



HOUSE COMMITTEE ON  
**NATURAL RESOURCES**  
CHAIRMAN BRUCE WESTERMAN

**To:** House Committee on Natural Resources Republican Members  
**From:** House Committee on Natural Resources Republican Staff  
**Date:** Wednesday, November 8, 2023  
**Subject:** Markup of 4 bills

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The Committee on Natural Resources will hold a markup on **Wednesday, November 8, 2023, at 10:00 a.m.** in room 1324 Longworth House Office Building. The legislation to be considered includes: H.J. Res. 96 (Rep. Westerman); H.R. 1121 (Rep. Duncan); H.R. 6008 (Rep. Graves of Louisiana); and H.R. 4385 (Rep. Neguse).

Member offices are requested to notify Madeline Bryant ([madeline.bryant@mail.house.gov](mailto:madeline.bryant@mail.house.gov)) by 4:30 p.m. on Tuesday, November 7, 2023, to confirm their Members' attendance at the mark-up.

## **I. KEY MESSAGES & TOP LINE ACTIONS**

- Bills expected to move by regular order: H.R. 1121 (Rep. Duncan), "*Protecting American Energy Production Act*"; and H.R. 6008 (Rep. Graves of Louisiana), To prohibit the implementation of certain documents until the Assistant Administrator for Fisheries of the National Marine Fisheries Service issues documents relating to the Rice's whale.
- Please note that H.R. 6008 will have an amendment in the nature of a substitute (ANS). Members should ensure that any amendments are drafted to the ANS.
- Bills expected to move by unanimous consent: H.J. Res. 96 (Rep. Westerman), "*Compact of Free Association Amendments Act of 2023*"; and H.R. 4385 (Rep. Neguse), "*Drought Preparedness Act*".

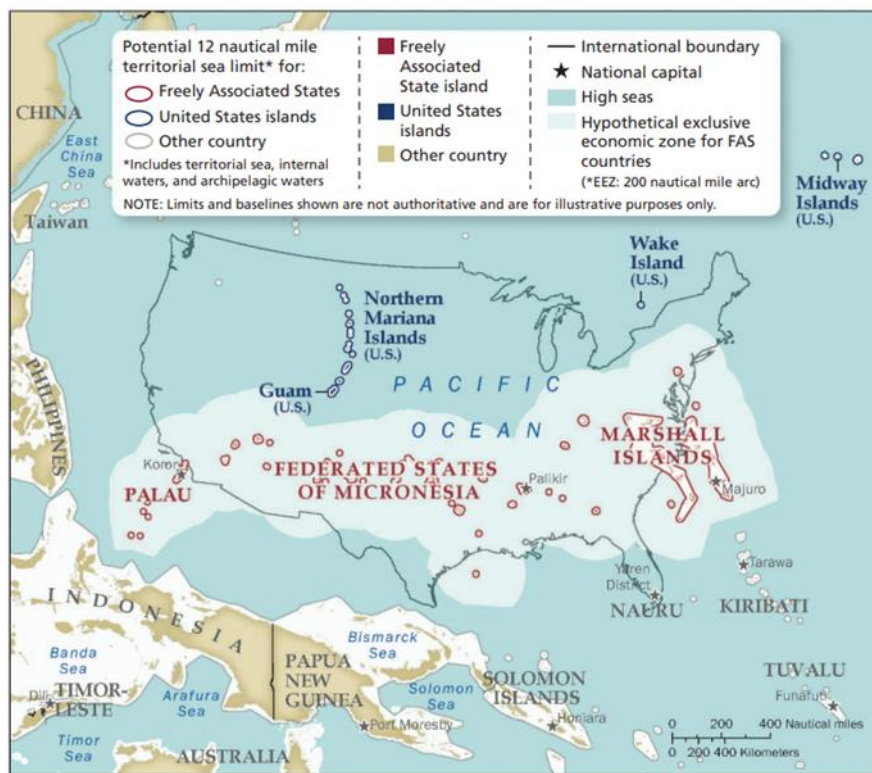
## **II. EXPECTED LEGISLATION**

### **[H.J. Res. 96](#) (Rep. Westerman), "*Compact of Free Association Amendments Act of 2023*"**

The U.S. has international agreements known as the Compact of Free Association (COFA or COFAs) with three Pacific Island countries; the Republic of Palau (Palau), the Republic of the Marshall Islands (RMI), and the Federated States of Micronesia (FSM), collectively referred to as the Freely Associated States (FAS). The COFAs for the RMI and the FSM expired at the end of Fiscal Year (FY) 2023, however an extension of certain COFA provisions for FSM and RMI was included in the FY 2023 Continuing Resolution (CR). The COFA for Palau will expire at the end of FY 2024.

