

Senate Bill No. 1459

Passed the Senate August 26, 2004

Secretary of the Senate

Passed the Assembly August 24, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

Corrected 9-1-04



CHAPTER _____

An act to amend Sections 8495 and 8842 of, to add Sections 8841 and 8494 to, and to repeal Section 8836.5 of, the Fish and Game Code, relating to fishing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1459, 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, and over other types of gear targeting the same species as those fisheries. The bill would subject every commercial bottom trawl vessel issued a state permit to the requirements and policies of the federal groundfish observer program. The bill would prohibit the commission from authorizing additional fishing areas for bottom trawls, unless the commission determines that adequate evidence establishes that additional fishing areas are sustainable, do not harm bottom habitat, and do not reasonably conflict with other users. The bill would prohibit the use of roller gear more than 8 inches in diameter, and commencing April 1, 2006, would make it unlawful to fish commercially for prawns or pink shrimp, unless an approved bycatch reduction device is used with each net. The bill would also make it unlawful to engage in bottom trawling in ocean waters of the state, except as otherwise specified. The bill would exempt from the provisions of the bill the use of trawl nets pursuant to a scientific research permit. The bill would require the commission to facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that conversion will not contribute to overcapacity or overfishing, and would prohibit the department from issuing new permits to bottom trawlers to replace those that are 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 Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management. The bill would also make it unlawful for any vessel to utilize bottom trawling gear without a state or federal permit.

The bill would require, commencing April 1, 2006, any vessel using bottom trawl gear in state-managed halibut fisheries to possess a halibut bottom trawl permit issued by the department that authorizes the use of trawl gear by that vessel for the take of California halibut. The bill would require, commencing with the 2006 permit year, a halibut bottom trawl vessel permit to be issued annually, and commencing with the 2007–08 season, would require an applicant to have previously held a valid California halibut bottom trawl vessel permit. The bill would prohibit the department from issuing a bottom trawl vessel permit for use in the halibut fishery unless that vessel has landed a minimum of 200 pounds of California halibut and reported that landing on fish tickets as being caught with bottom trawl gear within a specified timeframe. The bill would authorize those permits to be transferred in certain circumstances. The bill would require the commission to establish halibut bottom trawl vessel permit fees based on the recommendations of the department, and utilizing specified guidelines to cover the costs of administering the permit program, but would limit those fees to \$1,000 per permit until a restricted access program is adopted. The bill would authorize individuals holding a federal groundfish trawl permit to retain and land up to 150 pounds of halibut per trip without a halibut trawl permit in accordance with federal and state regulations, including, but not limited to, regulations developed under a halibut fishery management plan. The bill would make all these provisions inoperative upon the adoption by the commission of a halibut fishery management plan, as specified.

(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, notwithstanding the designation of those areas as California halibut trawl grounds, prohibit the use of trawl gear for the take of fish in certain areas of the California halibut trawl grounds. The bill would, commencing April 1, 2008, close specified areas in the California halibut trawl grounds to trawling, unless the commission finds that a bottom trawl fishery for halibut minimizes bycatch, is likely not damaging seafloor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats. The bill would require the commission to pay special attention in making that finding to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts. The bill would also require the commission, every 3 years commencing January 1, 2008, to review information from the federal groundfish observer program and other available research and monitoring information it determines relevant, and to close any areas in the California halibut trawl grounds where it finds that the use of trawl gear does not minimize bycatch, is likely damaging seafloor habitat, is adversely affecting ecosystem health, or impedes reasonable restoration of kelp, coral, or other biogenic habitats. The bill would prohibit any trawl net that exceeds a certain entrance size, wing panel length, mesh size, or that uses trawl doors that exceed a certain weight from being used in the California halibut trawl grounds.

(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 authorizes the use of trawl nets of a design prescribed by the commission to be used or possessed to take shrimps or prawns under a permit issued by the department. Existing law makes it unlawful when fishing for pink shrimp under that permit to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except as specified, and prohibits the possession or landing of specified amounts of other fish when fishing under that permit.

This bill would authorize trawling for shrimp or prawns only in those specified waters of Districts 6, 7, 10, 17, 18, and 19, but would authorize, until January 1, 2008, trawling not less than 2 miles from the nearest point of land on the mainland shore in certain other areas of those waters. The bill would authorize, commencing January 1, 2008, the taking of pink shrimp not less than 2 nautical miles from shore in those waters if the commission finds that, upon review of information from the federal groundfish observer program and other available research and monitoring information it determines relevant, the use of trawl gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect ecosystem health, and will not impede reasonable restoration of kelp, coral, or other biogenic habitats.

(5) 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.

(6) 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.

