

DUNGENESS CRAB CONSERVATION AND MANAGEMENT
ACT

—————
AUGUST 4, 1998.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3498]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3498) to amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize the States of Washington, Oregon, and California to regulate the Dungeness crab fishery in the exclusive economic zone, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Dungeness Crab Conservation and Management Act”.

SEC. 2. AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY.

(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; 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) **REPEAL.**—Section 112(d) of Public Law 104-297 (16 U.S.C. 1856 note) is repealed.

(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.

PURPOSE OF THE BILL

The purpose of H.R. 3498 is to amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize the States of Washington, Oregon and California to regulate the Dungeness crab fishery in the exclusive economic zone.

BACKGROUND AND NEED FOR LEGISLATION

The Pacific Ocean fishery for Dungeness Crab (Cancer magister) is administered in the State waters of California, Oregon, and Washington and in the exclusive economic zone adjacent to those States. A related tribal fishery is conducted under court order (*United States v. Washington*, D.C. No. CV-70-09213) in ocean areas designated by regulation as tribal “usual and accustomed” (U&A) areas.

Conservation and management regulations are implemented and enforced by the three States and the tribal governments. These regulations include limits on the size and sex of crab that can be legally harvested, season opening and closing dates, and—in the case of tribal fisheries—areas and periods of time when harvesting is limited to tribal fishermen. All three States have enacted laws which limit entry into the crab fishery and which prohibit non-permitted vessels from landing crab in the State. A Memorandum of Agreement is in effect among the three States which require cooperation in setting size, sex, and season limits.

Because a portion of the fishery occurs in the exclusive economic zone, the States are limited in their ability to enforce regulations against vessels registered under the laws of other States. Agree-

ments between the State of Washington and tribal governments which are designed to accommodate tribal treaty fisheries are also complicated by the State of Washington's lack of authority over Oregon and California vessels which could legally fish in those portions of the tribal U&A areas outside State waters.

In recognition of this confusing management problem, the Congress enacted section 112(d) of Public Law 104-297 (16 U.S.C. 1856 note) in 1996, which provided limited interim authority for the three States to enforce certain State regulations against all vessels operating in the exclusive economic zone and fishing for Dungeness crab. That interim authority is due to expire on October 1, 1999.

Paragraph (6) of Section 112(d) expressed the sense of Congress that the Pacific Fishery Management Council should develop a fishery management plan under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) for various shellfish species—including especially Dungeness crab—that were not then managed under such a plan. It further required the Council to submit a report to Congress by December 1, 1997, describing progress on and impediments to developing a fishery management plan.

The Pacific Fishery Management Council convened an ad hoc committee composed of representatives from the Council, the States, the harvesting sector, the processing sector, the National Marine Fisheries Service, and the treaty tribes to develop options to respond to this direction. The committee met in May 1997, and the Council considered the committee's report, along with extensive public testimony, at the Council meeting in June 1997. The Council voted to adopt two options for public review: development of a fishery management plan under the MSFCMA, with some degree of delegation to the States; and a request to Congress that the interim authority be made permanent. The Council accepted an offer from the Pacific States Marine Fisheries Commission to use the Commission's Tri-State Dungeness Crab Committee as a forum for public hearings on these options.

The Tri-State Committee met in August 1997, and unanimously agreed that the Council should request Congress to make the interim authority permanent, with two changes from existing law: clarification of the ban on vessels not permitted to harvest Dungeness crab; and extension of State authority over the Dungeness crab fishery to all laws and regulations, except those limiting entry to the fishery. In September 1997, the Council unanimously adopted a motion made by Mr. Jim Harp, the designated tribal representative on the Council, to accept the Tri-State Committee recommendation and forward it to Congress as its required report.

