

AMENDED IN SENATE MAY 24, 2004
AMENDED IN SENATE APRIL 19, 2004
AMENDED IN SENATE MARCH 22, 2004

SENATE BILL

No. 1459

Introduced by Senator Alpert
(*Coauthor: Assembly Member Harman*)

February 19, 2004

An act to amend Section 13220 of, to add Section 8841 to, and to repeal Sections 8495 and 8836.5 of, the Fish and Game Code, relating to fishing, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1459, as amended, Alpert. Fishing: trawl nets.

(1) Existing law generally permits the use of trawl nets, as defined, for the taking of fish and other marine life, except as otherwise prohibited for specific species or in various areas of the state. Existing law specifically authorizes the taking of shrimps and sea cucumbers by use of a trawl net under a permit issued by the Department of Fish and Game.

This bill would grant the Fish and Game Commission authority over all state-managed bottom trawl fisheries *not managed under a federal or state fishery management plan*. The bill would require, commencing April 1, 2006, all vessels using bottom trawl gear, *except those with a valid pink shrimp trawl vessel permit or a valid sea cucumber trawl vessel permit*, to maintain a current bottom trawl permit, ~~and~~. The bill would require an application for a bottom trawl permit for the 2006–07 fishing season to be received by the Department of Fish and Game not later than January 1, 2006. The bill would require that, commencing

with the 2007–08 fishing season, in order to obtain a bottom trawl permit, the applicant must have previously held a bottom trawl permit. ~~The bill would prohibit the transfer of bottom trawl permits, except to another vessel owned by the permitholder if the department determines the vessel is of comparable capacity and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown.~~ The bill would ~~also~~ authorize the transfer of ~~these~~ *bottom trawl* permits when the commission ~~establishes~~ *adopts* a capacity reduction program under an adopted fishery management plan. The bill would require the department to consider any valid pink shrimp trawl vessel permit or any valid sea cucumber trawl permit as the equivalent of the bottom trawl permit.

The bill would prohibit the use of roller gear that is more than 8 inches in diameter. The bill would also prohibit, commencing April 1, 2006, a person from fishing commercially for prawns or pink shrimp unless an approved type of bycatch reduction device is used with each net.

The bill would require the commission to facilitate the conversion of bottom trawlers to gear that sustains fish resources, if the commission determines that the conversion will not contribute to overcapacity or overfishing. The bill would authorize the commission to participate in and encourage programs that support the conversion of bottom trawlers to lower-impact gear or capacity reduction by trawl fleets, but would prohibit the department from issuing new permits to replace bottom trawlers retired through a conversion program.

The bill would require the commission and the department, as soon as practicable, but not later than May 1, 2005, to submit to the Pacific Fishery Management Council, and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, a request for federal management measures for the pink shrimp fishery.

(2) Existing law designates the ocean waters lying between one and 3 nautical miles from the mainland shore lying south and east of a line running due west (270° true) from Point Arguello and north and west of a line running due south (180° true) from Point Mugu as the California halibut trawl grounds.

This bill would repeal that provision.

(3) Existing law also designates specified fish and game districts, including District 18, in which trawl nets may be used in waters not less than 3 nautical miles from the nearest point of land on the mainland shore, including those portions of Monterey Bay, Estero Bay, and San



Luis Obispo Bay which lie within those districts. Existing law, notwithstanding that limited authority, authorizes the use of trawl nets, except midwater trawl nets in that portion of District 18 between a line running due west from Yankee Point and a line running due west from Point Sur in water not less than one nautical mile from the nearest point of land on the mainland shore.

This bill would repeal the additional authority relating to the use of trawl nets in those portions of District 18.

(4) Existing law makes a violation of the Fish and Game Code a misdemeanor punishable by fine, imprisonment, or both.

By creating new crimes, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(6) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department and to the commission to pay all necessary expenses incurred in carrying out programs and policies contained in the Fish and Game Code and to pay the compensation and expenses of the commissioners, and employees of the commission~~ Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department for payment of refunds of sums it determines have been erroneously deposited in the fund and for the payment of all necessary expenses incurred in carrying out the Fish and Game Code and any other laws for the protection and preservation of birds, mammals, reptiles, and fish, and to the Fish and Game Commission to pay the compensation and expenses of the commissioners and employees of the commission.

This bill would instead, commencing with the 2005–06 fiscal year, make the money in the Fish and Game Preservation Fund available for expenditure by the department and the commission only upon appropriation by the Legislature for those purposes.

