

112TH CONGRESS  
2D SESSION

# H. R. 6200

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2012

Mr. MARKEY (for himself, Mr. FRANK of Massachusetts, Mr. JONES, Mr. COURTNEY, 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, Ways and Means, and Natural Resources, 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

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## 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, building upon any agreement under section 421(c)  
8 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
9 350j(c)), or any other prior agreement. The memorandum  
10 shall include provisions, performance metrics, and  
11 timelines as appropriate to improve such cooperation (act-  
12 ing under provisions of law other than this subsection)  
13 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 by which—

9 (A) all agents of the National Oceanic and  
10 Atmospheric Administration authorized to con-  
11 duct inspections meet training standards estab-  
12 lished by the Food and Drug Administration  
13 beginning no later than one year after the en-  
14 actment of this Act; and

15 (B) data collected by either of these agen-  
16 cies is shared to maximize efficiency and en-  
17 forcement of seafood safety efforts;

18 (4) create a process by which—

19 (A) officials of other Federal, State, or  
20 local agencies authorized to conduct inspections  
21 of seafood, or inspections of facilities that proc-  
22 ess or sell seafood, may be trained in accord-  
23 ance with training standards established by the  
24 Food and Drug Administration; and

1 (B) data collected by these officials is  
2 shared with the National Oceanic and Atmos-  
3 pheric Administration and the Food and Drug  
4 Administration to maximize efficiency and en-  
5 forcement of seafood safety efforts;

6 (5) create and maintain a list of all antibiotics  
7 and other substances allowed to be administered to  
8 farmed fish in the United States and other countries  
9 that import farmed fish to the United States, as well  
10 as unapproved substances that could be used and  
11 could be hazardous to human health, and develop  
12 protocols for certification of foreign and domestic  
13 private laboratories to conduct testing for levels of  
14 these substances; and

15 (6) fully utilize the National Oceanic and At-  
16 mospheric Administration's seafood inspection activi-  
17 ties to prescreen imported seafood or seafood offered  
18 for import originating from any country or exporter  
19 that wishes to have its product certified as safe for  
20 export to the United States.

21 (b) COORDINATION.—

22 (1) EXPEDITING IMPORTATION OF SEAFOOD  
23 FROM CERTAIN COUNTRIES AND EXPORTERS.—The  
24 Secretary of Commerce shall coordinate with the  
25 Secretary of Health and Human Services, the Fed-

1 eral Trade Commission, the Secretary of Homeland  
2 Security, and other appropriate Federal agencies to  
3 develop a process (acting under provisions of law  
4 other than this paragraph) for expediting the impor-  
5 tation of seafood from foreign countries and export-  
6 ers that consistently adhere to the highest standards  
7 for seafood safety.

8 (2) NATIONAL SEA GRANT COLLEGE PRO-  
9 GRAM.—The Administrator of the National Oceanic  
10 and Atmospheric Administration shall ensure that  
11 the Administration’s seafood inspection activities are  
12 coordinated with the national sea grant college pro-  
13 gram to provide outreach to the States, consumers,  
14 and the seafood industry on seafood safety.

15 (3) INSPECTING TO PREVENT SEAFOOD  
16 FRAUD.—The Secretary of Commerce and the Sec-  
17 retary of Health and Human Services shall, to the  
18 maximum extent practicable, ensure that inspections  
19 and tests for seafood safety also collect information  
20 for seafood fraud prevention.

21 (c) REFUSAL OF ADMISSION.—

22 (1) IN GENERAL.—Subject to paragraphs (3)  
23 and (4), all seafood imported or offered for import  
24 originating from an exporter shall be refused admis-  
25 sion if the Secretary of Health and Human Services

1 or the Secretary of Commerce finds that any ship-  
2 ment of such seafood appears to—

3 (A) not meet the controls established  
4 under the applicable provisions of part 123 of  
5 title 1, Code of Federal Regulations (or any  
6 successor regulation);

7 (B) be treated, or have been given feed  
8 that has been treated, with an antibiotic or  
9 other substance that has not been approved by  
10 the Food and Drug Administration for use by  
11 United States aquaculturists; or

12 (C) contain a level of any substance above  
13 the maximum level deemed safe for consump-  
14 tion by the Food and Drug Administration.

