

Calendar No. 477

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-260

WEST COAST DUNGENESS CRAB
MANAGEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1143



MAY 23, 2016.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1143]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1143) to make the authority of States of Washington, Oregon, and California to manage Dungeness crab fishery permanent and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1143, the West Coast Dungeness Crab Management Act, is to allow Washington, Oregon, and California to manage the Dungeness crab fishery permanently.

BACKGROUND AND NEEDS

Marine fisheries resources in the United States are managed under State and Federal authorities. Fisheries in the exclusive economic zone of the United States (U.S. EEZ) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).¹ The U.S. EEZ is the largest in the world; it extends from coastal State boundaries to 200 nautical miles from shore, encompassing about 3.4 million square nautical miles of area. Within a few miles of shore, States are responsible for fisheries management, often in coordination with neighboring States and with the Federal Government. Most States' seaward boundaries extend three miles from shore; however, the seaward boundaries of Texas, Puerto Rico, and the Gulf coast of Florida extend

¹ 16 U.S.C. 1801 et seq.

nine nautical miles. In 2012, Louisiana claimed State jurisdiction out to over 10 nautical miles.²

Magnuson-Stevens Fishery Conservation and Management Act

In 1976, Congress passed the Fishery Conservation and Management Act,³ which established a “fishery conservation zone” extending 200 miles from the shores of the United States, gave the United States exclusive authority to manage fishery resources within that zone, and excluded most foreign fishing fleets from those waters. In 1983, that Act was amended to reflect President Reagan’s proclamation establishing an exclusive economic zone 200 nautical miles offshore of the United States⁴ consistent with the United Nations Convention on the Law of the Sea.⁵ That Act was retitled the Magnuson Fishery Conservation and Management Act in 1980⁶ to honor the leadership of Senator Warren Magnuson in that Act’s original passage; in 1996 Senator Ted Stevens’ contributions were recognized when his name was appended to the short title.⁷

The original version of that Act, in addition to establishing U.S. control over the fishery resources off our shores, also established eight Regional Fishery Management Councils (Councils): New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, and Western Pacific.⁸ The Councils include State, Federal, industry, and scientific representatives, and are primarily responsible for developing fishery management plans for fisheries in their respective regions.⁹ The Federal Government provides scientific and administrative support for the management of fisheries in Federal waters, primarily through the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS). NMFS is subdivided into six regional offices and corresponding science centers: Alaska, West Coast, Greater Atlantic, Pacific Islands, Southeast, and Caribbean.¹⁰

Dungeness Crab Tri-State Management

The Dungeness crab (*Metacarcinus magister*) is a native species to the Pacific Ocean, with a habitat stretching from Alaska to Mexico.¹¹ In 2014, across the West Coast, fishermen landed more than 53 million pounds of crab valued at \$169.8 million.¹² Commercial and recreational harvest of the crab supports one of the West Coast’s most valuable fisheries, with about 99 percent of the crab on the U.S. market coming from domestic sources. Landings of the

²Louisiana (State). 2011. Senate Bill 145 Act No 366. Available at: <http://www.legis.la.gov/legis/ViewDocument.aspx?d=760938> (accessed June 17, 2015).

³P.L. 94–265.

⁴48 Fed. Reg. 10605.

⁵Rolleri, J. “Taking Stock: The Magnuson-Stevens Act Revisited; Background Materials on the MSA.” Prepared for the 8th Marine Law Symposium, November 4-5, 2010, Roger Williams University School of Law, Bristol, RI.

⁶P.L. 96–561.

⁷P.L. 104–208.

⁸For each Council’s area of responsibility, see http://www.nmfs.noaa.gov/sfa/reg_svcs/councils.htm (accessed October 30, 2013).

⁹16 U.S.C. 1852.

¹⁰National Marine Fisheries Service. 2013. Fisheries of the United States, 2012. U.S. Department of Commerce, Current Fishery Statistics No. 2012: p. 108. Available at: <http://www.st.nmfs.noaa.gov/commercial-fisheries/fus/fus12/index> (accessed October 30, 2013).

¹¹PSMFC. “Tri-State Dungeness Crab (TSDC).” Available at <http://www.psmfc.org/program/tri-state-dungeness-crab-tdsc> (accessed September 23, 2015).

¹²PSMFC. Dungeness Crab Report 2014. Available at: <http://www.psmfc.org/crab/2014-2015%20files/DUNGENESS%20CRAB%20REPORT2014.pdf> (accessed September 23, 2015).

crab in the fisheries off Washington, Oregon, and California have maintained a cyclical pattern for nearly 50 seasons, with harvests ranging from 8 million to 54 million pounds yearly, peaking approximately every 10 years.¹³

In 1980, the States of Washington, Oregon, and California entered into a memorandum of understanding¹⁴ to take mutually supportive actions to cooperatively manage the fishery within their respective State waters (0 to 3 nautical miles from shore) as well as in the adjacent Federal waters (3 to 200 nautical miles).¹⁵ Those three States manage the commercial and recreational fishery through the Dungeness crab tri-State process under the umbrella of the Pacific States Marine Fisheries Commission, an interstate compact agency that helps State resource agencies and the fishing industry sustainably manage Pacific Ocean resources in the five-State region of Washington, Oregon, California, Idaho, and Alaska. Each State is represented by three Commissioners. The Pacific States Marine Fisheries Commission establishes reporting requirements and seasons,¹⁶ as well as allocations.

