

TO MAKE TECHNICAL AMENDMENTS TO CERTAIN MARINE FISH CONSERVATION STATUTES, AND FOR OTHER PURPOSES

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JUNE 22, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed  
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Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4528]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4528) to make technical amendments to certain marine fish conservation statutes, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4528 is to make technical amendments to certain marine fish conservation statutes.

BACKGROUND AND NEED FOR LEGISLATION

Billfish is the common name used for a broad category of predatory and highly migratory species characterized by their spear-like “bill”.<sup>1</sup> Billfish are marine fish species that generally belong to the family Istiophoridae and can be found primarily in tropical and sub-tropical waters in oceans across the globe.<sup>2</sup> Management of these species is typically governed by international fishing treaties,

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<sup>1</sup> <https://billfish.org/education/what-are-billfish/>.

<sup>2</sup> *Id.* at 2.

and the Secretary of Commerce promulgates regulations for their management within the exclusive economic zone of the United States pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.<sup>3</sup>

The quality of data surrounding these species varies, and for several species the data is poor or nonexistent.<sup>4</sup> For species with comprehensive stock assessments, their conservation statuses vary. According to the most recent stock assessments, some billfish species, including the Atlantic blue marlin, are overfished or undergoing overfishing.<sup>5</sup> However, other species, including the Pacific blue marlin, are neither overfished nor undergoing overfishing.<sup>6</sup>

In 2012, Congress enacted the Billfish Conservation Act of 2012 (Public Law 112–183). This legislation broadly prohibited the sale of billfish in the mainland United States.<sup>7</sup> This prohibition covers blue marlin, striped marlin, black marlin, sailfish, shortbill spearfish, white marlin, roundscale spearfish, Mediterranean spearfish, and longbill spearfish, but explicitly excludes swordfish.<sup>8</sup> The Act included an exemption for traditional uses for “billfish caught by U.S. fishing vessels and landed in the State of Hawaii or Pacific Insular Areas”.<sup>9</sup> Congress intended this exemption for traditional uses “not [to] apply to the State of Hawaii and Pacific Insular areas *as long as the billfish were only sold in Hawaii or a Pacific Insular area*” [emphasis added].<sup>10</sup>

While Congress intended the exemption to allow the sale of billfish only within Hawaii or the Pacific Insular areas where the fish was landed and retained, as written, current law allows billfish landed in these areas to be sold to the mainland through these traditional markets. H.R. 4528 would amend section 4(c)(1) of the Act by adding “and retained” after “landed”. This change would reconcile current law and the original intent of the Act.

The bill is supported by American Sportfishing Association, Center for Sportfishing Policy, Coastal Conservation Association, Congressional Sportsmen’s Foundation, the Guy Harvey Ocean Foundation, the National Marine Manufacturers Association, OCEARCH and Wild Oceans.<sup>11</sup>

An identical bill, S. 396, introduced by Senator Bill Nelson (D-FL), passed the Senate by voice vote on October 2, 2017.<sup>12</sup>

<sup>3</sup> 16 U.S.C. 1801 et seq.

<sup>4</sup> For example, in 2011 the Inter-American Tropical Tuna Commission determined that “it is not possible to determine the status of the sailfish stock in the EPO with respect to specific management parameters . . . because the results do not provide reliable information on stock productivity and the biomass level corresponding to [maximum sustainable yield]”. See report titled “*Status of Sailfish in the Eastern Pacific Ocean in 2011 and Outlook for the Future*” (Hinton, Michael G. and Maunder, Mark N.) for further detail on this species. For a variety of reasons several other species of billfish, including the shortbill spearfish, the roundscale spearfish and the longbill spearfish lack comprehensive, reliable stock assessments.

<sup>5</sup> *Stock Assessment for the Atlantic Blue Marlin*, International Commission for the Conservation of Atlantic Tunas, 2011.

<sup>6</sup> *Stock Assessment Update for Blue Marlin (Makaira nigricans) in the Pacific Ocean through 2014*, Western and Central Pacific Fisheries Commission, 2014.

<sup>7</sup> 16 U.S.C. 1827a(a).

<sup>8</sup> 16 U.S.C. 1827a(d).

<sup>9</sup> 16 U.S.C. 1827a(c)(1).

<sup>10</sup> *House Committee on Natural Resources Report to Accompany H.R. 2706, H. Rpt. 112–656*, p. 2.

<sup>11</sup> <http://asafishing.org/senators-weigh-billfish-conservation-act/>.

<sup>12</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/396/actions>.

