea-
14 food inspection and assist in detecting and pre-
15 venting seafood fraud and mislabeling.

16 (3) ANNUAL REPORTS ON IMPLEMENTATION OF
17 AGREEMENTS.—The Secretary, the Chairman of the
18 Federal Trade Commission, and the heads of other
19 appropriate Federal agencies that are parties to
20 agreements executed under paragraph (1) shall sub-
21 mit, jointly or severally, an annual report to the
22 Congress concerning—

23 (A) specific efforts taken pursuant to the
24 agreements;

1 (B) the budget and personnel necessary to
2 strengthen seafood safety and labeling and pre-
3 vent seafood fraud; and

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

7 (c) MARKETING, LABELING, AND FRAUD REPORT.—
8 Within 1 year after the date of enactment of this Act, the
9 Secretary and the Chairman of the Federal Trade Com-
10 mission shall submit a joint report to the Congress on con-
11 sumer protection and enforcement efforts with respect to
12 seafood marketing and labeling in the United States. The
13 report shall include—

14 (1) findings with respect to the scope of seafood
15 fraud and deception in the United States market
16 and its impact on consumers;

17 (2) information on how the National Oceanic
18 and Atmospheric Administration and the Federal
19 Trade Commission can work together more effec-
20 tively to address fraud and unfair or deceptive acts
21 or practices with respect to seafood;

22 (3) detailed information on the enforcement and
23 consumer outreach activities undertaken by the Na-
24 tional Oceanic and Atmospheric Administration and

1 the Federal Trade Commission during the preceding
2 year pursuant to this Act; and

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

8 (d) NOAA SEAFOOD INSPECTION AND MARKING CO-
9 ORDINATION.—

10 (1) DECEPTIVE MARKETING AND FRAUD.—The
11 National Oceanic and Atmospheric Administration
12 shall report deceptive seafood marketing and fraud
13 to the Federal Trade Commission pursuant to an
14 agreement under subsection (b).

15 (2) APPLICATION WITH EXISTING AGREE-
16 MENTS.—Nothing in this Act shall be construed to
17 impede, minimize, or otherwise affect any agreement
18 or agreements regarding cooperation and informa-
19 tion sharing in the inspection of fish and fishery
20 products and establishments between the Depart-
21 ment of Commerce and the Department of Health
22 and Human Services in effect on the date of enact-
23 ment of this Act. Within 6 months after the date of
24 enactment of this Act, the Secretary of Commerce
25 and the Secretary of Health and Human Services

1 shall submit a joint report to the Congress on imple-
2 mentation of any such agreement or agreements, in-
3 cluding the extent to which the Food and Drug Ad-
4 ministration has taken into consideration informa-
5 tion resulting from inspections conducted by the De-
6 partment of Commerce in making risk-based deter-
7 minations such as the establishment of inspection
8 priorities for domestic and foreign facilities and the
9 examination and testing of imported seafood.

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

19 **SEC. 3. CERTIFIED LABORATORIES.**

20 Within 180 days after the date of enactment of this
21 Act, the Secretary, in consultation with the Secretary of
22 Health and Human Services, shall increase the number
23 of laboratories certified to the standards of the Food and
24 Drug Administration in the United States and in countries
25 that export seafood to the United States for the purpose

1 of analyzing seafood and ensuring that the laboratories,
2 including Federal, State, and private facilities, comply
3 with applicable Federal laws. Within 1 year after the date
4 of enactment of this Act, the Secretary of Commerce shall
5 publish in the Federal Register a list of certified labora-
6 tories. The Secretary shall update and publish the list no
7 less frequently than annually.

8 **SEC. 4. NOAA LABORATORIES.**

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

17 **SEC. 5. CONTAMINATED SEAFOOD.**

18 (a) REFUSAL OF ENTRY.—The Secretary of Health
19 and Human Services may issue an order refusing admis-
20 sion into the United States of all imports of seafood or
21 seafood products originating from a country or exporter
22 if the Secretary determines that shipments of such seafood
23 or seafood products do not meet the requirements estab-
24 lished under applicable Federal law.

