

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1287**

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**Introduced by Senator McGuire**

(Coauthors: Assembly Members Achadjian, Levine, and Wood)

February 19, 2016

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An act to amend ~~Section~~ *Sections 8276.5, 8279.1, and 9002.5* of the Fish and Game Code, relating to commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1287, as amended, McGuire. Commercial fishing: Dungeness crab.

*Existing*

*(1) Existing law regulates the Dungeness crab fishery and prohibits a person from using a vessel to take, possess, or land Dungeness crab for commercial purposes without a Dungeness crab vessel permit. Existing law requires a commercial Dungeness crab trap to be marked with a buoy and the buoy to be marked with an identification number. Existing requires the Director of Fish and Wildlife to adopt a program for Dungeness crab trap limits for all California permits. The program requires participants to pay a \$5 crab trap tag fee and a \$1,000 crab trap limit fee on a biennial basis, as provided, and requires a Dungeness crab trap that is fished to contain a trap tag that is fastened to the main buoy, and an additional tag attached to the trap. Existing law makes the program inoperative on April 1, 2019.*

*This bill would require the department to issue a waiver from the biennial crab trap tag fee to a participant who is unable to fish due to mandatory military service, as provided. The bill would authorize a vessel to transit state waters with Dungeness crab traps that are not marked in the above-described manner if traps contain either valid*

*Oregon or Washington tags, no crab is onboard the vessel, and the traps are not deployed in state waters.*

*(2) Existing law prohibits a person from using any vessel to take Dungeness crab for commercial purposes without a Dungeness crab vessel permit. Existing law prohibits a person from taking Dungeness crab for commercial purposes from a vessel in specified ocean waters for 30 days after the opening of the Dungeness crab fishing season if the opening of the season has been delayed in those waters and that person has taken, possessed, or landed Dungeness crab in other specified waters prior to that opening. Existing law requires the Fish and Game Commission to revoke the Dungeness crab vessel permit of any person who violates these provisions. Existing law makes these provisions inoperative on April 1, 2019.*

*This bill would limit the 30-day start prohibition to a situation in which a person uses the same vessel that was used to take Dungeness crab in specified waters before the delayed opening of the season in the areas subject to the prohibition.*

*(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. Existing law, until April 1, 2019, authorizes the department, in consultation with the ~~Dungeness-Crab Task Force~~, *crab task force*, to develop regulations as necessary to provide for the retrieval of lost or abandoned commercial crab traps.*

*This bill would require the department, as part of the above-described regulations, to establish a retrieval permit program that would grant a ~~Dungeness crab vessel permit~~ *holder person* who obtains a retrieval permit the authority to retrieve during the closed season of the Dungeness crab commercial fishery lost or abandoned Dungeness crab traps belonging to another person and to receive compensation for that retrieval on a per trap basis. The bill would require the department to establish a fee to be charged to a Dungeness crab vessel permit holder for each trap belonging to the permit holder that is retrieved through the program. The bill would prohibit the department from renewing a Dungeness crab vessel permit until any fee imposed pursuant to the program has been paid.*

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. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The Dungeness ~~Crab Task Force~~ *crab task force* supports  
4 the Department of Fish and Wildlife issuing citations for  
5 abandoning traps in the ocean and for fishing during the closed  
6 season of the Dungeness crab commercial fishery in addition to  
7 charging fees for the retrieval of Dungeness crab traps pursuant  
8 to the program established by this act.

9 (2) The commercial Dungeness crab fishing industry does not  
10 tolerate strings of gear left in the ocean after the season closes.  
11 The program established by this act will provide an incentive to  
12 retrieve traps from the ocean.

13 (3) Establishing this program will help reduce the risk of whale  
14 entanglements in commercial Dungeness crab fishing gear.

15 (b) This act shall be known and may be cited as the Whale  
16 Protection and Crab Gear Retrieval Act.

17 *SEC. 2. Section 8276.5 of the Fish and Game Code is amended*  
18 *to read:*

19 8276.5. (a) In consultation with the Dungeness crab task force,  
20 or its appointed representatives, the director shall adopt a program,  
21 by March 31, 2013, for Dungeness crab trap limits for all California  
22 permits. Unless the director finds that there is consensus in the  
23 Dungeness crab industry that modifications to the following  
24 requirements are more desirable, with evidence of consensus,  
25 including, but not limited to, the record of the Dungeness crab task  
26 force, the program shall include all of the following requirements:

27 (1) The program shall contain seven tiers of Dungeness crab  
28 trap limits based on California landings receipts under California  
29 permits between November 15, 2003, and July 15, 2008, as follows:

30 (A) The 55 California permits with the highest California  
31 landings shall receive a maximum allocation of 500 trap tags.