In 1996, Congress gave authority to Washington, Oregon, and California to manage the commercial Dungeness crab fishery off their coasts.¹⁷ This amendment included a sunset clause that expired one year after the enactment of the amendment. Since the initial 1-year pilot, the tri-State management authority has been extended 3 times, the most recent being a 10-year extension of the management authority in 2007.¹⁸ The current Federal authorization for the tri-State management authority expires on September 30, 2016. Under current law, the Secretary of Commerce reserves the right, at any time, to implement a Federal Fishery Management Plan for the fishery under the MSA.¹⁹

The States conduct pre-season meat pick-out testing²⁰ of the crab to determine season opening dates. According to the Pacific States Marine Fisheries Commission, each of the three States fund these assessments through revenue generated from the sale of Dungeness fishery permits and sales of crab retained during the testing. Additionally, the States have adopted strict size and sex requirements: only male crabs may be retained and must measure at least 6.25 inches at the shortest distance across the back of the shell.²¹ This size limit is utilized to protect sexually mature male crabs from harvest for a season or two.

¹³ NOAA Southwest Fisheries Science Center. "Management of Dungeness Crab Fisheries." Available at: <https://swfsc.noaa.gov/publications/CR/1986/8667.PDF> (accessed September 23, 2015).

¹⁴ Fullerton, E.C., J. Donaldson, and G. Sandison. Memorandum of Understanding. Available at: <https://www.scribd.com/doc/272105926/MOU-Pacific-Coast-Dungeness-Crab-Fishery-1980> (accessed September 23, 2015).

¹⁵ P.L. 94-625. Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-105publ384/pdf/PLAW-105publ384.pdf> (accessed September 23, 2015).

¹⁶ Washington Fish and Wildlife. "Recreational Crab Fishing." Available at: <http://wdfw.wa.gov/fishing/shellfish/crab/> (accessed September 23, 2015).

¹⁷ P.L. 104-297 - Section 112(d). October 11, 1996.

¹⁸ P.L. 109-479 - Section 302(e). January 12, 2007.

¹⁹ P.L. 105-384 - Section 203(g). November 13, 1998.

²⁰ PSMFC. Pre-Season Testing Protocol for the Tri-State Coastal Dungeness Crab Commercial Fishery. Available at: http://www.psmfc.org/crab/2013_FINAL_PreSeasonTestingProtocol.pdf (accessed September 23, 2015).

²¹ Marine Stewardship Council - MSC Final Report with Certification Decision: Oregon Dungeness Crab Fishery, p.19, October 27, 2010. Available at: https://www.msc.org/track-a-fishery/fisheries-in-the-program/certified/pacific/oregon-dungeness-crab/assessment-downloads-1/ODC_V4_Final-Report_27Oct2010.pdf (accessed September 23, 2015).

Domoic Acid

The 2015 commercial Dungeness crab season was set to open on November 15th. On November 6, 2015, the California Department of Fish and Wildlife delayed the opening of the season due to dangerous levels of domoic acid in crab meat. Domoic acid is a toxin produced by the algae *Pseudo-nitzschia* and can be fatal at high levels. The reasons for the *Pseudo-nitzschia* bloom are unclear, but may possibly be related to the current El Niño.²² This bill would continue the management system currently in place and would not impact the ability of State public health and fish and wildlife departments to react to cases like this.

SUMMARY OF PROVISIONS

S. 1143, the West Coast Dungeness Crab Management Act, would allow Washington, Oregon, and California to manage the Dungeness crab fishery permanently.

LEGISLATIVE HISTORY

S. 1143 was introduced by Senator Cantwell on April 30, 2015. Senators Wyden, Murray, Merkley, Feinstein, and Boxer are co-sponsors. On November 18, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 1143 to be reported favorably. A companion bill, H.R. 2168, was passed by the House of Representatives on October 6, 2015, by Representatives Herrera Beutler, Larsen, Kilmer, and Schrader.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1143—West Coast Dungeness Crab Management Act

S. 1143 would authorize Washington, Oregon, and California to continue to manage commercial fishing for Dungeness crabs in federal waters adjacent to their states until the Pacific Fishery Management Council develops a formal fishery management plan for the area. Under current law, the states' authority to manage their Dungeness crab fisheries will expire on September 30, 2016. After that date, the National Oceanic and Atmospheric Administration (NOAA) will manage the fishery.

