

Calendar No. 179

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-77

AMERICAN FISHERIES ADVISORY
COMMITTEE ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 494



AUGUST 16, 2019—Ordered to be printed
Filed, under authority of the order of the Senate of August 1, 2019

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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

R E P O R T

[To accompany S. 494]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 494) 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 without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 494, 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 federally managed fish:

¹ 16 U.S.C. 1801 et seq.

as of the end of 2017, 9 percent of stocks were subject to overfishing and 15 percent of stocks were overfished.² Additionally, in 2017, three 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 Administration (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 36 grants given out by NOAA in 2018, only six were intended 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

S. 494 was introduced on February 14, 2019, by Senator Sullivan (for himself and Senators Cantwell, Markey, Murkowski, and Warren) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On April 3, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 494 to be reported favorably without amendment.

In the 115th Congress, a similar bill, S. 1322 was introduced by Senator Sullivan (for himself and Senators Cantwell and Murkowski) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. It also was 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 by Senator Schatz. S. 1322 was 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 re-

²National Oceanic and Atmospheric Administration, “Status of Stocks 2017: Annual Report to Congress on the Status of U.S. Fisheries,” at <https://www.fisheries.noaa.gov/national/2017-report-congress-status-us-fisheries>.

³*Ibid.*

⁴15 U.S.C. 713e-3.

⁵*Ibid.*

⁶Public Law 83-466; 68 Stat. 376.

ported. Subsequent versions of the bill reflect these changes, including 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 justification 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. 494, American Fisheries Advisory Committee Act			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 3, 2019			
Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 494 would establish the American Fisheries Advisory Committee within the Department of Commerce (DOC). The committee would consist of representatives from each of six geographic regions and 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 the needs of fishing communities, developing requests for proposals for research and development grants to meet those needs, reviewing grant applications, and selecting applicants to receive funding.

The National Oceanic and Atmospheric Administration currently administers the fishery research and development grant program described above. That program's funding is derived from DOC's permanent statutory authority to spend 30 percent of customs receipts collected from imported fishery products. In 2018 the agency spent \$16 million for those purposes. S. 494 would shift the authority to administer that grant program to the newly established committee. The bill also would expand eligibility for grant applicants to include projects related to fisheries science and recreational fishing.

S. 494 would not change the amount of authorized spending of custom receipts (although the composition of that spending might change). Thus, CBO estimates that enacting S. 494 would not affect the federal budget.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy 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 bill, as reported, would cover anyone applying for a Fund grant.

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 be required to provide a written document to the Advisory Committee justifying denial of 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 semiannually. 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):

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 (SALTONSTALL-KENNEDY ACT)

* * * * *

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

SEC. 2. (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 the Secretary—*

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

(ii) based on the recommendations of the American Fisheries Advisory Committee established in subsection (e), 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.*

(B) If the Secretary fails to provide funds to a grant selected by the American Fisheries Advisory Committee, the Secretary shall provide a written document to the Committee justifying the decision.

(4) Each grant made under this 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 of 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) 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 the Territory of the Virgin Islands of the United States.*

(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 or processor;*

(II) *one shall have experience as recreational or commercial fisher or have experience growing seafood; and*

(III) *one shall be an individual who represents the fisheries science community or the relevant Regional Fishery Management Council; 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 as follows:

(i) *One individual with experience in food distribution, marketing, retail, or food service.*

(ii) *One individual with experience in the recreational fishing industry supply chain, such as fishermen, manufacturers, retailers, and distributors.*

(iii) *One individual with experience in the commercial fishing industry supply chain, such as fishermen, manufacturers, retailers, and distributors.*

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

- (C) *BALANCED REPRESENTATION.*—*In selecting the members described in subparagraphs (A) and (B), the Secretary shall seek to maximize on the Committee, to the extent practicable, a balanced representation of expertise in United States fisheries, seafood production, and science.*
- (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).*
 - (C) *MINIMIZING COSTS.*—*The Committee shall seek to minimize the operational costs associated with meetings, hearings, or other business of the Committee, including through the use of video or teleconference.*
- (9) *DESIGNATION OF STAFF MEMBER.*—*The Secretary shall designate a staff member to coordinate the activities of the Committee and to assist with administrative and other functions as requested by the Committee.*
- (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 costs of reimbursements under subparagraph (A) and the other costs associated with the Committee shall be paid from funds made available to carry out this section (which may include funds described in subsection (f)(1)(B)), except that no funds allocated for grants under subsection (f)(1)(A) shall be expended for any purpose under this subsection.*
- (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.

(12) *TECHNICAL REVIEW OF APPLICATIONS.—*

(A) *IN GENERAL.—*Prior to review of an application for a grant under subsection (c) by the Committee, the Secretary shall obtain an independent written technical evaluation from 3 or more appropriate Federal, private, or public sector experts (such as industry, academia, or governmental experts) who—

(i) *have subject matter expertise to determine the technical merit of the proposal in the application;*

(ii) *shall independently evaluate each such proposal; and*

(iii) *shall certify that the expert does not have a conflict of interest concerning the application that the expert is reviewing.*

(B) *GUIDANCE.—*Not later than 180 days after the date of enactment of the American Fisheries Advisory Committee Act, the Secretary shall issue guidance related to carrying out the technical evaluations under subparagraph (A). Such guidance shall include criteria for the elimination by the National Oceanic and Atmospheric Administration of applications that fail to meet a minimum level of technical merit as determined by the review described in subparagraph (A).

[(e)] (f) *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 para-

graph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in accordance 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.