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

SECTION 1. Section 8841 is added to the Fish and Game Code, to read:

8841. (a) The commission is hereby granted authority over all state-managed bottom trawl fisheries not managed under a



federal fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) or a state fishery management plan pursuant to the Marine Life Management Act (Chapter 1052 of the Statutes of 1998), to ensure that resources are sustainably managed, to protect the health of ecosystems, and to provide for an orderly transition to sustainable gear types in situations where bottom trawling may not be compatible with these goals.

(b) The commission is hereby granted authority to manage all of the fisheries described in subdivision (a) in a manner that is consistent with the requirements of this section and in accordance with the requirements of Part 1.7 (commencing with Section 7050), including, but not limited to, the following:

- (1) California halibut.
- (2) Sea cucumber.
- (3) Ridge-back, spot, and golden prawn.
- (4) Pink shrimp.

(c) The commission is also granted authority over other types of gear targeting the same species as the bottom trawl fisheries referenced in subdivision (a) to manage in a manner that is consistent with the requirements of Part 1.7 (commencing with Section 7050).

(d) Every commercial bottom trawl vessel issued a state permit is subject to the requirements and policies of the federal groundfish observer program (50 C.F.R. 660.360).

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

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

(g) Commencing April 1, 2006, it is unlawful to fish commercially for prawns or pink shrimp, unless an approved bycatch reduction device is used with each net. For the purposes of this subdivision, a rigid grate fish excluder device is the approved type of bycatch reduction device, unless the commission, the Pacific Fishery Management Council, or the National Marine Fisheries Service determines that a different type



of fish excluder device has an equal or greater effectiveness at reducing bycatch.

(h) Except as provided in Section 8495 or 8842, it is unlawful to engage in bottom trawling in ocean waters of the state.

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

(j) The commission shall facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that conversion will not contribute to overcapacity or overfishing. The commission may participate in, and encourage programs that support, conversion to low-impact gear or capacity reduction by trawl fleets. The department may not issue new permits to bottom trawlers to replace those retired through a conversion program.

(k) As soon as practicable, but not later than May 1, 2005, the commission and the department shall submit to the Pacific Fishery Management Council and the National Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management.

(l) No vessel may utilize bottom trawling gear without a state or federal permit.

SEC. 2. Section 8494 is added to the Fish and Game Code, to read:

8494. (a) Commencing April 1, 2006, any vessel using bottom trawl gear in state-managed halibut fisheries, as described in subdivision (a) of Section 8841, shall possess a halibut bottom trawl permit issued by the department that authorizes the use of trawl gear by that vessel for the take of California halibut. An application for a California halibut bottom trawl vessel permit for the 2006–07 season shall be received by the department not later than January 1, 2006.

(b) A halibut bottom trawl vessel permit shall be issued annually, commencing with the 2006 permit year. Commencing with the 2007-08 season, in order to be eligible for that permit, an applicant shall have previously held a valid California halibut bottom trawl vessel permit.



(c) The department shall not issue a bottom trawl vessel permit pursuant to this section for use in the halibut fishery unless that vessel has landed a minimum of 200 pounds of California halibut and reported that landing on fish tickets as being caught with bottom trawl gear in at least one of the following:

(1) At least two of the calendar years 1995 to 2003, inclusive.

(2) At least one of the calendar years 1995 to 2003, inclusive, and from January 1, 2004, to February 19, 2004, inclusive.

(d) Permits issued pursuant this section may be transferred only if at least one of the following occur:

(1) The commission adopts a restricted access program for the fishery, including, but not limited to, if necessary, a plan for reducing capacity in this fishery in a manner that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(2) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permitholder of equal or less capacity, as determined by the department based on the United States Coast Guard documentation papers, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permitholder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard, or any other law enforcement agency or fire department that conducted an investigation of the loss.

(3) Prior to the implementation of a halibut trawl restricted access program, a vessel permitholder, or his or her heirs or assigns, requests to transfer the permit because of the death or permanent disability of the permitholder or the decision by the permitholder to retire from fishing upon reaching or exceeding age 65, and halibut landings contributed significantly to the catch record and economic income derived from the vessel, and the permit is authorized by the department to be transferred with the vessel. The department may request information that it determines



is reasonably necessary from the permitholder or his or her heirs and assigns for the purpose of verifying statements in the request prior to authorizing the transfer of the permit.

(e) The commission shall establish California halibut bottom trawl vessel permit fees based on the recommendations of the department and utilizing the guidelines outlined in subdivision (b) of Section 711 to cover the costs of administering this section. Prior to the adoption of a restricted access program pursuant to subdivision (d), fees may not exceed one thousand dollars (\$1,000) per permit.

