

KEEPING ECOSYSTEMS LIVING AND PRODUCTIVE ACT

NOVEMBER 16, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4458]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4458) to establish a grant program within the National Oceanic and Atmospheric Administration to award grants to eligible entities for the purpose of carrying out projects on the conservation, restoration, or management of kelp forest ecosystems, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Keeping Ecosystems Living and Productive Act” or the “KELP Act”.

SEC. 2. GRANTS FOR CONSERVING, RECOVERING, AND MAINTAINING KELP FOREST ECOSYSTEMS.

(a) **ESTABLISHMENT.**—The Administrator shall establish a grant program under which the Administrator shall award grants to eligible entities described in subsection (b) to carry out projects relating to the conservation, restoration, or management of kelp forest ecosystems.

(b) **ELIGIBLE ENTITY.**—To be eligible for a grant under this section, an entity shall—

(1) be a member of the fishing industry, an institution of higher education, a nonprofit organization, an Indian Tribe, or a State agency;

(2) propose or be conducting a project relating to the conservation, restoration, or management of kelp forest ecosystems developed through consultation with any of the other entities described in paragraph (1); and

- (3) submit to the Administrator an application describing such project at such time, in such manner, and containing such information as the Administrator may require, including information about what criteria will be used to monitor and evaluate the effectiveness of the project and the qualifications of the applicant to conduct, monitor, and evaluate the project.
- (c) **ELIGIBLE PROJECTS.**—The Administrator shall award grants to eligible entities for projects that—
- (1) address greatest relative regional declines in kelp forest ecosystems;
 - (2) focus on elements such as—
 - (A) long term ecosystem resilience;
 - (B) long term socioeconomic resilience;
 - (C) kelp forest seeding and connectivity;
 - (D) re-establishing trophic structure to support resilience through actions such as targeted urchin removal and predator control efforts;
 - (E) monitoring and assessment of kelp forest ecosystems; or
 - (F) other efforts to restore kelp forest ecosystems and prevent large scale losses of kelp forests; or
 - (3) are identified by Federal or State restoration and management plans as focal areas for recovery of kelp forests and associated species.
- (d) **MATCHING REQUIREMENT.**—
- (1) **IN GENERAL.**—Except as provided in paragraph (2), the amount of Federal funding received as a grant under this section by an eligible entity may not exceed 85 percent of the total cost of the project for which a grant is awarded. For the purposes of this subparagraph, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.
 - (2) **WAIVER.**—The Administrator may waive all or part of the requirement in paragraph (1) if the Administrator determines that no reasonable means are available through which an eligible entity applying for a grant under this section can meet such requirement and the probable benefit of such project outweighs the public interest in such requirement.
- (e) **DEFINITIONS.**—In this section—
- (1) the term “Administrator” means the Secretary of Commerce acting through the Administrator of the National Oceanic and Atmospheric Administration.
 - (2) the term “fishing industry” means processors, commercial fishermen, and recreational fishermen;
 - (3) the term “Indian Tribe” has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304);
 - (4) the term “institution of higher education” has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));
 - (5) the term “kelp forest ecosystem” means a naturally occurring, biotic system dominated by canopy-forming, stipitate, or prostrate benthic macroalgae and associated taxa; and
 - (6) the term “nonprofit organization” means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that the purposes of this Act and the grants authorized by section 2 are to support native wild kelp forest ecosystems and restoration of native wild kelp to enable long term recovery of naturally functioning kelp forest ecosystems that do not involve commercial or mechanized harvesting.

PURPOSE OF THE BILL

The purpose of H.R. 4458 is to establish a grant program within the National Oceanic and Atmospheric Administration to award grants to eligible entities for the purpose of carrying out projects on the conservation, restoration, or management of kelp forest ecosystems.

BACKGROUND AND NEED FOR LEGISLATION

Kelp forests grow predominantly along the Pacific Coast, from Alaska and Canada to the waters of Baja California. These marine ecosystems provide food and habitat for hundreds of species of fish,

invertebrates, and marine mammals.¹ Coastal communities also depend on healthy kelp forest ecosystems to protect coastlines and support sustainable fisheries.

