

STAFF SUMMARY OF EXECUTIVE ACTIONS AND
FEDERAL LEGISLATION IN THE 115TH U.S. CONGRESS

A summary of recent Federal legislation is attached. This summary is intended as a general overview for discussion purposes. Full text of these bills, with background information and current status, can be found at the Library of Congress website (<http://thomas.gov>) or at <http://govtrack.us>.

The topics below are organized generally in order of priority to the Council. Figures in percentages (x%) are the bill's chance of passage as assigned by Skopos Labs.

Signed Into Law

HR 4528/S. 396 A Bill to Make Technical Amendments to Certain Marine Fish Conservation Statutes

- Introduced by Darren Soto (D-FL) and Bill Nelson (D-FL).
- Signed into law August 2.

Makes very minor technical amendments to the Billfish Conservation Act and Shark Conservation Act.

Sea Lion Predation Bills

Several new bills have been introduced (and action has been taken on existing bills) to address sea lion predation of salmonids listed under the Endangered Species Act. These include:

HR 2083/S. 1702 Endangered Salmon and Fisheries Predation Prevention Act

- Introduced by Jaime Herrera-Beutler (R-WA)/James Risch (R-ID)
- HR 2083 passed the House June 26, 2018 (29% chance of passage). S. 1702 has not moved since introduction on August 2, 2017.

Amends the Marine Mammal Protection Act to give temporary authorization to “eligible entities” to lethally take sea lions on the Columbia River.

S. 3119 Endangered Salmon Predation Prevention Act
S. 3315 Predation Reduction of Salmon Act

- S. 3119 introduced by James Risch (R-ID) on June 21, 2018 and reported by committee August 1 (4% chance of passage)
- S. 3315 introduced by Jeff Merkley (D-OR) on July 31, 2018 (4% chance of passage)

Both bills allow the taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other nonlisted fish species. The bills are nearly identical.

Other Newly Introduced Bills

HR 6212: Imported Seafood Safety Standards Act

- Introduced by Clay Higgins (R-LA) on June 25, 2018 (2% chance of passage)

Amends the Federal Food, Drug, and Cosmetic Act to require safety certification of imported seafood. Requires testing of 20 percent of all seafood imported into the U.S. each year, plus the first 15 shipments of seafood imported from new exporters.

HR 6267: Coastal and Ocean Acidification Stressors and Threats Research Act

- Introduced by Suzanne Bonamici (D-OR) on June 28, 2018 (5% chance of passage)

Amends the Federal Ocean Acidification Research and Monitoring Act of 2009 to establish an Ocean Acidification Advisory Board, to expand and improve the research on Ocean Acidification and Coastal Acidification, and to establish and maintain a data archive system for Ocean Acidification data and Coastal Acidification data. Introduced on June 28, 2018 and referred to the House Science, Space, and Technology Committee.

HR 6300: National Ocean Policy Act

- Introduced by Jimmy Panetta (D-CA) on June 29, 2018 (19% chance of passage)

Gives Executive Order (EO) 13547 (Obama) the full force and effect of law. Among other things, the EO establishes a national policy to protect, maintain and restore the health of ocean, coastal, and Great Lakes ecosystems and resources. This is a response to the Trump administration's June 2018 EO that repeals the National Ocean Policy.

Previously Discussed Bills:

HR 8/HR 5895 Water Resources Development Act

- HR 8 was introduced by Bill Shuster (R-PA) on May 18, 2018 and passed House on June 6 (81% chance of passage). HR 8 is similar to S. 2800 (Barrasso, R-WY)
- HR 5895 was introduced by Mike Simpson on May 21, 2018 and passed Senate on June 25 (84% chance of passage)

HR 8 supports harbor maintenance, dredging, and general Army Corps of Engineer operations. Section 112 clarifies Corps obligations to provide assistance to Indian tribes displaced as a result of the construction of the Bonneville, John Day Dam, and The Dalles Dams. (Similar provisions were included in HR 1630 and S. 669, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act). HR 5895 does not contain the same provisions.