15 (2) IMPORT CERTIFICATION.—For any exporter  
16 whose seafood products must be refused admission  
17 under paragraph (1) based on a prior shipment, the  
18 Secretary of Health and Human Services shall de-  
19 termine whether to require, as a condition of grant-  
20 ing admission into the United States to an article of  
21 seafood originating from such exporter, that such  
22 seafood be accompanied by a certification or other  
23 assurance under section 801(q) of the Federal Food,  
24 Drug, and Cosmetic Act (21 U.S.C. 381(q)).

1           (3) ALLOWANCE OF INDIVIDUAL SHIPMENTS.—  
2           Paragraph (1) does not apply with respect to an in-  
3           dividual shipment of seafood originating from an ex-  
4           porter whose products must otherwise be refused ad-  
5           mission under such paragraph if the exporter pre-  
6           sents evidence to the Secretary of Health and  
7           Human Services or the Secretary of Commerce from  
8           a laboratory accredited under section 422 of the  
9           Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
10          350k), or other equivalent evidence, documenting  
11          that the shipment—

12                   (A) meets the controls established under  
13                   the applicable provisions of part 123 of title 1,  
14                   Code of Federal Regulations (or any successor  
15                   regulation); and

16                   (B) is not described in subparagraph (B)  
17                   or (C) of paragraph (1).

18           (4) TERMINATION OF INDIVIDUAL SHIPMENT  
19           SCREENING REQUIREMENT.—Paragraph (1) shall  
20           cease to prohibit the admission of seafood origi-  
21           nating from an exporter based on a prior shipment  
22           if the Secretary of Health and Human Services or  
23           the Secretary of Commerce determines that—

1 (A) each prior shipment whose appearance  
2 triggered the application of such paragraph was  
3 in fact in compliance with Federal law; or

4 (B) during the preceding 12 months, no  
5 shipment of seafood originating from the ex-  
6 porter has triggered the application of para-  
7 graph (1).

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

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

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

19 **SEC. 3. SEAFOOD IDENTIFICATION.**

20 (a) LIST OF STANDARDIZED NAMES FOR SEA-  
21 FOOD.—

22 (1) UPDATE.—Beginning not later than 180  
23 days after the date of the enactment of this Act, the  
24 Secretary of Health and Human Services, in con-  
25 sultation with the Secretary of Commerce, shall



1 maintain a list of standardized names for identifica-  
2 tion of seafood at the distribution, marketing, and  
3 retail stages.

4 (2) CONTENTS.—The list maintained under  
5 paragraph (1) shall—

6 (A) include scientific names, acceptable  
7 market names, and common or regional names  
8 for all seafood species distributed in interstate  
9 commerce in the United States, and indicate  
10 clearly—

11 (i) which of those names may be used  
12 to identify seafood; and

13 (ii) which constitute mislabeling in  
14 violation of Federal law;

15 (B) take into account taxonomy, inter-  
16 national law and custom, market information,  
17 and naming precedence;

18 (C) identify names for seafood as appro-  
19 priate only if the Secretary of Commerce deter-  
20 mines the names are not likely to confuse or  
21 mislead consumers; and

22 (D) include information regarding any con-  
23 sumption advisory that has been issued for the  
24 seafood.

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

3           (A) made available to the public on the  
4 Web sites of the Department of Health and  
5 Human Services and the Department of Com-  
6 merce; and

7           (B) updated annually based on the best  
8 available scientific and market information.

9           (4) PUBLIC INPUT.—The Secretary of Health  
10 and Human Services and the Secretary of Commerce  
11 shall—

12           (A) accept citizen petitions to amend the  
13 list maintained under paragraph (1); and

14           (B) provide to each petitioner a written re-  
15 sponse to the respective petition within 180  
16 days of receipt.