In the past five years, California’s kelp forests have collapsed. On the North coast of California, more than 95% of kelp coverage is lost due to a “perfect storm” of harmful conditions including higher ocean temperatures, which limit kelp growth, and sea star wasting disease, which is removing a key predator of purple sea urchins.² The resulting population explosion of urchins, voracious kelp eaters, has led to underwater wastelands.

The red abalone fishery, severely impacted by a lack of food, has been closed with significant impacts on local businesses and communities. Habitat loss has meant fewer fish and less food for birds, larger fish, and marine mammals. Kelp restoration and urchin removal efforts are underway, but local stakeholders and state partners need support.

H.R. 4458 would direct federal resources to this growing challenge by establishing a new NOAA grant program to fund conservation, restoration, and management projects focused on kelp forest ecosystems. Grants would be open to tribes, academic researchers, the fishing industry, nonprofits, and state agencies. Projects should address the most significant relative regional declines, long-term ecological and socio-economic resilience, and kelp restoration and urchin removal efforts to prevent large-scale kelp forest loss. Priority projects should focus on areas that have already been identified as focal recovery areas by federal and state management plans.

COMMITTEE ACTION

H.R. 4458 was introduced on July 16, 2021, by Representative Jared Huffman (D–CA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On July 29, 2021, the Subcommittee held a hearing on the bill. On February 16, 2022, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chair Raúl M. Grijalva (D–AZ) offered an amendment in the nature of a substitute. Rep. Cliff Bentz (R–OR) offered an amendment designated Bentz #1 to the amendment in the nature of a substitute. The amendment was not agreed to by a roll call vote of 18 yeas and 23 nays, as follows:

¹ *Kelp Forest*, OCEANA, <https://oceana.org/marine-life/kelp-forest/> (last visited Nov. 3, 2022).

² *“Perfect Storm” Decimates Northern California Kelp Forests*, CAL. DEP’T OF FISH & WILDLIFE MARINE MGMT. NEWS (Mar. 30, 2016), <https://cdfwmarine.wordpress.com/2016/03/30/perfect-storm-decimates-kelp/>; see also LAURA ROCCHIO WITH MIKE CARLOWICZ, NASA EARTH OBSERVATORY, MONITORING THE COLLAPSE OF KELP FORESTS, <https://earthobservatory.nasa.gov/images/148391/monitoring-the-collapse-of-kelp-forests> (last visited Nov. 3, 2022).

Date: February 16, 2022

**COMMITTEE ON NATURAL RESOURCES
117TH CONGRESS — ROLL CALL**

Bill / Motion: H.R. 4458

Amendment: Rep. Bentz #1 amendment

Disposition: Was not agreed to by a roll call vote of 18 yeas and 23 nays.

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA		X	
2	Mr. Case, HI		X	
3	Mr. Cohen, TN			
4	Mr. Costa, CA		X	
5	Ms. DeGette, CO		X	
6	Mrs. Dingell, MI		X	
7	Mr. Gallego, AZ		X	
8	Mr. Garcia, IL		X	
9	Mr. Grijalva, AZ (Chair)		X	
10	Mr. Huffman, CA		X	
11	Ms. Leger Fernández, NM		X	
12	Mr. Levin, CA		X	
13	Mr. Lowenthal, CA		X	
14	Ms. McCollum, MN		X	
15	Mr. McEachin, VA			
16	Mrs. Napolitano, CA		X	
17	Mr. Neguse, CO		X	
18	Ms. Porter, CA		X	
19	Mr. Sablan, MP			
20	Mr. San Nicolas, GU		X	
21	Mr. Soto, FL		X	
22	Ms. Stansbury, NM		X	
23	Ms. Tlaib, MI		X	
24	Mr. Tonko, NY		X	
25	Ms. Trahan, MA		X	
26	Ms. Velázquez, NY		X	
	REP. MEMBERS (22)			
1	Mr. Bentz, OR	X		
2	Mrs. Boebert, CO	X		
3	Mr. Carl, AL	X		
4	Mr. Fulcher, ID	X		
5	Mr. Gohmert, TX			
6	Miss González-Colón, PR	X		
7	Mr. Graves, LA	X		
8	Ms. Herrell, NM	X		
9	Mr. Hice, GA			
10	Mr. Lamborn, CO	X		
11	Mr. McClintock, CA	X		
12	Mr. Moore, UT	X		
13	Mr. Oberholte, CA	X		
14	Mrs. Radewagen, AS			
15	Mr. Rosendale, MT	X		
16	Mr. Stauber, MN	X		
17	Mr. Tiffany, WI	X		
18	Mr. Webster, FL	X		
19	Mr. Westerman, AR (RM)	X		
20	Mr. Wittman, VA	X		
21	Mr. Young, AK	X		
22	vacancy			
	Total: 48 / Quorum: 16 / Report: 26	18	23	
	TOTALS	YEAS	NAYS	PRESENT

