

Senate Bill No. 197

Passed the Senate September 10, 2013

Secretary of the Senate

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 711.4, 7860, 7861, 7861.1, 7861.2, 7861.5, 7862.5, and 7863 of the Fish and Game Code, and to amend Section 76953.5 of the Food and Agricultural Code, relating to commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, Evans. Commercial fishing: commercial fishing salmon stamp.

(1) Existing law prohibits specified persons from taking salmon for commercial purposes unless the person has a commercial fishing salmon stamp affixed to his or her commercial fishing license. Existing law requires the Department of Fish and Wildlife to issue a commercial fishing salmon stamp, upon application for the stamp and payment of a base fee of \$85. That base fee is required to be adjusted during specified commercial salmon seasons. However, existing law prohibits the total fees, as adjusted, from exceeding \$260.

Existing law requires that fee revenues be deposited in the Commercial Salmon Stamp Account, which was abolished March 14, 2013, by the Controller pursuant to specified statutory provisions, in the Fish and Game Preservation Fund, and be available to the department upon appropriation by the Legislature for new or expanded salmon restoration and enhancement programs in the state that will serve to increase ocean salmon landings. Existing law provides that not more than 15% of the funds may be used to pay the costs incurred in the administration of the program.

Existing law repeals these provisions as of January 1, 2014.

The bill would extend the operation of these provisions until January 1, 2019, would recast them to replace references to the Commercial Salmon Stamp Account with references to the Commercial Salmon Stamp Dedicated Subaccount, which the bill would establish in the Fish and Game Preservation Fund, and would require the transfer of specified moneys from the Fish and Game Preservation Fund to the new subaccount. The bill would

also make other conforming changes and delete obsolete cross-references.

(2) Existing law generally makes a violation of fish and game laws a crime.

Because this bill would extend operation of the commercial salmon fishing program and thereby the crimes imposed for a violation of those provisions, the bill would create a state-mandated local program by creating new crimes.

(3) 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 711.4 of the Fish and Game Code is amended to read:

711.4. (a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act.

(b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified. The department shall annually adjust the fees pursuant to Section 713.

(c) (1) All project applicants and public agencies subject to the California Environmental Quality Act shall pay a filing fee for each proposed project, as specified in subdivision (d).

(2) Notwithstanding paragraph (1), a filing fee shall not be paid pursuant to this section if any of the following conditions exist:

- (A) The project has no effect on fish and wildlife.
 - (B) The project is being undertaken by the department.
 - (C) The project costs are payable by the department from any of the following sources that are held by the department:
 - (i) The Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.
 - (ii) The California Wildlife, Coastal, and Park Land Conservation Fund of 1988.
 - (iii) The Habitat Conservation Fund.
 - (iv) The Fisheries Restoration Account in the Fish and Game Preservation Fund.
 - (v) The Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund.
 - (vi) Striped bass stamp funds collected pursuant to Section 7360.
 - (vii) The California Ocean Resource Enhancement Account.
 - (D) The project is implemented by the department through a contract with either a nonprofit entity or a local government agency.
- (3) Filing fees shall be paid at the time and in the amount specified in subdivision (d). Notwithstanding Sections 21080.5 and 21081 of the Public Resources Code, a project shall not be operative, vested, or final, and local government permits for the project shall not be valid, until the filing fees required pursuant to this section are paid.
- (d) The fees shall be in the following amounts:
 - (1) For a project that is statutorily or categorically exempt from the California Environmental Quality Act, including those certified regulatory programs that incorporate statutory and categorical exemptions, a filing fee shall not be paid.
 - (2) For a project for which a negative declaration is prepared pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the filing fee is one thousand eight hundred dollars (\$1,800). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.

(3) For a project with an environmental impact report prepared pursuant to the California Environmental Quality Act, the filing fee is two thousand five hundred dollars (\$2,500). A local agency collecting the filing fee shall remit the fee to the county clerk at the time of filing a notice of determination pursuant to Section 21152 of the Public Resources Code. A state agency collecting the filing fee shall remit the fee to the Office of Planning and Research at the time of filing a notice of determination pursuant to Section 21108 of the Public Resources Code.

