



To: Subcommittee on Water, Oceans and Wildlife Republican Members
From: Subcommittee on Water, Oceans and Wildlife Republican Staff; Kiel Weaver (Kiel.Weaver@mail.house.gov), Annick Miller (Annick.Miller@mail.house.gov), and Rob MacGregor (Robert.MacGregor@mail.house.gov)
Date: March 14, 2022
Subject: Hybrid Legislative Hearing on H.R. 3431 (Pappas), H.R. 6491 (Huffman), H.R. 6651 (Young), H.R. 6785 (Moulton), and H.R. 6987 (Larsen)

On Thursday, March 17, 2022, at 1:00 p.m. EDT, in person and via Cisco Webex, the Subcommittee on Water, Oceans and Wildlife will hold a hybrid legislative hearing on five bills.

Member offices are requested to notify Annick Miller (Annick.Miller@mail.house.gov) no later than Wednesday, March 16, at 4:30 p.m. EDT, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- While well-intentioned, the Democrat bills in this hearing would authorize new taxpayer-funded grant-related programs with few limitations on overhead costs and large cost share burdens for the federal government.
- These bills are also part of a general Democrat agenda of throwing taxpayer money at species issues without streamlining the underlying federal regulatory structure that could help both species and people.
- H.R. 6651, the bill introduced by the Dean of the House, Mr. Young, seeks scientific answers and recommendations to resolve declining salmon runs in Alaska.

II. WITNESSES

Panel I – Members

- TBD

Panel II – Federal

- **Ms. Janet Coit**, Assistant Administrator, National Marine Fisheries Service, Silver Spring, Maryland.

Panel III – Stakeholders

- **Mr. Rick Marks**, Government Affairs Director, Robertson, Monagle & Eastaugh, Kenai, Alaska. *Testifying on H.R. 6651 and H.R. 6987.* (Republican Witness)
- **Ms. Jessica Redfern**, Senior Scientist and Chair of the Spatial Ecology, Mapping, and Assessment Program, Anderson Cabot Center, Boston, Massachusetts; *Testifying on H.R. 6785 and H.R. 6987.*
- **Mr. Steven Honigman**, former General Counsel, U.S. Navy (ret.), New York, New York; *Testifying on H.R. 6987.*
- **Ms. Jill Weitz**, Campaign Director, Salmon Beyond Borders, Juneau, Alaska; *Testifying on H.R. 6491 and H.R. 6651.*

III. BACKGROUND

[H.R. 3431](#) (Rep. Chris Pappas, D-NH), Increasing Community Access to Resiliency Grants Act of 2021

This bill would require the National Oceanic and Atmospheric Administration (NOAA) to create a centralized website that makes public all NOAA and other federal agency grants available to state, Tribal, and local governments for resiliency, adaptation and mitigation of climate change and sea level rise. NOAA would be required to include on the website the contact information for an individual who can offer assistance for each grant program. NOAA would also be required to conduct outreach to inform state, Tribal, and local governments of these grants. The bill does not include a discretionary funding amount.

The bill has nine cosponsors, including two Republicans [Reps. Daniel Webster (FL) and Brian Fitzpatrick (PA)].

[H.R. 6491](#) (Rep. Jared Huffman, D-CA), Salmon FISH Act

This bill would create a new designation of “salmon conservation areas” for watersheds or areas that have “attributes important to sustaining viable populations of salmon throughout their range” and may be “regionally significant for the conservation of salmon.” Under this designation and definition, the presence of salmon would not be required. In the last Congress, the Subcommittee on Water, Oceans and Wildlife held a hearing on similar legislation. The Republican witness highlighted that this “aspect of the FISH Act is directly contrary to a recent Supreme Court decision interpreting the Endangered Species Act. In *Weyerhaeuser Co., v. United States Fish and Wildlife Service* (139 S. Ct. 361), the Supreme Court held that the U.S. Fish and Wildlife

Service lacks authority under the Endangered Species Act to designate areas as critical habitat if the subject species is not present.”¹ The bill would also allow state governments, tribal nations, non-governmental organizations, and the general public to nominate areas for designation.

The bill would authorize \$200 million over five fiscal years for the U.S. Forest Service to implement Section 304 of the Healthy Forests Restoration Act of 2003 ([16 U.S.C. 6543](#)), which establishes a Watershed Condition Framework for National Forest System land. The U.S. Forest Service is required to use a portion of the funds for programs that “preserve watersheds that are salmon habitats.”

The bill would create a grant program under the U.S. Fish and Wildlife Service, in collaboration with NOAA, where eligible entities could apply for funding to carry out projects for salmon conservation and restoration activities. Some of the eligible activities include habitat restoration work, land acquisition, purchase of mining or water rights, removal of fish passage barriers and dams and local outreach. This program would be authorized at \$250 million for five fiscal years.

The bill has five Democrat cosponsors.