17           (b) SEAFOOD TRACEABILITY REQUIREMENTS.—Be-  
18 ginning on the date that is 180 days after the date of  
19 the enactment of this Act, the Secretary of Commerce, in  
20 consultation with the Secretary of Health and Human  
21 Services, shall implement the following requirements with  
22 respect to seafood imported into the United States or oth-  
23 erwise distributed or sold in interstate commerce:

24           (1) Of the information required to be submitted  
25 to the Secretary of Commerce under section

1 303(a)(5) of the Magnuson-Stevens Fishery Con-  
2 servation and Management Act (16 U.S.C.  
3 1853(a)(5)), the following information shall be in-  
4 cluded in the labeling of, or otherwise accompany,  
5 seafood through processing, distribution, and final  
6 sale:

7 (A) The acceptable market name and sci-  
8 entific name for the seafood species, as speci-  
9 fied in the list maintained under paragraph (1).

10 (B) The production method of the seafood,  
11 including gear type, and whether the seafood  
12 was farmed or wild-caught.

13 (C) The geographic catch area or aqua-  
14 culture production area of the seafood.

15 (D) The weight or number and any trans-  
16 formation of product for an individual fish or  
17 lot.

18 (2) If seafood has been previously frozen, or  
19 treated with any substance (other than ice or water)  
20 that may affect the true weight of the seafood, by  
21 any harvester, processor, distributor, or retailer,  
22 such information shall be included in the labeling of,  
23 or otherwise accompany, the seafood through proc-  
24 essing, distribution, and final sale.

1           (3) With respect to any information required by  
2 paragraph (1) or (2) to be included in the labeling  
3 of, or otherwise accompany, seafood, a retailer may  
4 satisfy such requirement by making the information  
5 available upon request—

6                   (A) to anyone purchasing the seafood; and

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

9                           (i) seafood; or

10                           (ii) any facility that processes or sells  
11 seafood.

12       (c) REFUSAL OF ADMISSION.—

13           (1) IN GENERAL.—Subject to paragraphs (3)  
14 and (4), all seafood imported or offered for import  
15 originating from an exporter shall be refused admis-  
16 sion if the Secretary of Health and Human Services  
17 or the Secretary of Commerce finds that any ship-  
18 ment of such seafood appears to be in violation of  
19 subsection (b) or other applicable Federal laws or  
20 regulations prohibiting seafood fraud.

21           (2) IMPORT CERTIFICATION.—For any exporter  
22 whose seafood products must be refused admission  
23 under paragraph (1) based on a prior shipment, the  
24 Secretary of Health and Human Services shall de-  
25 termine whether to require, as a condition of grant-

1 ing admission into the United States to an article of  
2 seafood originating from such exporter, that such  
3 seafood be accompanied by a certification or other  
4 assurance under section 801(q) of the Federal Food,  
5 Drug, and Cosmetic Act (21 U.S.C. 381(q)).

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

19 (4) TERMINATION OF INDIVIDUAL SHIPMENT  
20 SCREENING REQUIREMENT.—Paragraph (1) shall  
21 cease to prohibit the admission of seafood origi-  
22 nating from an exporter based on a prior shipment  
23 if the Secretary of Health and Human Services or  
24 the Secretary of Commerce determines that—

1 (A) each prior shipment whose appearance  
2 triggered the application of such paragraph was  
3 in fact in compliance with the provisions of sub-  
4 section (b) and other Federal laws or regula-  
5 tions prohibiting seafood fraud; or

6 (B) during the preceding 12 months, no  
7 shipment of seafood originating from the ex-  
8 porter has triggered the application of para-  
9 graph (1).

10 (d) PENALTIES.—The violation of a requirement of  
11 subsection (a) is deemed to constitute a violation of section  
12 307(1)(A) of the Magnuson-Stevens Fishery Conservation  
13 and Management Act (16 U.S.C. 1857(1)(A)).