By expanding the parameters of, and imposing new duties on, the commission and the department, and by increasing fine revenues to ~~being~~ be deposited in ~~this~~ the currently continuously appropriated fund, this bill would make an appropriation.



Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8841 is added to the Fish and Game
2 Code, to read:
3 8841. (a) The commission is hereby granted authority over
4 all state-managed bottom trawl fisheries *not managed under a*
5 *federal fishery management plan pursuant to the*
6 *Magnuson-Stevens Fishery Conservation and Management Act*
7 *(16 U.S.C. Sec. 1801 et seq.) or a state fishery management plan*
8 *pursuant to the Marine Life Management Act (Chapter 1052 of the*
9 *Statutes of 1998), to ensure that resources are sustainably*
10 *managed, to protect the health of ecosystems, and to provide for*
11 *an orderly transition to sustainable gear types in situations where*
12 *bottom trawling may not be compatible with these goals.*
13 (b) The commission is hereby granted authority to manage all
14 ~~of the following fisheries, and all bottom trawl gear not currently~~
15 ~~managed under a federal fishery management plan pursuant to the~~
16 ~~Magnuson-Stevens Fishery Conservation and Management Act~~
17 ~~(16 U.S.C. Sec. 1801 et seq.), consistent with the requirements of~~
18 *of the following fisheries in a manner that is consistent with the*
19 *requirements of this section and in accordance with the*
20 *requirements of Part 1.7 (commencing with Section 7050),*
21 *including, but not limited to, the following:*
22 (1) California halibut.
23 (2) Sea cucumber.
24 (3) Ridge-back, spot, and golden prawn.
25 (c) Commencing April 1, 2006, except as described in
26 ~~subdivision (d), all vessels using bottom trawl gear shall maintain~~
27 *subdivision (e), all vessels using bottom trawl gear in*
28 *state-managed bottom trawl fisheries, as described in subdivision*
29 *(a), shall maintain a bottom trawl permit that has not been*
30 *suspended or revoked expressly and that authorizes the use of that*
31 *gear in a fishery. An application for a bottom trawl permit for the*
32 *2006–07 season shall be received by the department not later than*
33 *January 1, 2006.*
34 (1) A bottom trawl vessel permit shall be issued annually,
35 commencing with the permit for the 2006 permit year.



1 Commencing with the 2007–08 season, in order to be eligible for
2 a bottom trawl permit an applicant shall have previously held a
3 valid California bottom trawl permit.

4 (2) Permits issued under this section, *except those pink shrimp*
5 *trawl vessel or sea cucumber trawl vessel permits described in*
6 *subdivision (e)*, shall become transferable when the commission
7 ~~establishes~~ *adopts* a capacity reduction program under a fishery
8 management plan adopted pursuant to Chapter 5 (commencing
9 with Section 7070) of Part 1.7 *in a manner that is consistent with*
10 *any regulations adopted pursuant to that capacity reduction*
11 *program*.

12 ~~(3) A bottom trawl vessel permit may be transferred to another~~
13 ~~vessel owned by the same permitholder, if the vessel is of~~
14 ~~comparable capacity, as determined by the department based on~~
15 ~~the United States Coast Guard documentation papers, and if the~~
16 ~~originally permitted vessel was lost, stolen, destroyed, or suffered~~
17 ~~a major irreparable mechanical breakdown.~~

18 ~~(4) The department may not issue a permit for a replacement~~
19 ~~vessel if the department determines that the originally permitted~~
20 ~~vessel was fraudulently reported as lost, stolen, destroyed, or~~
21 ~~damaged.~~

22 ~~(5) Only the permitholder at the time of the loss, theft,~~
23 ~~destruction, or irreparable mechanical breakdown of a vessel may~~
24 ~~apply to transfer the vessel permit. Evidence that a vessel is lost,~~
25 ~~stolen, or destroyed shall be in the form of a copy of the report filed~~
26 ~~with the United States Coast Guard, or any other law enforcement~~
27 ~~agency or fire department that conducted an investigation of the~~
28 ~~loss.~~

29 (3) *A permit issued in the halibut trawl fishery may not be*
30 *transferred until a capacity reduction program is adopted for that*
31 *fishery pursuant to paragraph (2), unless the commission*
32 *determines that circumstances constituting a hardship, as defined*
33 *by the commission, exist.*

34 (d) *The department may not issue a bottom trawl permit*
35 *pursuant to this section for use in the halibut fishery unless that*
36 *vessel has landed a minimum of 100 pounds of California halibut*
37 *and reported that landing on fish tickets as being caught with*
38 *bottom trawl gear in at least three years of the years 1999 to 2003,*
39 *inclusive.*



1 (e) The department shall consider any valid pink shrimp trawl
2 vessel permit or a valid sea cucumber trawl *vessel* permit as the
3 equivalent of the bottom trawl permit described in subdivision (c)
4 and may not require any pink shrimp or sea cucumber trawl vessel
5 permit holder to obtain a bottom trawl permit pursuant to
6 subdivision (c). All other subdivisions in this section apply to pink
7 shrimp trawl and sea cucumber trawl permit holders.

