

House Committee on Natural Resources

Rob Bishop, Chairman

Markup Memo

September 7, 2015

To: House Committee on Natural Resources Members

From: House Water, Power and Oceans Subcommittee Republican Staff (x5-8331)

Subject: Full Committee Markup of H.R. 2168 (Herrera Beutler, R-WA) “*West Coast Dungeness Crab Management Act*,”

Bill Summary:

H.R. 2168 is a bipartisan bill that would permanently reauthorize the tri-state (Washington, Oregon, and California) Dungeness crab management authority, which will expire on September 30, 2016.

Cosponsors:

Reps. Peter DeFazio (D-OR), Derek Kilmer (D-WA), Kurt Schrader (D-OR), Rick Larsen (D-WA), Mike Thompson (D-CA) and Jared Huffman (D-CA).

Background:

The Dungeness crab (crab) is a native species to the Pacific Ocean, with a habitat stretching from Alaska to Mexico.¹ Commercial and recreational harvest of the crab supports one of the West Coast’s most valuable fisheries, with about 99% of the crab on the U.S. market coming from domestic sources. Landings of the crab in the fisheries off California, Oregon, and Washington have maintained a cyclical pattern for nearly 50 seasons, with annual harvests ranging from 8 million to 54 million pounds, peaking approximately every ten years.²

With the creation of regional fishery management councils pursuant to the Fishery Conservation and Management Act of 1976 (P.L. 94-265),³ the Pacific Fishery Management Council considered putting the Dungeness crab fishery under federal management. However, according to testimony submitted to the House Resources Committee from then-Deputy Assistant Administrator for Fisheries, Mr. David Evans: “Council members decided that the diverse and urgent management needs of the salmon and groundfish fisheries were more than enough for the young council to coordinate.”⁴

¹ <http://www.psmfc.org/program/tri-state-dungeness-crab-tsd>

² <http://swfsc.noaa.gov/publications/CR/1986/8667.PDF>

³ Section 302 of P.L. 94-265

⁴ Submitted testimony of Deputy Assistant Administrator David Evans, National Marine Fisheries Service, to the House Committee on Resources, 105th Cong. Legislative Hearing on H.R. 3498. May 7, 1998.

In 1980, the States of Washington, California, and Oregon entered into a Memorandum of Understanding⁵ to take “mutually supportive actions” to manage the fishery within their respective state waters (0-3 nautical miles from shore) as well as in the adjacent federal waters (3-200 nautical miles).⁶ This three-state process is still under the umbrella of the Pacific States Marine Fisheries Commission.⁷ This three-state process includes reporting requirements and seasons⁸ as well as allocations.⁹

The 1996 reauthorization of what is now commonly referred to as the Magnuson-Stevens Act recognized the three-state agreement by granting a one year authorization.¹⁰ Since the initial one year pilot, the tri-state management authority has been extended three times with the most recent being a ten year extension of the management authority in 2007.¹¹ The current federal authorization for the tri-state management authority expires on September 30, 2016.¹² Under current law, the U.S. Secretary of Commerce reserves the right, at any time, to implement a federal Fishery Management Plan for the fishery under the Magnuson-Stevens Fishery Conservation and Management Act.¹³ This would effectively allow the Commerce Secretary to assert federal management of the crab fishery in federal waters.

In lieu of formal annual stock assessments – as would be required under a federal management plan – the states conduct “pre-season meat pick-out testing” of the crab to determine season opening dates.¹⁴ 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.¹⁵ Additionally, the states have adopted strict size and sex requirements: only male crabs are retainable and must measure at least 6.25 inches at the shortest distance across the back of the shell.¹⁶ This size limit is intended to protect sexually mature male crabs from harvest for a season or two.