(4) For a project that is subject to a certified regulatory program pursuant to Section 21080.5 of the Public Resources Code, the filing fee is eight hundred fifty dollars (\$850). The filing fee shall be paid to the department before the filing of the notice of determination pursuant to Section 21080.5 of the Public Resources Code.

(e) The county clerk may charge a documentary handling fee of fifty dollars (\$50) per filing in addition to the filing fee specified in subdivision (d).

(1) The county clerk of each county and the Office of Planning and Research shall maintain a record, both electronic and in paper, of all environmental documents received. The record shall include, for each environmental document received, the name of each applicant or lead agency, the document filing number, the project name as approved by the lead agency, and the filing date. The record shall be made available for examination or audit by authorized personnel of the department during normal business hours.

(2) The filing fee imposed and collected pursuant to subdivision (d) shall be remitted monthly to the department within 30 days after the end of each month. The remittance shall be accompanied with the information required pursuant to paragraph (1). The amount of fees due shall be reported on forms prescribed and provided by the department.

(3) The department shall assess a penalty of 10 percent of the amount of fees due for a failure to remit the amount payable when due. The department may pursue collection of delinquent fees through the Controller's office pursuant to Section 12419.5 of the Government Code.

(f) Notwithstanding Section 12000, failure to pay the fee under subdivision (d) is not a misdemeanor. All unpaid fees are a

statutory assessment subject to collection under procedures as provided in the Revenue and Taxation Code.

(g) Only one filing fee shall be paid for each project unless the project is tiered or phased, or separate environmental documents are required.

(h) This section does not preclude or modify the duty of the department to recommend, require, permit, or engage in mitigation activities pursuant to the California Environmental Quality Act.

(i) The permit process of the California Coastal Commission, as certified by the Secretary of the Resources Agency, is exempt from the payment of the filing fees prescribed by paragraph (4) of subdivision (d) insofar as the permits are issued under any of the following regulations:

(1) Subchapter 4 (commencing with Section 13136) of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations.

(2) Subchapter 1 (commencing with Section 13200), Subchapter 3 (commencing with Section 13213), Subchapter 3.5 (commencing with Section 13214), Subchapter 4 (commencing with Section 13215), Subchapter 4.5 (commencing with Section 13238), Subchapter 5 (commencing with Section 13240), Subchapter 6 (commencing with Section 13250), and Subchapter 8 (commencing with Section 13255.0) of Chapter 6 of Division 5.5 of Title 14 of the California Code of Regulations.

SEC. 2. Section 7860 of the Fish and Game Code is amended to read:

7860. (a) Except as provided in subdivision (f) or (g), no person who is 18 years of age or more and less than 70 years of age, on or before April 1 of the current license year, shall take salmon for commercial purposes or be on board a vessel on which salmon are taken for commercial purposes while salmon are being taken or transported unless that person has a commercial fishing salmon stamp issued pursuant to this section affixed to his or her commercial fishing license.

(b) Except as provided in subdivision (f) or (g), the operator of a vessel on which salmon are taken for commercial purposes shall not permit a person on board that vessel while salmon are being taken or transported unless that person was less than 18 years of age or 70 years of age or more on April 1 of the current license year or that person has a commercial fishing salmon stamp affixed to the person's commercial fishing license.

(c) Except as provided in this subdivision, the department shall issue a commercial fishing salmon stamp upon application therefor and payment of the fee of eighty-five dollars (\$85). For any commercial salmon season preceded by a commercial salmon season in which the commercial troll salmon landings in this state equal or exceed 3,000,000 pounds dressed weight, as determined by the department, the fee shall be increased by twelve dollars and fifty cents (\$12.50) for every 250,000 pounds over 3,000,000 pounds of dressed weight landings, except that the total fees as adjusted shall not exceed two hundred sixty dollars (\$260).

(d) A commercial fishing salmon stamp is valid during the commercial salmon season of the year in which it was issued.

(e) Notwithstanding Section 1053, upon application and payment of an additional fee equal to that prescribed in subdivision (c), the department may issue an additional commercial fishing salmon stamp for a crewmember to the owner or operator of a vessel who holds a commercial fishing salmon stamp.

