

Calendar No. 728

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-425

WHALING CONVENTION AMENDMENTS ACT
OF 2018

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2369



DECEMBER 11, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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WHALING CONVENTION AMENDMENTS ACT OF 2018

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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. 2369]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2369) to authorize aboriginal subsistence whaling pursuant to the regulations of the International Whaling Commission, 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. 2369 is to amend the Whaling Convention Act of 1949¹ to allow Alaska Native subsistence whaling. It would require the Secretary of Commerce (Secretary) to act if the International Whaling Commission (IWC) fails to give Alaska Natives any whaling quota. In absence of action by the IWC, the Secretary would be required to establish catch limits for any given year, according to all limits and regulations of the IWC, and issue any regulations necessary to implement this Act within 3 years of its enactment.

BACKGROUND AND NEEDS

Subsistence hunting is an important way of life for indigenous communities including those in northern and western Alaska and Washington. Alaska State laws define subsistence hunting and fishing as the noncommercial customary and traditional uses of

¹ 16 U.S.C. §916 et seq.

fish and wildlife, to include such things as follows: food, sharing, construction materials, fuel, clothing, tools, transportation, and handicrafts. In addition to ensuring a critical source of food, whaling rights are extremely important to many Native American groups because they support cultural traditions, provide economic benefits, and help to maintain a sense of identity.

THE MARINE MAMMAL PROTECTION ACT

The Marine Mammal Protection Act of 1972 (MMPA)² was enacted in response to growing concerns among scientists and the general public about the health and population size of various marine mammal species. A signature piece of the MMPA was the establishment of a moratorium on the taking (defined as hunting, harassing, capturing, or killing, or attempting to do so) of marine mammals in U.S. waters. That Act authorized the Secretaries of Commerce and the Interior to issue permits for the taking of marine mammals for certain purposes. The MMPA shifted all marine mammal management authority to the Federal Government, dividing the species among the National Oceanic and Atmospheric Administration (NOAA) and the Fish and Wildlife Service (FWS), with all whales managed by NOAA.

The moratorium on taking of marine mammals generally does not apply to Alaska or Washington Natives, as section 101 of the MMPA³ contains provisions allowing for the taking of marine mammals for subsistence use. However, the Secretaries of Commerce and the Interior may regulate the taking of a depleted species or stock, regardless of the purpose for which it is taken.

THE INTERNATIONAL WHALING COMMISSION

The IWC is an inter-governmental organization established under the 1946 International Convention for the Regulation of Whaling (Convention) to provide proper conservation of whale stocks and manage whaling. The IWC consists of 88 member governments from countries all over the world. There are specific measures that the IWC has collectively decided are necessary to regulate whaling and conserve whale stocks. These specific measures are an integral part of the Convention. Uncertainty over whale stocks in 1986 led to a moratorium on commercial whaling. This moratorium remains in place, although the IWC continues to set catch limits for aboriginal subsistence whaling and research.

Alaska Natives have been hunting bowhead whales for traditional subsistence purposes for thousands of years. This right is protected under the MMPA and by the IWC, and hunting is allowed for registered members of the Alaska Eskimo Whaling Commission. The total allowable harvest quota for bowhead whales is determined by the IWC. The IWC bases this quota on the following: (1) the nutritional and cultural needs of Alaska Natives; and (2) the size and growth of the bowhead population. This harvest is reviewed every year and the quota is generally set in 5-year increments. The currently approved quota covers the years 2013 through 2018, and allows Alaskan and Chukotkan whalers to land up to 336 whales over this 5-year period. The IWC adopted an

² 16 U.S.C. §1361 et seq.

³ 16 U.S.C. §1371.

automatic renewal to reauthorize quotas for Alaska Natives in September 2018, so long as harvests remain scientifically sustainable.

Alaska Eskimos are prohibited from taking either bowhead calves or whales accompanied by calves. And only licensed ship captains or crew may engage in whaling. In addition to harpoons, rifles may be used to expedite the kill. The Alaska Eskimo Whaling Commission established a weapons improvement program, which has both improved the hunting efficiency and well as provided a more humane method. The whole process usually involves the entire village, and the whale is shared extensively within the Eskimo community. The meat, fat, baleen, and bone are distributed throughout the village.

Though the IWC has always granted the United States' request for an Alaska Natives quota, subsistence quotas have been a point of contention. In 2012, no quota was given to Greenland for subsistence purposes for the 2013–2018 seasons, despite a request that was consistent with the IWC's Scientific Committee. As a result, Greenland set its own quota. S. 2369 would provide a similar mechanism for the United States to set its own quota if the IWC fails to approve a request.

SUMMARY OF PROVISIONS

If enacted, S. 2369, the Whaling Convention Amendments Act of 2018 would do the following:

- Require the Secretary of Commerce to establish sustainable catch limits for the Alaska Native aboriginal subsistence hunt for any year if the IWC has not adopted catch limits for that year.
- Require the Secretary to issue any regulations necessary to implement these actions within 3 years.
- Direct the Secretary to review and update the regulations as needed, at least once every 5 years.