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

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

18 (1) the exporter presents evidence from a lab-
19 oratory certified by the Secretary that a shipment of
20 seafood meets the requirements of applicable Federal
21 laws; and

22 (2) the Secretary, or other agent of a Federal
23 agency authorized to conduct inspections of seafood,
24 has inspected the shipment and has found that the

1 shipment and the conditions of manufacturing meet
2 the requirements of applicable Federal laws.

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

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

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

22 (a) INSPECTION OF FOREIGN SITES.—The Secretary,
23 in cooperation with the Secretary of Health and Human
24 Services, may send 1 or more inspectors to a country or
25 exporter from which seafood exported to the United States

1 originates. The inspection team shall assess practices and
2 processes being used in connection with the farming, cul-
3 tivation, harvesting, preparation for market, or transpor-
4 tation of such seafood and may provide technical assist-
5 ance related to the requirements established under appli-
6 cable Federal laws to address seafood fraud and safety.
7 The inspection team shall prepare a report for the Sec-
8 retary of Commerce with its findings. The Secretary of
9 Commerce shall make a copy of the report available to
10 the country or exporter that is the subject of the report
11 and provide a 30-day period during which the country or
12 exporter may provide a rebuttal or other comments on the
13 findings to the Secretary.

14 (b) DISTRIBUTION AND USE OF REPORT.—The Sec-
15 retary shall provide the report to the Secretary of Health
16 and Human Services as information for consideration in
17 making risk-based determinations such as the establish-
18 ment of inspection priorities of domestic and foreign facili-
19 ties and the examination and testing of imported seafood.
20 The Secretary shall provide the report to the Executive
21 Director of the Federal Trade Commission for consider-
22 ation in making recommendations to the Chairman of the
23 Federal Trade Commission regarding consumer protection
24 to prevent fraud, deception, and unfair business practices
25 in the marketplace.

1 **SEC. 7. SEAFOOD IDENTIFICATION.**

2 (a) STANDARDIZED LIST OF NAMES FOR SEAFOOD.—

3 The Secretary and the Secretary of Health and Human
4 Services shall initial a joint rulemaking proceeding to de-
5 velop and make public a list of standardized names for
6 seafood identification purposes at distribution, marketing,
7 and consumer retail stages. The list of standardized names
8 shall take into account taxonomy, current labeling regula-
9 tions, international law and custom, market value, and
10 naming precedence for all commercially distributed sea-
11 food distributed in interstate commerce in the United
12 States and may not include names, whether similar to ex-
13 isting or commonly used names for species, that are likely
14 to confuse or mislead consumers.

15 (b) PUBLICATION OF LIST.—The list of standardized
16 names shall be made available to the public on Depart-
17 ment of Health and Human Services and the Department
18 of Commerce Web sites, shall be open to public review and
19 comment, and shall be updated annually.

20 **SEC. 8. DEFINITIONS.**

21 In this Act:

22 (1) APPLICABLE FEDERAL LAWS.—The term
23 “applicable laws and regulations” means Federal
24 statutes, regulations, and international agreements
25 pertaining to the importation, exportation, transpor-
26 tation, sale, harvest, processing, or trade of seafood,

1 including the Magnuson-Stevens Fishery Conserva-
2 tion and Management Act, section 801 of the Fed-
3 eral Food, Drug, and Cosmetic Act (21 U.S.C. 381),
4 section 203 of the Food Allergen Labeling and Con-
5 sumer Protection Act of 2004 (21 U.S.C. 374a), and
6 the Seafood Hazard Analysis and Critical Control
7 Point regulations in part 123 of title 21, Code of
8 Federal Regulations.

9 (2) APPROPRIATE FEDERAL AGENCIES.—The
10 term “appropriate Federal agencies” includes the
11 Department of Health and Human Services, the
12 Federal Food and Drug Administration, the Depart-
13 ment of Homeland Security, and the Department of
14 Agriculture.

15 (3) SECRETARY.—The term “Secretary” means
16 the Secretary of Commerce.

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