

115TH CONGRESS }
1st Session

SENATE

{ REPORT
115-193

AMERICAN FISHERIES ADVISORY
COMMITTEE ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1322



DECEMBER 11, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

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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. 1322]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1322) 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 purpose of the American Fisheries Advisory Committee (Advisory Committee) Act is to create a committee to do the following: identify the needs of the seafood industry; develop requests for proposals; review grant applications; and select grant applications for approval. The Act also would require that all final decisions be at the discretion of the Secretary of Commerce (Secretary) and that the Advisory Committee meet not more than two times each year.

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 Federal managed fish; as of 2016, less than 10 percent of stocks were subject to over-

¹ 16 U.S.C. §1801 et seq.

fishing and 16 percent of stocks were overfished.² Additionally, in 2016, two stocks were declared rebuilt and added to the list of rebuilding success stories.³ One of the reasons stocks have recovered in recent years is that the 2006 amendments to the MSA required hard annual catch limits on stocks. Thus, in recent years, in order to increase profits, fishermen have had to primarily focus on increasing the value of their catch rather than catching more fish.

The Saltonstall-Kennedy Fund (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, the previous advisory committee oversaw the Fund’s activity,⁶ but that advisory committee was disbanded due to the enactment of the Federal Advisory Committee Act (5 U.S.C. App.). Since the disbanding of that advisory committee, the funds have been distributed by the National Oceanic and Atmospheric Association (NOAA) either as grants or to fund internal projects.

Concerns have been raised, however, that NOAA does not distribute grants in accordance with the 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 Act would establish the Advisory Committee to evaluate grants and make recommendations on which projects should be funded by the Fund.

LEGISLATIVE HISTORY

On June 8, 2017, S. 1322 was introduced by Senator Sullivan (for himself and Senators Cantwell and Murkowski). It is also cosponsored by Senator Warren. On August 2, 2017, the Committee met in open Executive Session and, by a voice vote, ordered S. 1322 to be reported favorably with an amendment (in the nature of a substitute). A substitute amendment was proposed by Senator Schatz. S. 1322 is nearly identical to S. 3087 that was reported out of Committee in the 114th Congress.

In the 114th Congress, several amendments to S. 3087, including four from Senator Markey and two from Senator Schatz, were adopted at Executive Session and incorporated in the bill as reported. This Congress, S. 1322 reflects the changes that were agreed to last Congress, namely the following: requiring grant recipients to publicly post the title and abstract of the project; reorganizing of geographic areas; requiring that one member of the Board represent the fisheries science community; providing criteria by which the Secretary would evaluate grant applications; and requiring the Secretary to submit to the Advisory Committee a justifica-

²National Oceanic and Atmospheric Administration, “Status of Stocks 2016: Annual Report to Congress on the Status of U.S. Fisheries,” at http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2016/status-of-stocks-2016-web.pdf.

³Ibid.

⁴15 U.S.C. §713e-3

⁵Ibid.

⁶P.L. 83-466; 68 Stat. 376.

tion if the recommendations of the Advisory Committee are not followed.

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. 1322—American Fisheries Advisory Committee Act

S. 1322 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. S. 1322 also would expand the scope of projects eligible for a grant under the program.

Based on an analysis of information from DOC, CBO estimates that the committee's operations would cost \$2 million a year over the 2018–2022 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. 1322 would have no significant net effect on the federal budget. Pay-as-you-go procedures apply because enacting the bill would affect direct spending. Enacting S. 1322 would not affect revenues.

CBO estimates that enacting S. 1322 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1322 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 Theresa Gullo, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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 Act, as reported, would cover anyone applying for a Fund grant; last year NOAA recommended over 40 projects totaling \$10 million.

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 would provide a written document to the Advisory Committee justifying the decision in failing to provide funding for a grant selected by the Advisory Committee.

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 would provide that the Act may be cited as "the American Fisheries Advisory Committee Act."

Section 2. American Fisheries Advisory Committee.

This section would establish the Advisory Committee. Membership of the Advisory Committee would include 10 members from various States and 9 At-Large Members. The Advisory Committee would be required to do the following: identify the needs of the seafood industry; develop requests for proposals; review grant applications; and select applications for approval for grants. The Advisory Committee would meet not more than biannually. All decisions would be subject to a feasibility review by the Secretary.

Section 3. Expansion of specified purposes of fisheries research and Development Projects Grants Program to include fisheries research and development projects.

This section would amend and expand the Saltonstall-Kennedy Fund governing statute to include fisheries science and recreational fishing as approved projects for grant application.

Section 4. Public availability of grants proposals.

This section would require any person awarded a grant 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):

AUGUST 11, 1939

[53 Stat. 1412]

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

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

(a) * * *

(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, *fisheries science, recreational fishing*, 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) * * *

(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, shellfish, or marine algae 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-Ste-

vens 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.

