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2d Session }

SENATE

{ REPORT
111-250

LONGLINE CATCHER PROCESSOR SUB-
SECTOR SINGLE FISHERY COOPERATIVE
ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1609



AUGUST 5, 2010.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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LOONGLINE CATCHER PROCESSOR SUBSECTOR SINGLE FISHERY COOPERATIVE ACT

AUGUST 5, 2010.—Ordered to be printed

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

REPORT

[To accompany S. 1609]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1609) to authorize a single fisheries cooperative for the Bering Sea Aleutian Islands longline catcher processor subsector, 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 Longline Catcher Processor Subsector Single Fishery Cooperative Act, S. 1609, would authorize a single fishery cooperative for the longline catcher processor subsector operating in the Bering Sea and Aleutian Islands Management Area of Alaska.

BACKGROUND AND NEEDS

Pacific cod are found around the rim of the North Pacific, from the Yellow Sea to the Bering Strait, along the Aleutian Islands, and south to roughly Los Angeles, California (although the species is somewhat rare in the southernmost part of its range).¹ The Pacific cod fisheries in the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) regions are the oldest Alaskan groundfish fisheries. Fishing activity began in the fisheries around 1865 and

¹Daniel M. Cohen, et al., *Gadiform Fishes of the World (Order Gadiformes). An Annotated and Illustrated Catalogue of Cods, Hakes, Grenadiers and other Gadiform Fishes Known to Date.* FAO FISHERIES SYNOPSIS No. 125, Vol. 10. Food and Agriculture Organization of the United Nations, Rome (1990), 42.

peaked during the period from 1916 to 1920.² The fisheries then steadily declined until 1950, after which time they began to support substantial foreign commercial fishing activity—primarily by Japan and the Soviet Union.³ This foreign fishing activity continued into the 1970s, and it was not until 1991 that the region was completely controlled and dominated by domestic commercial fishing interests.⁴ Currently, the Alaskan Pacific cod fisheries provide two-thirds of the world Pacific cod supply and are the second largest groundfish fisheries off the coast of Alaska (pollock being the largest). In 2009, the BSAI Pacific cod fisheries accounted for 173,663 tons,⁵ or 11.6 percent, of the total Alaska groundfish catch.⁶

The worldwide shortage of Atlantic cod and the increasing acceptance of Pacific cod as an alternative good in European markets indicate a likelihood of continued growth of commercial fishing for Pacific cod.⁷ Marine Stewardship Council (MSC)-certified Pacific cod caught by bottom longline, trap, or hook-and-line methods are likely to be especially fast-growing. In 2006, MSC-certified Pacific cod products sold at a 3 percent premium.⁸ This includes Pacific cod caught by the 36 Washington-based and Alaska-based freezer longline fishing vessels operating in the BSAI.

Alaskan Pacific cod fisheries are managed jointly at the State and Federal levels. The fishery management plans (FMPs) governing Pacific cod control fishing activity through a variety of means, including permits and limited entry, catch quotas, gear restrictions, closed waters, seasons, bycatch limits and rates, and other measures.⁹ Although this system is not entirely ineffective, it is problematic because it fosters a “race to fish” in which participants in the fishery compete to land the largest catch in the shortest amount of time in pursuit of economic security.¹⁰ On July 9, 2008, the Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing entitled “Fishing Safety: Policy Implications of Cooperatives and Vessel Improvements.” At that hearing, several witnesses testified to the benefits of rationalization as a fishery management tool. Specifically, the creation of fisheries cooperatives was cited as a management strategy that will “promote

² Gordon H. Kruse, et al., *Overview of State-Managed Marine Fisheries in the Central and Western Gulf of Alaska, Aleutian Islands, and Southeastern Bering Sea, with Reference to Steller Sea Lions*. Regional Information Report 5J00-10. Alaska Department of Fish and Game, Division of Commercial Fisheries (2000), 133.

³*Id.*

⁴ *Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Region*, North Pacific Fishery Management Council (2004), 187.

⁵ *Bering Sea Aleutian Islands Catch Report*, Alaska Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration (2009), 3.

⁶*Id.*

⁷ *Seafood Marketing Bulletin: Pacific Cod*, Alaska Seafood Marketing Institute, January 2006, 1.

⁸ *Stock Assessment and Fishery -Evaluation Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Region*, North Pacific Fishery Management Council (2008), 162 (citing Torunn Halhjem, *Genuine Alaska Pollock, Pacific Whiting, and Pacific Cod*, presented at the 15th Annual Global Groundfish Forum, Lisbon, Portugal (2006)).

⁹ See generally *Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area: Allocation of Pacific Cod Among Sectors and Apportionment of Sector Allocations between Bering Sea and Aleutian Islands Subareas*, North Pacific Fishery Management Council, March 12, 2006 (discussing various fishery management methods used for Pacific cod in the Bering Sea and Aleutian Islands Management Area).