LEGISLATIVE HISTORY

S. 2369, the Whaling Convention Amendments Act of 2018, was introduced on February 8, 2018, by Senator Sullivan (for himself and Senators Murkowski and Whitehouse) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On April 25, 2018, the Committee met in open Executive Session and by voice vote ordered S. 2369 reported favorably without amendment.

On February 15, 2018, a companion bill, H.R. 5064, the Whaling Convention Amendments Act of 2018, was introduced by Representative Young and was referred to the Committee on Foreign Affairs of the House of Representatives.

On June 5, 2012, in anticipation of that year's upcoming IWC meeting, S. 3262, the Whaling Convention Amendments Act of 2012, was introduced by Senator Begich (for himself and Senator Murkowski) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. A similar companion bill, H.R. 5898, the Whaling Convention Amendments Act of 2012, was also introduced on June 5, 2012, by Representative Young and was referred to the Committee on Foreign Affairs of the House of Representatives.

On October 31, 2017, the Committee on Commerce, Science, and Transportation of the Senate held a hearing on subsistence issues entitled “Exploring Native American Subsistence Rights and International Treaties.” On April 25, 2018, the Committee held a hearing on the MMPA entitled “Enhancing the Marine Mammal Protection Act.”

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. 2369—Whaling Convention Amendments Act of 2018

S. 2369 would amend the Whaling Convention Act of 1949 to authorize the Secretary of Commerce to set catch limits for subsistence whaling by Alaska Natives in any year for which the Secretary determines that the International Whaling Commission (IWC) has not adopted such limits. To ensure sustainability of the whale population, any catch limit would be set on the basis of the IWC’s most recent stock assessment. The bill also would require the National Oceanic and Atmospheric Administration (NOAA) to issue regulations for implementing the bill.

According to NOAA, the bill would mostly codify current policies and practices for the process of setting limits on subsistence whaling. Therefore, CBO estimates that implementing S. 2369 would have no significant effect on federal spending.

Enacting S. 2369 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 2369 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 2369 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. 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. 2369, as reported, would not create any new programs or impose any new regulatory requirements. Therefore, it would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have a negative impact on the Nation’s economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 2369 would not create increases in paperwork burdens if enacted.

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 “Whaling Convention Amendments Act of 2018.”

Section 2. Amendment of the Whaling Convention Act of 1949.

This section would amend the Whaling Convention Act of 1949 by allowing the Secretary of Commerce to authorize aboriginal subsistence whaling according to the regulations of the IWC. This would include establishing catch limits for any given year if the IWC has not adopted such applicable catch limits for that year, according to all limits and regulations of the IWC.

Section 3. Implementing regulations.

This section would require the Secretary to issue any regulations necessary to implement this Act within 3 years of its enactment. In addition, the Secretary would be required to review and update the regulations as needed, and at least once every 5 years.

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):

WHALING CONVENTION ACT OF 1949

[16 U.S.C. 916 et seq.]

SEC. 6A. ABORIGINAL SUBSISTENCE WHALING.

(a) *IN GENERAL.*—*The Secretary of Commerce, or such officer as may be designated by the Secretary, shall authorize aboriginal subsistence whaling pursuant to paragraph 13 of the regulations of the Commission (or any successor to such paragraph), if such whaling—*

- (1) *is for subsistence purposes (including the sale of authentic native articles of handicrafts and clothing);*
- (2) *does not include the striking, taking, or killing of calves or any whale accompanied by a calf; and*

(3) is not accomplished in a wasteful manner.

(b) *CATCH LIMIT.*—

(1) *REQUIREMENT TO ESTABLISH.*—*The Secretary of Commerce shall establish catch limits for the Alaska Native aboriginal subsistence whale hunt for any year, if the Secretary determines that—*

(A) *the Commission has failed to adopt catch limits applicable to the hunt for such year; and*

(B) *the biological status of the affected stock is such that, based on the most recent review of the status of such stock by the Scientific Committee of the Commission, the aboriginal subsistence needs statement submitted by the United States to the Commission of that year is sustainable.*

(2) *LIMITATION.*—*The catch limits established by the Secretary under paragraph (1) shall satisfy the Alaska Native subsistence needs described in a statement submitted by the United States to the Commission, and shall include carryover at the level accepted by the Scientific Committee of the Commission in its most recent review of the subsistence whaling quota.*

(3) *CONSTRUCTION.*—*Nothing in paragraph (1) relieves the United States Commissioner of the Commissioner's obligation to continue seeking adoption by the Commission, pursuant to the paragraph 13 of the regulations of the Commission (or any successor to such paragraph that permits aboriginal subsistence whaling), of catch limits that provide for Alaska Native aboriginal subsistence needs.*