

Calendar No. 674

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-379

AMERICAN FISHERIES ADVISORY
COMMITTEE ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3087



NOVEMBER 17, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

69-010

WASHINGTON : 2016

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 3087]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3087) to establish the American Fisheries Advisory Committee to assist in the awarding of fisheries research and development grants and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purposes of the American Fisheries Advisory Committee Act are to create a committee to identify the needs of the seafood industry, develop requests for proposals, review grant applications, and select applications for approval for grants. This Act also would require all decisions to be at the discretion of the Secretary of Commerce and the American Fisheries Advisory Committee (AFAC) to meet not more than biannually.

BACKGROUND AND NEEDS

The fishery management standards established by the Magnuson-Stevens Fishery Conservation and Management Act (MSA)¹ have led to the recovery of most stocks of federally managed fish. As of 2015, less than 10 percent of stocks were overfished.² One of the reasons stocks have recovered is that the 2006 revisions to the

¹ 16 U.S.C. §1801 et seq.

² National Oceanic and Atmospheric Administration, *Status of Stocks 2015: Annual Report to Congress on the Status of U.S. Fisheries*, April 2016, at http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2015/2015_status_of_stocks_updated.pdf.

MSA required hard annual catch limits on stocks.³ Thus, in recent years, in order to increase profits, fishermen have had to focus primarily on increasing the value of their catch rather than catching more fish.

The Saltonstall-Kennedy Fund was established to “carry out a national program of research and development addressed to such aspects of United States fisheries including, but not limited to, harvesting, processing, marketing, and associated infrastructures.”⁴ It is funded by tariffs on imported fishery products.⁵ Originally, an advisory committee oversaw the Saltonstall-Kennedy Fund’s activity,⁶ but the authority for that advisory committee terminated after a 2-year period pursuant to section 14 of the Federal Advisory Committee Act.⁷ After the advisory committee was terminated, funds were and continue to be distributed by the National Oceanic and Atmospheric Administration (NOAA), either as grants or to fund internal projects. Concerns have been raised that NOAA does not distribute grants in accordance with the Saltonstall-Kennedy Fund’s governing statute. For example, out of the 50 grants given out by NOAA in 2016, only 3 have been to improve the marketing of fish.

SUMMARY OF PROVISIONS

The American Fisheries Advisory Committee Act would establish AFAC, which would evaluate grants and make recommendations on which projects should be funded by the Saltonstall-Kennedy Fund and how funds should be distributed.

LEGISLATIVE HISTORY

On June 22, 2016, the American Fisheries Advisory Committee Act was introduced by Senator Sullivan and cosponsored by Senators Cantwell and Murkowski.

On June 29, 2016, the Committee met in open Executive Session and, by a voice vote, ordered S. 3087 to be reported favorably with an amendment (in nature of a substitute).

The Committee adopted six amendments to the measure. Senator Markey offered four amendments, all of which were accepted. Those amendments would: require grant recipients to publicly post the title and abstract of the project; reorganize geographic areas; require an at-large member of AFAC to represent the fisheries science community; provide criteria by which the Secretary of Commerce should evaluate grant applications; and require the Secretary of Commerce to submit to AFAC a justification if the recommendations of AFAC were not followed. An amendment offered by Senator Schatz to require representatives of recreational fishing interests to be included on AFAC also was accepted. A second degree amendment offered by Senator Wicker, and accepted, would realign the geographic specifications for the makeup of AFAC.

³ Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, Public Law 109-479; 120 Stat. 3575.

⁴ 15 U.S.C. §713c-3

⁵ *Ibid.*

⁶ *Ibid.*

⁷ 5 U.S.C. App.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 3087—American Fisheries Advisory Committee Act

S. 3087 would establish the American Fisheries Advisory Committee within the Department of Commerce (DOC). The committee would comprise three representatives from each of six geographic regions and seven at-large members with experience in the seafood and fisheries industries, as selected by DOC. Under the bill, the committee would be responsible for identifying needs of the fishing industry, developing requests for grants to meet those needs, and reviewing and selecting applications for an existing grant program for approval by DOC. Under current law, the National Marine Fisheries Service (NMFS) within DOC is responsible for those activities. In 2016, the program awarded 50 grants totaling \$11 million. That amount is derived from permanent authority to spend certain customs duties that are imposed on imported fishery products.