Rep. Bentz offered an amendment designated Bentz #2 to the amendment in the nature of a substitute. The amendment was not agreed to by a roll call vote of 19 yeas and 23 nays, as follows:

Date: February 16, 2022

**COMMITTEE ON NATURAL RESOURCES
117TH CONGRESS — ROLL CALL**

Bill / Motion: H.R. 4458

Amendment: Rep. Bentz #2 amendment.

Disposition: Was not agreed to by a roll call vote of 19 yeas and 23 nays.

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA		X	
2	Mr. Case, HI		X	
3	Mr. Cohen, TN			
4	Mr. Costa, CA		X	
5	Ms. DeGette, CO		X	
6	Mrs. Dingell, MI		X	
7	Mr. Gallego, AZ		X	
8	Mr. Garcia, IL		X	
9	Mr. Grijalva, AZ (Chair)		X	
10	Mr. Huffman, CA		X	
11	Ms. Leger Fernández, NM		X	
12	Mr. Levin, CA		X	
13	Mr. Lowenthal, CA		X	
14	Ms. McCollum, MN		X	
15	Mr. McEachin, VA			
16	Mrs. Napolitano, CA		X	
17	Mr. Neguse, CO		X	
18	Ms. Porter, CA		X	
19	Mr. Sablan, MP			
20	Mr. San Nicolas, GU		X	
21	Mr. Soto, FL		X	
22	Ms. Stansbury, NM		X	
23	Ms. Tlaib, MI		X	
24	Mr. Tonko, NY		X	
25	Ms. Trahan, MA		X	
26	Ms. Velázquez, NY		X	
	REP. MEMBERS (22)			
1	Mr. Bentz, OR	X		
2	Mrs. Boebert, CO	X		
3	Mr. Carl, AL	X		
4	Mr. Fulcher, ID	X		
5	Mr. Gohmert, TX	X		
6	Miss González-Colón, PR	X		
7	Mr. Graves, LA	X		
8	Ms. Herrell, NM	X		
9	Mr. Hice, GA			
10	Mr. Lamborn, CO	X		
11	Mr. McClintock, CA	X		
12	Mr. Moore, UT	X		
13	Mr. Oberholte, CA	X		
14	Mrs. Radewagen, AS			
15	Mr. Rosendale, MT	X		
16	Mr. Stauber, MN	X		
17	Mr. Tiffany, WI	X		
18	Mr. Webster, FL	X		
19	Mr. Westerman, AR (RM)	X		
20	Mr. Wittman, VA	X		
21	Mr. Young, AK	X		
22	vacancy			
	Total: 48 / Quorum: 16 / Report: 25	19	23	
	TOTALS	YEAS	NAYS	PRESENT

Ranking Member Bruce Westerman (R-AR) offered an amendment designated Westerman #1 to the amendment in the nature of a substitute. The amendment was agreed to by voice vote. The amendment in the nature of a substitute, as amended, was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 23 yeas and 19 nays, as follows:

Date: February 16, 2022

COMMITTEE ON NATURAL RESOURCES
117TH CONGRESS — ROLL CALL

Bill / Motion: H.R. 4458

Amendment:

Disposition: Final Passage: H.R. 4458, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 23 yeas and 19 nays.