[H.R. 6651](#) (Rep. Don Young, R-AK) Alaska Salmon Research Task Force Act

The bill would require the Secretary of Commerce, in consultation with the Governor of Alaska, to create an Alaska Salmon Research Task Force (Task Force) to review existing Pacific salmon research, identify research gaps regarding the variability and the decline of salmon returns in some regions of Alaska, and to support sustainable management of salmon in Alaska. This is an attempt to understand the cause behind the recent low salmon runs in the Yukon River.² On January 21, 2022, NOAA issued determinations that, since 2018, fourteen fisheries disasters occurred in Alaska. Nearly all of these fisheries were salmon fisheries.³

The Task Force would be composed of thirteen to nineteen members, which would include representation from NOAA, the North Pacific Fishery Management Council, the U.S. section of the Pacific Salmon Commission, Alaska residents, the Alaskan fishing industry, and academic experts. Within one year of enactment, the Task Force must submit to the Secretary of Commerce and Congress a report detailing the work it conducted and any recommendations. The bill would not authorize funding but would require the Secretary of Commerce to provide administrative support to the Task Force.

This bill currently does not have cosponsors.

[H.R. 6785](#) (Rep. Seth Moulton, D-MA), Right Whale Coexistence Act

The North Atlantic right whale is an endangered whale species that migrates seasonally along the east coast of the United States, spending summer and fall in New England waters and the Bay of

¹ [Testimony of J.G. Andre Monette, Managing Partner, Washington D.C. Office, Best Best & Krieger L.L.P., on the House Natural Resources Committee’s Water, Oceans, and Wildlife Subcommittee hearing on H.R. 4723, the Salmon Focused Investments in Sustainable Habitats Act of 2019 \(“FISH Act”\).](#)

² <https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1308492981.pdf>

³ <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations>

Fundy in Canada. The right whale calving season begins in mid-November and runs through mid-April.⁴ Researchers have identified fourteen live calves for the 2022 calving season.⁵

Due to Atlantic right whale population concerns, NOAA developed a species recovery plan in 1991 and updated the plan in 2005.⁶ Recovery strategies focus on reducing death and injuries from shipping and commercial fishing operations, identifying important habitat, monitoring the health of the stock, conducting studies on potential threats, and assessing the population. The ultimate goal of the recovery plan is to remove the species from the federal endangered species list.⁷ NOAA also implemented the Atlantic Large Whale Take Reduction Plan (ALWTRP)⁸ and the Atlantic Large Whale Take Reduction Team (TRT)⁹ to further mitigate risks posed to marine mammals. In 2021, NOAA published a final rule to amend the ALWTRP.¹⁰ The rule modifies regulations for the northeast lobster and Jonah crab trap/pot fisheries as follows:

- Modifies gear marking to introduce state-specific colors for gear marks and increase the number of gear markings and areas requiring marked lines.
- Modifies gear configurations to reduce the number of vertical lines by requiring more traps between buoy lines.
- Requires weak insertions or weak rope in buoy lines.
- Modifies existing seasonally restricted areas to allow ropeless fishing.
- Adds two new seasonally restricted areas.
- Following changes made by Massachusetts, extends the Massachusetts Restricted Area to add state waters north to the New Hampshire border.

Shortly after the final rule was published, the Maine Lobstermen's Association filed a lawsuit challenging the new rule.¹¹ In addition, Maine Governor Janet Mills (D) requested, and was granted, intervenor status in the lawsuit.¹² This and other related litigation is still pending at the federal district court level.¹³ The gear modifications required by the rule are set go into effect May 1, 2022, which is the start of the American lobster/Jonah crab fishing year.

H.R. 6785 would create a new \$150 million grant program over ten fiscal years under the Department of Commerce for projects that conserve North Atlantic right whales. Specifically, such projects would be awarded grants if they: 1) address the unintentional conflicts between humans and North Atlantic right whales through development, testing, and use of innovative technology or other methods to reduce the lethal and sub-lethal effects on North Atlantic right whales from fishing gear entanglements and vessel collisions; 2) promote cooperative projects on such topics with foreign governments; or 3) promote cooperative projects on such topics with

⁴ [North Atlantic Right Whale Calving Season 2022](#)

⁵ *Id.*

⁶ [NOAA Institutional Repository Website: Recovery Plan for the North Atlantic Right Whale.](#)

⁷ *Id.* at 11

⁸ [NOAA Fisheries Website: Atlantic Large Whale Take Reduction Plan](#)

⁹ [NOAA Fisheries Website: Atlantic Large Whale Take Reduction Team](#)

¹⁰ [Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery](#)

¹¹ [Case No.: 1:21-cv-2509](#)

¹² <https://www.maine.gov/governor/mills/news/governor-mills-announces-maine-granted-intervenor-status-lawsuit-challenging-federal>

¹³ <https://www.courthousenews.com/along-the-gulf-of-maine-lawsuits-over-north-atlantic-right-whale-regulations-coming-to-boil/>

affected local communities, small businesses such as fishermen, others in the maritime private sector, or nongovernmental organizations.

Any State and tribal agency, institution, non-profit, or individual with expertise required for right whale conservation would be eligible for grants and allowed to enter into federal partnerships. Project sponsors must provide a 25 percent match to funds provided, although this could be waived by the Secretary of Commerce. In addition, the program would have a per year administrative overhead cap of 5 percent or \$80,000, whichever is greater. Lastly, the bill would authorize \$3 million over ten fiscal years for the Secretary of Commerce to conduct a Continuous Plankton Recorder survey.