(f) Notwithstanding subdivision (a), one crewmember of a vessel for which a commercial fishing salmon stamp is issued pursuant to subdivision (e) may be aboard that vessel and take salmon for commercial purposes as a crewmember on that vessel without obtaining a commercial fishing salmon stamp under the following conditions:

(1) The crewmember is designated by name and commercial fishing license number on a form furnished by the department before salmon are taken on the vessel when that crewmember is aboard.

(2) The crewmember has a valid commercial fishing license issued under Section 7850.

(3) The commercial fishing salmon stamp for the crewmember is affixed to the form prescribed in paragraph (1) on which the vessel registration number of the vessel is entered and on which the crewmember who is exempted by this subdivision is designated by the last entered name and commercial fishing license number.

(g) Persons who are exempt from the license requirements, or who are not required to be licensed, pursuant to Section 7850, are exempt from the requirements of this section.

SEC. 3. Section 7861 of the Fish and Game Code is amended to read:

7861. (a) After deducting the administrative costs for issuing the commercial fishing salmon stamps, the department shall deposit the fees received pursuant to Section 7860 in the Commercial Salmon Stamp Dedicated Subaccount, which is hereby established in the Fish and Game Preservation Fund. The money in the subaccount shall be available to the department, upon appropriation by the Legislature, for new or expanded salmon restoration and enhancement programs in the state that will serve to increase ocean salmon landings. No money in this subaccount shall be used in lieu of other funds appropriated for salmon restoration and enhancement programs authorized by law on or before January 1, 1988.

(b) (1) Thirty dollars (\$30) of the fees collected for each commercial fishing salmon stamp issued shall be allocated by the department to be used for raising chinook salmon to a yearling size, at which size they shall be released into state waters. The amount of salmon stamp revenues expended for this purpose in any fiscal year shall not exceed the amount expended by the department for the same purpose during the same period from other funds. The calculation of the amount expended by the department for this purpose shall not include expenditures made by the department for which reimbursements are received from state or federal agencies, public utilities, or private entities for raising chinook salmon to yearling size as part of a fish mitigation program instituted to compensate for the adverse effect of a dam on natural salmon production. If the department expends no funds other than moneys collected from the sale of commercial fishing salmon stamps or moneys for which reimbursements are received as part of an anadromous fish mitigation program for the raising of chinook salmon to yearling size within the period of a fiscal year, the fees prescribed in Section 7860 shall be reduced by an amount equivalent to that portion of the commercial fishing salmon stamp program, as specified in this subdivision.

(2) If the salmon stamps issued pursuant to Section 7860 raise more money for the purpose of this subdivision than is necessary to match the funds expended by the department during any fiscal year from other funds, then the excess salmon stamp revenue allocated pursuant to this subdivision shall be carried over into the following fiscal year.

(c) The department shall post on its Internet Web site an accounting of the projects undertaken with funds from the Commercial Salmon Stamp Dedicated Subaccount and the costs incurred to administer the program. At a minimum, the Internet Web site shall list the project title, the applicant, a brief description of the project, the amount approved, and the status of the project.

(d) Any moneys that were in the Commercial Salmon Stamp Account as of March 14, 2013, and that were retained in the Fish and Game Preservation Fund shall be transferred to the Commercial Salmon Stamp Dedicated Subaccount.

SEC. 4. Section 7861.1 of the Fish and Game Code is amended to read:

7861.1. Not more than 15 percent of the funds expended pursuant to Section 7861 may be used to pay the costs incurred in the administration of the program.

SEC. 5. Section 7861.2 of the Fish and Game Code is amended to read:

7861.2. Notwithstanding any other law, the department may receive on behalf of the Commercial Salmon Trollers Enhancement and Restoration Program, for deposit in the Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund established pursuant to Section 7861, funds from sources in addition to funds derived from the sale of commercial fishing salmon stamps, including, but not limited to, grants from the federal government, grants from private foundations, money disbursed from court settlements, and donations and bequeaths from individuals. The additional nonfederal funds shall not be deposited in the Commercial Salmon Stamp Dedicated Subaccount unless the person or entity providing the funds specifically designates in writing, prior to or at the time of transmittal of the funds to the department, that the funds are intended solely for deposit to that subaccount. Funds received by the department that are not designated at the time of receipt as being intended solely for deposit to the Commercial Salmon Stamp Dedicated Subaccount shall be deposited in the Fish and Game Preservation Fund.

