

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY APRIL 17, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2363

Introduced by Assembly Member Chesbro

February 24, 2012

An act to amend Sections 8103, ~~8280.3, and 8841~~ and 8280.3 of, and to add and repeal Section 9002.5 of, the Fish and Game Code, relating to commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Chesbro. Commercial Fishing.

(1) Existing law relating to limited entry fisheries requires the Department of Fish and Game to transfer a permit for a limited entry fishery, upon application, to a parent, spouse, child, or sibling of a permittee whose death was the result of an accident that occurred after January 1, 1986.

This bill would require the department to transfer a permit for a limited entry fishery, upon application, to a parent, spouse, child, sibling, domestic partner, or ~~the estate~~ *other natural person who is an heir* of a permittee whose death occurred after January 1, 2010, without reference to the cause of death.

(2) Existing law regulating the Dungeness crab fishery permits the owner of a vessel to whom a Dungeness crab vessel permit has been issued, upon the written approval of the department, to temporarily transfer the permit to another replacement vessel for which use in the Dungeness crab fishery is not permitted, for a period of not more than 6 months during the current permit year, under specified circumstances.

Existing law also permits the transfer of a permit to another vessel in the event of loss or destruction of a permitted vessel, within 2 years after the loss or damage of the original vessel.

This bill would require the owner of a vessel to whom a Dungeness crab vessel permit has been issued to have had Dungeness crab landings of not less than 5,000 pounds cumulative for the past 2 years. The bill also would require the replacement vessel to be equivalent in size and capacity, as specified, to the vessel from which the permit is transferred.

~~(3) Existing law grants the Fish and Game Commission authority over bottom trawl fisheries not managed under the federal Magnuson-Stevens Fishery Conservation and Management Act or specified state law, and specifically grants the commission authority over listed fisheries. Existing law, except as specified, makes it unlawful to engage in bottom trawling in ocean waters of the state. Under existing law, the commission is authorized to authorize additional fishing areas for bottom trawls only if it makes a prescribed determination.~~

~~This bill would authorize the commission, notwithstanding that provision generally prohibiting bottom trawling in ocean waters of the state, to authorize additional fishing areas for bottom trawls in any waters of the state if it makes that prescribed determination.~~

~~(4)~~

(3) Existing law regulating commercial fishing traps makes it unlawful, except as specified, to willfully or recklessly disturb, move, or damage any trap that belongs to another person and that is marked with a buoy identification number.

This bill would authorize a person holding a commercial fishing license to retrieve and bring to shore Dungeness crab traps in ocean waters under specified circumstances. The bill would authorize the department, in consultation with Dungeness crab permit holders or their representatives, to establish regulations as necessary to implement and enforce the trap retrieval provisions. Those provisions would become inoperative on April 1, 2019, and would be repealed on January 1, 2020.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 8103 of the Fish and Game Code is
- 2 amended to read:
- 3 8103. (a) The Legislature finds and declares as follows:

1 (1) The death of a limited entry permittee results in great
2 hardships on the permittee's family.

3 (2) Under the law as it existed immediately prior to January 1,
4 1987, if a member of the permittee's family has not been actively
5 working in the fishery, the limited entry permit could not be
6 transferred to a member of the family, an action that deprives the
7 family of the opportunity to continue to derive a livelihood from
8 the fishery and that imposes greater hardships.

9 (3) When there is a death of a limited entry permittee, a
10 transition period is necessary to allow a family member to join the
11 fishery and to become acclimated, knowledgeable, and experienced
12 in the fishery.

13 (b) Notwithstanding Section 8102, the department shall transfer
14 a permit for a limited entry fishery, upon application, to a parent,
15 spouse, child, sibling, domestic partner, or ~~the estate~~ *other natural*
16 *person who is an heir* of a permittee whose death occurred after
17 January 1, 2010.