The Subcommittee on Water, Oceans and Wildlife held a hearing on similar legislation in the 116th Congress, H.R. 1568. The Committee on Natural Resources subsequently passed the bill. The committee report, including dissenting views for the legislation, can be found [here](#). H.R. 6785 has five Democrat cosponsors.

H.R. 6987 (Rep. Rick Larsen, D-WA), To establish programs to reduce the impacts of vessel traffic and underwater noise on marine mammals, and for other purposes.

All marine mammals are protected under the Marine Mammal Protection Act (MMPA).¹⁴ Generally, the MMPA prohibits the “take” of marine mammals in U.S. waters and by U.S. citizens on the high seas.¹⁵ Under MMPA, the term “take” includes harassment, hunting, capturing, collecting, or killing of marine mammals.¹⁶ The MMPA also makes it illegal to import marine mammals and marine mammal products into the U.S. without a permit.¹⁷

This bill would create several grant programs intended to address impacts to marine mammals. Section 1 would create a new federal grant program to develop and expand ocean soundscape programs, which include data collection, monitoring, and analysis to benefit marine mammals. This program would be authorized at \$7.5 million over five fiscal years. The bill does not include any non-federal matching fund requirements or administrative overhead limits.

Section 2 would create a new grant program for seaports to develop “mitigation measures that lead to quantifiable reduction in impacts to marine mammals from vessel traffic, including shipping activities and port operations.” While the focus of this grant program is to address the impacts to marine mammals, listed among the priorities for funding are projects that protect coral reef impacts from ships. This program would be authorized at \$25 million over five fiscal years. The bill does not include any non-federal matching fund requirements or administrative overhead limits.

Section 3 would direct NOAA, in coordination with the U.S. Coast Guard and the Department of Defense, to create a pilot program to carry out a Near Real-Time Large Whale Monitoring and Mitigation Program. This program is intended to assist with the monitoring of the aforementioned North Atlantic right whales. NOAA would be required to include data on “core

¹⁴ 16 U.S.C. 1361 et seq

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

foraging habits” and “important feeding, breeding, calving, rearing, or migratory habitats” of right whales that occur within areas of high risk of vessel strikes or disturbance. In conversations with some stakeholders, committee staff have heard of potential concerns over mandatory requirements for monitoring systems on boat owners and what entities would have access to the collected data.

Lastly, NOAA would be required to submit a report to Congress within six years of enactment that would include an assessment of the efficacy of the program, a plan to expand the program, and proposals to include “additional large whale species of concern.” The bill does not provide any guidance as to what “additional large whale species of concern” means and how this would be determined. This program would be authorized at \$85 million over five fiscal years and does not include any non-federal matching fund requirements or administrative overhead limits.

Section 4 would require the Administrator of the Maritime Administration to create a grant program to develop technologies that reduce underwater noise. This program would be authorized at \$55 million over five fiscal years, and the bill does not include any non-federal matching fund requirements or administrative overhead limits. This section would not be under the jurisdiction of the House Natural Resources Committee, as the Maritime Administration is an agency of the Department of Transportation.

Section 5 would require the Secretary of Defense, in consultation with NOAA, the Maritime Administration, and the U.S. Coast Guard, to submit a report to Congress that identifies and evaluates existing non-classified naval technologies that reduce underwater noise. The bill would authorize \$100,000 to complete the report.

The bill has five cosponsors, including one Republican, Rep. Brian Fitzpatrick (PA).

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 3431 (Rep. Chris Pappas, D-NH), Increasing Community Access to Resiliency Grants Act of 2021

- Requires NOAA to create a website that makes public all NOAA and other federal agency grants available to state, tribal, and local governments for resiliency, adaptation and mitigation of climate change and sea level rise.

H.R. 6491 (Rep. Jared Huffman, D-CA), Salmon FISH Act

- Creates a new “salmon conservation area” designation.
- Authorizes \$200 million over five fiscal years for the U.S. Forest Service to implement Section 304 of the Healthy Forests Restoration Act of 2003.
- Creates a new \$250 million over five fiscal years grant program for funding to carryout projects for salmon conservation and restoration activities.

H.R. 6651 (Rep. Don Young, R-AK), Alaska Salmon Research Task Force Act

- Creates an Alaska Salmon Research Task Force.
- The Task Force is tasked with studying the causes behind the recent decrease in salmon runs and supporting coordination for salmon conservation efforts in Alaska.

H.R. 6785 (Rep. Seth Moulton, D-MA), Right Whale Coexistence Act

- Creates a new \$150 million over ten fiscal years grant program for projects that conserve North Atlantic right whales.

H.R. 6987 (Rep. Rick Larsen, D-WA), To establish programs to reduce the impacts of vessel traffic and underwater noise on marine mammals, and for other purposes.

- Creates several grant programs aimed at helping marine mammals.

V. COST

None of the bills have received a Congressional Budget Office cost analysis.

VI. ADMINISTRATION POSITION

Unknown at this time.

VII. EFFECT ON CURRENT LAW (RAMSEYER)