

105TH CONGRESS  
2D SESSION

# S. 1726

To authorize the States of Washington, Oregon, and California to regulate the Dungeness crab fishery in the exclusive economic zone.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 6, 1998

Mrs. MURRAY (for herself, Mr. GORTON, Mr. SMITH of Oregon, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## A BILL

To authorize the States of Washington, Oregon, and California to regulate the Dungeness crab fishery in the exclusive economic zone.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dungeness Crab Con-  
5 servation and Management Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the ocean Dungeness crab (Cancer magis-  
9 ter) fishery adjacent to the States of Washington,

1 Oregon, and California has been successfully con-  
2 served and managed by those States since the 19th  
3 century;

4 (2) in recognition of the need for coastwide con-  
5 servation of Dungeness crab, the States of Washing-  
6 ton, Oregon, and California have—

7 (A) enacted certain laws that promote con-  
8 servation of the resource;

9 (B) signed a memorandum of understand-  
10 ing declaring the intent of those States to take  
11 mutually supportive actions to further the man-  
12 agement of Dungeness crab; and

13 (C) through the Pacific States Marine  
14 Fisheries Commission, formed the Tri-State  
15 Dungeness Crab Committee to provide a public  
16 forum for coordinating conservation and man-  
17 agement actions;

18 (3) tribal treaty rights to crab under the sub-  
19 proceeding numbered 89–3 in United States v.  
20 Washington, D.C. No. CV–70–09213, are being im-  
21 plemented by the State of Washington through an-  
22 nual preseason negotiations with the affected Indian  
23 tribes;

24 (4) the expiration of interim authority referred  
25 to in paragraph (7) will jeopardize the ability of the

1 State to effectively provide for State-tribal harvest  
2 agreements that include restrictions on nontreaty  
3 fishers in the exclusive economic zone;

4 (5) the Magnuson-Stevens Fishery Conservation  
5 and Management Act (16 U.S.C. 1801 et seq.) re-  
6 quires that Federal fishery management plans be es-  
7 tablished for fisheries that require conservation and  
8 management;

9 (6) under the Magnuson-Stevens Fishery Con-  
10 servation and Management Act, several fisheries in  
11 the Atlantic and Pacific Oceans, including king crab  
12 in the Gulf of Alaska, have remained under the ju-  
13 risdiction of individual States or interstate organiza-  
14 tions because conservation and management can be  
15 better achieved without the implementation of a  
16 Federal fishery management plan;

17 (7) section 112(d) of the Sustainable Fisheries  
18 Act (Public Law 104–297; 110 Stat. 3596 though  
19 3597) provided interim authority for the States of  
20 Washington, Oregon, and California to exercise lim-  
21 ited jurisdiction over the ocean Dungeness crab fish-  
22 ery in the exclusive economic zone and required the  
23 Pacific Fishery Management Council to report to  
24 Congress on progress in developing a fishery man-

1       agement plan for ocean Dungeness crab and any im-  
2       pediments to that progress;

3           (8) the Pacific Fishery Management Council  
4       diligently carried out the responsibilities referred to  
5       in paragraph (7) by holding public hearings, re-  
6       questing recommendations from a committee of that  
7       Council and the Tri-State Dungeness Crab Commit-  
8       tee;

9           (9) representatives from the Indian tribes in-  
10      volved, the west coast Dungeness crab industry, and  
11      the fishery management agencies of the States of  
12      Washington, Oregon, and California were consulted  
13      by the Pacific Fishery Management Council, and the  
14      Council voted in public session on its final report;  
15      and

16          (10) by a unanimous vote, the Pacific Fishery  
17      Management Council found that amending section  
18      112 of the Sustainable Fisheries Act and providing  
19      for permanent authority to the States of Washing-  
20      ton, Oregon, and California to manage, with certain  
21      limitations, the ocean Dungeness crab fishery in that  
22      portion of the exclusive economic zone adjacent to  
23      each of the States, respectively, and continued par-  
24      ticipation by fishermen and the Indian tribes subject

1 to the tribal treaty rights referred to in paragraph  
2 (3) would—

3 (A) best accomplish the conservation and  
4 management of the ocean Dungeness crab fish-  
5 ery; and

6 (B) best serve the public interest.