(f) Individuals holding a federal groundfish trawl permit may retain and land up to 150 pounds of California halibut per trip without a California halibut trawl permit in accordance with federal and state regulations, including, but not limited to, regulations developed under a halibut fishery management plan.

(g) This section shall become inoperative upon the adoption by the commission of a halibut fishery management plan in accordance with the requirements of Part 1.7 (commencing with Section 7050).

SEC. 3. Section 8495 of the Fish and Game Code is amended to read:

8495. (a) The following area is designated as the California halibut trawl grounds:

The ocean waters lying between one and three 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.

(b) Notwithstanding the provisions of subdivision (a), the use of trawl gear for the take of fish is prohibited in the following areas of the California halibut trawl grounds:

(1) Around Point Arguello. The area from a line extending from Point Arguello true west (270°) and out three miles, to a line extending from Rocky Point true south (180°) and out three miles.

(2) Around Point Conception. From a point on land approximately one-half mile north of Point Conception at latitude 34° 27.5' extending seaward true west (270°) from one to three miles, to a point on land approximately 1/2 mile east of Point Conception at longitude 120° 27.5' extending seaward true south (180°) from one to three miles.



(3) In the Hueneme Canyon in that portion demarked by the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 and from one mile to the three mile limit of state waters.

(4) In Mugu Canyon, from Laguna point, a line extending true south (180°) and out three miles, to Point Mugu, a line extending true south (180°) and from one to three miles.

(c) (1) Notwithstanding the provisions of subdivision (a), commencing April 1, 2008, the following areas in the California halibut trawl grounds shall be closed to trawling, unless the commission finds that a bottom trawl fishery for halibut minimizes bycatch, is likely not damaging seafloor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats:

(A) The ocean waters lying between one and three nautical miles from the mainland shore from a point east of a line extending seaward true south (180°) from a point on land approximately $\frac{1}{2}$ mile east of Point Conception at longitude $120^\circ 27.5'$ to a line extending due south from Gaviota.

(B) The ocean waters lying between one and two nautical miles from the mainland shore lying east of a line extending due south from Santa Barbara Point (180°) and west of a line extending due south from Pitas Point (180°).

(C) Except as provided in subdivision (b), the ocean waters lying between one and three nautical miles from the mainland shore lying south and east of a line running due west (270° true) from Point Arguello to a line extending seaward true south (180°) from a point on land approximately $\frac{1}{2}$ mile east of Point Conception at longitude $120^\circ 27.5'$, and from the western border of the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 in Hueneme Canyon running south and east to a line running due south (180° true) from Point Mugu.

(2) In making the finding described in paragraph (1), the commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring such habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts.

(d) Commencing January 1, 2008, the commission shall review information every three years from the federal groundfish observer program and other available research and monitoring information it determines relevant, and shall close any areas in the



California halibut trawl grounds where it finds that the use of trawl gear does not minimize bycatch, is likely damaging seafloor habitat, is adversely affecting ecosystem health, or impedes reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.

(e) Notwithstanding any other provision of law, no trawl net shall be used in the California halibut trawl grounds with an entrance greater than 60 feet across and 6 feet in height, with wing panels that exceed 100 feet in length, that utilize less than 5 inch mesh in the body of the net and less than 7¹/₂ inch mesh in the cod end of the net, or that uses any trawl doors on the net that exceed 500 pounds in weight. The commission may order modifications in net and mesh size as it determines necessary to assure trawl gear is used in a sustainable manner within the California halibut trawl grounds.

SEC. 4. Section 8836.5 of the Fish and Game Code is repealed.

SEC. 5. Section 8842 of the Fish and Game Code is amended to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a permit issued by the department under regulations adopted by the commission.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) Trawling for shrimps or prawns shall be authorized only in those waters of Districts 6, 7, 10, 17, 18, and 19 that lie not less than three nautical miles from the nearest point of land on the mainland shore, and all offshore islands and the boundary line of District 19A, except that in waters lying between a line extending due west from False Cape and a line extending due west from Point Reyes, trawling is allowed not less than two nautical miles from the nearest point of land on the mainland shore until January 1, 2008.

(c) When fishing for pink shrimp (*Pandalus jordani*) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day



of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount not in excess of federal regulations. No Pacific halibut and not more than 150 pounds of California halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip.

(d) Commencing January 1, 2008, the commission shall permit the taking of pink shrimp not less than two nautical miles from shore in waters that lie between a line extending due west from False Cape and a line extending due west from Point Reyes from the nearest point of land on the mainland shore, if the commission finds that, upon review of information from the federal groundfish observer program and other available research and monitoring information that it determines relevant, the use of trawl gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect ecosystem health, and will not impede reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.

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



Approved _____, 2004

Governor

