

H.R. 2029 – Consolidated Appropriations Act of 2016

The House of Representatives and the Senate voted today (Friday, December 18, 2015) to pass H.R. 2029, the Consolidated Appropriations Act of 2016. This legislation will fund the Federal government through September 30, 2016. The bill is now cleared for the President.

The bill is approximately 2,000 pages and includes fisheries related provisions that may affect operations of the Regional Fishery Management Councils. In addition, the report that accompanies the bill includes additional fisheries related language that may be of interest. This review of the bill and the report may not include all provisions or report language of interest to the Councils, so if additional clarification is needed or there are questions, please give me a call.

While report language is not binding on agencies, report language is intended to give guidance to agencies when implementing their duties under the appropriations bills and under other statutes. For example, the actual bill language which appropriates funds to NOAA includes only a few broad categories. The report to accompany the bill includes a chart of specific individual line items and dollar amounts expected to be provided for those items.

The report that accompanies H.R. 2029 also includes more specific fisheries related language. The report to accompany H.R. 2029 also notes that the report language from both the House and the Senate Commerce, Justice, Science, and Related Agencies Appropriations Acts is approved by the passage of this legislation.

The actual bill language can be found at:

<http://docs.house.gov/billsthisweek/20151214/CPRT-114-HPRT-RU00-SAHR2029-AMNT1final.pdf>

The report is broken down into titles. The report to accompany the Commerce, Justice, Science, and Related Agencies title of the bill can be found at:

<http://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD003.pdf>

Below are several categories of provisions from the bill. The first section below notes legislative provisions including the actual bill language or a summary of the provisions that may be of interest to the Regional Fishery Management Councils. The second section includes provisions that may not directly address the Councils, but may be of interest. The third section relates report language from the report to accompany H.R. 2029.

Section 1 - Specific Legislative Provisions Related to Fisheries Management

I. State Jurisdiction for Gulf of Mexico Reef Fish FMP (actual bill language):

“SEC. 110. (a) None of the funds made available by this Act or any other appropriations Act may be used by the Secretary of Commerce for management activities pursuant to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico or any amendment to such Plan unless such management is conducted beyond the seaward boundary of a coastal State as set out under subsection (b).

(b) Notwithstanding any other provision of law, for the purpose of carrying out activities pursuant to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico or any amendment to such Plan, the seaward boundary of a coastal State in the Gulf of Mexico is a line 9 nautical miles seaward from the baseline from which the territorial sea of the United States is measured.”

Section 2 – Misc. Provisions of Interest

I. Genetically-modified salmon labeling (actual bill language):

SEC. 761. (a) During fiscal year 2016, the Food and Drug Administration (FDA) shall not allow the introduction or delivery for introduction into interstate commerce of any food that contains genetically engineered salmon until FDA publishes final labeling guidelines for informing consumers of such content; and

(b) Of the amounts made available to the Food and Drug Administration, Salaries and Expenses, not less than \$150,000 shall be used to develop labeling guidelines and implement a program to disclose to consumers whether salmon offered for sale to consumers is a genetically engineered variety.

II. New National Oceans and Coastal Security Fund (summary of provision):

The new provision authorizes the Administrator of NOAA and the National Fish and Wildlife Foundation to establish a new tax-exempt “National Oceans and Coastal Security Fund”. The Fund may accept appropriated funds or donations; however, no donations from foreign governments may be accepted.

The Fund may be used “to support programs and activities intended to better understand and utilize ocean and coastal resources and coastal infrastructure,

including baseline scientific research, ocean observing, and other programs and activities carried out in coordination with Federal and State departments of agencies.” The bill also clarifies that no funds may be used to fund litigation against the Federal government or to fund the creation of national marine monuments or marine protected areas, or to fund marine spatial planning or the National Ocean Policy.

The provision creates two new grant programs – one as a grant program for coastal states which includes a distribution formula, and one as a grant program for oceans, coasts, and Great Lakes. Grants under the second grant program will be provided based on recommendations of a new advisory panel that is authorized to be created by the National Fish and Wildlife Foundation.

The provision requires a cap on administrative funds, eligibility criteria, prioritization criteria, accountability measures, an annual report to Congress, and an authorization of appropriations of “such sums as necessary” for fiscal years 2017-2019.

III. **Country of Origin Labeling Modifications** (summary of provision):

This provision amends the Agricultural Marketing Act of 1946 to remove the country of origin label requirements for beef and pork; however, the provision does not change the labeling requirements for farm-raised fish and wild fish.