If the states' authority to manage the fishery expires, CBO estimates that NOAA will require appropriations totaling \$1 million a year beginning in 2017 to hire 10 to 15 new employees to carry out administrative activities related to managing the fishery. Under the bill, CBO expects that the three states would continue to manage their Dungeness crab fisheries largely at state expense. Therefore, we estimate that implementing the bill would reduce the need for discretionary appropriations (and associated spending) by \$1 million a year over the 2017–2020 period.

²²R. Parsons, "Toxic algae delays California's Dungeness crab season," Los Angeles Times, November 5, 2015. Available at: <http://www.latimes.com/food/dailydish/la-dd-dungeness-crab-season-delayed-toxic-algae-20151105-story.html> (accessed November 9, 2015).

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 1143 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs incurred by states to continue regulating their fisheries would be incurred voluntarily.

On September 30, 2015, CBO transmitted a cost estimate for H.R. 2168, the West Coast Dungeness Crab Management Act, as ordered reported by the House Committee on Natural Resources on September 10, 2015. The two bills are similar, and CBO's estimated costs are the same for both bills.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1143 as reported does not create any new programs or impose any new regulatory requirements, and therefore will not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

S. 1143 is not expected to have a negative impact on the Nation's economy and, in fact, would have a positive impact. Were the management of the West Coast Dungeness Crab fishery to revert to Federal control, the estimated cost would be approximately \$1 million per year for NOAA to hire new administrative employees related to managing the fishery.

PRIVACY

The reported bill would have no impact on the personal privacy of individuals.

PAPERWORK

S. 1143 would not increase paperwork requirements for either the private or public sector.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of this bill as the “West Coast Dungeness Crab Management Act.”

Section 2. Dungeness crab fishery management.

This section would allow Washington, Oregon, and California to manage the Dungeness crab fishery permanently.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT TO APPROVE A GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND THE REPUBLIC OF POLAND, AND FOR OTHER PURPOSES

[Public Law 105–384; 112 Stat. 3451]

SEC. 203. AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY.

[16 U.S.C. 1856 note]

(a) **IN GENERAL.**—Subject to the provisions of this section and notwithstanding section 306(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1856(a)), each of the States of Washington, Oregon, and California may adopt and enforce State laws and regulations governing fishing and processing in the exclusive economic zone adjacent to that State in any Dungeness crab (*Cancer magister*) fishery for which there is no fishery management plan in effect under that Act.

(b) **REQUIREMENTS FOR STATE MANAGEMENT.**—Any law or regulation adopted by a State under this section for a Dungeness crab fishery—

(1) except as provided in paragraph (2), shall apply equally to vessels engaged in the fishery in the exclusive economic zone and vessels engaged in the fishery in the waters of the State, and without regard to the State that issued the permit under which a vessel is operating;

(2) shall not apply to any fishing by a vessel in exercise of tribal treaty rights except as provided in *United States v. Washington*, D.C. No. CV-70-09213, United States District Court for the Western District of Washington; and

(3) shall include any provisions necessary to implement tribal treaty rights pursuant to the decision in *United States v. Washington*, D.C. No. CV-70-09213.

(c) **LIMITATION ON ENFORCEMENT OF STATE LIMITED ACCESS SYSTEMS.**—Any law of the State of Washington, Oregon, or California that establishes or implements a limited access system for a Dungeness crab fishery may not be enforced against a vessel that is otherwise legally fishing in the exclusive economic zone adjacent to that State and that is not registered under the laws of that State, except a law regulating landings.

(d) STATE PERMIT OR TREATY RIGHT REQUIRED.—No vessel may harvest or process Dungeness crab in the exclusive economic zone adjacent to the State of Washington, Oregon, or California, except as authorized by a permit issued by any of those States or pursuant to any tribal treaty rights to Dungeness crab pursuant to the decision in *United States v. Washington*, D.C. No. CV-70-09213.

(e) STATE AUTHORITY OTHERWISE PRESERVED.—Except as expressly provided in this section, nothing in this section reduces the authority of any State under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish processing, or landing of fish.

(f) TERMINATION OF AUTHORITY.—The authority of the States of Washington, Oregon, and California under this section with respect to a Dungeness crab fishery shall expire on the effective date of a fishery management plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act.

(g) [Omitted]

(h) DEFINITIONS.—The definitions set forth in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) shall apply to this section.

[(i) SUNSET.—This section shall have no force or effect on and after September 30, 2016.]

[(j)](i) Not later than December 31, 2001, and every 2 years thereafter, the Pacific State Marine Fisheries Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report on the status and management of the Dungeness Crab fishery located off the coasts of the States of Washington, Oregon, and California, including—

- (1) stock status and trends throughout its range;
- (2) a description of applicable research and scientific review processes used to determine stock status and trends; and
- (3) measures implemented or planned that are designed to prevent or end overfishing in the fishery.