18 (c) Application for the transfer of a permit pursuant to
19 subdivision (b) shall be made on or before ~~January 1, 2011~~ *July*
20 *1, 2013*, or not more than one year after the death of the permittee,
21 whichever is later.

22 (d) The director may authorize another person, when requested
23 by the new permittee, to serve in the place of the new permittee
24 and to engage in fishing activities under the authority of the limited
25 entry permit for not more than two years from the date of the permit
26 transfer.

27 SEC. 2. Section 8280.3 of the Fish and Game Code is amended
28 to read:

29 8280.3. (a) Notwithstanding Article 9 (commencing with
30 Section 8100) of Chapter 1 and except as provided in this section,
31 a Dungeness crab vessel permit shall not be transferred.

32 (b) The owner of a vessel to whom a Dungeness crab vessel
33 permit has been issued shall transfer the permit for the use of that
34 vessel upon the sale of the vessel by the permitholder to the person
35 purchasing the vessel. Thereafter, upon notice to the department,
36 the person purchasing the vessel may use the vessel for the taking
37 and landing of Dungeness crab for any and all of the unexpired
38 portion of the permit year, and that person is eligible for a permit
39 pursuant to Section 8280.1 for the use of that vessel in subsequent
40 years. The person purchasing the vessel shall not transfer the permit

1 for use of that vessel in the Dungeness crab fishery to another
2 replacement vessel during the same permit year.

3 (c) The owner of a vessel to whom the Dungeness crab vessel
4 permit has been issued may transfer the permit to a replacement
5 vessel of equivalent capacity, except as specified in this section.
6 Thereafter, upon notice to the department and payment of the
7 transfer fee specified in Section 8280.6, the replacement vessel
8 may be used for the taking and landing of Dungeness crab for any
9 and all of the unexpired portion of the permit year and that person
10 is eligible for a permit pursuant to Section 8280.1 for the use of
11 that replacement vessel in subsequent years.

12 (d) The owner of a permitted vessel may transfer the permit to
13 a vessel of greater capacity that was owned by that person on or
14 before November 15, 1995, not to exceed 10 feet longer in length
15 overall than the vessel for which the permit was originally issued
16 or to a vessel of greater capacity purchased after November 15,
17 1995, not to exceed 5 feet longer in length overall than the vessel
18 for which the permit was originally issued.

19 (e) The department, upon recommendation of the Dungeness
20 crab review panel, may authorize the owner of a permitted vessel
21 to transfer the permit to a replacement vessel that was owned by
22 that person on or before April 1, 1996, that does not fish with trawl
23 nets that is greater than five feet longer in length overall than the
24 vessel for which the permit was originally issued, if all of the
25 following conditions are satisfied:

26 (1) A vessel of a larger size is essential to the owner for
27 participation in another fishery other than a trawl net fishery.

28 (2) The owner held a permit on or before January 1, 1995, for
29 the fishery for which a larger vessel is needed and has participated
30 in that fishery.

31 (3) The permit for the vessel from which the permit is to be
32 transferred qualified pursuant to paragraph (1) of subdivision (b)
33 of Section 8280.1.

34 (4) The vessel to which the permit is to be transferred does not
35 exceed 20 feet longer in length overall than the vessel for which
36 the permit was originally issued and the vessel to which the permit
37 is to be transferred does not exceed 60 feet in overall length.

38 (f) A transfer of a permit to a larger vessel shall not be allowed
39 more than one time. If a permit is transferred to a larger vessel,
40 any Dungeness crab vessel permit for that permit year or any

1 subsequent permit years for that larger vessel shall not be
2 transferred to another larger vessel. The department shall not
3 thereafter issue a Dungeness crab vessel permit for the use of the
4 original vessel from which the permit was transferred, except that
5 the original vessel may be used to take or land Dungeness crab
6 after that transfer if its use is authorized pursuant to another
7 Dungeness crab vessel permit subsequently transferred to that
8 vessel pursuant to this paragraph.