14 (e) LIST OF OFFENDERS.—The Secretary of Com-  
15 merce, in consultation with the Secretary of Health and  
16 Human Services, shall develop, maintain, and post on the  
17 public Web site of the Department of Commerce a list  
18 that—

19 (1) includes, by country, each exporter whose  
20 seafood is imported or offered for import into the  
21 United States; and

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

1 (f) INSPECTIONS.—The Secretary of Commerce, in  
2 consultation with the Secretary of Health and Human  
3 Services, shall—

4 (1) increase, as resources allow, the number of  
5 foreign and domestic seafood shipments that are in-  
6 spected for seafood fraud, including verification of  
7 compliance with the traceability requirements of sub-  
8 section (b) (relating to traceability);

9 (2) ensure that the percentage of seafood ship-  
10 ments inspected during a given year is not lower  
11 than the percentage inspected during the previous  
12 year; and

13 (3) to the maximum extent practicable, ensure  
14 that inspections and tests for seafood fraud preven-  
15 tion also collect information for seafood safety.

16 **SEC. 4. AUTHORITY OF STATES.**

17 Whenever the attorney general of a State, or an offi-  
18 cial or agency designated by a State, has reason to believe  
19 that any person has engaged or is engaging in a pattern  
20 or practice of seafood fraud in violation of subsection (b)  
21 or (c) of section 3, the State may bring a civil action on  
22 behalf of its residents to enjoin fraud, an action to recover  
23 for actual monetary loss or receive \$10,000 in damages  
24 for each violation, or both such actions. If the court finds  
25 the defendant willfully or knowingly violated this Act, the

1 court may, in its discretion, increase the amount of the  
2 award to an amount equal to not more than 3 times the  
3 amount available under the preceding sentence. Nothing  
4 in this section shall preclude an individual from bringing  
5 a civil action.

6 **SEC. 5. REPORT TO CONGRESS.**

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

14 (1) findings with respect to—

15 (A) the extent and severity of violations of  
16 Federal, State, and local law relating to seafood  
17 safety and seafood fraud; and

18 (B) the health and financial impacts of  
19 these violations on United States consumers  
20 and the United States fishing industry;

21 (2) an analysis of the lists required to be devel-  
22 oped and maintained under sections 2(d) and 3(e);

23 (3) an analysis of the effectiveness of the  
24 memorandum of understanding required by section  
25 2(a) in ensuring that the Department of Commerce



1 and the Department of Health and Human Services  
2 work to ensure seafood safety, including an assess-  
3 ment of achieving identified performance metrics  
4 and timelines;

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

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

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

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

1 **SEC. 6. PREEMPTION.**

2 Nothing in this Act preempts the authority of a State  
3 to establish and enforce requirements for improving sea-  
4 food safety and preventing seafood fraud that are con-  
5 sistent with, or in addition to, the requirements of this  
6 Act.

7 **SEC. 7. DEFINITIONS.**

8 In this Act:

9 (1) The term “other applicable Federal laws  
10 and regulations” means Federal statutes, regula-  
11 tions, and international agreements (other than this  
12 Act) pertaining to the importation, exportation,  
13 transportation, sale, harvest, processing, or trade of  
14 seafood, including the Magnuson-Stevens Fishery  
15 Conservation and Management Act (16 U.S.C. 1801  
16 et seq.), the Lacey Act Amendments of 1981 (16  
17 U.S.C. 3371 et seq.), the Federal Food, Drug, and  
18 Cosmetic Act (21 U.S.C. 301 et seq.), the FDA  
19 Food Safety Modernization Act (Public Law 111–  
20 353), and part 123 of title 21, Code of Federal Reg-  
21 ulations (or any successor regulations).

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

24 (3) The term “seafood fraud” means the  
25 mislabeling or misrepresentation of seafood in viola-

1 tion of this Act or other applicable Federal laws and  
2 regulations.

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