

Calendar No. 213

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-66 }

FLUKE FAIRNESS ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1747



FEBRUARY 3, 2022.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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FEBRUARY 3, 2022.—Ordered to be printed

Ms. CANTWELL, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1747]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1747) to provide for an equitable management of summer flounder based on geographic, scientific, and economic data, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1747, as reported, is to provide for an equitable management of summer flounder based on geographic, scientific, and economic data and for other purposes.

BACKGROUND AND NEEDS

Summer flounder, or fluke, are flat, bottom-dwelling fish that live in the Atlantic Ocean. They are found from the east coast of Florida to the Canadian province of Nova Scotia. They can grow up to 2 feet and are popular targets for both recreational and commercial fishing.¹ The summer flounder fishery is targeted by both commercial and recreational fishers.² In 2019, commercial fishers

¹National Oceanic and Atmospheric Administration, National Marine Fisheries Service, “Summer Flounder” (<https://www.fisheries.noaa.gov/species/summer-flounder>) (accessed September 8, 2021).

²National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Science and Technology, *Fisheries of the United States, 2019*, Current Fishery Statistics No.

Continued

caught more than 9 million pounds of summer flounder worth \$30 million.³ In the same year, recreational fishers caught 7.8 million pounds of fish.⁴

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) guides management of Federal fisheries resources through the use of fishery management plans within the eight established regional councils for fisheries in Federal waters. Fisheries in State waters are either managed directly by States or by an interstate commission, though not all interstate commissions have regulatory authority. Due to its presence in multiple State waters, as well as Federal waters, summer flounder is jointly managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission.⁵ Some stakeholders have expressed concern that the use of old data has resulted in a fishery management plan that does not give New York recreational or commercial fishermen an adequate share of the summer flounder quota.⁶

SUMMARY OF PROVISIONS

If enacted, S. 1747 would require the Council to submit to the Secretary a modified fishery management plan or an amendment to the existing fishery management plan for the commercial management of summer flounder.

LEGISLATIVE HISTORY

S. 1747, the Fluke Fairness Act of 2021, was introduced on May 20, 2021, by Senator Schumer and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On May 25, 2021, Senator Gillibrand became a cosponsor. On June 16, 2021, the Committee met in open Executive Session and, by voice vote, ordered S. 1747 reported favorably with an amendment.

In the 116th Congress, S. 908, the Fluke Fairness Act of 2019, was introduced on March 27, 2019, by Senator Schumer (for himself and Senator Gillibrand) 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. 908 reported favorably without amendment.

In the 115th Congress, similar legislation, S. 3331, the Fluke Fairness Act of 2018, was introduced on August 1, 2018, by Senator Schumer (for himself and Senator Gillibrand) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. The measure was not taken up by the Committee.

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

2019, 2021 (<https://www.fisheries.noaa.gov/national/sustainable-fisheries/fisheries-united-states>) (accessed September 8, 2021).

³Ibid.

⁴Ibid.

⁵National Oceanic and Atmospheric Administration, National Marine Fisheries Service, "Summer Flounder" (<https://www.fisheries.noaa.gov/species/summer-flounder>) (accessed September 8, 2021).

⁶Mark Harrington, "Schumer Pledges to Use Clout to Pass 'Fluke Fairness Act,'" *Newsday*, November 5, 2013 (https://www.newsday.com/news/nation/schumer-pledges-to-use-clout-to-pass-fluke-fairness-act-1.6375816?_ga=2.73170384.2137316337.1561046669-1062949043.1561046669) (accessed September 7, 2021).

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 2021.

Hon. MARIA CANTWELL,
Chair, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1747, the Fluke Fairness Act of 2021.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure

S. 1747, Fluke Fairness Act of 2021			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 16, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 1747 would require the Mid-Atlantic Fishery Management Council to modify the fishery management plan for the commercial management of summer flounder within one year of enactment. The modified plan would:

- Establish commercial quotas in direct proportion to the distribution, abundance, and location of summer flounder;
- Consider regional, coastwide, or other management measures for summer flounder; and
- Require commercial catch quotas for summer flounder to reflect the most recent scientific information on summer flounder landings.

In addition, the bill would require the Government Accountability Office to report to the Congress on the implementation of the modified fishery management plan.

Using information from the National Oceanic and Atmospheric Administration and based on the costs of similar activities, CBO es-

estimates that implementing S. 1747 would cost \$1 million over the 2022–2026 period; spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Sofia Guo. 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

S. 1747, as reported, does not create any new programs. It may result in a change to the regulatory requirements for some fishermen, but those individuals and businesses are already subject to regulation.

Economic Impact

S. 1747, as reported, is not expected to have a negative impact on the Nation’s economy.

Privacy

S. 1747, as reported, is not expected to impact the personal privacy of individuals.

Paperwork

S. 1747, as reported, would likely result in an updated fishery management plan.

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 bill may be cited as the “Fluke Fairness Act of 2021”.

Section 2. Findings

This section contains findings regarding the economic importance of summer flounder, a history of its management, and how that management led to a perceived inequity in stock allocation among States.

Section 3. Definitions

This section would define “Commission” as the Atlantic States Marine Fisheries Commission; “Council” as the Mid-Atlantic Fishery Management Council; “National Standards” as the national standards for fishery conservation and management set out in sec-

tion 301(a) of the MSA;⁷ “Secretary” as the Secretary of Commerce; and “summer flounder” as the species *Paralichthys dentatus*, also commonly known as fluke.

Section 4. Summer flounder management reform

This section would require the Council to submit to the Secretary, which the Secretary may approve, a modified fishery management plan or amendment to an existing plan for the commercial management of summer flounder. The plan would be based on the best scientific information available, use recent data, and consider other management measures for summer flounder. In preparing the plan, the Council shall consult with the Commission to ensure consistent management throughout the range of the summer flounder. If the Council fails to submit a modified fishery management plan or amendment within 1 year, the Secretary would be required to prepare and consider one.

Section 5. Report

This section would require the Comptroller General to submit to Congress a report on the implementation of such modified plan or amendment that includes an assessment of whether such implementation complies with the National Standards of the MSA.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.



⁷ 16 U.S.C. 1851(a).