

112TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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.

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IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**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. 4. 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. 5. 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).