

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

May 19, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x58331)

Markup: **H.R. 4528 (Rep. Darren Soto, D-FL)**, To make technical amendments to certain marine fish conservation statutes, and for other purposes.
Wednesday, May 23, 2018; 1324 Longworth HOB

H.R. 4528 (Rep. Darren Soto), *To make technical amendments to certain marine fish conservation statutes, and for other purposes.*

Bill Summary

H.R. 4528 makes a technical correction to section 4 of the Billfish Conservation Act of 2012 (16 U.S.C. 1827a). The Act prohibits the sale of billfish, but provides an exemption for traditional fisheries markets in Hawaii and Pacific Insular Areas.¹ This bill clarifies that the exemption for these areas allows the sale of billfish caught by U.S. fishing vessels only within Hawaii and Pacific Insular Areas. The bill also amends the Shark Conservation Act of 2010 (Public Law 111-348) to emphasize that nothing in that Act would impact the ability of the Secretary of Commerce to manage highly migratory species pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

Cosponsors

None.

Background

Billfish is the common name used for a broad category of predatory and highly migratory species characterized by their spear-like “bill”.² Billfish are marine fish species that generally belong to the family Istiophoridae and can be found primarily in tropical and sub-tropical waters in oceans across the globe.³ Management of these species is typically governed by international fishing treaties, and the Secretary of Commerce promulgates regulations for their management within the exclusive economic zone of the United States pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.⁴

¹ *Billfish Conservation Act of 2012*, P.L. 112-183.

² <https://billfish.org/education/what-are-billfish/>.

³ *Id* at 2.

⁴ [16 U.S.C. 1801 et seq.](#)

The quality of data surrounding these species varies, and for several species the data is poor or nonexistent.⁵ For species with comprehensive stock assessments, their conservation statuses vary. According to the most recent stock assessments, some billfish species, including the Atlantic blue marlin, are overfished or undergoing overfishing.⁶ However, other species, including the Pacific blue marlin, are neither overfished nor undergoing overfishing.⁷

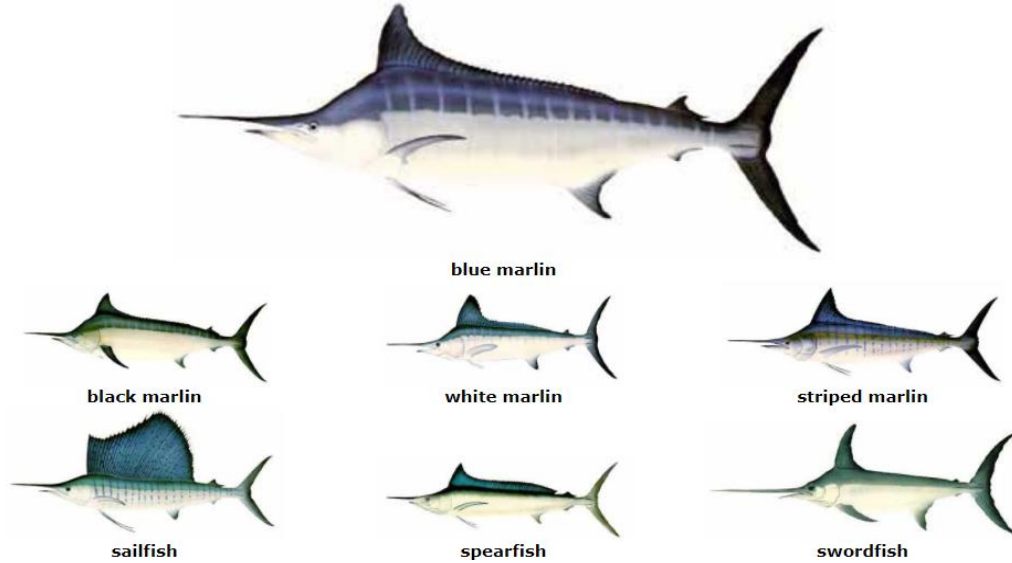


Figure 1: Images of several species of billfish. The prohibitions on the sale of billfish established by *Billfish Conservation Act of 2012* applied to each of these species except swordfish.