HR 200: Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act

- Introduced by Don Young (R-AK) on May 18, 2018
- Passed House on July 11 (31% chance of passage)

HR 200 passed the House on July 11 (see Agenda Item F.2, Attachment 2 for the most recent version of the bill, Attachment 3 for text of the MSA as currently modified by HR 200 and S. 1520, and Attachment 4 for a Council Coordination Committee letter on HR 200).

The following amendments were approved:

- Strike section 302(c) and 307, modify sections 205, 207, 304, 306, 406, and 408, add section on voting procedures for the Western Alaska Community Development Quota Program's administrative panel. (Young, R-AK)
- Create an industry-based pilot trawl survey for the New England and Mid-Atlantic Fishery Management Council regions. (Courtney, D-CT)
- Waive compensatory mitigation requirements for maintenance dredging projects in certain inland waterways, inlets, or harbors. (Frankel, D-FL)
- Require the Comptroller General to submit a report to Congress on resource rent of Limited Access Privilege Programs in the Gulf of Mexico and South Atlantic Fishery Management Councils, ways the Treasury can reclaim that resource rent, and ways to eliminate fiduciary conflicts of interest in the South Atlantic and Gulf of Mexico Fishery Management Councils. (Graves, R-LA) (subsequently modified)
- Direct the Secretary to submit a plan to establish fully operational electronic monitoring and reporting procedures for the Northeast Multispecies Fishery. (Keating, D-MA)
- Require the National Oceanic and Atmospheric Administration (NOAA) to conduct a study on all fees it charges the lobster industry and report those findings to Congress. (Poliquin, R-ME)
- Lift the ban on striped bass fishing in the Block Island transit zone between Montauk, NY and Block Island, RI. (Zeldin, R-NY)

- Direct the Secretary to use funds collected from penalties and fines for monitoring in addition to traditional enforcement activities. (Keating, D-MA)
- Reward the elimination of lionfish from U.S. waters by allowing individuals to exchange lionfish for tags authorizing fishing for certain species in addition to the number of such species otherwise authorized to be taken by such individuals. (Gaetz, R-FL) (subsequently modified)

The following amendments were rejected:

- Ensure that rebuilding plans are successful in rebuilding overfished fish stocks. (Huffman, D-CA)
- Provide voting representation for Rhode Island on the Mid-Atlantic Fishery Management Council. (Langevin, D-RI)

HR 3916 FISH Act

- Introduced by Ken Calvert (R-CA) on October 3, 2017
- Reported by Committee July 18, 2018 (63% chance of passage)

This bill transfers all functions with respect to anadromous species and catadromous species under the Endangered Species Act from the Secretary of Commerce or National Marine Fisheries Service (NMFS) to the Secretary of the Interior. Current orders, determinations, regulations, etc. would remain in effect until modified, terminated, etc., by the President, other authorized officials, Courts, or law. Opposing groups state that although the U.S. Fish and Wildlife Service (USFWS) and NMFS have similar budgets for endangered species, USFWS has responsibility for 1400 endangered species, while NMFS manages 95. Therefore, they believe the bill would weaken protections that currently exist under NMFS jurisdiction.

The Council [commented on this bill](#) at the request of Reps. Calvert and Panetta.

S. 756: Save Our Seas Act

- Introduced by Dan Sullivan (R-AK) on March 29, 2017
- Has passed both House and Senate. Differences being negotiated (90% chance of passage)

A bill to reauthorize and amend the Marine Debris Act to promote international action to reduce marine debris.

S. 1425: Coordinated Ocean Monitoring and Research Act

- Introduced by Roger Wicker (R-AK) on June 22, 2017
- Passed Senate on January 8, 2018 (4% chance of passage)

Reauthorizes the Integrated Coastal and Ocean Observation System Act of 2009.

S. 1520: Modernizing Recreational Fisheries Management Act

- Introduced by Roger Wicker (R-AK) on July 10, 2017
- Reported by Committee Feb. 28 and June 5, 2018
- 70% chance of passage.

