

112TH CONGRESS  
1ST SESSION

# S. 1312

To strengthen and improve monitoring in the fisheries across the United States and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 30, 2011

Mr. BROWN of Massachusetts 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 and improve monitoring in the fisheries across the United States 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 Re-  
5 sponsibility Act of 2011”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to strengthen and improve  
8 monitoring in the fisheries across the United States.

1 **SEC. 3. FISHERIES INVESTMENT FUND.**

2 (a) ESTABLISHMENT.—There is established in the  
3 general fund of the Treasury a separate account, which  
4 shall be known as the “Fisheries Investment Fund”.

5 (b) SOURCE OF FUNDS.—

6 (1) IN GENERAL.—All sums received by the  
7 United States as fines, penalties, and forfeitures of  
8 property for violations of any provision of the Mag-  
9 nuson-Stevens Fishery Conservation and Manage-  
10 ment Act (16 U.S.C. 1801 et seq.) or any other ma-  
11 rine resource law enforced by the Secretary of Com-  
12 merce shall be deposited into the Fisheries Invest-  
13 ment Fund.

14 (2) AVAILABILITY OF FUNDS.—Fees deposited  
15 in the Fisheries Investment Fund State shall remain  
16 available until expended.

17 (c) USE OF FUNDS.—Fees deposited in the Fisheries  
18 Investment Fund shall be used—

19 (1) subject to subsection (d), to reimburse rea-  
20 sonable attorneys’ fees to a covered person; and

21 (2) to conduct—

22 (A) the audit required by subsection (e);

23 (B) enforcement activities as described in  
24 section 311(e)(1) of the Magnuson-Stevens  
25 Fishery Conservation and Management Act (16

1 U.S.C. 1861(e)(1)), as amended by section 5;  
2 and

3 (C) monitoring activities as described in  
4 subsection (l) of section 305 of the Magnuson-  
5 Stevens Fishery Conservation and Management  
6 Act (16 U.S.C. 1855(l)), as added by section 4.

7 (d) REIMBURSEMENT OF ATTORNEYS' FEES.—

8 (1) AUTHORITY TO PROVIDE REIMBURSE-  
9 MENT.—During fiscal years 2012 and 2013, the  
10 Secretary of Commerce may reimburse the reason-  
11 able attorneys' fees of a covered person pursuant to  
12 subsection (c)(1).

13 (2) APPLICATION.—A covered person seeking  
14 reimbursement under paragraph (1) shall submit to  
15 the Secretary an application for such reimbursement  
16 no more than 60 days after the date the Secretary  
17 directs a fisheries enforcement penalty be remitted  
18 to the covered person.

19 (3) DEFINITIONS.—In this section:

20 (A) COVERED PERSON.—The term “cov-  
21 ered person” means any person—

22 (i) that the Secretary of Commerce  
23 has directed be remitted a fisheries en-  
24 forcement penalty at the recommendation

1 of the report of Special Master Swartwood;  
2 or

3 (ii) that—

4 (I) submitted a complaint to the  
5 Special Master prior to May 7, 2011,  
6 seeking remittance of a fisheries en-  
7 forcement penalty; and

8 (II) the Secretary directs to re-  
9 ceive such remittance or a portion of  
10 such remittance.

11 (B) REASONABLE ATTORNEYS' FEES.—

12 The term “reasonable attorneys’ fees” means  
13 attorneys’ fees expended by a covered person—

14 (i) seeking remittance of a fisheries  
15 enforcement penalty that the Secretary of  
16 Commerce directs be remitted to the cov-  
17 ered person;

18 (ii) that were incurred by the covered  
19 person prior to the date that is 60 days  
20 after such fisheries enforcement penalty  
21 was directed by the Secretary to be remit-  
22 ted to the covered person; and

23 (iii) that the Secretary determines are  
24 reasonable.

1 (e) AUDIT.—For each of the fiscal years 2012, 2013,  
2 and 2014, the Secretary of Commerce or the Secretary  
3 of the Treasury shall—

4 (1) prepare an annual audit plan for the Fish-  
5 eries Investment Fund;

6 (2) submit each such audit plan to the Inspec-  
7 tor General of the Department of Commerce or the  
8 Inspector General of the Department of the Treas-  
9 ury, as appropriate;

10 (3) carry out the audit; and

11 (4) submit the final audit results to the Inspec-  
12 tor General of the Department of Commerce or the  
13 Inspector General of the Department of the Treas-  
14 ury, as appropriate, upon completion.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—

16 (1) IN GENERAL.—There is authorized to be  
17 appropriated to Secretary of Commerce from the  
18 Fisheries Investment Fund for each fiscal year be-  
19 ginning with fiscal year 2012—