H.R. 3498 would enact into law the recommendations of the Council, which follow extensive public review by two committees and substantial public testimony at two different Council meetings. The Dungeness crab fishery has been successfully managed by the three west coast States and the relevant tribal governments for many years. Although the crab population is cyclical, substantial harvests have been sustained for decades. While the substantial increase in the number of vessels and pots used in this fishery in recent years is cause for concern that the fishery is becoming increasingly overcapitalized, there is no evidence to demonstrate that

management under State regulation has resulted in conservation problems for the ocean Dungeness crab fishery.

To ensure continued conservation, accommodate tribal treaty rights, and provide the States some means of addressing the growing problem of overcapitalization, some regulatory authority is necessary in the exclusive economic zone. If H.R. 3498 is not enacted, no authority will exist when the current interim authority expires, which could lead to a dramatic short-term increase in effort in this overcapitalized fishery. While the Pacific Fishery Management Council could develop a fishery management plan under the MSFCMA, such a step would impose a fiscal burden on the taxpayers, an unnecessary regulatory burden on harvesters and processors, and would detract from efforts to conserve and manage other species which are under the Council's jurisdiction. For example, the Subcommittee on Fisheries, Wildlife Conservation and Oceans conducted an oversight hearing on west coast groundfish on April 30, 1998, which demonstrated the lack of data and funding available to the Council to effectively manage and conserve that fishery. The Council is also considering fishery management plans for coastal pelagic and highly migratory species; thus a requirement to develop an additional fishery management plan would further stretch the Council's capability to implement these plans effectively.

Section 302 of the MSFCMA requires regional fishery management councils to develop fishery management plans for fisheries that require conservation and management. In several cases, including fisheries in Alaska and on the east coast, Congress has explicitly recognized that conservation and management under State authority makes more sense. H.R. 3498 follows this pattern in recognizing the special circumstances surrounding a unique fishery which has been successfully conserved and managed under State and tribal authority.

COMMITTEE ACTION

H.R. 3498 was introduced on March 18, 1998, by Congressman George Miller (D-CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife, and Oceans. On May 7, 1998, the Subcommittee held a hearing on H.R. 3498, where testimony was heard from: Dr. David Evans, Deputy Assistant Director, National marine Fisheries Service; Mr. Phillip Anderson, Pacific Fishery Management Council; Mr. Randy Fisher, Executive Director, Pacific States Marine Fisheries Commission; Mr. Nick Furman, Executive Director, Oregon Dungeness Crab Commission; Mr. Larry Thevik, Washington Dungeness Crab Fishermen's Association and the Columbia River Crab Fishermen's Association; Mr. Pietro Parravano, President, Pacific Coast Federation of Fishermen's Associations; and Mr. Rod Moore, Executive Director, West Coast Seafood Processors Association. Every witness testified in strong support of H.R. 3498. On June 4, 1998, the Subcommittee met to mark up H.R. 3498. An amendment in the nature of a substitute was offered by Mr. Miller of California, and adopted by voice vote. The amendment made the bill a free standing measure instead of an amendment to the MSFCMA. The bill was then ordered favorably

reported to the Full Committee by voice vote. On July 22, 1998, the Full Resources Committee met to consider H.R. 3498. Chairman Young offered an amendment to extend State fisheries jurisdiction out to three marine leagues in the Gulf of Mexico for the States of Alabama, Louisiana, and Mississippi, effective July 1, 1999. The Young amendment was ruled non-germane. No further amendments were offered and the bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 provides the short title of H.R. 3498: the Dungeness Crab Conservation and Management Act.

SECTION 2. AUTHORITY OF STATES OF WASHINGTON, OREGON, AND CALIFORNIA TO MANAGE DUNGENESS CRAB FISHERY

Section 2 provides authority to the States of California, Oregon, and Washington to manage Dungeness crab fisheries throughout the exclusive economic zone adjacent to those States, subject to certain limitations.

Subsection 2(b) specifies that regulations governing the Dungeness crab fishery which are issued by a State must apply equally to all vessels within State waters and the exclusive economic zone, and to all vessels fishing in waters adjacent to a State, regardless of a vessel's origin. Thus, for example, the State of Washington could not allow Washington-permitted vessels to carry a certain number of crab pots, but prohibit Oregon or California-permitted vessels from carrying the same number of crab pots.