In 2012, Congress enacted the Billfish Conservation Act of 2012 (Public Law 112-183). This legislation broadly prohibited the sale of billfish in the mainland United States.⁸ This prohibition covers blue marlin, striped marlin, black marlin, sailfish, shortbill spearfish, white marlin, roundscale spearfish, Mediterranean spearfish, and longbill spearfish, but explicitly excludes swordfish.⁹ The Act included an exemption for traditional uses for “billfish caught by U.S. fishing vessels and landed in the State of Hawaii or Pacific Insular Areas”.¹⁰ Congress intended this exemption for traditional uses “not [to] apply to the State of Hawaii and Pacific

⁵ For example, in 2011 the Inter-American Tropical Tuna Commission determined that “it is not possible to determine the status of the sailfish stock in the EPO with respect to specific management parameters... because the results do not provide reliable information on stock productivity and the biomass level corresponding to [maximum sustainable yield]”. See report titled “[Status of Sailfish in the Eastern Pacific Ocean in 2011 and Outlook for the Future](#)” (Hinton, Michael G. and Maunder, Mark N.) for further detail on this species. For a variety of reasons several other species of billfish, including the shortbill spearfish, the roundscale spearfish and the longbill spearfish lack comprehensive, reliable stock assessments.

⁶[Stock Assessment for the Atlantic Blue Marlin](#), International Commission for the Conservation of Atlantic Tunas, 2011.

⁷ [Stock Assessment Update for Blue Marlin \(*Makaira nigricans*\) in the Pacific Ocean through 2014](#), Western and Central Pacific Fisheries Commission, 2014.

⁸ [16 U.S.C. 1827a\(a\)](#).

⁹ 16 U.S.C. 1827a(d).

¹⁰ 16 U.S.C. 1827a(c)(1).

Insular areas *as long as the billfish were only sold in Hawaii or a Pacific Insular area*” [emphasis added].¹¹

While Congress intended the exemption to allow the sale of billfish only within Hawaii or the Pacific Insular areas where the fish was landed and retained, as written, current law allows billfish landed in these areas to be sold to the mainland through these traditional markets. H.R. 4528 would amend section 4(c)(1) of the Act by adding “and retained” after “landed”. This change would reconcile current law and the original intent of the Act.

The Western Pacific Regional Fishery Management Council (WestPac) has voiced concerns over the adverse economic impact this bill would have on Hawaii and the Pacific Insular areas.¹² In 2015, WestPac released the Stock Assessment and Fishery Evaluation Report for Pacific Island Pelagic Fisheries and reported that the average annual revenue for commercial billfish landings in Hawaii totals about \$3 million.¹³ Billfish landings (which excludes swordfish), comprise approximately 39% of the total non-tuna landings in Hawaii and the Pacific Insular areas.¹⁴

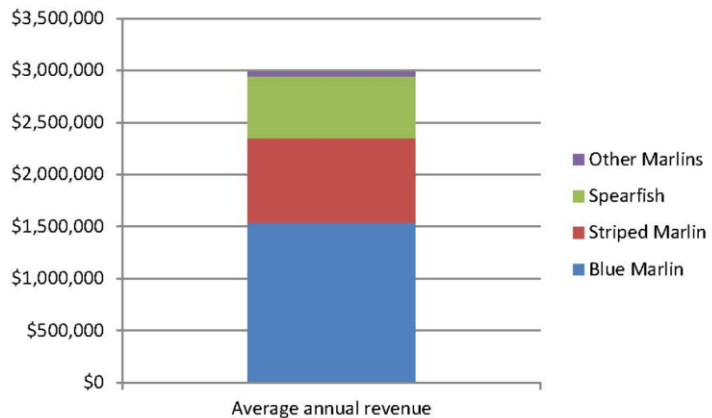


Figure 2: Hawaii average annual revenue from commercial billfish landings (excluding swordfish) from 2011-2015.

