

112TH CONGRESS
1ST SESSION

H. R. 2610

To amend the Magnuson-Stevens Fishery Conservation and Management Act to reform procedures for the payment of funds from the asset forfeiture fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2011

Mr. FRANK of Massachusetts (for himself, Mr. JONES, Mr. TIERNEY, Mr. GUINTA, Mr. MARKEY, Ms. PINGREE of Maine, Mr. KEATING, Mr. LYNCH, Mr. COURTNEY, Mr. MICHAUD, Mr. MCINTYRE, Mr. PALLONE, and Mr. MCGOVERN) 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 reform procedures for the payment of funds from the asset forfeiture fund, 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 “Asset Forfeiture Fund
5 Reform and Distribution Act of 2011”.

1 **SEC. 2. ASSET FORFEITURE FUND REFORM.**

2 (a) IN GENERAL.—Section 311(e) of the Magnuson-
3 Stevens Fishery Conservation and Management Act (16
4 U.S.C. 1861(e)) is amended—

5 (1) by striking “(1) Notwithstanding” and in-
6 serting “(1)(A) Notwithstanding”; and

7 (2) in paragraph (1)—

8 (A) by striking “may pay from” and in-
9 serting “shall use each of the”; and

10 (B) by striking “(16 U.S.C. 3371 et
11 seq.)—” and all that follows through the end of
12 the paragraph and inserting the following: “(16
13 U.S.C. 3371 et seq.), to make a payment, in
14 the amount of the sum received—

15 “(i) if the violation occurred in a State, to such
16 State;

17 “(ii) if the violation did not occur in a State,
18 to the State in which the vessel involved in the viola-
19 tion is homeported; or

20 “(iii) if the violation did not occur in a State
21 and did not involve a vessel, to the State which is
22 most directly affected by the violation.

23 “(B) Amounts paid to a State under subparagraph
24 (A) shall be used for research and monitoring activities
25 as determined appropriate by the head of the agency of

1 the State that is responsible for management of marine
2 fisheries. Such activities may include—

3 “(i) fishery research and independent stock as-
4 sements, including cooperative research;

5 “(ii) socioeconomic assessments, including so-
6 cioeconomic conditions of fishing communities;

7 “(iii) data collection, including creation of an
8 information system that will enable timely audit and
9 transmission of data for utilization by researchers
10 and other collaborating institutions;

11 “(iv) compensation for the costs of analyzing
12 the economic impacts of fishery management deci-
13 sions and to analyze potential methods to provide
14 targeted compensation to fisherman that have been
15 harmed by such management decisions;

16 “(v) at-sea and shoreside monitoring of fishing;

17 “(vi) preparation of fishery impact statements;

18 and

19 “(vii) other activities that a Regional Fishery
20 Management Council of which the State is a member
21 considers to be necessary to rebuild or maintain sus-
22 tainable fisheries, ensure healthy ecosystems, provide
23 socioeconomic economic assistance, or maintain fish-
24 ing communities.”.

1 (b) RULE OF APPLICATION.—The amendments made
2 by subsection (a) shall apply with respect to amounts re-
3 ceived under section 311(e) of the Magnuson-Stevens
4 Fishery Conservation and Management Act (16 U.S.C.
5 1861(e)) after September 30, 2011.

6 (c) TRANSITION RULE.—

7 (1) IN GENERAL.—The Secretary may use any
8 amount received as a fisheries enforcement penalty
9 before October 1, 2011, to reimburse appropriate
10 legal fees and costs to a covered person in an
11 amount not to exceed \$200,000 per covered person.

12 (2) TIMING.—

13 (A) SUBMISSION OF APPLICATION.—A cov-
14 ered person seeking reimbursement of appro-
15 priate legal fees and costs under paragraph (1)
16 shall submit to the Secretary an application for
17 such reimbursement—

18 (i) in the case of a covered person de-
19 scribed in paragraph (4)(B)(i), not later
20 than December 31, 2011; and

21 (ii) in the case of a covered person de-
22 scribed in paragraph (4)(B)(ii), not later
23 than 1 year after the date on which the
24 Secretary directed that such covered per-

1 son shall receive a remittance of a fisheries
2 enforcement penalty.