The Committee recognizes that differences in the biology and ecology of crabs, bottom topography, and other natural factors may require differential management measures in different times or areas. For example, a State may need to prohibit fishing in certain waters to protect molting crabs. While such actions are permissible for conservation reasons, they cannot discriminate among vessels permitted by Washington, Oregon, or California.

Paragraphs 2(b) (2) and (3) make clear that the expanded State authority granted in this Act shall not apply to vessels exercising their legitimate tribal treaty rights. The term "tribal treaty rights" means a treaty fishing right that has been finally approved by the courts under the process defined in section 19(g) of the final court order under *United States v. Washington*, and the approval is not subject to further appeal. Further, if specific regulatory actions are required to be taken in order to implement those tribal treaty rights, the relevant State has the obligation to do so.

Subsection 2(c) limits State authority by prohibiting enforcement of a State limited access system in the exclusive economic zone against vessels that are otherwise legally fishing. As noted above, the States of California, Oregon, and Washington have all enacted limited entry laws that apply respectively to each State's vessels. Those laws, including restrictions on landing, will continue to apply. However, they may not be used to prevent legally permitted vessels from other States from fishing in the exclusive economic zone and landing crab in their own States.

Subsection 2(d) specified that the only vessels which may legally fish for Dungeness crab in the exclusive economic zone adjacent to the States of California, Oregon, and Washington are vessels which are permitted for such fishing by any one of those States, or vessels exercising tribal treaty rights.

Subsection 2(e) generally preserves State authority to conserve and manage fish and wildlife, subject to the provisions of this Act.

Subsection 2(f) makes clear that the expanded authority granted to the States of California, Oregon, and Washington under this Act will terminate on the effective date of a federal fishery management plan for the Dungeness crab fishery under the MSFCMA. Any State laws or regulations which govern the activities of vessels in the exclusive economic zone, other than laws or regulations which apply to a State's own vessels, will no longer be in effect after that date, unless specifically provided for in the fishery management plan.

Subsection 2(g) repeals the interim authority over Dungeness crab fishing which was granted to the States of California, Oregon, and Washington under Public Law 104-297. This Act supersedes that interim authority.

Subsection 2(h) specifies that definitions for such terms as "fish" and "fishing" which are used in this Act are the same as used in the MSFCMA.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact H.R. 3498.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 3498. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3498 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. In fact,

the Congressional Budget Office estimates that enactment of H.R. 3498 would reduce federal spending over the 1999–2003 period by about \$1 million, assuming appropriations are reduced by the amount of the estimated savings.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 3498.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3498 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1998.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3498, the Dungeness Crab Conservation and Management Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gary Brown (for federal costs), Pepper Santalucia (for the state and local impact), and Lesley Frymier (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 3498—Dungeness Crab Conservation and Management Act

Summary: H.R. 3498 would renew the authority of the states of California, Oregon, and Washington to regulate the fishery for Dungeness crab in the exclusive economic zone adjacent to those states (3 miles to 200 miles offshore), subject to certain conditions. Under current law, the states' authority to regulate this fishery expires on October 1, 1999. The bill specifies that the states' authority would terminate if the federal government elects to implement a management plan for this resource.

CBO estimates that implementing the bill would reduce federal spending over the 1999–2003 period by about \$1 million, assuming appropriations are reduced by the amount of the estimated savings. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go producers would not apply. The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 3498 would reauthorize and clarify an existing mandate on owners of vessels that fish for Dungeness crab in the exclusive economic zone adjacent to the states of California, Oregon, and Wash-

ington. Based on information provided by the National Oceanic and Atmospheric Administration (NOAA), CBO estimates that the direct cost of extending and clarifying the existing mandate would fall well below the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation) in any of the first five years.