H.R. 2168 permanently reauthorizes the tri-state management authority and is broadly supported by commercial and recreational fishing organizations and others. In a June 22, 2015 letter to Representative Herrera Beutler, the Executive Director of the Pacific Fishery Management Council stated:

⁵ [Charles Fullerton, John Donaldson, Gordon Sandison - Memorandum of Understanding Relative to Improvement Management of the Pacific Coast Dungeness Crab Fishery. June 1980.](#)

⁶ [Public Law 105-384 – Section 203\(a\). November 13, 1998.](#)

⁷ <http://www.psmfc.org/program/tri-state-dungeness-crab-tsdc>

⁸ <http://wdfw.wa.gov/fishing/shellfish/crab/>

⁹ http://www.ccawashington.org/action_alert

¹⁰ [Public Law 104-297 – Section 112\(d\). October 11, 1996.](#)

¹¹ [Public Law 109-479 – Section 302\(e\). January 12, 2007.](#)

¹² [Id.](#)

¹³ [Public Law 105-384 – Section 203\(g\). November 13, 1998.](#)

¹⁴ [Id.](#)

¹⁵ Staff Conference call with Mr. Dave Colpo, Senior Program Manager, Pacific States Marine Fisheries Commission. July 17, 2015.

¹⁶ [Marine Stewardship Council – MSC Final Report w/ Certification Decision: Oregon Dungeness Crab Fishery. p.19, October 27, 2010.](#)

“The existing management regime has resulted in a healthy resource and an economically important and sustainable fishery,” and that “[t]he loss of the statutory delegation to the West Coast states for Dungeness crab would put the Pacific Council in a position to embark on a multi-year process to develop a fishery management plan (FMP) for Dungeness crab and shift resources away from ongoing fishery management issues.”¹⁷

According to the Central California Seafood Marketing Association (CCSMA):

“The long history of very successful Dungeness crab fishery management by the states supports policy to eliminate the sunset clause,” and that “[the] CCSMA urges the House Committee on Natural Resources ... to move expeditiously in enacting the West Coast Dungeness Crab Management Act”¹⁸

The Pacific States Marine Fisheries Commission, the Washington Seafood Processors Association, the Washington Dungeness Crab Fishermen’s Association, the Oregon Dungeness Crab Commission, Caito Fisheries, Inc., and the Pacific Coast Federation of Fishermen’s Associations also support H.R. 2168

Major Provisions/Analysis of H.R. 2168:

H.R. 2168 amends Section 203 of P.L. 105-384 by striking the sunset provision for the Tri-State Dungeness Crab Commission, making the management authority permanent.

Cost:

The Congressional Budget Office (CBO) has not completed a cost estimate of the bill. However, in the 105th Congress, the House Resources Committee passed a bill (H.R. 3498) authorizing the tri-state Dungeness crab management authority. The CBO cost estimate of H.R. 3498 stated that the bill “would not affect direct spending” and that it would eliminate the need for a federal management plan thus reducing “federal spending by about \$1 million over the four-year period, assuming appropriations are reduced as a result of these savings.”¹⁹

Administration Position:

Supports.²⁰

Expected Amendments

None

¹⁷ D.O. McIsaac, Ph.D., Pacific Fishery Management Council letter to Representative Jamie Herrera Beutler, June 22, 2015.

¹⁸ Ms. Tiffani Seitz, Central California Seafood Marketing Association letter to House Natural Resources Committee, 2015.

¹⁹ [Congressional Budget Office cost estimate of H.R. 3498, July 22, 1998.](#)

²⁰ The National Oceanic and Atmospheric Administration’s Deputy Regional Administrator for the West Coast Region testified on H.R. 2168: “While the NMFS and the Council could develop a fishery management plan under the MSA, such a step would impose a fiscal burden on the taxpayers and could detract from efforts to conserve and manage other species which are under the Council’s jurisdiction.”

Ramseyer:

**Authority of States of Washington, Oregon, and California to Manage
Dungeness Crab Fishery**

H.R. 2168, as amended:

16 U.S.C. §1856:

(text to be struck in gray; new text in yellow)

[Pub. L. 105–384, title II, §203, Nov. 13, 1998, 112 Stat. 3453](#), as amended by [Pub. L. 107–77, title VI, §624, Nov. 28, 2001, 115 Stat. 803](#) ; [Pub. L. 109–479, title III, §302\(e\), Jan. 12, 2007, 120 Stat. 3624](#), provided that:

"(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 [16 U.S.C. 1801 et seq.].

"(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 [16 U.S.C. 1801 et seq.].

"(g) Repeal.-[Repealed section 112(d) of Pub. L. 104-297, see below.]

"(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 [now Committee on Natural 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."