9 (g) (1) Upon the written approval of the department, the owner
10 of a vessel to whom the Dungeness crab vessel permit has been
11 issued, which has had Dungeness crab landings of not less than
12 5,000 pounds cumulative for the past two years, may temporarily
13 transfer the permit to another replacement vessel of equivalent
14 size and capacity of the vessel, no greater than 10 feet in length,
15 from which the permit is transferred, for which use in the
16 Dungeness crab fishery is not permitted pursuant to this section
17 or Section 8280.1, for a period of not more than six months during
18 the current permit year if the vessel for which the permit was issued
19 is seriously damaged, suffers major mechanical breakdown, or is
20 lost or destroyed, as determined by the department, upon approval
21 of the director. The owner of the vessel shall submit proof that the
22 department may reasonably require to establish the existence of
23 the conditions of this paragraph. Upon approval by the director,
24 the owner of a lost or destroyed vessel granted a six-month
25 temporary transfer under this section may be granted an additional
26 six-month extension of the temporary transfer.

27 (2) Notwithstanding subdivision (e) of Section 8280.2, in the
28 event of loss or destruction of a vessel for which a Dungeness crab
29 vessel permit was issued, or serious damage that renders the vessel
30 inoperable, and upon written approval of the department, the owner
31 of the vessel to whom the permit was issued may retain the permit
32 and may transfer the permit to another vessel of equivalent size
33 and capacity of the vessel that was lost or damaged during the
34 period of two years after the loss or damage of the vessel for which
35 the permit was originally issued. The owner of the lost or damaged
36 vessel shall submit proof that the department may reasonably
37 require to establish the loss or damage of the vessel. If the permit
38 is not transferred to another vessel owned by the person to whom
39 the vessel permit was originally issued within two years of the loss
40 or damage, the permit shall be revoked.

1 (h) Upon written approval of the department, the owner of a
2 vessel to whom the Dungeness crab vessel permit has been issued
3 may retain that permit upon the sale of that permitted vessel for
4 the purpose of transferring the permit to another vessel to be
5 purchased by that individual within one year of the time of sale of
6 the vessel for which the permit was originally issued if the
7 requirements of this section are satisfied, including the payment
8 of transfer fees. If the permit is not transferred to a new vessel
9 owned by the person to whom the vessel permit was originally
10 issued within one year of the sale of the vessel for which it was
11 originally issued, or if the person does not retain ownership of the
12 new vessel to which the permit is transferred for a period of not
13 less than one year, the permit shall be revoked.

14 (i) In the event of the death or incapacity of a permitholder, the
15 permit shall be transferred, upon application, to the heirs or assigns,
16 or to the working partner, of the permitholder, together with the
17 transfer of the vessel for which the permit was issued, and the new
18 owner may continue to operate the vessel under the permit, renew
19 the permit, or transfer the permit upon sale of the vessel pursuant
20 to subdivision (b).

21 (j) This section shall become inoperative on April 1, 2019, and,
22 as of January 1, 2020, is repealed, unless a later enacted statute,
23 that becomes operative on or before January 1, 2020, deletes or
24 extends the dates on which it becomes inoperative and is repealed.

25 ~~SEC. 3.—Section 8841 of the Fish and Game Code is amended~~
26 ~~to read:~~

27 ~~8841. (a) The commission is hereby granted authority over all~~
28 ~~state-managed bottom trawl fisheries not managed under a federal~~
29 ~~fishery management plan pursuant to the federal Magnuson-Stevens~~
30 ~~Fishery Conservation and Management Act (16 U.S.C. Sec. 1801~~
31 ~~et seq.) or a state fishery management plan pursuant to Part 1.7~~
32 ~~(commencing with Section 7050), to ensure that resources are~~
33 ~~sustainably managed, to protect the health of ecosystems, and to~~
34 ~~provide for an orderly transition to sustainable gear types in~~
35 ~~situations where bottom trawling may not be compatible with these~~
36 ~~goals.~~