8 ~~(e)~~

9 (f) Every vessel issued a bottom trawl permit is subject to the
10 requirements and policies of the federal groundfish observer
11 program (50 C.F.R. 660.360).

12 ~~(f)~~

13 (g) The commission shall establish trawl permit fees based on
14 the recommendations of the department, and utilizing the
15 guidelines outlined in subdivision (b) of Section 711 to cover the
16 costs of administering this section, including, but not limited to,
17 the cost of issuing permits, fishery observers, and collection and
18 analysis of essential fishery information.

19 ~~(g) The department may not issue a bottom trawl permit~~
20 ~~pursuant to this section for use in the halibut fishery unless that~~
21 ~~vessel has landed a minimum of 100 pounds of California halibut~~
22 ~~and reported that landing on fish tickets as being caught with~~
23 ~~bottom trawl gear in at least three years of the years 1999 to 2003,~~
24 ~~inclusive.~~

25 (h) The commission may not authorize additional fishing areas
26 for bottom trawls, unless the commission determines that adequate
27 evidence establishes that additional fishing areas are sustainable,
28 do not harm bottom habitat, and do not conflict with other users.

29 (i) It is unlawful to use roller gear more than eight inches in
30 diameter.

31 (j) Commencing April 1, 2006, it is unlawful to fish
32 commercially for prawns or pink shrimp, unless an approved
33 bycatch reduction device is used with each net. For the purposes
34 of this subdivision, a rigid grate fish excluder device is the
35 approved type of bycatch reduction device, unless the
36 commission, the Pacific Fishery Management Council, or NOAA
37 Fisheries determines that a different type of fish excluder device
38 ~~is more effective at reducing bycatch and adopts that device as an~~
39 ~~approved bycatch reduction device through regulation.~~ *has an*
40 *equal or greater effectiveness at reducing bycatch.*



1 (k) It is unlawful to engage in bottom trawling in ocean waters
2 of the state.

3 (l) This section does not apply to the use of trawl nets pursuant
4 to a scientific research permit.

5 (m) The commission shall facilitate the conversion of bottom
6 trawlers to gear that is more sustainable if the commission
7 determines that conversion will not contribute to overcapacity or
8 overfishing. The commission may participate in and encourage
9 programs that support conversion to low-impact gear or capacity
10 reduction by trawl fleets. The department may not issue new
11 permits to bottom trawlers to replace any that are retired through
12 a conversion program.

13 (n) As soon as practicable, and not later than May 1, 2005, the
14 commission and the department shall submit to the Pacific Fishery
15 Management Council and NOAA Fisheries a request for federal
16 management measures for the pink shrimp fishery as the
17 commission and the department determine is needed to reduce
18 bycatch or protected habitat, to account for uncertainty, or to
19 otherwise ensure consistency with federal groundfish
20 management.

21 SEC. 2. Section 8495 of the Fish and Game Code is repealed.

22 SEC. 3. Section 8836.5 of the Fish and Game Code is
23 repealed.

24 SEC. 4. *Section 13220 of the Fish and Game Code is amended*
25 *to read:*

26 13220. Except as provided in Section 13230, the money in the
27 Fish and Game Preservation Fund, *commencing with the 2005–06*
28 *fiscal year, is appropriated as follows available for expenditure,*
29 *upon appropriation by the Legislature, for all of the following*
30 *purposes:*

31 (a) To the department for payment of refunds of sums
32 determined by it to have been erroneously deposited in the fund,
33 including, but not limited to, money received or collected in
34 payment of fees, licenses, permits, taxes, fines, forfeitures, or
35 services.

36 (b) To the department for expenditure in accordance with law
37 for the payment of all necessary expenses incurred in carrying out
38 this code and any other laws for the protection and preservation of
39 birds, mammals, reptiles, and fish.



1 (c) To the commission for expenditure in accordance with law
2 for the payment of the compensation and expenses of the
3 commissioners and employees of the commission.

4 *SEC. 5.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

