

Calendar No. 111

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-88

A BILL TO REMOVE THE SUNSET PROVI-
SION OF SECTION 203 OF PUBLIC LAW
105-384 AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 61



JUNE 5, 2017.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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A BILL TO REMOVE THE SUNSET PROVISION OF SECTION 203 OF PUBLIC LAW 105-384

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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. 61]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 61) to remove the sunset provision of section 203 of Public Law 105-384 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. 61, known as 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 U.S. Exclusive Economic Zone (U.S. EEZ) are managed under the authority of the Magnuson-Stevens Fisheries 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 3 miles from shore; however, the seaward boundaries of Texas, Puer-

¹ 16 U.S.C. §1801 et seq.

to Rico, and the Gulf Coast of Florida are at 9 nautical miles. In 2012, Louisiana claimed State jurisdiction to over 10 miles.²

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.³ Across the West Coast, fishermen landed more than 53 million pounds of crab valued at \$169.8 million in 2014.⁴ Commercial and recreational harvest of the crab supports one of the West Coast's most valuable fisheries. Landings of the crab in the fishery 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.⁵

In 1980, Washington, Oregon, and California entered into a Memorandum of Understanding⁶ 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).⁷ The 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 (Commission), an interstate compact agency that helps resource agencies and the fishing industry to 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 Commission establishes reporting requirements and seasons, as well as allocations.⁸

Generally, fish in the U.S. EEZ are managed through the regional Fishery Management Councils set up under the MSA.⁹ However, in 1996, the MSA was amended to give authority to Washington, Oregon, and California to manage the commercial Dungeness crab fishery off their coasts.¹⁰ This amendment included a sunset clause that expired 1 year after the enactment of the amendment. Since the initial 1 year pilot, the tri-State management authority has been extended three times, the most recent being a 10 year extension of the management authority in 2007.¹¹ The current Federal authorization for the tri-State management authority expired on September 30, 2016.¹² 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

² Louisiana State Law, 2011, Senate Bill 145 Act No 366, at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=760938>.

³ Pacific States Marine Fisheries Commission (PSMFC), Tri-State Dungeness Crab (TSDC), accessed September 23, 2015, at <http://www.psmfc.org/program/tri-state-dungeness-crab-tsd>.

⁴ PSMFC, Dungeness Crab Report 201, accessed September 23, 2015, at <http://www.psmfc.org/crab/2014-2015%20files/DUNGENESS%20CRAB%20REPORT201.pdf>.

⁵ PSMFC, TSDC, accessed September 23, 2015, at <http://www.psmfc.org/program/tri-state-dungeness-crab-tsd>.

⁶ Fullerton, E.C., J. Donaldson, and G. Sandison, Memorandum of Understanding, accessed September 23, 2015, at <https://www.scribd.com/doc/272105926/MOU-Pacific-Coast-Dungeness-Crab-Fishery-1980>.

⁷ P.L. 94-625

⁸ Washington Fish and Wildlife, Recreational Crab Fishing, accessed September 23, 2015, at <http://wdfw.wa.gov/fishing/shellfish/crab>.

⁹ 16 U.S.C. §1801 et seq.

¹⁰ P.L. 104-297

¹¹ P.L. 109-479

¹² 16 U.S.C. §1856.

MSA.¹³ The States have continued to manage the fishery effectively since September 30, 2016,¹⁴ but due to the sunset clause their authority could be challenged.

Domoic acid

In California, Oregon, and Washington, there have been significant delays of the season openings due to dangerous levels of domoic acid in crab meat in the 2015 and 2016 fishing seasons.¹⁵ 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 possibly related to the current El Niño.¹⁶ This Act 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

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

LEGISLATIVE HISTORY

S. 61 was introduced on January 9, 2017, by Senator Cantwell and is cosponsored by Senators Murkowski, Wyden, Murray, Merkley, and Feinstein. A companion bill, H.R. 374, was introduced on the same day by Representative Beutler. That measure was cosponsored by Representatives Bonamici, DeFazio, Huffman, Kilmer, and Thompson. That measure passed in the House of Representatives on a vote of 388-0 and was received in the Senate on January 31, 2017. On April 5, 2017, the Committee met in open Executive Session and, by voice vote, ordered S. 61 reported favorably without amendment.

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. 61—A bill to remove the sunset provision of section 203 of Public Law 105-384 and for other purposes

S. 61 would authorize Washington, Oregon, and California to manage commercial fishing for Dungeness crabs in federal waters adjacent to their states. Under prior law, the states had managed such fishing under authority that expired on September 30, 2016. Under current law, the National Oceanic and Atmospheric Administration (NOAA) is preparing to manage the fishery during the next Dungeness crab season, which will begin near the start of fiscal year 2018.

¹³ P.L. 105-384 Section 203(g)

¹⁴ Fishermen News, *Domoic Danger Delays Dungeness*, February 1, 2017, accessed April 23, 2017, at <http://www.fishermensnews.com/story/2017/02/01/features/domoic-danger-delays-dungeness/447.html>.

¹⁵ Id.

¹⁶ R. Parsons, "Toxic algae delays California's Dungeness crab season," *Los Angeles Times*, November 5, 2015, at <http://www.latimes.com/food/dailydish/la-dd-dungeness-crab-season-delayed-toxic-algae-20151105-story.html>.

Based on an analysis of information provided by NOAA, CBO estimates that NOAA will spend about \$1 million a year beginning in 2018 to hire 10 to 15 employees to carry out administrative activities related to managing the fishery. Under the bill, CBO expects that the three states would manage the Dungeness crab fisheries largely at state expense. Therefore, we estimate that implementing the bill would reduce the need for discretionary appropriations by about \$1 million a year over the 2018–2022 period.

Enacting S. 61 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 2028.

S. 61 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 the States of Washington, California, and Oregon to regulate their fisheries would be incurred voluntarily.

The CBO staff contact for this estimate is Robert Reese. 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. 61 as reported would not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

S. 61 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 National Oceanic and Atmospheric Administration 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. 61 would not increase paperwork requirements for either the private or public sectors.

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. Dungeness Crab Fishery Management

This section would amend section 203 of the Act entitled “An Act to approve a governing international agreement between the United States and the Republic of Poland, and for other purposes” to strike the sunset clause under subsection (i).

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; 16 U.S.C. 1856 note]

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

* * * * *

[(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.