IV. **Alaska pollock label** (summary of provision):

This provision clarifies that the acceptable market name for *Gadus chalcogrammus* is “pollock” and the terms “Alaskan Pollock” or “Alaska Pollock” may only be used to label pollock harvested in the State waters of Alaska or in the EEZ adjacent to Alaska.

V. **Pacific Salmon Recovery Fund** (actual bill language):

“For necessary expenses associated with the restoration of Pacific salmon populations, \$65,000,000, to remain available until September 30, 2017: Provided, That, of the funds provided herein, the Secretary of Commerce may issue grants to the States of Washington, Oregon, Idaho, Nevada, California, and Alaska, and to the Federally recognized tribes of the Columbia River and Pacific Coast (including Alaska), for projects necessary for conservation of salmon and steelhead populations that are listed as threatened or endangered, or that are identified by a State as at-risk to be so listed, for maintaining populations necessary for exercise of tribal treaty fishing rights or native subsistence fishing, or for conservation of Pacific coastal salmon and steelhead habitat, based on guidelines to be developed by the Secretary of Commerce: Provided further, That all funds shall be allocated based on scientific and other merit principles and shall not be available for marketing activities: Provided further, That funds disbursed to States shall be subject to a

matching requirement of funds or documented in-kind contributions of at least 33 percent of the Federal funds.”

VI. Fisheries Finance Program Account (actual bill language):

“Subject to section 502 of the Congressional Budget Act of 1974, during fiscal year 2016, obligations of direct loans may not exceed \$24,000,000 for Individual Fishing Quota loans and not to exceed \$100,000,000 for traditional direct loans as authorized by the Merchant Marine Act of 1936.”

VII. Mass Marking Of Salmonids (actual bill language):

“The United States Fish and Wildlife Service shall, in carrying out its responsibilities to protect threatened and endangered species of salmon, implement a system of mass marking of salmonid stocks, intended for harvest, that are released from federally operated or federally financed hatcheries including but not limited to fish releases of coho, chinook, and steelhead species. Marked fish must have a visible mark that can be readily identified by commercial and recreational fishers.”

VIII. Lead Fishing Equipment (actual bill language):

“None of the funds made available by this or any other Act may be used to regulate the lead content of ammunition, ammunition components, or fishing tackle under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or any other law.”

IX. International Fisheries Commissions (actual bill language):

“For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, \$36,681,000: Provided, That the United States share of such expenses may be advanced to the respective commissions pursuant to section 3324 of title 31, United States Code.”

Section 3 – Report Language from the report to accompany H.R. 2029

I. Overall NOAA Funding (actual report language):

“This Act includes total appropriations of \$5,765,579,000 for the National Oceanic and Atmospheric Administration (NOAA).”

“This Act includes a total program level of \$3,453,477,000 under this account for the coastal, fisheries, marine, weather, satellite and other programs of NOAA. This total funding level includes \$3,305,813,000 in direct appropriations; a transfer of

\$130,164,000 from balances in the "Promote and Develop Fishery Products and Research Pertaining to American Fisheries" fund; and \$17,500,000 is derived from recoveries of prior year obligations."

"National Marine Fisheries Service (NMFS) - \$849,497,000 is for NMFS Operations, Research, and Facilities."

II. Funding for Councils and Commissions (summary):

The chart which includes funding details for the National Marine Fisheries Service includes \$33,470,000 for the Regional Councils and Fisheries Commissions.

III. Specific Report language regarding Gulf of Mexico fisheries (actual report language):

Gulf of Mexico reef fish stock assessments -

"The agreement adopts House and Senate language regarding reef fish in the Gulf of Mexico. The agreement provides \$5,000,000 within the amount provided for Fisheries Data Collections, Surveys, and Assessments, and \$5,000,000 within the amount provided for Sea Grant for the purposes stated in the House and Senate reports. The Committees direct NOAA to, in addition to current surveys and assessments, use fishery independent data that includes surveying and assessing red snapper populations on and aggregated near marine structures including offshore oil and gas platforms, artificial reefs, and structures created in the Gulf of Mexico and naturally occurring reefs and rock structures. NOAA shall ensure the research supported by this funding is complementary between respective line offices and not duplicative. Additionally, NOAA shall provide the Committees with a plan for these research efforts, and how they will be coordinated, not later than 45 days after enactment of this Act."

