

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1287

Introduced by Senator McGuire

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

February 19, 2016

An act to amend 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.

(1) Existing law regulates the Dungeness crab fishery and 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, 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 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 permitholder for each trap belonging to the permitholder 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 supports the Department of
- 4 Fish and Wildlife issuing citations for abandoning traps in the

1 ocean and for fishing during the closed season of the Dungeness
2 crab commercial fishery in addition to charging fees for the
3 retrieval of Dungeness crab traps pursuant to the program
4 established by this act.

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

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

11 (4) *The program established pursuant to this act should be*
12 *efficient and cost-effective, and should utilize entities in addition*
13 *to the Department of Fish and Wildlife, including nongovernmental*
14 *organizations, to help implement the program.*

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.

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

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

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

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

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

17 (3) Participants in the program shall meet all of the following
18 requirements:

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

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

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

34 (D) A Dungeness crab trap that is fished shall contain a trap tag
35 that is fastened to the main buoy, and an additional tag provided
36 by the permitholder attached to the trap. The department shall
37 mandate the information that is required to appear on both buoy
38 and trap tags.

39 (4) The department shall issue a participant a waiver from the
40 biennial fee for each trap tag described in subparagraph (A) of

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

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

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

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

25 (8) (A) Any Dungeness crab permit holder may submit to the
26 director an appeal of a trap tag allocation received pursuant to this
27 section, by March 31, 2014, on a permit-by-permit basis for the
28 purpose of revising upward or downward any trap tag allocation.
29 Any appeal to revise upward a trap tag allocation shall be based
30 on evidence that a permit's California landings during the period
31 between November 15, 2003, and July 15, 2008, inclusive, were
32 reduced as a result of unusual circumstances and that these
33 circumstances constitute an unfair hardship, taking into account
34 the overall California landings history as indicated by landing
35 receipts associated with the permit. The director shall initiate the
36 appeal process within 12 months of receiving an appeal request.
37 The appeal shall be heard and decided by an administrative law
38 judge of the Office of Administrative Hearings, whose decision
39 shall constitute the final administrative decision. Except as
40 provided in subparagraph (B), any Dungeness crab permit holder

1 requesting an appeal to revise upward the permit holder's trap tag
2 allocation shall pay all expenses, including a nonrefundable filing
3 fee, as determined by the department, to pay for the department's
4 reasonable costs associated with the appeal process described in
5 this paragraph.

6 (B) Any Dungeness crab permit holder requesting an appeal may
7 apply to the administrative law judge for a waiver of the appeal
8 fees. In making the determination, the administrative law judge
9 may only consider medical hardship or military service occurring
10 during the tier qualifying window period of November 15, 2003,
11 through July 15, 2008.

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

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

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

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

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

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

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

34 (c) For the purposes of this section, a proposed recommendation
35 that receives an affirmative vote of at least 15 of the non-ex officio
36 members of the Dungeness crab task force may be transmitted to
37 the director or the Legislature as a recommendation, shall be
38 considered to be the consensus of the task force, and shall be
39 considered to be evidence of consensus in the Dungeness crab
40 industry. Any proposed recommendation that does not receive a

1 vote sufficient to authorize transmittal to the director or Legislature
2 as a recommendation shall be evidence of a lack of consensus by
3 the Dungeness crab task force, and shall be considered to be
4 evidence of a lack of consensus in the crab industry.

5 (d) (1) The director shall submit a proposed program pursuant
6 to this section to the Dungeness crab task force for review, and
7 shall not implement the program until the task force has had 60
8 days or more to review the proposed program and recommend any
9 proposed changes. The director may implement the program earlier
10 than 60 days after it is submitted to the Dungeness crab task force
11 for review, if recommended by the task force.

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

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

26 (f) For purposes of meeting the necessary expenses of initial
27 organization and operation of the program until fees may be
28 collected, or other funding sources may be received, the department
29 may borrow money as needed for these expenses from the council.
30 The borrowed money shall be repaid within one year from the fees
31 collected or other funding sources received. The council shall give
32 high priority to providing funds or services to the department, in
33 addition to loans, to assist in the development of the program,
34 including, but not limited to, the costs of convening the Dungeness
35 crab task force, environmental review, and the department's costs
36 of attending meetings with task force members.

37 (g) (1) It is the intent of the Legislature that the department,
38 the council, and the Dungeness crab task force work with the
39 Pacific States Marine Fisheries Commission and the Tri-state
40 Dungeness Crab Commission to resolve any issues pertaining to

1 moving the fair start line south to the border of California and
2 Mexico.

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

11 (h) For purposes of this section, “council” means the Ocean
12 Protection Council established pursuant to Section 35600 of the
13 Public Resources Code.