37 ~~(b) The commission is hereby granted authority to manage all~~
38 ~~of the following fisheries in a manner that is consistent with this~~
39 ~~section and Part 1.7 (commencing with Section 7050):~~

40 ~~(1) California halibut.~~

1 ~~(2) Sea cucumber.~~

2 ~~(3) Ridge-back, spot, and golden prawn.~~

3 ~~(4) Pink shrimp.~~

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

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

12 ~~(e) Notwithstanding subdivision (h), the commission may only~~
13 ~~authorize additional fishing areas for bottom trawls in waters of~~
14 ~~the state after it determines, based on the best available scientific~~
15 ~~information, that bottom trawling in those areas is sustainable,~~
16 ~~does not harm bottom habitat, and does not unreasonably conflict~~
17 ~~with other users.~~

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

20 ~~(g) Commencing April 1, 2006, it is unlawful to fish~~
21 ~~commercially for prawns or pink shrimp, unless an approved~~
22 ~~bycatch reduction device is used with each net. On or before April~~
23 ~~1, 2006, the commission shall approve one or more bycatch~~
24 ~~reduction devices for use in the bottom trawl fishery. For purposes~~
25 ~~of this subdivision, a rigid grate fish excluder device is the~~
26 ~~approved type of bycatch reduction device unless the commission,~~
27 ~~the Pacific Marine Fishery Management Council, or the National~~
28 ~~Marine Fisheries Service determines that a different type of fish~~
29 ~~excluder device has an equal or greater effectiveness at reducing~~
30 ~~bycatch. If the commission does not approve a bycatch reduction~~
31 ~~device prior to April 1, 2006, then a device that is approved by the~~
32 ~~Pacific Marine Fishery Management Council or the National~~
33 ~~Marine Fisheries Service shall be deemed approved by the~~
34 ~~commission.~~

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

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

39 ~~(j) The commission shall facilitate the conversion of bottom~~
40 ~~trawlers to gear that is more sustainable if the commission~~

1 ~~determines that conversion will not contribute to overcapacity or~~
2 ~~overfishing. The commission may participate in, and encourage~~
3 ~~programs that support, conversion to low-impact gear or capacity~~
4 ~~reduction by trawl fleets. The department shall not issue new~~
5 ~~permits to bottom trawlers to replace those retired through a~~
6 ~~conversion program.~~

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

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

17 ~~SEC. 4.~~

18 *SEC. 3.* Section 9002.5 is added to the Fish and Game Code,
19 to read:

20 9002.5. (a) Notwithstanding Section 9002, any person holding
21 a commercial fishing license may retrieve and bring to shore any
22 Dungeness crab trap or traps belonging to any person, where a trap
23 or traps were lost, abandoned, or are otherwise present in ocean
24 waters within District 10 between 96 hours after the close of the
25 commercial Dungeness crab season until 96 hours prior to the next
26 commercial Dungeness crab season in District 10 and, within
27 Districts 6, 7, 8, and 9, between 96 hours after the close of the
28 commercial Dungeness crab season until 96 hours prior to the next
29 commercial Dungeness crab season in Districts 6, 7, 8, and 9. This
30 section does not apply to traps used for recreational crab fishing.

31 (b) The department, in consultation with Dungeness crab
32 permit holders or their representatives, shall establish regulations
33 as necessary to implement and enforce this section, including
34 provisions for the notification of owners of traps retrieved
35 following the close of the Dungeness crab fishery each year, any
36 retrieval fee, and the sale or auction of retrieved traps.

37 (c) This section shall become inoperative on April 1, 2019, and,
38 as of January 1, 2020, is repealed, unless a later enacted statute,

- 1 that becomes operative on or before January 1, 2020, deletes or
- 2 extends the dates on which it becomes inoperative and is repealed.

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