7 (b) PURPOSES.—The purposes of this Act are—

8 (1) to provide for the continued conservation  
9 and management of ocean Dungeness crab in a  
10 manner that recognizes the contributions of the  
11 States of Washington, Oregon, and California and  
12 the needs of the Indian tribes that are subject to the  
13 tribal treaty rights to crab described in subsection  
14 (a)(3); and

15 (2) to carry out the recommendations that the  
16 Pacific Fishery Management Council made in ac-  
17 cordance with requirements established by Congress.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) EXCLUSIVE ECONOMIC ZONE.—The term  
21 “exclusive economic zone” has the meaning given  
22 that term in section 3(11) of the Magnuson-Stevens  
23 Fishery Conservation and Management Act (16  
24 U.S.C. 1802(11)).

1           (2) FISHERY.—The term “fishery” has the  
 2           meaning given that term in section 3(13) of the  
 3           Magnuson-Stevens Fishery Management Act (16  
 4           U.S.C. 1802(13)).

5           (3) FISHING.—The term “fishing” has the  
 6           meaning given that term in section 3(15) of the  
 7           Magnuson-Stevens Fishery Conservation and Man-  
 8           agement Act (16 U.S.C. 1802(15)).

9   **SEC. 4. AUTHORITY FOR MANAGEMENT OF DUNGENESS**  
 10                           **CRAB.**

11          (a) IN GENERAL.—Subject to the provisions of this  
 12          section, and notwithstanding section 306(a) of the Magnu-  
 13          son-Stevens Fishery Conservation and Management Act  
 14          (16 U.S.C. 1856(a)), each of the States of Washington,  
 15          Oregon, and California may adopt and enforce State laws  
 16          (including regulations) governing fishing and processing  
 17          in the exclusive economic zone adjacent to that State in  
 18          any Dungeness crab (*Cancer magister*) fishery for which  
 19          there is no fishery management plan in effect under the  
 20          Magnuson-Stevens Fishery Conservation and Manage-  
 21          ment Act (16 U.S.C. 1801 et seq.).

22          (b) REQUIREMENTS FOR STATE LAWS.—Any law  
 23          adopted by a State under this section for a Dungeness  
 24          crab fishery—

1           (1) except as provided in paragraph (2), shall,  
 2       without regard to the State that issued the permit  
 3       under which a vessel is operating, apply equally to—

4           (A) vessels engaged in the fishery in the  
 5       exclusive economic zone; and

6           (B) vessels engaged in the fishery in the  
 7       waters of the State;

8           (2) shall not apply to any fishing by a vessel in  
 9       the exercise of tribal treaty rights; and

10          (3) shall include any provisions necessary to im-  
 11       plement tribal treaty rights in a manner consistent  
 12       with the decision of the United States District Court  
 13       for the Western District of Washington in United  
 14       States v. Washington, D.C. No. CV-70-09213.

15       (c) EXCLUSIVE ECONOMIC ZONE.—

16           (1) IN GENERAL.—Subject to paragraph (2),  
 17       any law of the State of Washington, Oregon, or Cali-  
 18       fornia that establishes or implements a limited entry  
 19       system for a Dungeness crab fishery may not be en-  
 20       forced against a vessel that—

21           (A) is otherwise legally fishing in the ex-  
 22       clusive economic zone adjacent to that State;  
 23       and

24           (B) is not registered under the laws of that  
 25       State.

1           (2) EXCLUSION.—A State referred to in para-  
 2       graph (1) may regulate the landing of Dungeness  
 3       crab.

4           (d) REQUIREMENTS FOR HARVEST.—No vessel may  
 5       harvest or process Dungeness crab in the exclusive eco-  
 6       nomic zone adjacent to the State of Washington, Oregon,  
 7       or California, except—

8           (1) as authorized by a permit issued by any of  
 9       the States referred to in subsection (c)(1); or

10          (2) under any tribal treaty rights to Dungeness  
 11       crab in a manner consistent with the decision of the  
 12       United States District Court for the Western Dis-  
 13       trict of Washington in *United States v. Washington*,  
 14       D.C. No. CV-70-09213.

15          (e) STATUTORY CONSTRUCTION.—Except as ex-  
 16       pressly provided in this section, nothing in this section is  
 17       intended to reduce the authority of any State under the  
 18       Magnuson-Stevens Fishery Conservation and Manage-  
 19       ment Act (16 U.S.C. 1801 et seq.) to regulate fishing, fish  
 20       processing, or landing of fish.

21       **SEC. 5. ELIMINATION OF INTERIM AUTHORITY.**

22       Section 112 of the Sustainable Fisheries Act (Public  
 23       Law 104-297; 110 Stat. 3596) is amended by striking  
 24       subsection (d).

○