

Calendar No. 317

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-167

FLUKE FAIRNESS ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 908



DECEMBER 5, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

99-010

WASHINGTON : 2019

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. 908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 908) 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 without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 908, 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 two feet and are popular targets for both recreational and commercial fishing.¹

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

¹National Oceanic and Atmospheric Administration, NOAA Fisheries, “Summer Flounder” (<https://www.fisheries.noaa.gov/species/summer-flounder>) (accessed on March 28, 2019).

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.² Some stakeholders have expressed concern that the use of old data has led to a fishery management plan that does not give New York recreational or commercial fishermen an adequate share of the summer flounder quota.³

SUMMARY OF PROVISIONS

If enacted, S. 908 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. 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 Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

²National Oceanic and Atmospheric Administration, NOAA Fisheries, “Summer Flounder” (<https://www.fisheries.noaa.gov/species/summer-flounder>) (accessed on March 28, 2019).

³Mark 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 on March 28, 2019).

S. 908, Fluke Fairness Act of 2019			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 3, 2019			
By Fiscal Year, 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	1	n.e.
Pay-as-you-go procedures apply?	No	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
n.e. = not estimated.			

S. 908 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 the bill's 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.

Using information from the National Oceanic and Atmospheric Administration, CBO estimates that implementing S. 908 would cost \$1 million in 2020. Any spending would be subject to the availability of appropriated funds.

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. 908 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

Enactment of the 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. 908 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 2019”.

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 section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)); “Secretary” as the Secretary of Commerce; and “summer flounder” as the species *Paralichthys dentatus*.

Section 4. Summer flounder management plan modification.

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 a 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.

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.