3 (B) DETERMINATION.—Not later than 60
4 days after receiving an application under para-
5 graph (1), the Secretary shall make a final de-
6 termination on whether to provide such reim-
7 bursement and the amount of any such reim-
8 bursement.

9 (3) REMAINING FUNDS.—The Secretary shall
10 use—

11 (A) 80 percent of the amounts described in
12 paragraph (1) remaining after all reimburse-
13 ments have been made under such paragraph,
14 for fishery stock assessments in the fishery
15 management region that the Secretary deter-
16 mines to be appropriate; and

17 (B) 20 percent of such amounts to make
18 payments to States in accordance with section
19 311(e)(1) of the Magnuson-Stevens Fishery
20 Conservation and Management Act (16 U.S.C.
21 1861(e)(1)).

22 (4) DEFINITIONS.—In this subsection:

23 (A) The term “appropriate legal fees and
24 costs” means the legal fees and costs incurred
25 by a covered person—

1 (i) that the Secretary determines were
2 appropriately incurred by the covered per-
3 son in successfully challenging a fisheries
4 enforcement penalty; and

5 (ii) that were incurred not later than
6 30 days after the date on which the Sec-
7 retary directed that such penalty shall be
8 remitted to the covered person.

9 (B) The term “covered person” means—

10 (i) a person that the Secretary di-
11 rected shall receive a remittance of a fish-
12 eries enforcement penalty in the Decision
13 Memorandum; or

14 (ii) a person that—

15 (I) received a Notice of Violation
16 and Assessment issued on or after
17 March 17, 1994, for a fisheries en-
18 forcement penalty that was settled or
19 otherwise resolved prior to February
20 3, 2010;

21 (II) paid such fisheries enforce-
22 ment penalty;

23 (III) submitted a complaint prior
24 to May 7, 2011, seeking remittance of
25 such civil penalty; and

1 (IV) the Secretary directed shall
2 receive a remittance of a fisheries en-
3 forcement penalty or a portion of such
4 remittance.

5 (C) The term “Decision Memorandum”
6 means the Secretarial Decision Memorandum
7 issued by the Secretary on May 17, 2011, enti-
8 tled “Decisions regarding Certain NOAA Fish-
9 eries Enforcement Cases Based on Special Mas-
10 ter Swartwood’s Report and Recommenda-
11 tions”.

12 (D) The term “fisheries enforcement pen-
13 alty” means any fine, penalty, or forfeiture of
14 property imposed for a violation of the Magnu-
15 son-Stevens Fishery Conservation and Manage-
16 ment Act (16 U.S.C. 1801 et seq.) or of any
17 other marine resource law enforced by the Sec-
18 retary, including the Lacey Act Amendments of
19 1981 (16 U.S.C. 3371 et seq.).

20 (E) The term “Secretary” means the Sec-
21 retary of Commerce.

1 **SEC. 3. LIMITATION ON ADMINISTRATIVE LAW JUDGES IN**
2 **THE NATIONAL OCEANIC AND ATMOSPHERIC**
3 **ADMINISTRATION.**

4 (a) IN GENERAL.—Subject to subsection (b), the Ad-
5 ministrator of the National Oceanic and Atmospheric Ad-
6 ministration (referred to in this section as “NOAA”) may
7 not assign any proceeding required to be conducted in ac-
8 cordance with sections 556 and 557 of title 5 to an indi-
9 vidual who has served as an administrative law judge for
10 NOAA for a period of five or more years if such pro-
11 ceeding pertains to the same fishery management region
12 to which the majority of such proceedings that the indi-
13 vidual presided over within the period pertained.

14 (b) REASSIGNMENT AFTER FIVE YEARS.—Sub-
15 section (a) does not apply to an individual who has not
16 served as an administrative law judge for NOAA within
17 a five-year period ending on the date of the assignment
18 described in such subsection.

19 **SEC. 4. DEFINITION OF FISHERY MANAGEMENT REGION.**

20 In this Act, the term “fishery management region”
21 means a region under the jurisdiction of a Regional Fish-
22 ery Management Council established under section 302 of
23 the Magnuson-Stevens Fishery Conservation and Manage-
24 ment Act (16 U.S.C. 1852).

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