S. 1520 was reported by committee on June 5 (see Attachment 5 for the current version). A comparison between the current and previous versions of S. 1520 is provided in Attachment 6. Of particular note:

Sec. 102 (“Alternative Fishery Management Measures”) was changed to “Fishery Management Measures,” and references to “alternative” were deleted. Examples of such management measures remain the same (extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities).

Sec. 103 changes the contents and timeline for the study of limited access privilege programs in mixed-use fisheries. The North Pacific Council is newly excluded from such studies. The temporary moratorium on limited access privilege programs now applies only to the Gulf, South Atlantic, and Mid-Atlantic Councils.

Sec. 104 states that rebuilding “not exceed the shortest time possible within which the stock of fish would be rebuilt without fishing occurring, plus one mean generation, unless management measures under international agreement in which the United States participates dictate otherwise.” (The previous version included the 10 year option).

Sec. 104 also adds criteria for judging whether rebuilding is occurring. Under the new wording, Councils may not adopt fishery management plans, amendments, etc., for stocks that have not rebuilt, unless there is a 75 percent chance of rebuilding within a proposed timeline, as determined by the Scientific and Statistical Committee.

Sec. 105 removes a provision allowing Councils to maintain annual catch limits (ACLs) for certain stocks that have not been assessed within the preceding five years, that are not subject to overfishing, and for which the ACL is 25 percent or more below the fishing limit.

Sec. 106 removes previously proposed limitations on exempted fishing permits (EFPs). Councils, interstate fishery commissions, and state fish and wildlife agencies may voice their objections and request an explanation for why an EFP was approved.

Sec. 201 changes some of the requirements for a report on cooperative data collection, and adds a requirement for a biennial report on the Marine Recreational Information Program (MRIP).

Sec. 202 removes Saltonstall-Kennedy funds from a state partnership program on recreational data collection and modifies requirements for the National Academy of Sciences report on MRIP.

S. 3138: AQUAA Act of 2018

- Introduced by Roger Wicker (R-MS) on June 26, 2018
- 5% chance of passage

The Legislative Committee reviewed a discussion draft for this bill at its June meeting, and the bill was introduced on June 26. Sections that differ substantially from the introduced version are bolded below. Attachment 7 also shows the changes made.

Sec. 2. Findings, page 2 of Attachment 7. This section explains the need for a Federal strategy related to marine aquaculture in the Exclusive Economic Zone (EEZ). The bill lays out the benefits of aquaculture in the EEZ, including the fact that over 90 percent of the seafood consumed in the U.S. is imported.

In the newest version, text is added in Section 2(b)(2) – “The purposes of this act.... To safeguard the marine environment, *wild fish stocks*, and our coastal communities...”

Sec. 3. Definitions, page 5. This section defines coastal state, cultured species, EEZ, and other terms.

Sec. 4. Office of Marine Aquaculture, page 9. This section establishes an Office of Aquaculture within the National Marine Fisheries Service at NOAA headquarters and regional fisheries offices.

Sec. 5. Administration, page 11. NOAA would serve as the lead Federal agency for the purposes of providing information on aquaculture permitting requirements in state and Federal waters. This section directs Commerce to begin a rulemaking process to coordinate the offshore aquaculture permitting process with the assistance of relevant Federal agencies, coastal states, tribal governments, and regional fishery management councils.

Sec. 6. Offshore Aquaculture Permits, page 14. This section outlines requirements for obtaining a 25-year offshore aquaculture permit (which may be renewed for an additional 25 years) and the standards for revoking a permit.

Previously, Sec. 6(a)(3) required proposed aquaculture projects to be compatible with the use of the EEZ for fishing, navigation, resource protection, etc., and (4) stated that aquaculture must not interfere with the conservation measures of the MSA. These sections were moved to Sec. 10(1).