32 (B) The 55 California permits with the next highest California  
33 landings to those in subparagraph (A) shall receive a maximum  
34 allocation of 450 trap tags.

35 (C) The 55 California permits with the next highest California  
36 landings to those in subparagraph (B) shall receive a maximum  
37 allocation of 400 trap tags.

1 (D) The 55 California permits with the next highest California  
2 landings to those in subparagraph (C) shall receive a maximum  
3 allocation of 350 trap tags.

4 (E) The 55 California permits with the next highest California  
5 landings to those in subparagraph (D) shall receive a maximum  
6 allocation of 300 trap tags.

7 (F) The remaining California permits with the next highest  
8 California landings to those in subparagraph (E), which are not  
9 described in paragraph (1) or (2) of subdivision (g) of Section  
10 8276.4, shall receive a maximum allocation of 250 trap tags.

11 (G) The California permits described in paragraphs (1) and (2)  
12 of subdivision (g) of Section 8276.4 shall receive a maximum  
13 allocation of 175 tags. The tags in this tier shall not be transferable  
14 for the first two years of the program.

15 (2) Notwithstanding paragraph (1), the director shall not remove  
16 a permitholder from a tier described in paragraph (1), if, after an  
17 allocation is made pursuant to paragraph (1), an appeal pursuant  
18 to paragraph ~~(6)~~ (8) places a permitholder in a tier different than  
19 the original allocation.

20 (3) Participants in the program shall meet all of the following  
21 requirements:

22 (A) ~~Pay~~ *Unless a participant receives a waiver pursuant to*  
23 *paragraph (4), pay* a biennial fee for each trap tag issued pursuant  
24 to this section to pay the pro rata share of costs of the program,  
25 including, but not limited to, informing permitholders of the  
26 program, collecting fees, acquiring and sending trap tags to  
27 permitholders, paying for a portion of enforcement costs, and  
28 monitoring the results of the program. The fee shall not exceed  
29 five dollars (\$5) per trap, per two-year period. All of the trap tags  
30 allocated to each permit pursuant to subdivision (a) shall be  
31 purchased by the permitholder or the permit shall be void.

32 (B) Purchase a biennial crab trap limit permit of not more than  
33 one thousand dollars (\$1,000) per two-year period to pay for the  
34 department's reasonable regulatory costs.

35 (C) Not lease a crab trap tag, and transfer a tag only as part of  
36 a transaction to purchase a California permitted crab vessel.

37 (D) A Dungeness crab trap that is fished shall contain a trap tag  
38 that is fastened to the main buoy, and an additional tag provided  
39 by the permitholder attached to the trap. The department shall

1 mandate the information that is required to appear on both buoy  
2 and trap tags.

3 (4) *The department shall issue a participant a waiver from the*  
4 *biennial fee for each trap tag described in subparagraph (A) of*  
5 *paragraph (3) if the participant is unable to fish due to mandatory*  
6 *military service and the participant submits a request for a waiver*  
7 *to the department at the same time that the participant renews the*  
8 *permit issued pursuant to subparagraph (B) of paragraph (3). A*  
9 *participant who receives a waiver pursuant to this paragraph shall*  
10 *not apply to the department to fish for Dungeness crab during the*  
11 *first year of the waiver, but may apply to fish for Dungeness crab*  
12 *during the second year of the waiver if the participant pays the*  
13 *full cost of the biennial fee for each trap tag. The department shall*  
14 *not limit the number of times a participant may request a waiver.*

15 (5) *Notwithstanding subparagraph (D) of paragraph (3), a*  
16 *vessel may transit state waters with Dungeness crab traps that are*  
17 *not tagged pursuant to subparagraph (D) of paragraph (3) if the*  
18 *traps contain either a valid Oregon or Washington trap tag, no*  
19 *crab species are onboard the vessel, and the traps are not deployed*  
20 *in state waters.*

21 ~~(4)~~

22 (6) The department shall annually provide an accounting of all  
23 costs associated with the crab trap limit program. The department  
24 shall use excess funds collected to reduce the cost of the crab trap  
25 limit permit fee or tag fee in subsequent years of the program.