SEC. 6. Section 7861.5 of the Fish and Game Code is amended to read:

7861.5. In consultation with the Commercial Salmon Trollers Advisory Committee, the department may allocate funds from the

Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund for the following purposes:

(a) For restoration projects to assist in the recovery of salmon stocks listed as threatened or endangered under Chapter 1.5 (commencing with Section 2050) of Division 3, or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(b) As matching funds for federal salmon restoration moneys.

SEC. 7. Section 7862.5 of the Fish and Game Code is amended to read:

7862.5. (a) The Commercial Salmon Trollers Advisory Committee established under Section 7862 may recommend to the director that a nonprofit organization or the California Salmon Council be authorized to create or contract to create salmon or salmon fishing artwork and other materials based on that artwork, including, but not limited to, a stamp, and offer those items for sale to the public during 2003 and thereafter, for the purpose of augmenting funding for the Commercial Salmon Trollers Enhancement and Restoration Program established under this article.

(b) The committee may not recommend a nonprofit organization or the California Salmon Council as authorized under subdivision (a), unless all of the following conditions are met:

(1) The proposed creation and sale of the artwork is pursuant to a written business plan presented to the committee.

(2) The committee determines that a reasonable share of the sales of any stamp will be remitted to the department for deposit into the Commercial Salmon Stamp Dedicated Subaccount established in the Fish and Game Preservation Fund under Section 7861.

(3) The committee determines that the creation and sale of the artwork will act to increase public awareness and support for the salmon stamp program and the restoration of salmon and their habitats in the state.

(4) Any other conditions deemed necessary by the committee for determining whether to recommend approval to the director have been met.

(c) The director, upon receiving the recommendation of the committee, and upon finding that there will be no new costs to the department, may authorize the recommended entity to create or contract to create salmon or salmon fishing artwork and other

materials based on that artwork, including, but not limited to, a stamp, and offer those items for sale to the public, for the purpose described in subdivision (a).

(d) No person or entity, including, but not limited to, any nonprofit organization, may use the name of the Commercial Salmon Stamp, the Commercial Salmon Trollers Advisory Committee, or the Commercial Salmon Trollers Enhancement and Restoration Program for the sale of artwork and other materials, unless that person or entity has been approved by the director under this section for that purpose. The approval of the director under this section shall be for one year, after which the approval may be renewed for an additional year, upon recommendation of the committee.

(e) No artwork sold in the form of a stamp under this section conveys to the purchaser any entitlement to engage in the commercial salmon fishery.

(f) Proceeds from the sales of artwork and other materials sold under this section, after deduction of all reasonable costs borne by the nonprofit organization or California Salmon Council for creation of the artwork and conducting the sales, shall be deposited in the Commercial Salmon Stamp Dedicated Subaccount.

SEC. 8. Section 7863 of the Fish and Game Code is amended to read:

7863. This article shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

SEC. 9. Section 76953.5 of the Food and Agricultural Code is amended to read:

76953.5. (a) Before the referendum vote is conducted by the director, the proponents of the council shall deposit with the director the amount that the director determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the council who deposited the funds with the director.

(c) Upon establishment of the council, the council may reimburse the proponents of the council for any funds deposited with the director that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the council.

(d) After approval by the Commercial Salmon Trollers Advisory Committee created pursuant to Section 7862 of the Fish and Wildlife Code, the Department of Fish and Game may expend funds collected pursuant to Section 7861 of the Fish and Game Code, for payment to the Director of Food and Agriculture to pay necessary costs incurred in conducting the implementation referendum vote. If a majority of the commercial salmon vessel operators who voted at the implementation referendum voted in favor of implementing this article, as provided in Section 76952, the council shall reimburse the Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund all amounts received from that fund.

SEC. 10. 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 _____, 2013

Governor