Under the COFAs, these countries grant the United States sole and unfettered military access to their lands, waters, and airspace in exchange for economic assistance in the form of grants and contributions to Compact Trust Funds, access to certain U.S. federal programs for COFA citizens, and the ability for COFA citizens to live and work in the U.S.

These three small island nations occupy an ocean area roughly the size of the continental United States and are made up of thousands of small islands and atolls. Because of the vast area covered by the various Pacific nations, including the FAS, the western Pacific is sometimes referred to as the Big Blue Pacific Continent. This area has been strategically important to the U.S. since WWII.



Maintaining a strong U.S. presence in the FAS is vital to resisting the People’s Republic of China’s (PRC) expansion in the region. The U.S. has critical security and economic interests throughout Indo-Pacific region, particularly amid rising competition with the PRC. The importance of the FAS for the U.S. cannot be overstated given the proximity to the U.S. homeland areas and the broader geopolitical context. The PRC has sought to take advantage of the relatively weak economies and governance structure of island nations in the region. Through offerings of economic aid and infrastructure development, the PRC attempts to leverage its resources to shape political outcomes and perceptions of the U.S. in the region while waging political warfare to gain undue influence and/or destabilize the FAS.

H.J. Res. 96, the “*Compact of Free Association Amendments Act of 2023*” (COFAA 2023) would approve recently negotiated and updated COFAs with the FSM, Palau, and the RMI and related subsidiary agreements. Through the revised COFAs, economic assistance would be provided over the next 20 years to implement the 2023 amended COFA agreements with the FAS, and for continued U.S. Postal Service services to the FAS. The bill includes strengthened oversight and accountability measures for U.S. implementation and management of the COFAs economic provisions by authorizing the Comptroller General, Secretary of the Interior, Secretary of State, and the Postmaster General oversight responsibilities to implement the 2023 COFA agreements. When these agreements are approved by Congress they will be in place until the end of FY 2043.

#### Key Provisions:

The Compact of Free Association Amendments Act of 2023 would approve and incorporate by reference agreements signed between the U.S. and the FAS for the new COFA period, from FY 2024 through FY 2043. These agreements are as follows:

- **2023 Agreement to Amend the U.S.-FSM Compact:** An agreement between the U.S. and the FSM governments to amend the 2003 U.S.-FSM COFA by renewing economic provisions. The agreement sets a new funding schedule from FY 2024 through FY 2043 for the various funding categories, including the FSM’s trust fund, as agreed upon between the FSM and U.S. governments. The agreement also sets biennial reporting requirements on the FSM government to send reports on the use of U.S. economic assistance and the FSM governments’ progress in meeting program and economic goals.
- **2023 U.S.-FSM Fiscal Procedures Agreement:** An agreement on the procedures for the implementation of economic assistance provided to the FSM government by the U.S. government. This agreement sets guidelines, requirements, and conditions for the U.S. government and the FSM government when implementing the U.S.-FSM COFA economic provisions. The agreement sets parameters for the various categories of sector grants, which are funds dedicated for use for projects within sectors that the U.S. and the FSM have designated as priorities such as education, health, and private sector development. This would ensure evaluation the FSM’s progress in meeting economic and financial objectives and provides recommendations for increasing effectiveness of U.S. Compact assistance.
- **2023 U.S.-FSM Trust Fund Agreement:** An agreement on the rules and conditions of the trust fund established by the U.S. for the FSM. The FSM’s trust fund would receive a total of \$500 million for the period from FY 2024 through FY 2043 under the U.S.- FSM COFA. This agreement sets legal status, account structure, funding levels and conditions for distribution, audit and reporting requirements, and withdrawal conditions for the FSM’s trust fund.