26 ~~(5)~~

27 (7) Permitholders may replace lost tags by application to the  
28 department and payment of a fee not to exceed the reasonable costs  
29 incurred by the department. The department may waive or reduce  
30 a fee in the case of catastrophic loss of tags.

31 ~~(6)~~

32 (8) (A) Any Dungeness crab permitholder may submit to the  
33 director an appeal of a trap tag allocation received pursuant to this  
34 section, by March 31, 2014, on a permit-by-permit basis for the  
35 purpose of revising upward or downward any trap tag allocation.  
36 Any appeal to revise upward a trap tag allocation shall be based  
37 on evidence that a permit's California landings during the period  
38 between November 15, 2003, and July 15, 2008, inclusive, were  
39 reduced as a result of unusual circumstances and that these  
40 circumstances constitute an unfair hardship, taking into account

1 the overall California landings history as indicated by landing  
2 receipts associated with the permit. The director shall initiate the  
3 appeal process within 12 months of receiving an appeal request.  
4 The appeal shall be heard and decided by an administrative law  
5 judge of the Office of Administrative Hearings, whose decision  
6 shall constitute the final administrative decision. Except as  
7 provided in subparagraph (B), any Dungeness crab permitholder  
8 requesting an appeal to revise upward the permitholder's trap tag  
9 allocation shall pay all expenses, including a nonrefundable filing  
10 fee, as determined by the department, to pay for the department's  
11 reasonable costs associated with the appeal process described in  
12 this paragraph.

13 (B) Any Dungeness crab permitholder requesting an appeal may  
14 apply to the administrative law judge for a waiver of the appeal  
15 fees. In making the determination, the administrative law judge  
16 may only consider medical hardship or military service occurring  
17 during the tier qualifying window period of November 15, 2003,  
18 through July 15, 2008.

19 (C) An appeal to revise downward a trap tag allocation shall be  
20 decided by the department.

21 (b) (1) In addition to criminal penalties authorized by law, a  
22 violation of the requirements of the program created pursuant to  
23 this section shall be subject to the following civil penalties:

24 (A) Conviction of a first offense shall result in a fine of not less  
25 than two hundred fifty dollars (\$250) and not more than one  
26 thousand dollars (\$1,000) per illegal trap or fraudulent tag.

27 (B) Conviction of a second offense shall result in a fine of not  
28 less than five hundred dollars (\$500) and not more than two  
29 thousand five hundred dollars (\$2,500) per illegal trap or fraudulent  
30 tag, and the permit may be suspended for one year.

31 (C) Conviction of a third offense shall result in a fine of not less  
32 than one thousand dollars (\$1,000) and not more than five thousand  
33 dollars (\$5,000) per illegal trap or fraudulent tag, and the permit  
34 may be permanently revoked.

35 (2) The severity of a penalty within the ranges described in this  
36 subdivision shall be based on a determination whether the violation  
37 was willful or negligent and other factors.

38 (3) The portion of monetary judgments for noncompliance that  
39 are paid to the department shall be deposited in the Dungeness  
40 Crab Account created pursuant to subdivision (e).

1 (c) For the purposes of this section, a proposed recommendation  
2 that receives an affirmative vote of at least 15 of the non-ex officio  
3 members of the Dungeness crab task force may be transmitted to  
4 the director or the Legislature as a recommendation, shall be  
5 considered to be the consensus of the task force, and shall be  
6 considered to be evidence of consensus in the Dungeness crab  
7 industry. Any proposed recommendation that does not receive a  
8 vote sufficient to authorize transmittal to the director or Legislature  
9 as a recommendation shall be evidence of a lack of consensus by  
10 the Dungeness crab task force, and shall be considered to be  
11 evidence of a lack of consensus in the crab industry.

12 (d) (1) The director shall submit a proposed program pursuant  
13 to this section to the Dungeness crab task force for review, and  
14 shall not implement the program until the task force has had 60  
15 days or more to review the proposed program and recommend any  
16 proposed changes. The director may implement the program earlier  
17 than 60 days after it is submitted to the Dungeness crab task force  
18 for review, if recommended by the task force.