¹⁰ See generally Raymond Hilborn et al., *State of the World’s Fisheries*, ANNUAL REVIEW OF ENVIRONMENT AND RESOURCES, November 2003, 359-399.

safer operations, minimize loss of life and vessel casualties and improve efficiencies.”¹¹ Many fisheries scientists and economists have echoed these sentiments regarding the effectiveness of cooperatives.¹²

In 2005, freezer longline companies, vessel owners, and related businesses participating in the BSAI Pacific cod fisheries joined to form the Freezer Longline Coalition (FLC). The FLC was formed for the purpose of establishing a cooperative to improve the safety, conservation and management, and social and economic benefits associated with the harvest of Pacific cod by catcher-processors in the fisheries. Although all but one company within the freezer longline catcher processor sector—or 34 out of the 36 vessels in the fleet—and all six Alaska Community Development Quota groups are supportive of the cooperative, as a practical matter, the support of the entire fleet is needed for the North Pacific Regional Fishery Management Council to rationalize the catcher-processor subsector. Furthermore, while the Council has laid much of the necessary groundwork for the cooperative by providing the freezer longline sector with an allocation of Pacific cod in Amendment 85 to the BSAI Groundfish FMP, formation of a cooperative through the Council’s process is likely to take three to five years to complete. For these reasons, the FLC is seeking legislation to help it complete the process.

SUMMARY OF PROVISIONS

S. 1609 would facilitate the formation of a single fishing cooperative by the BSAI Pacific cod longline catcher processor fleet. Rationalizing their fisheries in this manner would permit the fleet to allocate the total allowable catch in the fishery among their members based on their catch history. This, in turn, would enable them to better predict demands on their time and resources and facilitate cost effective operations, and to put an end to the dangerous “race for fish” that currently exists in so many fisheries. The cooperative would empower commercial fishermen with a framework and incentives to better manage their fishery without diminishing the important regulatory and oversight responsibilities of the North Pacific Fishery Management Council and the National Marine Fisheries Service.

LEGISLATIVE HISTORY

S. 1609 was introduced on August 6, 2009, by Senators Cantwell, Murray, Murkowski, and Begich. On July 9, 2008, the Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard held a hearing entitled “Fishing Safety: Policy Implications of Cooperatives and Vessel Improvements.” On December 17, 2009, the Committee met

¹¹ *Fishing Safety: The Policy Implications of Cooperatives and Vessel Improvements*, before the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard of the Senate Committee on Commerce, Science, and Transportation, 110th Cong. (2008) (statement of Leslie J. Hughes, Executive Director, North Pacific Fishing Vessel Owner’s Association Vessel Safety Program).

¹² See, e.g., Christopher Costello et al., *Can Catch Shares Prevent Fisheries Collapse?* SCIENCE, Sep. 18, 2008, 1678-1681; David R. Griffith, *The Ecological Implications of Individual Fishing Quotas and Harvest Cooperatives*, FRONTIERS IN ECOLOGY AND THE ENVIRONMENT, May 2008, 191-198; and Raymond Hilborn, *Defining Success in Fisheries and Conflicts in Objectives*, MARINE POLICY, March 2007, 153-158.

in executive session and, by voice vote, ordered S. 1609 reported 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:

MARCH 11, 2010.

Hon. JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1609, the Longline Catcher Processor Subsector Single Fishery Cooperative Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1609—Longline Catcher Processor Subsector Single Fishery Cooperative Act

S. 1609 would establish a process for certain fishermen to create a cooperative, authorized by the Secretary of Commerce, to allocate quotas of Pacific cod among its members. Based on information from the National Oceanic and Atmospheric Administration, CBO estimates that implementing S. 1609 would have no significant impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

Under current law, longline fishermen (those who fish with lines and hooks rather than nets or traps) operating in the Bering Sea/Aleutian Islands (BSAI) Pacific cod fishery are subject to an annual quota. Under that system, individual license holders can catch an unlimited number of fish until the total of all fish caught within the fishery equals the quota. Under the bill, if fishermen holding at least 80 percent of all licenses granted to the longline subsector operating in the BSAI Pacific cod fishery choose to enter into a cooperative, the Secretary of Commerce would use the guidelines established in the bill to allocate an annual quota to the cooperative, which would then divide that quota among its members each year. Based on information from NOAA, CBO estimates that implementing the legislation would have no significant impact on the federal budget.

S. 1609 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.

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

REGULATORY IMPACT STATEMENT

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

The reported legislation covers a freezer longline fleet that comprises 36 vessels and employs more than 1,200 persons.

ECONOMIC IMPACT

The reported bill would facilitate the establishment of a single fishery cooperative which would enable participating fishing vessel owners to invest time and resources more effectively than they are currently able to do. A more efficient allocation of time and resources would reduce the cost of fishing in the fishery, improve safety by ending the “race to fish,” and promote effective, sustainable fishing practices in the fishery.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

The Committee does not anticipate that the reported bill would impose any new paperwork requirements on private citizens, businesses, or other entities that do not choose to participate in a single fishery cooperative for the Pacific cod longline catcher-processor subsector in the BSAI Management Area. Those who do choose to participate in the cooperative may be subject to some additional paperwork requirements.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no items 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 provide that this legislation may be cited as the Longline Catcher Processor Subsector Single Fishery Cooperative Act.