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA	X		
2	Mr. Case, HI	X		
3	Mr. Cohen, TN			
4	Mr. Costa, CA	X		
5	Ms. DeGette, CO	X		
6	Mrs. Dingell, MI	X		
7	Mr. Gallego, AZ	X		
8	Mr. Garcia, IL	X		
9	Mr. Grijalva, AZ (<i>Chair</i>)	X		
10	Mr. Huffman, CA	X		
11	Ms. Leger Fernández, NM	X		
12	Mr. Levin, CA	X		
13	Mr. Lowenthal, CA	X		
14	Ms. McCollum, MN	X		
15	Mr. McEachin, VA			
16	Mrs. Napolitano, CA	X		
17	Mr. Neguse, CO	X		
18	Ms. Porter, CA	X		
19	Mr. Sablan, MP			
20	Mr. San Nicolas, GU	X		
21	Mr. Soto, FL	X		
22	Ms. Stansbury, NM	X		
23	Ms. Tlaib, MI	X		
24	Mr. Tonko, NY	X		
25	Ms. Trahan, MA	X		
26	Ms. Velázquez, NY	X		
	REP. MEMBERS (22)			
1	Mr. Bentz, OR		X	
2	Mrs. Boebert, CO		X	
3	Mr. Carl, AL		X	
4	Mr. Fulcher, ID		X	
5	Mr. Gohmert, TX		X	
6	Miss González-Colón, PR		X	
7	Mr. Graves, LA		X	
8	Ms. Herrell, NM		X	
9	Mr. Hice, GA			
10	Mr. Lamborn, CO		X	
11	Mr. McClintock, CA		X	
12	Mr. Moore, UT		X	
13	Mr. Oberholte, CA		X	
14	Mrs. Radewagen, AS			
15	Mr. Rosendale, MT		X	
16	Mr. Stauber, MN		X	
17	Mr. Tiffany, WI		X	
18	Mr. Webster, FL		X	
19	Mr. Westerman, AR (RM)		X	
20	Mr. Wittman, VA		X	
21	Mr. Young, AK		X	
22	vacany			
	Total: 48 / Quorum: 16 / Report: 25	23	19	
	TOTALS	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Oceans, and Wildlife held on July 29, 2021.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2022.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4458, the KELP Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4458, KELP Act			
As ordered reported by the House Committee on Natural Resources on February 16, 2022			
By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	27	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 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 4458 would require the National Oceanic and Atmospheric Administration to award grants for projects that would conserve, restore, or manage kelp forest ecosystems (shallow, underwater ecosystems consisting of various algae species). Recipients could include commercial and recreational anglers; academic institutions; nonprofit organizations; and state, local, and tribal governments.

Using information on similar programs and accounting for anticipated inflation, CBO estimates that implementing H.R. 4458 would cost \$27 million over the 2022–2027 period, assuming appropriation of the estimated amounts. The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 4458

	By fiscal year, millions of dollars—						
	2022	2023	2024	2025	2026	2027	2022–2027
Estimated Authorization	0	7	7	7	7	8	36
Estimated Outlays	0	2	5	6	7	7	27

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to establish a grant program within the National Oceanic and Atmospheric Administration to award grants to eligible entities for the purpose of carrying out projects on the conservation, restoration, or management of kelp forest ecosystems.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104 as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

DISSENTING VIEWS

H.R. 4458 would create a new grant program under the National Oceanic and Atmospheric Administration for the creation and management of kelp forest ecosystems located in federal and state waters. Unfortunately, the Committee on Natural Resources had limited time for discussion on H.R. 4458 because this bill was squeezed into a Subcommittee on Water, Oceans, and Wildlife legislative hearing along with fourteen other bills.

While the \$250 million authorization of appropriations included in the introduced text of the bill was removed at full committee mark up, the bill still contains an unacceptable 85 percent federal cost share and does not limit administrative overhead costs. While H.R. 4458 proposes that 85 cents out of every project dollar be paid by the federal government, there was no justification given for the decision to finance this program overwhelmingly by the American taxpayers. In addition, the non-federal 15 percent cost share can be waived at the discretion of the National Oceanic and Atmospheric Administration.

H.R. 4458 would prohibit sustainable commercial harvests of any kelp financed by the new authority created in the bill. Kelp, like trees, can sequester carbon and there is interest in exploring this natural climate solution further. Harvesting of kelp in certain circumstances can generate economic activity and provide innovative and sustainable ways to manage this offshore resource.

For these reasons, I oppose H.R. 4458 as reported by the Committee on Natural Resources.

BRUCE WESTERMAN.