## SECTION-BY-SECTION ANALYSIS

*Section 1* would clarify the Billfish Conservation Act of 2012 to ensure the exemption provided for traditional markets in Hawaii and the Pacific Insular areas would not allow the sale of billfish from these areas to the mainland United States.

*Section 2* amends Public Law 111-348 to emphasize that nothing in the Shark Conservation Act of 2010 would impact the ability of the Secretary of Commerce to manage highly migratory species pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

## COMMITTEE ACTION

H.R. 4528 was introduced on December 1, 2017, by Congressman Darren Soto (D-FL). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On April 17, 2018, the Subcommittee held a hearing on the legislation. On June 6, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 21, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4528, a bill to make technical amendments to certain marine fish conservation statutes, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jacob Fabian.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 4528—A bill to make technical amendments to certain marine fish conservation statutes, and for other purposes*

H.R. 4528 would amend the Billfish Conservation Act of 2012 to prevent the transfer and sale of billfish caught and landed by U.S. vessels in Hawaii or the Pacific Insular Areas to the mainland United States. Under current law, billfish caught and landed in Hawaii or the Pacific Insular Areas by U.S. vessels can be sold locally or transported and sold in the mainland United States. The bill also would amend the Shark Conservation Act of 2010 to affirm that the Secretary of Commerce has the authority to regulate shark fishing under the Magnuson-Stevens Fishery Conservation and Management Act.

CBO estimates that implementing H.R. 4528 would increase revenues from civil penalties resulting from violations of the prohibition on selling billfish to the mainland United States; therefore, pay-as-you-go procedures apply. However, using information from the National Oceanic and Atmospheric Administration (NOAA), CBO estimates that the increased revenues would not be significant in any year and over the 2019–2028 period. Enacting the bill would not affect direct spending.

CBO estimates that enacting H.R. 4528 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

The prohibitions in H.R. 4528 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). Using information from NOAA about the value of billfish landed in Hawaii and Pacific Insular Areas, CBO estimates that the cost of the mandate would total a few million dollars or less and would fall well below the annual threshold established in UMRA for private-sector mandates (\$160 million in 2018, adjusted annually for inflation).

The bill does not contain any intergovernmental mandates.

On August 17, 2017, CBO transmitted a cost estimate for S. 396, a bill to make technical amendments to certain marine fish conservation statutes, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 18, 2017. The two pieces of legislation are similar and the CBO's estimate of the budgetary effects are the same.

The CBO staff contacts for this estimate are Jacob Fabian (for federal costs) and Zachary Byrum (for private-sector mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to make technical amendments to certain marine fish conservation statutes.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

## COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**BILLFISH CONSERVATION ACT OF 2012**

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**SEC. 4. PROHIBITION ON SALE OF BILLFISH.**

(a) PROHIBITION.—No person shall offer for sale, sell, or have custody, control, or possession of for purposes of offering for sale or selling billfish or products containing billfish.

(b) PENALTY.—For purposes of section 308(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858(a)), a violation of this section shall be treated as an act prohibited by section 307 of that Act (16 U.S.C. 1857).

(c) EXEMPTIONS FOR TRADITIONAL FISHERIES AND MARKETS.—

(1) Subsection (a) does not apply to billfish caught by US fishing vessels and landed *and retained* in the State of Hawaii or Pacific Insular Areas as defined in section 3(35) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(35)).

(2) Subsection (a) does not apply to billfish landed by foreign fishing vessels in the Pacific Insular Areas when the foreign caught billfish is exported to non-US markets or retained within Hawaii and the Pacific Insular Areas for local consumption.

(d) BILLFISH DEFINED.—In this section the term “billfish”—

(1) means any fish of the species—

- (A) *Makaira nigricans* (blue marlin);
- (B) *Kajikia audax* (striped marlin);
- (C) *Istiompax indica* (black marlin);
- (D) *Istiophorus platypterus* (sailfish);

- (E) *Tetrapturus angustirostris* (shortbill spearfish);
  - (F) *Kajikia albida* (white marlin);
  - (G) *Tetrapturus georgii* (roundscale spearfish);
  - (H) *Tetrapturus belone* (Mediterranean spearfish); and
  - (I) *Tetrapturus pfluegeri* (longbill spearfish); and
- (2) does not include the species *Xiphias gladius* (swordfish).

**PUBLIC LAW 111-348**

AN ACT to amend the high seas driftnet fishing moratorium protection act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

**SECTION 1. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

**TITLE I—SHARK CONSERVATION ACT OF 2010**

Sec. 101. Short title.

Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.

Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

**[Sec. 104. Offset of implementation cost.]**

*Sec. 104. Rule of construction.*

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**TITLE I—SHARK CONSERVATION ACT OF 2010**

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**[SEC. 104. OFFSET OF IMPLEMENTATION COST.**

**[Section 308(a) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(a)) is amended by striking “2012.” and inserting “2010, and \$2,500,000 for each of fiscal years 2011 and 2012.”.]**

**SEC. 104. RULE OF CONSTRUCTION.**

*Nothing in this title or the amendments made by this title shall be construed as affecting, altering, or diminishing in any way the authority of the Secretary of Commerce to establish such conservation and management measures as the Secretary considers necessary and appropriate under sections 302(a)(3) and 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(3), 1854(g)).*

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## ADDITIONAL VIEWS

H.R. 4528 would amend the Billfish Conservation Act of 2012 to require billfish landed in Hawaii or the Pacific Insular Areas (American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, the Northern Mariana Islands, Palmyra Atoll, and Wake Island) to be retained for sale in those areas. While this bill's title characterizes this change as a technical amendment, we believe this bill represents a substantive change in the law (Billfish Conservation Act of 2012; Public Law 112–183). While we appreciate the conservation intent of H.R. 4528, we feel that billfish fisheries off the coasts of Hawaii and the Pacific Insular Areas are already well-managed and sustainable.

Such a change in the law principally targets fishers in Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands and prevents them from selling their sustainably-caught billfish to markets in the mainland United States, removing an exemption in the Billfish Conservation Act of 2012 for these Pacific fisheries. Many local fishermen's groups from Hawaii, Guam, and other Pacific Insular Areas oppose this change in the law, as does the Western Pacific Regional Fishery Management Council.

Under Section 4(c) of the Billfish Conservation Act of 2012, billfish caught by U.S. fishing vessels and landed in Hawaii or the Pacific Insular Areas are currently exempt from the general prohibitions on sale and custody with the intent to sale, reflecting careful management of domestic billfish fisheries in the Pacific under the Magnuson-Stevens Fishery Conservation and Management Act. Unfortunately, in the Atlantic region, recreational fishers prize billfish such as swordfish and marlin, which has led to overfishing and stock depletion of several Atlantic billfish species.<sup>1</sup> Note the Billfish Conservation Act of 2012 does not restrict fishing for swordfish, and that H.R. 4528 would not close this exemption.

Alan Risenhoover, Director of the Office of Sustainable Fisheries at NOAA, emphasized in his written testimony submitted to the House Natural Resources Subcommittee on Water, Power and Oceans at an April 17, 2018, hearing on H.R. 4528, “. . . in the Pacific and Western Pacific, with the exception of striped marlin, billfish populations are not overfished or subject to overfishing and are being sustainably managed under the Magnuson Stevens Act. The U.S. catch of billfish has been below established limits set by international bodies for Pacific striped marlin stocks.”<sup>2</sup>

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<sup>1</sup>2017 *Stock Assessment and Fishery Evaluation (SAFE) Report for Atlantic Highly Migratory Species*, National Oceanic and Atmospheric Administration (NOAA), Atlantic Highly Migratory Species Management Division, January 2018

<sup>2</sup>Alan Risenhoover, Testimony by to the Committee on Natural Resources, Subcommittee on Water, Power and Oceans, April 17, 2018

U.S.-caught billfish account for only a small percentage of the total landings in the Pacific region. Approximately 15 percent of the total catch in Hawaii in 2016 consisted of billfish.<sup>3</sup> Local fishermen's groups from Hawaii, Guam and other Pacific Insular Areas have expressed strong objections to closing a potential future market for their Pacific-caught billfish in the mainland United States. H.R. 4528 will negatively impact the livelihoods of fishermen in Hawaii, Guam and the Pacific Insular Areas by closing off the only off-island market for U.S.-caught billfish.

In closing, H.R. 4528 will do little to improve billfish conservation in U.S. territorial waters in the Pacific, where fishermen have been sustainably landing these species for generations. We support needed-conservation efforts in the Atlantic, but do not believe that Pacific fisheries need to be targeted in order to achieve those goals. Such unwarranted restrictions on commercial fishing activities are seen by many Pacific Islander fishermen as infringing upon generations of traditional fishing practices, their rights as indigenous peoples, and consensus-based local fisheries management.

COLLEEN HANABUSA.  
AUMUA AMATA COLEMAN  
RADEWAGEN.  
MADELEINE Z. BORDALLO.



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<sup>3</sup> *Stock Assessment and Fishery Evaluation Report. Pacific Island Pelagic Fisheries 2016*, Western Pacific Regional Fishery Management Council, September 13, 2017