19 (2) After the program is implemented pursuant to paragraph  
20 (1), the director may modify the program, if consistent with the  
21 requirements of this section, after consultation with the Dungeness  
22 crab task force or its representatives and after the task force has  
23 had 60 days or more to review the proposed modifications and  
24 recommend any proposed changes. The director may implement  
25 the modifications earlier than 60 days after it is sent to the  
26 Dungeness crab task force for review, if recommended by the task  
27 force.

28 (e) The Dungeness Crab Account is hereby established in the  
29 Fish and Game Preservation Fund and the fees collected pursuant  
30 to this section shall be deposited in that account. The money in  
31 the account shall be used by the department, upon appropriation  
32 by the Legislature, for administering and enforcing the program.

33 (f) For purposes of meeting the necessary expenses of initial  
34 organization and operation of the program until fees may be  
35 collected, or other funding sources may be received, the department  
36 may borrow money as needed for these expenses from the council.  
37 The borrowed money shall be repaid within one year from the fees  
38 collected or other funding sources received. The council shall give  
39 high priority to providing funds or services to the department, in  
40 addition to loans, to assist in the development of the program,

1 including, but not limited to, the costs of convening the Dungeness  
2 crab task force, environmental review, and the department's costs  
3 of attending meetings with task force members.

4 (g) (1) It is the intent of the Legislature that the department,  
5 the council, and the Dungeness crab task force work with the  
6 Pacific States Marine Fisheries Commission and the Tri-state  
7 Dungeness Crab Commission to resolve any issues pertaining to  
8 moving the fair start line south to the border of California and  
9 Mexico.

10 (2) For the purposes of this subdivision, the resolution of issues  
11 pertaining to the fair start line shall be limited to assessing the  
12 positive and negative implications of including District 10 in the  
13 tri-state agreement, including working with the Tri-state Dungeness  
14 Crab Commission to amend Oregon and Washington laws to  
15 include District 10 in the regular season fair start clause, and  
16 discussion of providing different rules for District 10 with regard  
17 to preseason quality testing.

18 (h) For purposes of this section, "council" means the Ocean  
19 Protection Council established pursuant to Section 35600 of the  
20 Public Resources Code.

21 (i) 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 8279.1 of the Fish and Game Code is amended*  
26 *to read:*

27 8279.1. (a) A person shall not take, possess onboard, or land  
28 Dungeness crab for commercial purposes from ~~any~~ a vessel in  
29 ocean waters in District 6, 7, 8, or 9 for 30 days after the opening  
30 of the Dungeness crab fishing season in California, if both of the  
31 following events have occurred:

32 (1) The opening of the season has been delayed pursuant to state  
33 law in California.

34 (2) ~~The person has taken, possessed onboard, or landed same~~  
35 ~~vessel was used to take, possess onboard, or land~~ Dungeness crab  
36 for commercial purposes, from ocean waters outside of District 6,  
37 7, 8, or 9, prior to the opening of the season in those districts.

38 (b) A person shall not take, possess onboard, or land Dungeness  
39 crab for commercial purposes from ~~any~~ a vessel in ocean waters  
40 south of the border between Oregon and California for 30 days

1 after the opening of the Dungeness crab fishing season in  
2 California, if both of the following events have occurred:

3 (1) The opening of the season has been delayed pursuant to state  
4 law in California.

5 (2) ~~The person has taken, possessed onboard, or landed same~~  
6 ~~vessel was used to take, possess onboard, or land~~ Dungeness crab  
7 for commercial purposes in Oregon or Washington prior to the  
8 opening of the season in California.

9 (c) A person shall not take, possess onboard, or land Dungeness  
10 crab for commercial purposes from ~~any~~ a vessel in ocean waters  
11 north of the border between Oregon and California for 30 days  
12 after the opening of the Dungeness crab fishing season in Oregon  
13 or Washington, if both of the following events have occurred:

14 (1) The opening of the season has been delayed in Oregon or  
15 Washington.

16 (2) ~~The person has taken, possessed onboard, or landed same~~  
17 ~~vessel was used to take, possess onboard, or land~~ Dungeness crab  
18 for commercial purposes in California prior to the opening of the  
19 season in ocean waters off Oregon or Washington.