Section 2. Authority to approve and implement a single fishery cooperative for the longline catcher processor subsector in the BSAI

Subsection (a) of this section would authorize the Secretary of Commerce to create a single fishery cooperative for the longline catcher processor subsector of the BSAI Pacific cod fishery. In order to authorize this cooperative, the Secretary would need a request from eligible members holding at least 80 percent of the licenses in the fishery.

Subsection (b) of this section would prohibit any cooperative member from harvesting more than 20 percent of the Pacific cod available to the subsector.

Subsection (c) of this section would require that, no later than November 1 of each year, the subsector must submit a contract to the Secretary to implement the single fishery cooperative. Any modifications to this contract would be required to be submitted no later than 60 days prior to the commencement of fishing.

Subsection (d) of this section would require members of the cooperative to undergo a Department of Justice business review, and would require that the results of this review be submitted to the Secretary of Commerce.

Subsection (e) of this section would require that the Secretary implement a single fishery cooperative approved under this section no later than 2 years after receiving a request to form the cooperative.

Subsection (f) of this section would provide that, if the longline catcher processor subsector does not submit a contract to the Secretary to form a cooperative, then the subsector shall operate as a limited access fishery for the following year subject to the license limitation program in effect for the subsector on the date of enactment of this Act, or any subsequent modifications to that program made through the Council process.

Section 3. Harvest and prohibited species allocations to a single fishery cooperative for the longline catcher processor subsector in the BSAI

This section would authorize the single fishery cooperative to harvest any portion of the Pacific cod subsector total allowable catch that is not otherwise allocated to the non-cooperative portion of the fleet. This section would also authorize the cooperative to utilize the total amount of prohibited species not otherwise allocated to the non-cooperative portion of the fleet. Additionally, it would authorize the cooperative to harvest any reallocation of Pacific cod that has been authorized by the Secretary.

Section 4. Longline catcher processor subsector non-cooperative limited access fishery

Subsection (a) of this section would preserve the right of any eligible member of the subsector that elects not to participate in the single fishery cooperative to continue to fish in a non-cooperative, limited access fishery subject to the license limitation program in effect for the subsector on the date of enactment of this Act, or any subsequent modifications to that program made through the Council process.

Subsection (b) of this section would provide that a vessel electing to fish in the non-cooperative fishery would be allowed to harvest the combined average percentage of the overall total allowable catch harvested by that vessel for 2006, 2007, and 2008, and to utilize a percentage of the BSAI Pacific cod prohibited species catch allocation in the fishery calculated in the same manner.

Section 5. Authority of the North Pacific Fishery Management Council

Subsection (a) of this section would make clear that nothing in this Act supersedes the authority of the North Pacific Fishery Management Council in its management of Pacific cod fisheries in the BSAI or Gulf of Alaska.

Subsection (b) of this section would provide that the Council may not alter the methodology used to calculate the allocation (including the allocation of prohibited species) to either the cooperative or non-cooperative portions of the fleet, as described in section 4. It would further provide that the Council may modify the 20 percent individual vessel limitation described in section 2(b) after 7 years, so long as no member of the subsector is negatively impacted.

Subsection (c) of this section would provide discretionary authority for the imposition of certain protections for coastal communities and other participants in the Gulf of Alaska Pacific cod fishery, in the form of harvest limitations on Pacific cod by the longline catcher processor subsector.

Section 6. Relationship to the Magnuson-Stevens Act

Subsection (a) of this section makes clear that a single fishery cooperative created pursuant to this Act is intended to enhance conservation and sustainable fishery management, reduce and minimize bycatch, promote social and economic benefits, and promote safety of human life at sea consistent with the national standards for fishery conservation and management set forth in section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)).

Subsection (b) would deem the cooperative to meet the transition rule requirements of section 303A(i) of the Magnuson-Stevens Act (16 U.S.C. 1853a(i)) unless the Secretary determines otherwise within 30 days after the date of enactment of this Act.

Subsection (c) of this section would authorize the Secretary to recover reasonable costs related to the implementation and administration of a single fishery cooperative approved under this Act.

Section 7. Community Development Quota Program

This section would provide that nothing in this Act shall affect the western Alaska Community Development Quota program established by section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)), including the allocation of fishery resources in the directed Pacific cod fishery.

Section 8. Definitions

This section would define the following terms: “BSAI,” “BSAI Pacific Cod Total Allowable Catch,” “BSAI Pacific Cod Prohibited Species Catch Allocation,” “Council,” “Eligible Member,” “Gulf of Alaska,” “Longline Catcher Processor Subsector,” “Magnuson-Stevens Act,” and “Secretary.”

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