This section also removes a paragraph—Sec. 6(b)(2)(B)—which would have allowed the culture of species that were “naturalized to the region where the aquaculture facility is located” (as opposed to being native or sterile).

Paragraph 6(c)(1)(E) is amended to require applications to specify plans for responding to disease outbreaks in aquaculture facilities. Paragraph (F) now requires “a contingency plan for responding to an escape of farmed fish... including a response to a technical failure ... that presents a navigational hazard.”

Paragraph 6(d)(2) is amended to disallow state-owned entities, or those that are majority-controlled by a state-owned enterprise, from applying for offshore aquaculture permits.

Sec. 7. Restrictions on Offshore Aquaculture Activities (page 31). This section requires a permit established by this Act to participate in offshore aquaculture, while allowing permits already in place to be grandfathered in. Additionally, this section would allow states to oppose certain species and locations for offshore aquaculture if certain requirements are met.

Sec. 8. Recordkeeping and Access to Information (page 32). This section requires permit holders to maintain records related to their operation.

Sec. 9. Programmatic Environmental Impact Statements (page 34). This section requires NOAA to initiate and lead environmental impact statements for areas that the Secretary determines are “highly favorable for marine aquaculture and likely compatible with other uses of such areas.”

Added text (Sec. 9(c)(2) and (3)) now states that individual projects may require additional review under NEPA, and that all public input, including regional and local concerns, must be considered.

Sec. 10. Environmental and Management Standards (page 34). This section requires the Secretary to consult with appropriate Federal agencies, states, and fishery management councils to identify environmental requirements that apply to offshore aquaculture under existing laws.

Sec. 10(2) now contains text moved from Sec. 6(a)(3) requiring the Secretary to consider environmental and management factors that apply to offshore aquaculture under existing law that are compatible with the use of the EEZ for navigation, fishing, resource protection, recreation, and other purposes.

A new provision requires the Secretary to (C) “recognize the importance of fishery resources to fishing communities...” and to the extent practicable, to avoid, minimize, or mitigate adverse impacts to (D) the marine environment and to (E) wild fish stocks and fisheries; (F) to use only cultured species previously described; (G) to prevent transmission of disease or parasites to wild stocks; (H) to prevent escapes that might cause significant environmental harm; (I) to minimize risks and impacts on water quality; and (J) to avoid, minimize, etc., cumulative adverse impacts of multiple operations. (Certain parts of this section were reworked from the previous version).

Sec. 11. Research and Development Grant Program (page 35). This section creates a research and development grant program to investigate priority issues, such as disease prevention, feed alternatives, and seafood marketing programs. The new version adds the Saltonstall-Kennedy Grant Program as a source of partnerships.

Sec. 12. Enforcement (page 39). This section provides enforcement authority regarding violations committed with respect to offshore aquaculture facilities.

Sec. 13. Authorization of Appropriations (page 43). This section authorizes \$350 million over 5 years to carry out this legislation.

California SB 1017 Commercial fishing: drift gill net shark and swordfish fishery

- Introduced by Sen. Allen on February 7, 2018
- Amended and reported by committee March and April 2018.

This bill, discussed in April, aims to phase out shark and swordfish driftnet fishing in California starting in 2019. The bill continues to move through the California legislature, with the last action (a hearing) on August 8.

Recently Discussed Bills that Have Not Moved:

- HR 2936: Resilient Federal Forests Act (Westerman). Would likely have negative impacts on salmon habitat.
- HR 3144: To provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time, and for other purposes (McMorris-Rodgers). Would prevent spill to aid salmon. Still given a 53 percent chance of passage.
- S. 2764: Sustainable Shark Fisheries and Trade Act (Rubio); prohibits the import of shark products originating from any nation without a certification.
- S. 2773/HR 5638: Driftnet Modernization and Bycatch Reduction Act (Feinstein, Lieu). Aims to phase out large-scale driftnet fishing for swordfish in U.S. waters by 2020, and authorizes NOAA to develop a program to help the driftnet fishery transition to more sustainable methods.

PFMC
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