

**Calendar No. 224**

115TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
115-160

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

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 396



SEPTEMBER 19, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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

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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. 396]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 396) to make technical amendments to certain marine fish conservation statutes, 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. 396, a bill to make technical amendments to certain marine fish conservation statutes, is to make technical amendments that would clarify an exemption in the Billfish Conservation Act of 2012 (Act of 2012)<sup>1</sup> and clarify the authority of the Secretary of Commerce (Secretary) under the Shark Conservation Act of 2010 (Act of 2010)<sup>2</sup>.

#### BACKGROUND AND NEEDS

##### **Billfish Conservation Act of 2012**

More than 2 decades ago, the United States banned the commercial sale and harvest of Atlantic-caught billfish (marlin, sailfish, and spearfish) in order to maximize recreational opportunities for these relatively rare fish. Catch-and-release recreational angling

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<sup>1</sup> 16 U.S.C. §1827a

<sup>2</sup> P.L. 111-348, 124 Stat. 3668.

for billfish generates many millions of dollars in economic benefits to the U.S. economy each year.<sup>3</sup> On October 5, 2012, President Obama signed into law the Act of 2012, effectively banning the importation of billfish into the continental United States.<sup>4</sup> In the Act of 2012, the term “billfish” is defined to mean blue marlin, striped marlin, black marlin, sailfish, shortbill spearfish, white marlin, roundscale spearfish, Mediterranean spearfish, and longbill spearfish, but excludes swordfish. The legislation was in response to declining billfish populations due to overfishing by non-U.S. commercial fishing fleets. In an effort to conserve billfish, the Act of 2012 prohibits the sale of billfish, as defined, except in the State of Hawaii, in order to respect traditional fisheries.<sup>5</sup>

While it has been almost 5 years since enactment, the rule-making required to implement the Act of 2012 has not been completed by the National Oceanic and Atmospheric Administration. The reason for the delay is that a drafting error in the Act of 2012 may actually continue to allow billfish caught in other parts of the world to be shipped into the United States via Hawaii’s traditional fishing exemption.<sup>6</sup>

### **Shark Conservation Act of 2010**

In January 2011, the Act of 2010 was signed into law. The Act of 2010 amended the High Seas Driftnet Fishing Moratorium Protection Act<sup>7</sup> and the Magnuson-Stevens Fishery Conservation and Management Act<sup>8</sup> (Magnuson-Stevens Act) to improve the conservation of sharks. The Act of 2010 directs the Secretary to urge international fishery management organizations to adopt shark conservation measures and requires the Secretary to list a nation in the biennial report on international compliance if the nation’s fishing vessels are, or have been, engaged in fishing activities that target or incidentally catch sharks in waters beyond their jurisdiction. Among other things, provisions of the Act of 2010 prohibits any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, or transferring or landing shark fins.<sup>9</sup>

#### SUMMARY OF PROVISIONS

If enacted, S. 396 would do the following:

- Close the exemption loophole in the Act of 2012 by specifying that billfish can only be landed and retained in Hawaii, thus ensuring billfish are not routed through Hawaii and sold to the U.S. mainland.
- Remove an expired offset in the Act of 2010 and replace that section with language affirming that the Act of 2010

<sup>3</sup> Congressional Sportsmen’s Foundation, “Billfish Conservation Act of 2012 Passes the House of Representatives,” press release, September 12, 2012, at <http://sportsmenslink.org/the-media-room/news/billfish-conservation-act-of-2012-passes-the-house-of-representatives>.

<sup>4</sup> 16 U.S.C. §1827a

<sup>5</sup> Congressional Sportsmen’s Foundation, “Billfish Conservation Act of 2012 Becomes Law,” press release, October 16, 2012, at <http://sportsmenslink.org/the-media-room/news/billfish-conservation-act-of-2012-passes-the-house-of-representatives>.

<sup>6</sup> American Sportfishing Association, “Senators Weigh in on Billfish Conservation Act,” press release, February 17, 2017, at <http://asafishing.org/senators-weigh-billfish-conservation-act>.

<sup>7</sup> P.L. 102-582, 106 Stat. 4900.

<sup>8</sup> 18 U.S.C. §1801

<sup>9</sup> P.L. 111-348, 124 Stat. 3668.

would not alter or diminish the authority of the Secretary under the Magnuson-Stevens Act.<sup>10</sup>

#### LEGISLATIVE HISTORY

S. 396 was introduced in the Senate on February 15, 2017, by Senator Nelson and is cosponsored by Senators Rubio, Moran, and Manchin. On May 18, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 396 be reported favorably without amendment.

#### 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. 396—A bill to make technical amendments to certain marine fish conservation statutes, and for other purposes*

S. 396 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 S. 396 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, based on 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 2018–2027 period. Enacting the bill would not affect direct spending.

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

S. 396 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The prohibitions in S. 396 would impose a private-sector mandate, as defined by UMRA. Based on information from NOAA about the value of billfish landed in Hawaii and the 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 (\$156 million, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jacob Fabian (for federal costs) and Amy Petz (for private-sector mandates). The esti-

<sup>10</sup> 16 U.S.C. §1852

mate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT

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. 396, as reported, would not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

##### ECONOMIC IMPACT

S. 396 is not expected to have a negative impact on the Nation's economy.

##### PRIVACY

The reported bill would have no impact on the personal privacy of individuals.

##### PAPERWORK

S. 396 would not increase paperwork requirements for either the private sector or public sector.

##### 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. Billfish Conservation Act of 2012*

This section would clarify that an exemption provided for certain traditional fisheries and markets applies to billfish landed and retained locally.

##### *Section 2. Shark Conservation Act of 2010*

This section would amend section 104 of the Act of 2010 by deleting an expired offset and replacing it with a rule of construction, which would ensure that the Act of 2010 would not alter or diminish the authority of the Secretary to conserve and manage highly migratory fish species<sup>11</sup> and Atlantic highly migratory species<sup>12</sup> under the Magnuson-Stevens Act.

#### 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

<sup>11</sup> 16 U.S.C. §1852(a)(3)

<sup>12</sup> 16 U.S.C. §1854(g)

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

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

[Public Law 111–348; 124 Stat. 3668]

**[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)).*

BILLFISH CONSERVATION ACT OF 2012

[Public Law 112–183; 126 Stat. 1422]

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

[16 U.S.C. 1827a]

(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

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(2) does not include the species *Xiphias gladius* (swordfish).

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