20 (A) for the reimbursement of reasonable  
21 attorneys' fees pursuant to subsection (d), the  
22 amount necessary to provide such reimburse-  
23 ment;

1 (B) for an audit required by subsection  
2 (e), the amount necessary to conduct such  
3 audit;

4 (C) for enforcement activities described in  
5 section 311(e)(1) of the Magnuson-Stevens  
6 Fishery Conservation and Management Act (16  
7 U.S.C. 1861(e)(1)), as amended by section 5,  
8 an amount that is not more than 33 percent of  
9 the total remaining amount in the Fund; and

10 (D) for monitoring activities described in  
11 subsection (l) of section 305 of the Magnuson-  
12 Stevens Fishery Conservation and Management  
13 Act (16 U.S.C. 1855), as added by section 4,  
14 the total remaining amount in the Fund less  
15 any amount appropriated pursuant to the au-  
16 thorization in subparagraph (C).

17 (2) TOTAL REMAINING AMOUNT IN THE  
18 FUND.—In this subsection, the term “total remain-  
19 ing amount in the Fund” means the following:

20 (A) For fiscal years 2012, the amount re-  
21 ceived by the United States in fiscal year 2011  
22 as fines, penalties, and forfeitures of property  
23 for violations of any provision of the Magnuson-  
24 Stevens Fishery Conservation and Management  
25 Act (16 U.S.C. 1801 et seq.) or any other ma-

1 rine resource law enforced by the Secretary of  
2 Commerce less—

3 (i) the amount necessary to provide  
4 reimbursement pursuant to paragraph  
5 (1)(A) for fiscal year 2012; and

6 (ii) the amount necessary to conduct  
7 an audit pursuant to paragraph (1)(B) for  
8 fiscal year 2012.

9 (B) For a fiscal year after 2012, the  
10 amount deposited in the Fisheries Investment  
11 Fund for the prior fiscal year less—

12 (i) the amount necessary to provide  
13 reimbursement pursuant to paragraph  
14 (1)(A) for the current fiscal year; and

15 (ii) the amount necessary to conduct  
16 an audit pursuant to paragraph (1)(B) for  
17 the current fiscal year.

18 **SEC. 4. USE OF FUNDS FOR MONITORING.**

19 Section 305 of the Magnuson-Stevens Fishery Con-  
20 servation and Management Act (16 U.S.C. 1855) is  
21 amended by adding at the end the following new sub-  
22 section:

23 “(1) MONITORING ACTIVITIES.—

24 “(1) IN GENERAL.—The Secretary may pay  
25 from sums appropriated to the Secretary for moni-

1 toring activities from the Fisheries Investment Fund  
2 established under section 3(a) of the Asset For-  
3 feiture Responsibility Act of 2011 monitoring activi-  
4 ties selected by the Councils, including, in order of  
5 priority—

6 “(A) at-sea observers and shoreside moni-  
7 toring;

8 “(B) preparing fishery impact statements,  
9 as described in section 303(a)(9); and

10 “(C) other priorities established by a  
11 Council as necessary to rebuild or maintain sus-  
12 tainable fisheries, ensure healthy ecosystems,  
13 and maintain fishing communities.

14 “(2) ALLOCATION OF FUNDS AMONG COUN-  
15 CILS.—For each fiscal year, the sums appropriated  
16 to the Secretary for monitoring activities from the  
17 Fisheries Investment Fund established under section  
18 3(a) of the Asset Forfeiture Responsibility Act of  
19 2011 and used to carry out monitoring activities  
20 under paragraph (1) shall be allocated among the  
21 Councils so that the proportion of such sums that a  
22 Council receives is equal to the proportion of the  
23 sums deposited in such Fund from violations occur-  
24 ring in the area over which that Council exercises  
25 fishery management jurisdiction.”.



1 **SEC. 5. USE OF FUNDS FOR ENFORCEMENT.**

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) in paragraph (1)—

6 (A) by amendment the material preceding  
7 subparagraph (A) to read as follows:

8 “(1) The Secretary may pay from sums appro-  
9 priated to the Secretary for enforcement activities  
10 from the Fisheries Investment Fund established  
11 under section 3(a) of the Asset Forfeiture Responsi-  
12 bility Act of 2011—”; and

13 (B) by striking subparagraph (C); and

14 (2) in paragraph (2), by moving such para-  
15 graph two ems to the left.

16 (b) CONFORMING AMENDMENT.—Section 311(f) of  
17 the Magnuson-Stevens Fishery Conservation and Manage-  
18 ment Act (16 U.S.C. 1861(f)) is amended by striking  
19 paragraph (4).

20 **SEC. 6. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall  
22 apply with respect to sums received on or after the date  
23 of the enactment of this Act.

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