- 2023 U.S.-FSM Federal Programs and Services Agreement (FPSA): An agreement on what U.S. Federal programs and services would be provided to the FSM and the conditions for those services. These Federal programs and services will include the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service, the Federal Aviation Administration's (FAA) civil aviation services, the Federal Emergency Management Agency (FEMA), the U.S. Postal Service (USPS), and the Federal Deposit Insurance Corporation (FDIC).
- 2023 Agreement to Amend the U.S.-RMI Compact: An agreement between the U.S. and the RMI governments to amend the current U.S.-RMI COFA by renewing economic provisions. This agreement would set a new funding schedule from FY 2024 through FY 2043 for U.S. economic assistance to the RMI including the RMI's trust fund, agreed upon between the two governments. The agreement would also set reporting requirements on the RMI government to send reports on the RMI government's progress in meeting program and economic goals.
- 2023 U.S.-RMI Fiscal Procedures Agreement: An agreement on the procedures for the implementation of economic assistance provided to the RMI government by the U.S. government. This agreement sets guidelines, requirements, and conditions for the U.S. government and the RMI government when implementing the U.S.-RMI COFA economic provisions. This agreement also sets parameters for the various categories of sector grants to ensure review of the audits and reports required under the Compact.
- 2023 U.S.-RMI Trust Fund Agreement: An agreement on the rules and conditions of the trust fund established by the U.S. for the RMI. \$700 million for the period of FY 2024 through FY 2043 under the U.S.-RMI COFA will be available for the RMI trust fund. This agreement would set the legal status, account structure, funding levels and conditions for distribution, audit and reporting requirements, and withdrawal conditions for the RMI's trust fund.
- 2023 U.S.-Palau Compact Review Agreement (CRA): An agreement between the U.S. and Palau governments resulting from Section 432 of the U.S.-Palau compact. The 2023 agreement was the result of the thirtieth anniversary review of the Compact. The agreement sets a new funding schedule from FY 2024 through FY 2043 for the various funding categories, including Palau's trust fund, agreed upon between the Palau and U.S. governments. The agreement also sets the fiscal procedures for the implementation of economic assistance provisions, including setting annual reporting requirements for Palau.

### *Oversight and Accountability*

The COFAA 2023 would also strengthen oversight and accountability measures for U.S. implementation and management of the COFA economic provisions. The COFAA 2023 builds upon existing measures within Public Law 108-188 and the 2010 Palau CRA, but also creates

additional requirements for the Administration to report to Congress on COFA activities every four years.

The COFAA 2023 requires the U.S. members of the Economic Management and Accountability Committees, the U.S.-FSM Joint Trust Fund Committee, and U.S.-RMI Joint Trust Fund Committee to have strong experience in finance and accounting and sets term limits for the committee members. Furthermore, the COFAA 2023 would require the Secretary of the Interior to submit reports by these committees to Congress detailing the actions of the committees and their recommendations. The COFAA 2023 would also require the members of the Economic Advisory Group appointed by the Secretary of the Interior, to have qualifications in private sector business development, economic development, or national development.

The COFAA 2023 also carries forward the authorities of the Comptroller General to carry out its oversight responsibilities under the COFAs. The COFAA 2023 would also place reporting requirements on the Comptroller General to submit to Congress a report on the economic performance of the FAS, the impact of U.S. economic assistance to the FAS, and the effectiveness of U.S. administrative oversight over the COFAs. This would expand the requirements set by Public Law 108-188 by including reporting on Palau. The COFAA 2023 also carries forward the authorities of the Secretary of the Interior and the Postmaster General to carry out oversight responsibilities.

The COFAA 2023 would also require the Secretary of the Interior to submit to Congress a compilation of the COFA agreements with the FSM, the RMI, and Palau. This would improve the readability of the COFA agreements.

The COFAs are essential to U.S. interests in and relationships with the FAS, and ultimately the Indo-Pacific region. Renewing economic assistance and continuing federal programs and services to the FAS reaffirms the United States' commitment to its allies and reliability as a partner. This commitment through the COFAs is essential to counter the PRC's malign influence and to maintain the United States' capacity to secure its interests.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#). The bipartisan bill, introduced by Chairman Westerman, has 3 original cosponsors: Ranking Member Raul Grijalva, House Foreign Affairs Committee Chairman Mike McCaul and Ranking Member Gregory Meeks. The bill is anticipated to move by unanimous consent.