At the 169th WestPac meeting, Council staff noted that H.R. 4528 “would shut down the long established U.S. market for U.S. fisheries operating within the Western Pacific Region”.¹⁵ Staff further noted that the Pacific blue marlin population – blue marlin comprise the vast majority of billfish landings in the western Pacific¹⁶ – is healthy, and while the Pacific striped marlin is overfished and subject to overfishing, “the United States has been below its nominated level of striped marlin”.¹⁷

The bill is supported by American Sportfishing Association, Center for Sportfishing Policy, Coastal Conservation Association, Congressional Sportsmen's Foundation, the Guy Harvey Ocean Foundation, the National Marine Manufacturers Association, OCEARCH and

¹¹ [House Committee on Natural Resources Report to Accompany H.R. 2706, H. Rpt. 112-656, p. 2.](#)

¹² <http://www.wpcouncil.org/2017/03/24/10680/>.

¹³ *Id.*

¹⁴ [Stock Assessment and Fishery Evaluation Report: Pacific Island Pelagic Fisheries, Western Pacific Regional Fishery Management Council, 2015, p. ES-5.](#)

¹⁵ [Minutes of the 169th Meeting of the Western Pacific Regional Fishery Management Council, March 21-23, 2017, p. 48.](#)

¹⁶ [Stock Assessment and Fishery Evaluation Report: Pacific Island Pelagic Fisheries, Western Pacific Regional Fishery Management Council, 2015, p. ES-5.](#)

¹⁷ [Minutes of the 169th Meeting of the Western Pacific Regional Fishery Management Council, March 21-23, 2017, p. 48.](#)

Wild Oceans.¹⁸ An identical bill, S. 396, introduced by Senator Bill Nelson (D-FL), passed the Senate by voice vote on October 2, 2017.¹⁹

Major Provisions/Analysis of H.R. 4528

Section 1 would clarify the Billfish Conservation Act of 2012 to ensure the exemption provided for traditional markets in Hawaii and the Pacific Insular areas would not allow the sale of billfish from these areas to the mainland United States.

Section 2 amends Public Law 111-348 to emphasize that nothing in the Shark Conservation Act of 2010 would impact the ability of the Secretary of Commerce to manage highly migratory species pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

Cost

The Congressional Budget Office (CBO) estimates that an identical bill, S. 396, would “increase revenues from civil penalties resulting from violations of the prohibition on selling billfish to the mainland United States” but that the increases would not be significant. Further CBO found that enacting this legislation “would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028”.²⁰

Administration Position

Mr. Alan Risenhoover, Director of the Office of Sustainable Fisheries for the National Marine Fisheries Service, expressed concerns on the bill at a April 17, 2018, Subcommittee on Water, Power and Oceans hearing, stating that, “[W]e believe the legislation would not advance the conservation of billfish significantly, and would block a small amount of sustainably harvested domestic product from entering commerce on the U.S. mainland.”²¹

Anticipated Amendments

None anticipated.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 4528

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section (4)(c)(1) of the Billfish Conservation Act of 2012 (16 U.S.C. 1827a(c)(1))

¹⁸ <http://asafishing.org/senators-weigh-billfish-conservation-act/>.

¹⁹ <https://www.congress.gov/bill/115th-congress/senate-bill/396/actions>.

²⁰ <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/s396.pdf>.

²¹ https://naturalresources.house.gov/uploadedfiles/4.17_testimony_risenhoover.pdf

§1827a. Prohibition on sale of billfish

(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 1858(a) of this title, a violation of this section shall be treated as an act prohibited by section 1857 of this title.

(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 1802(35) of this title.

(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

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

Public Law 111-348

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I--SHARK CONSERVATION ACT OF 2010

Sec. 101. Short title.

Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.

Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

Sec. 104. [Offset of implementation cost.] Rule of construction.

TITLE II--INTERNATIONAL FISHERIES AGREEMENT

- Sec. 201. Short title.
- Sec. 202. International Fishery Agreement.
- Sec. 203. Application with other laws.
- Sec. 204. Effective date.

TITLE III--MISCELLANEOUS

- Sec. 301. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.
- Sec. 302. Pacific Whiting Act of 2006.
- Sec. 303. Replacement vessel.

* * * * *

[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))