Estimated cost to the Federal Government: Under current law, NOAA probably would develop and implement a plan for managing the Dungeness crab fishery after the states' authority expires. We estimate that NOAA would need about \$300,000 in fiscal year 2000 to develop a plan and less than \$150,000 each year thereafter to implement and enforce it. If H.R. 3498 is enacted, CBO expects that the states would regulate this fishery and that NOAA would not exercise its authority to manage the resource. This would eliminate the need for a federal management plan. Hence, CBO estimates that implementing this bill would reduce federal spending by about \$1 million over the four-year period, assuming appropriations are reduced as a result of these savings.

Pay-as-you-go considerations: None

Estimated impact on State, local, and tribal governments: The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs to states to regulate this fishery would be incurred voluntarily.

Estimated impact on the private sector: Current law, which is set to expire on October 1, 1999, prohibits vessels from fishing for Dungeness crab in the exclusive economic zone adjacent to the states of California, Oregon, and Washington without an appropriate state permit or a federal court order. H.R. 3498 would make this prohibition permanent. Based on information provided by NOAA, CBO estimates that the direct cost, if any, of extending the existing mandate would fall well below the threshold established in UMRA.

Current law does not specify that the state permit be issued only by California, Oregon, or Washington. H.R. 3498 would clarify that a permit be issued by one of those states. Accordingly to NOAA, all vessels currently fishing for Dungeness crab in the area subject to the prohibition already hold permits issued by one of those states. Therefore, the clarification would impose no additional costs on owners of vessels operating in the fishery.

Estimate prepared by: Federal costs: Gary Brown; impact on State, local, and tribal governments: Pepper Santalucia; impact on the private sector: Lesley Frymier.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 3498 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 existing law in which no change is proposed is shown in roman):

SECTION 112 OF THE ACT OF OCTOBER 11, 1996

(Public Law 104-297)

SEC. 112. STATE JURISDICTION.

(a) * * *

* * * * *

[(d) INTERIM AUTHORITY FOR DUNGENESS CRAB.—(1) Subject to the provisions of this subsection and notwithstanding section 306(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(a)), the States of Washington, Oregon, and California may each enforce State laws and regulations governing fish harvesting and processing against any vessel operating in the exclusive economic zone off each respective State in a fishery for Dungeness crab (*Cancer magister*) for which there is no fishery management plan implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

[(2) Any law or regulation promulgated under this subsection shall apply equally to vessels operating in the exclusive economic zone and adjacent State waters and shall be limited to—

[(A) establishment of season opening and closing dates, including presoak dates for crab pots;

[(B) setting of minimum sizes and crab meat recovery rates;

[(C) restrictions on the retention of crab of a certain sex; and

[(D) closure of areas or pot limitations to meet the harvest requirements arising under the jurisdiction of *United States v. Washington*, subproceeding 89-3.

[(3) With respect to the States of Washington, Oregon, and California—

[(A) any State law limiting entry to a fishery subject to regulation under this subsection may not be enforced against a vessel that is operating in the exclusive economic zone off that State and is not registered under the law of that State, if the vessel is otherwise legally fishing in the exclusive economic zone, except that State laws regulating landings may be enforced; and

[(B) no vessel may harvest or process fish which is subject to regulation under this subsection unless under an appropriate State permit or pursuant to a Federal court order.

[(4) The authority provided under this subsection to regulate the Dungeness crab fishery shall terminate on October 1, 1999, or when a fishery management plan is implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) for such fishery, whichever date is earlier.

[(5) Nothing in this subsection shall reduce the authority of any State, as such authority existed on July 1, 1996, to regulate fishing, fish processing, or landing of fish.

【(6)(A) It is the sense of Congress that the Pacific Fishery Management Council, at the earliest practicable date, should develop and submit to the Secretary fishery management plans for shellfish fisheries conducted in the geographic area of authority of the Council, especially Dungeness crab, which are not subject to a fishery management plan on the date of enactment of this Act.

【(B) Not later than December 1, 1997, the Pacific Fishery Management Council shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives describing the progress in developing the fishery management plans referred to in subparagraph (A) and any impediments to such progress.】