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

18 SEC. 3. Section 8279.1 of the Fish and Game Code is amended
19 to read:

20 8279.1. (a) A person shall not take, possess onboard, or land
21 Dungeness crab for commercial purposes from a vessel in ocean
22 waters in District 6, 7, 8, or 9 for 30 days after the opening of the
23 Dungeness crab fishing season in California, if both of the
24 following events have occurred:

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

27 (2) The same vessel was used to take, possess onboard, or land
28 Dungeness crab for commercial purposes, from ocean waters
29 outside of District 6, 7, 8, or 9, prior to the opening of the season
30 in those districts.

31 (b) A person shall not take, possess onboard, or land Dungeness
32 crab for commercial purposes from a vessel in ocean waters south
33 of the border between Oregon and California for 30 days after the
34 opening of the Dungeness crab fishing season in California, if both
35 of the following events have occurred:

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

38 (2) The same vessel was used to take, possess onboard, or land
39 Dungeness crab for commercial purposes in Oregon or Washington
40 prior to the opening of the season in California.

1 (c) A person shall not take, possess onboard, or land Dungeness
2 crab for commercial purposes from a vessel in ocean waters north
3 of the border between Oregon and California for 30 days after the
4 opening of the Dungeness crab fishing season in Oregon or
5 Washington, if both of the following events have occurred:

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

8 (2) The same vessel was used to take, possess onboard, or land
9 Dungeness crab for commercial purposes in California prior to the
10 opening of the season in ocean waters off Oregon or Washington.

11 (d) A person shall not take, possess onboard, or land Dungeness
12 crab for commercial purposes from a vessel in ocean waters off
13 Washington, Oregon, or California for 30 days after the opening
14 of the Dungeness crab fishing season in California, Oregon, or
15 Washington, if both of the following events have occurred:

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

18 (2) The same vessel was used to take, possess onboard, or land
19 Dungeness crab for commercial purposes in either of the two other
20 states prior to the delayed opening in the ocean waters off any one
21 of the three states.

22 (e) A violation of this section does not constitute a misdemeanor.
23 Pursuant to Section 7857, the commission shall revoke the
24 Dungeness crab vessel permit that was issued for use on the vessel
25 that was used in violation of this section.

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

30 SEC. 4. Section 9002.5 of the Fish and Game Code is amended
31 to read:

32 9002.5. (a) Notwithstanding Section 9002, the department, in
33 consultation with the Dungeness crab task force, shall develop
34 regulations as necessary to provide for the retrieval of lost or
35 abandoned commercial crab traps.

36 (b) (1) As part of the regulations adopted pursuant to
37 subdivision (a), the department shall establish a retrieval permit
38 program *that facilitates the removal of lost or abandoned crab*
39 *gear in an efficient and cost-effective manner* consistent with all
40 of the following:

1 (A) The department shall establish a retrieval permit that grants
2 a person who obtains a retrieval permit the authority to retrieve
3 during the closed season of the Dungeness crab commercial fishery
4 lost or abandoned Dungeness crab traps belonging to another
5 person and to receive compensation for that retrieval on a per trap
6 basis from the revenue generated by the fee established pursuant
7 to subparagraph (B).

8 (B) The department shall establish a fee to be charged to a
9 Dungeness crab vessel permitholder for each trap belonging to the
10 permitholder that is retrieved through the program. The department
11 shall set the fee at a level sufficient to cover the reasonable
12 regulatory costs associated with the program and to provide
13 reasonable compensation to a retrieval permitholder on a per trap
14 basis. The reasonable regulatory costs associated with the program
15 include, but are not limited to, administrative costs, storage costs,
16 and costs associated with disposing unusable traps or traps whose
17 owner cannot be identified.

18 ~~(C) The department shall determine how a Dungeness crab trap~~
19 ~~retrieved through the program shall be stored and how the owner~~
20 ~~of the trap shall be notified with regard to claiming the trap.~~

21 *(C) The department may use entities in addition to the*
22 *department, including, but not limited to, nongovernmental*
23 *organizations, to help implement the program.*

24 (D) A Dungeness crab trap shall not be returned to the owner
25 of the trap until the owner has paid the fee established pursuant to
26 subparagraph (B).

27 (E) The department shall not renew a Dungeness crab vessel
28 permit until any fee imposed pursuant to subparagraph (B) has
29 been paid.

30 (2) The department may adopt additional requirements necessary
31 to implement the program described in this subdivision.

32 (3) The department shall submit the proposed program
33 developed pursuant to this subdivision to the Dungeness crab task
34 force for review, and shall not implement the program until the
35 task force has had 60 days or more to review the proposed program
36 and recommend any proposed changes. The director may
37 implement the program earlier than 60 days after it is submitted
38 to the Dungeness crab task force for review, if recommended by
39 the task force.

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

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