Based on an analysis of information from DOC, CBO estimates that the committee's operations would cost \$2 million a year over the 2017–2021 period to operate the grant program. However, because any increases in amounts spent on administering the grant program would result in a corresponding reduction in amounts awarded for the grants, CBO estimates that implementing S. 3087 would have no significant net effect on the federal budget. Pay-as-you-go procedures apply because enacting the bill would have an insignificant effect on direct spending. Enacting S. 3087 would not affect revenues.

CBO estimates that enacting S. 3087 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 3087 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The American Fisheries Advisory Committee Act, as reported, would cover a person applying for a Saltonstall-Kennedy Fund grant. In 2015, 50 grants were submitted.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have any significant adverse impacts on the Nation's economy.

PRIVACY

This bill would not have any adverse impact on the privacy of individuals.

PAPERWORK

The Secretary of Commerce would be required to provide a written document to AFAC justifying a decision not to provide funding for a grant selected by AFAC.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section provides the short title of the bill, the "American Fisheries Advisory Committee Act."

Section 2. American Fisheries Advisory Committee.

This section would establish AFAC. There would be six regions within the AFAC. Each region would consist of a group of States, territories, or possessions of the United States. Each of the regions would be represented on AFAC by three members, as well as seven at-large members.

The responsibilities of AFAC would include: identifying the needs of the seafood industry that may be addressed by a project funded with grants; developing requests for proposals; reviewing grant applications; and selecting applications for approval for grants. AFAC would meet not more than biannually. All decisions would be subject to approval by the Secretary of Commerce.

Section 3. Public availability of grant proposals.

This section would require a person awarded a grant under section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713c-3(c)) to make publicly available the title and abstract of the project.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 11, 1939

[53 Stat. 1412]

SEC. 2. PROMOTION OF THE FREE FLOW OF DOMESTICALLY PRODUCED FISHERY PRODUCTS.

[15 U.S.C. 713c-3]

* * * * *

(c) FISHERIES RESEARCH AND DEVELOPMENT PROJECTS.—

(1) The Secretary shall make grants from the fund established under subsection (b) to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

(2) The Secretary shall—

(A) at least once each fiscal year, receive, during a 60-day period specified by him, applications for grants under this subsection;

(B) prescribe the form and manner in which applications for grants under this subsection must be made, including, but not limited to, the specification of the information which must accompany applications to ensure that the proposed projects comply with Federal law and can be evaluated in accordance with paragraph (3)(B); and

(C) approve or disapprove each such application before the close of the 120th day after the last day of the 60-day period (specified under subparagraph (A)) in which the application was received.

[(3) No application for a grant under this subsection may be approved unless the Secretary—

[(A) is satisfied that the applicant has the requisite technical and financial capability to carry out the project; and

[(B) evaluates the proposed project as to—

[(i) soundness of design,

[(ii) the possibilities of securing productive results,

[(iii) minimization of duplication with other fisheries research and development projects,

[(iv) the organization and management of the project,

[(v) methods proposed for monitoring and evaluating the success or failure of the project, and

[(vi) such other criteria as the Secretary may require.]

(3)(A) *No application for a grant under this subsection may be approved unless—*

(i) the Secretary is satisfied that the applicant has the requisite technical and financial capability to carry out the project;

(ii) the Secretary evaluates the proposed project as to—

(I) the selections of the Committee established in subsection (f);

(II) soundness of design;

(III) the possibilities of securing productive results;

(IV) minimization of duplication with other fisheries research and development projects;

(V) *the organization and management of the project;*
 (VI) *methods proposed for monitoring and evaluating the success or failure of the project; and*
 (VII) *such other criteria as the Secretary may require; and*

(iii) *the application selected for funding meets the proposal developed by the American Fisheries Advisory Committee under subsection (f).*

(B) *JUSTIFICATION.—If the Secretary fails to provide funds to a grant selected by the Committee, the Secretary shall provide a written document to the Committee justifying the decision.*

(4) Each grant made under the subsection shall be subject to such terms and conditions as the Secretary may require to protect the interests of the United States, including, but not limited to, the following:

(A) The recipient of the grant must keep such records as the Secretary shall require as being necessary or appropriate for disclosing the use made of grant funds and shall allow the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to such records for purposes of audit and examination.