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### **[H.R. 1121](#) (Rep. Duncan), “*Protecting American Energy Production Act*”**

H.R. 1121 expresses a “Sense of Congress” that hydraulic fracturing (fracking) should be regulated by States on state and private land, while also preventing the Biden administration, or any future administrations, from banning hydraulic fracturing without congressional direction. In 2015, the Bureau of Land Management (BLM), under the Obama administration, finalized a rule

to address fracking on federal lands.<sup>1</sup> The rule was widely unpopular as it was highly duplicative and would have allowed the BLM to make unilateral decisions concerning state regulations. Additionally, the rule would have created unnecessary costs and delays on producers, driving up energy prices for American families. The rule also would have preempted state laws and regulations on split estate lands where the surface is owned by a state or private citizen, but the mineral rights are owned by the federal government.<sup>2</sup>

Fortunately, the rule's effective date was postponed due to the issuance of a stay by a Wyoming federal judge,<sup>3</sup> and then was struck down by U.S. District Court Judge Scott Skavdahl in 2016.<sup>4</sup> Judge Skavdahl's decision stated "Congress has not delegated to the Department of Interior the authority to regulate hydraulic fracturing" and "the BLM's effort to do so through the Fracking Rule is in excess of its statutory authority and contrary to law."<sup>5</sup> The regulation was formally revoked by the Trump administration in 2017.<sup>6</sup> H.R. 1121 reaffirms Judge Skadahl's ruling by proclaiming that States should retain primacy for regulating hydraulic fracturing while also defending responsible American energy production by preventing any administration from banning hydraulic fracturing without congressional approval.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#). The bill has 29 Republican co-sponsors, found [here](#).

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**[H.R. 6008](#) (Rep. Graves of Louisiana), To prohibit the implementation of certain documents until the Assistant Administrator for Fisheries of the National Marine Fisheries Service issues documents relating to the Rice's whale.**

The Outer Continental Shelf (OCS) oil and gas program in the Gulf of Mexico (Oil and Gas Program) meets Endangered Species Act (ESA) requirements through a programmatic biological opinion (BiOp). A BiOp considers all permitted actions and plans approved by the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) under the OCS Lands Act.<sup>7</sup> The Oil and Gas Program activities include pre-lease activities related to geological and geophysical (G&G) surveys conducted under permits, prior to leasing, and activities associated with end-of-lease-life structure and equipment removal (decommissioning).

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<sup>1</sup> 80 Fed. Reg. 16127 (2015), <https://www.federalregister.gov/documents/2015/03/26/2015-06658/oil-and-gas-hydraulic-fracturing-on-federaland-indian-lands>.

<sup>2</sup> *Id.*

<sup>3</sup> Order Postponing Effective Date of Agency Action, Wyoming v. Jewell, No. 15-043 (D.Wyo. June 24, 2015).

<sup>4</sup> Case 2:15-cv-00043-SWS, 6/21/16, [https://www.govinfo.gov/content/pkg/USCOURTS-wyd-2\\_15-cv-00043-0/pdf/USCOURTS-wyd-2\\_15-cv-00043-0.pdf](https://www.govinfo.gov/content/pkg/USCOURTS-wyd-2_15-cv-00043-0/pdf/USCOURTS-wyd-2_15-cv-00043-0.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> 82 Fed. Reg. 34464 (2017), <https://www.federalregister.gov/documents/2017/07/25/2017-15696/oil-and-gas-hydraulic-fracturing-on-federaland-indian-lands-rescission-of-a-2015-rule>.

<sup>7</sup> 43 USC §1331 et seq. (2008); OCSLA.

The BiOp also considers the promulgation of federal regulations under the Marine Mammal Protection Act (MMPA) for the incidental take of marine mammals due to G&G surveys specific to the proposed Oil and Gas Program activities and subsequent issuance of letters of authorization by the National Marine Fisheries Service (NMFS).

In a BiOp issued in March 2020 (2020 BiOp), NMFS concluded that the Oil and Gas Program was not likely to jeopardize various threatened or endangered marine species.<sup>8</sup> However, NMFS determined that the Oil and Gas Program did pose a risk to the Rice's (or Bryde's) whale in the whale's habitat located in a small portion of the eastern Gulf.<sup>9</sup> In the 2020 BiOp, NMFS concluded that BOEM and BSSE could adequately mitigate risk associated by the Oil and Gas Program by adopting a "reasonable and prudent alternative" to protect the Rice's whale.