"The Committees strongly encourage NOAA to incorporate data from all external assessments carried out under this paragraph at the earliest possible date, but not later than fiscal year 2017, for the purposes of determining reef fish quotas and Annual Catch Limits in the Gulf of Mexico. NOAA shall report to the Committees, within 45 days of enactment, any impediments to incorporating these data for such purposes."

"The Committees remain gravely concerned with red snapper management in the Gulf of Mexico and the unacceptably short recreational fishing season. NOAA is directed to consider the impacts of sector separation created by amendments to any fishery management plan for the Gulf of Mexico, particularly negative impacts on private anglers. The agreement adopts Senate language urging NOAA to consider increasing the recreational fishery allocation. While all sectors have faced challenges

in the Gulf red snapper fishery, the private boat recreational sector has been especially impacted. NOAA shall brief the Committees on Appropriations on its efforts to address this matter no later than 30 days after enactment of this Act, at which time NOAA shall provide a comprehensive plan to address the concerns of recreational anglers.”

IV. Marine Recreational Information Program (actual report language)

“The agreement clarifies the Senate language regarding MRIP. No funding is provided in this Act for the full operational transition to a new MRIP methodology. Funding may be used to continue testing, development, and side-by-side comparison of the new methodology with the current MRIP model, including activities planned for fiscal year 2016 in the May 5, 2015 report entitled ‘Transition Plan for the Fishing Effort Survey.’ No funds shall be available for the full operational transition to a new MRIP methodology until NMFS also improves its stock assessments and surveys to account for fish inhabiting areas of artificial reefs and fixed offshore energy infrastructure.”

V. Electronic Monitoring (actual report language):

“The Committees are concerned with NMFS's failure to account for significant factors in its June 10, 2015, report entitled, ‘A Preliminary Cost Comparison of At Sea Monitoring and Electronic Monitoring for a Hypothetical Groundfish Sector.’ The Committees have strongly supported NMFS's research of electronic monitoring programs to streamline processes, reduce costs, and strengthen management of our nation's commercial fisheries. Not later than 120 days following enactment of this Act, NMFS shall provide a new report to the Committees detailing cost estimates for an electronic monitoring program for the same hypothetical sector that uses cost-savings suggested but not included in estimates in the June 10, 2015, report. Furthermore, NMFS is directed to apply other applicable, practical cost saving measures not mentioned in the previous report in the new estimates.”

VI. Hatchery Genetic Management Plans (actual report language):

“The agreement adopts the House language requiring a comprehensive plan to address the backlog of Hatchery Genetic Management plans and directs NOAA to increase funding for the review of these plans above the fiscal year 2015 level.”

VII. Coastal Ecosystem Resiliency Grants (actual report language):

“The Act provides \$10,000,000 within Habitat Conservation and Restoration to continue the coastal ecosystems resiliency grants program established in fiscal year 2015.”

VIII. National Ocean Policy (actual report language):

“The agreement does not include section 570 of the House bill regarding the National Ocean Policy. No funding was provided in fiscal year 2015, and none was requested by any agencies funded in this Act in fiscal year 2016, to implement the National Ocean Policy. Consequently, no funds for National Ocean Policy activities are included for any agency funded in this Act.”

In addition, the title of the bill for the Department of the Interior, Environment, And Related Agencies included the following report language on the National Ocean Policy - “The President's budget submission for fiscal year 2017 shall identify by agency and account all funding and associated actions proposed for the implementation of the coastal and marine spatial planning and ecosystem-based management components of the National Ocean Policy developed under Executive Order 13547.”

IX. Fishery cooperatives (*actual report language*):

“The agreement adopts the House language on fishery cooperatives, and directs the submission of the required report no later than 30 days after enactment of this Act.”

X. Tribal support (actual report language):

“The agreement modifies House language and encourages NOAA to support the coastal impacts mitigation efforts of coastal tribal communities through NOAA's ongoing efforts at storm surge and coastal inundation modeling, sea level prediction, and related information services. Such information is essential to understanding severe weather-related risks facing such communities, and could prove valuable in the efforts of these communities to secure mitigation and relocation assistance from Federal and state agencies.”

XI. Non-native predators (actual report language):

“The Committees are encouraged by the steps that NOAA has taken, in consultation with the United States Fish and Wildlife Service, the Bureau of Reclamation, States, and other stakeholders, to evaluate and implement projects that could improve protection and recovery of endangered salmon. The Committees encourage NOAA to continue consultations with Federal, State, and local agencies to develop additional activities that could aid in mitigating or removing non-native predators that prey on endangered salmon.”