(B) The amount of a grant may not be less than 50 percent of the estimated cost of the project.

(C) The recipient of the grant must submit to the Secretary periodic project status reports.

(5)(A) If the cost of a project will be shared by the grant recipient, the Secretary shall accept, as a part or all of that share, the value of in-kind contributions made by the recipient, or made available to, and applied by, the recipient, with respect to the project.

(B) For purposes of subparagraph (A), in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. The Secretary shall establish (i) the training, experience, and other qualifications which shall be required in order for services to be considered as in-kind contributions; and (ii) the standards under which the Secretary will determine the value of in-kind contributions for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be conclusive.

(6) *Any person awarded a grant under this subsection shall make publicly available a title and abstract of the project to be carried out by the grant funds that serves as the public justification for funding the project that includes a statement describing how the project serves to enhance United States fisheries, including harvesting, processing, marketing, and associated infrastructures, if applicable.*

(d) NATIONAL FISHERIES RESEARCH AND DEVELOPMENT PROGRAM.—

(1) The Secretary shall carry out a national program of research and development addressed to such aspects of United

States fisheries (including, but not limited to, harvesting, processing, marketing, and associated infrastructures), if not adequately covered by projects assisted under subsection (c), as the Secretary deems appropriate.

(2) The Secretary shall, after consultation with appropriate representatives of the fishing industry, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives, an annual report, that must be submitted not later than 60 days before the close of each fiscal year, containing—

(A) the fisheries development goals and funding priorities under paragraph (1) for the next fiscal year;

(B) a description of all pending projects assisted under subsection (c) or carried out under paragraph (1), in addition to—

(i) a list of those applications approved and those disapproved under subsection (c), and the total amount of grants made, for the current fiscal year, and

(ii) a statement of the extent to which available funds were not obligated or expended by the Secretary for grants under subsection (c) during the current fiscal year; and

(C) an assessment of each project assisted under subsection (c) or carried out under paragraph (1) that was completed in the preceding fiscal year regarding the extent to which (i) the objectives of the project were attained, and (ii) the project contributed to fishery development.

(e) ALLOCATION OF FUND MONEYS.—

(1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) or any other provision of law with respect to that fiscal year, shall be allocated as follows:

(A) the Secretary shall use no less than 60 per centum of such moneys to make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c) of this section; and

(B) the Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine Fisheries Service which are directly related to development of the United States fisheries pursuant to subsection (d) of this section.

(2) The Secretary shall, consistent with the number of meritorious applications received with respect to any fiscal year, obligate or expend all of the moneys in the fund described in paragraph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in ac-

cordance with this section without fiscal year limitation, except that the Secretary shall not obligate such moneys at a rate less than that necessary to prevent the balance of moneys in the fund from exceeding \$3,000,000 at the end of any fiscal year.

(f) *AMERICAN FISHERIES ADVISORY COMMITTEE.*—

(1) *DEFINITIONS.*—*In this subsection:*

(A) *COMMITTEE.*—*The term “Committee” means the American Fisheries Advisory Committee established under paragraph (2).*

(B) *FISHING COMMUNITY.*—*The term “fishing community” means harvesters, marketers, growers, processors, recreational fishermen, charter fishermen, and persons providing them with goods and services.*

(C) *MARKETING AND PROMOTION.*—*The term “marketing and promotion” means an activity aimed at encouraging the consumption of seafood or expanding or maintaining commercial markets for seafood.*

(D) *PROCESSOR.*—*The term “processor” means any person in the business of preparing or packaging seafood (including seafood of the processor’s own harvesting) for sale.*

(E) *SEAFOOD.*—*The term “seafood” means farm-raised and wild-caught fish or shellfish harvested in the United States or by a United States flagged vessel for human consumption.*