In October 2020, environmental groups sued NMFS (but not BOEM) in the District of Maryland, arguing that the 2020 BiOp understated the risk of the Oil and Gas Program to the Rice's whale and that the reasonable-and-prudent alternative was insufficiently protective.<sup>10</sup> In July 2023, the plaintiffs and NMFS agreed to stay the proceedings so that NMFS could update the 2020 BiOp.

H.R. 6008 would codify the 2020 BiOp for the Oil and Gas Program. The bill also sets certain requirements that NMFS must meet before it can reinitiate consultation on a new BiOp. These requirements include: 1) the issuance of a final rule designating critical habitat for the Rice's whale that incorporates data from by a National Academies of Science, Engineering, and Medicine study to determine the occurrence and range of the Rice's whale in the Central, Eastern, and Western Gulf of Mexico Planning Areas; and 2) revising and finalizing the proposed rule "Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico."<sup>11</sup>

In addition, the bill directs how NFMS should consult and cooperate with stakeholders on actions related to the preparation of BiOps. These requirements mirror Section 4004 of the Water Infrastructure Improvement for the Nation Act,<sup>12</sup> which requires the Secretaries of Commerce and the Interior to ensure that any public water agency with contracts for water with Central Valley Project and State Water Project in California can be involved in the BiOp process.

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

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<sup>8</sup> United States. National Marine Fisheries Service (2020). Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico. <https://doi.org/10.25923/hyeh-mb74>.

<sup>9</sup> Id at 597.

<sup>10</sup> 142-70, Sierra Club v. NMFS, No. 8:20-Cv-3060 (D. Md. filed Oct. 21, 2020), Dkt.1

<sup>11</sup> 88 Fed. Reg. 916; January 5, 2023.

<sup>12</sup> [P.L. 114-322](#).

## **H.R. 4385 (Rep. Neguse), “Drought Preparedness Act”**

The Bureau of Reclamation’s (Reclamation) Drought Response Program helps with drought planning and mitigation. The Drought Response Program’s authority is derived primarily through the Reclamation States Emergency Drought Relief Act (RSEDRA) of 1991 (43 U.S.C. 2211) as well as Title IX, Subtitle F of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a), SECURE Water Act).

H.R. 4385 would extend the authorities provided by the RSEDRA through 2028. Title 1 of RSEDRA gives Reclamation temporary emergency authorities to take certain measures to mitigate the impacts of drought in the 17 Reclamation states as well as the territories.<sup>13</sup> These measures include: the construction of temporary water infrastructure, the purchase of water from willing sellers, participation in state water banks, and the ability to make loans to water users to build drought mitigation infrastructure.<sup>14</sup> The bill also gives Reclamation the authority to make available water from certain projects for use outside the authorized project service area in order to mitigate drought conditions.<sup>15</sup> Reclamation is also authorized to make water available for the purposes of protecting or restoring fish and wildlife resources that are at risk due to drought conditions.<sup>16</sup> Reclamation is currently authorized to spend no more than \$130 million over the lifetime of the program, of that amount \$12 million remain available to be appropriated.<sup>17</sup> The bill does not increase the funding authorities.

H.R. 4385 is bipartisan, as its one cosponsor is Representative Juan Ciscomani (R-AZ).

Hearing information, including testimony, may be viewed [here](#) and the hearing memo may be viewed [here](#).

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### **III. CBO SCORES**

**None available.**

### **IV. EFFECT ON CURRENT LAW (RAMSEYER)**

#### **H.J. Res. 96**

#### **H.R. 4385**

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<sup>13</sup> “WaterSMART, Drought Response Program.” Reclamation State Emergency Drought Relief Act of 1991, Public Law 102-250, 106, Stat. 53, as amended. Bureau of Reclamation. [Reclamation State Emergency Drought Relief Act of 1991, Public Law 102-250, 106, Stat. 53, as amended | Drought Response Program \(usbr.gov\)](#).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> [43 USC Ch. 40: Reclamation States Emergency Drought Relief.](#)