20 (d) A person shall not take, possess onboard, or land Dungeness  
21 crab for commercial purposes from ~~any~~ a vessel in ocean waters  
22 off Washington, Oregon, or California for 30 days after the opening  
23 of the Dungeness crab fishing season in California, Oregon, or  
24 Washington, if both of the following events have occurred:

25 (1) The opening of the season has been delayed in Washington,  
26 Oregon, or California.

27 (2) ~~The person has taken, possessed onboard, or landed same~~  
28 ~~vessel was used to take, possess onboard, or land~~ Dungeness crab  
29 for commercial purposes in either of the two other states prior to  
30 the delayed opening in the ocean waters off any one of the three  
31 states.

32 (e) A violation of this section does not constitute a misdemeanor.  
33 Pursuant to Section 7857, the commission shall revoke the  
34 Dungeness crab vessel permit ~~held by any person who violates~~  
35 ~~that was issued for use on the vessel that was used in violation of~~  
36 this section.

37 (f) This section shall become inoperative on April 1, 2019, and,  
38 as of January 1, 2020, is repealed, unless a later enacted statute,  
39 that becomes operative on or before January 1, 2020, deletes or  
40 extends the dates on which it becomes inoperative and is repealed.

1 ~~SEC. 2.~~

2 *SEC. 4.* Section 9002.5 of the Fish and Game Code is amended  
3 to read:

4 9002.5. (a) Notwithstanding Section 9002, the department, in  
5 consultation with the Dungeness ~~Crab Task Force~~, *crab task force*,  
6 shall develop regulations as necessary to provide for the retrieval  
7 of lost or abandoned commercial crab traps.

8 (b) (1) As part of the regulations adopted pursuant to  
9 subdivision (a), the department shall establish a retrieval permit  
10 program consistent with all of the following:

11 ~~(1)~~

12 (A) The department shall establish a retrieval permit that grants  
13 a ~~Dungeness crab vessel permitholder~~ *person* who obtains a  
14 retrieval permit the authority to retrieve during the closed season  
15 of the Dungeness crab commercial fishery lost or abandoned  
16 Dungeness crab traps belonging to another person and to receive  
17 compensation for that retrieval on a per trap basis from the revenue  
18 generated by the fee established pursuant to ~~paragraph (2).~~  
19 *subparagraph (B).*

20 ~~(2)~~

21 (B) The department shall establish a fee to be charged to a  
22 Dungeness crab vessel permitholder for each trap belonging to the  
23 permitholder that is retrieved through the program. The department  
24 shall set the fee at a level sufficient to cover the reasonable  
25 regulatory costs associated with the program and to provide  
26 reasonable compensation to a retrieval permitholder on a per trap  
27 basis. The reasonable regulatory costs associated with the program  
28 include, but are not limited to, administrative costs, storage costs,  
29 and costs associated with disposing unusable traps or traps whose  
30 owner cannot be identified.

31 ~~(3)~~

32 (C) The department shall determine how a Dungeness crab trap  
33 retrieved through the program shall be stored and how the owner  
34 of the trap shall be notified with regard to claiming the trap.

35 ~~(4)~~

36 (D) A Dungeness crab trap shall not be returned to the owner  
37 of the trap until the owner has paid the fee established pursuant to  
38 ~~paragraph (2).~~ *subparagraph (B).*

39 ~~(5)~~

1 (E) The department shall not renew a Dungeness crab vessel  
2 permit until any fee imposed pursuant to ~~paragraph (2)~~  
3 *subparagraph (B)* has been paid.

4 ~~(e)~~

5 (2) The department may adopt additional requirements necessary  
6 to implement the program described in ~~subdivision (b)~~. *this*  
7 *subdivision*.

8 (3) *The department shall submit the proposed program*  
9 *developed pursuant to this subdivision to the Dungeness crab task*  
10 *force for review, and shall not implement the program until the*  
11 *task force has had 60 days or more to review the proposed program*  
12 *and recommend any proposed changes. The director may*  
13 *implement the program earlier than 60 days after it is submitted*  
14 *to the Dungeness crab task force for review, if recommended by*  
15 *the task force.*

16 ~~(d)~~

17 (c) This section shall become inoperative on April 1, 2019, and,  
18 as of January 1, 2020, is repealed, unless a later enacted statute,  
19 that becomes operative on or before January 1, 2020, deletes or  
20 extends the dates on which it becomes inoperative and is repealed.