(2) *ESTABLISHMENT.*—*Not later than 90 days after the date of the enactment of the American Fisheries Advisory Committee Act, the Secretary shall establish 6 regions within the American Fisheries Advisory Committee as follows:*

(A) *Region 1 shall consist of Alaska, Hawaii, the Commonwealth of the Northern Mariana Islands, and the Territories of Guam and American Samoa.*

(B) *Region 2 shall consist of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.*

(C) *Region 3 shall consist of Texas, Alabama, Louisiana, Mississippi, Florida, Arkansas, Puerto Rico, and territory of the Virgin Islands.*

(D) *Region 4 shall consist of California, Washington, Oregon, and Idaho.*

(E) *Region 5 shall consist of New Jersey, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

(F) *Region 6 shall consist of Michigan, Minnesota, Wisconsin, Illinois, Indiana, Ohio, and Pennsylvania.*

(3) *MEMBERSHIP.*—*The Committee shall be composed of the following members:*

(A) *REGIONAL REPRESENTATION.*—*Each of the regions listed in subparagraphs (A) through (F) of paragraph (2) shall be represented on the Committee by 3 members—*

(i) who are appointed by the Secretary;

(ii) who reside in a State or territory in the region that the member will represent;

(iii) of which—

(I) one shall have experience as a seafood harvester;

(II) one shall have experience as a processor; and

(III) one shall have experience as a recreational fisher; and

(iv) that are selected so that the members of the Committee have experience or expertise with as many seafood species as practicable.

(B) *AT-LARGE MEMBERS.*—The Secretary shall appoint to the Committee at-large members to ensure that the Committee fairly reflects the expertise and interest of the fishing community located in each region, as follows:

(i) One individual with experience in mass market food distribution.

(ii) One individual with experience in mass market food retail or food service.

(iii) One individual with experience in the marketing of seafood.

(iv) One individual with experience in growing seafood.

(v) One individual with experience as a recreational fisher.

(vi) One individual who is an employee of the National Marine Fisheries Service with expertise in fisheries research.

(vii) One individual that represents the fisheries science community.

(4) *MEMBER TERMS.*—The term for a member of the Committee shall be 3 years, except that the Secretary shall designate staggered terms for the members initially appointed to the Committee.

(5) *RESPONSIBILITIES.*—The Committee shall be responsible for—

(A) identifying needs of the fishing community that may be addressed by a project funded with a grant under subsection (c);

(B) developing the request for proposals for such grants;

(C) reviewing applications for such grants; and

(D) selecting applications for approval under subsection (c)(2)(B).

(6) *CHAIR.*—The Committee shall elect a chair by a majority of those voting, if a quorum is present.

(7) *QUORUM.*—A simple majority of members of the Committee shall constitute a quorum, but a lesser number may hold hearings.

(8) *MEETINGS.*—

(A) *FREQUENCY.*—The Committee shall meet not more than 2 times each year.

(B) *LOCATION.*—The meetings of the Committee shall rotate between the geographic regions described under paragraph (2).

(9) *STAFF.*—The Committee may employ staff as necessary.

(10) *PER DIEM AND EXPENSES AND FUNDING.*—

(A) *IN GENERAL.*—A member of the Committee shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5, United States Code, for reasonable travel costs and expenses incurred in performing duties as a member of the Committee.

(B) FUNDING.—The reimbursements made under subparagraph (A) shall be paid with the funds made available for grants under subsection (c).

(11) CONFLICT OF INTEREST.—The conflict of interest and recusal provisions set out in section 302(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(j)) shall apply to any decision by the Committee and to all members of the Committee as if each member of the Committee is an affected individual within the meaning of such section 302(j), except that in addition to the disclosure requirements of section 302(j)(2)(C) of such Act, (16 U.S.C. 1852(j)(2)(C)), each member of the Committee shall disclose any financial interest or relationship in an organization or with an individual that is applying for a grant under subsection (c) held by the member of the Committee, including an interest as an officer, director, trustee, partner, employee, contractor, agent, or other representative.

