

Assembly Bill No. 704

Passed the Assembly September 15, 1995

Chief Clerk of the Assembly

Passed the Senate September 14, 1995

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1995, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to add Sections 7861.2 and 12012 to the Fish and Game Code, relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 704, Hauser. Commercial fishing: fish and wildlife violations.

(1) Under existing law, the Department of Fish and Game may accept gifts and grants from various sources for specified purposes, including funds for fish and wildlife habitat enhancement for deposit in the Wildlife Restoration Fund.

This bill would authorize the department to deposit grants from the federal government, grants from private foundations, money disbursed from court settlements, and donations and bequeaths from individuals in the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund. The bill would prohibit the additional nonfederal funds from being deposited in the Commercial Salmon Stamp Account 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 account. The bill would require 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 Account to be deposited in the Fish and Game Preservation Fund.

Because the money in the account is continuously appropriated to the department under existing law for specified salmon programs, and because this bill would result in the deposit of additional funds in the account, the bill would make an appropriation.

(2) Existing law provides, upon conviction, specified punishment for a violation of the Fish and Game Code. Existing law also provides, generally, for the



commencement of prosecution of an offense within one year after the commission of the offense.

This bill would make it a criminal offense with specified punishment to knowingly unlawfully take for commercial purposes, as defined, a mammal, bird, amphibian, reptile, fish, or any other species in violation of the Fish and Game Code with specified exclusions. This requirement would impose a state-mandated local program.

The bill would also make it a criminal offense with specified punishment to knowingly unlawfully possess for commercial purposes any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer, the pelt of a furbearing mammal, a live reptile or amphibian, any fully protected, threatened, or endangered species, or any quantity of fish or shellfish in excess of the quantity permitted by other provisions of the Fish and Game Code with specified exclusions. This requirement would impose a state-mandated local program.

The bill would also make it a criminal offense with specified punishment for specified persons to knowingly unlawfully sell in violation of the Fish and Game Code for commercial purposes or to unlawfully possess with intent to sell in violation of the Fish and Game Code any part of, or product made from, unlawfully taken wildlife. This requirement would impose a state-mandated local program.

The bill would provide for the commencement of prosecution of an offense described in this paragraph within 3 years after the commission of the offense and would provide that those provisions do not apply to the accidental taking of any mammal, bird, amphibian, reptile, fish, or any other species.

(3) The bill would declare the intent of the Legislature that if SB 123 and this bill are both enacted, both bills add Section 12012 to the Fish and Game Code, and this bill is enacted last, that Section 12012 of the Fish and Game Code as added by this bill shall prevail over and supersede that section as added by SB 123.

(4) 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.

Appropriation: yes.

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

SECTION 1. Section 7861.2 is added to the Fish and Game Code, to read:

7861.2. Notwithstanding any provision of any other code, the department may receive on behalf of the Commercial Salmon Trollers Enhancement and Restoration Program, for deposit in the Commercial Salmon Stamp Account 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 Account 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 account. 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 Account shall be deposited in the Fish and Game Preservation Fund.

SEC. 2. Section 12012 is added to the Fish and Game Code, to read:

12012. (a) Notwithstanding any other provision of this code, the knowing unlawful taking for commercial purposes of a mammal, bird, amphibian, reptile, fish, or any other species in violation of this code is an offense punishable by imprisonment in the county jail for not more than one year, by a fine of not more than thirty



thousand dollars (\$30,000), or by both that imprisonment and fine. This subdivision does not apply to a person issued a commercial fishing license pursuant to Section 7852 who takes finfish in an amount that is less than 1,000 pounds more than the amount of fish authorized by the applicable statute or regulation.

(b) Notwithstanding any other provision of this code, the knowing unlawful possession for commercial purposes of any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer, a pelt of a furbearing mammal, a live reptile or amphibian, any fully protected, threatened, or endangered species, or any quantity of fish or shellfish in excess of the quantity permitted by other provisions of this code is an offense punishable by imprisonment in the county jail for not more than one year, by a fine of not more than thirty thousand dollars (\$30,000), or by both that imprisonment and fine. This subdivision does not apply to a person issued a commercial fishing license pursuant to Section 7852 or a commercial fish business license pursuant to Article 7 (commencing with Section 8030) of Chapter 1 of Part 3 of Division 6 who possesses finfish in an amount that is less than 1,000 pounds more than the amount of finfish authorized by the applicable statute or regulation.

(c) Notwithstanding any other provision of this code, the knowing unlawful sale in violation of this code for commercial purposes, or the unlawful possession with the intent to sell in violation of this code, of any part of, or product made from, any wildlife is an offense punishable by imprisonment in the county jail for not more than one year, by a fine of not more than thirty thousand dollars (\$30,000), or by both that imprisonment and fine. This subdivision applies only to a person who knowingly acquires for commercial purposes any part of, or product made from, any unlawfully taken wildlife.

(d) (1) Whenever a second or subsequent violation of subdivision (a), (b), or (c) also involves a violation of Section 8685.5, 8685.6, 8685.7, or 8688 which is punishable by subdivision (b) of Section 12004, the offense shall be punishable by a fine of not more than thirty thousand



dollars (\$30,000), or by imprisonment pursuant to subdivision (b) of Section 12004, or by both that fine and imprisonment.

(2) Whenever a second or subsequent violation of subdivision (a), (b), or (c) also involves a violation of Section 4758 which is punishable pursuant to subdivision (a) of Section 12005, the offense shall be punishable by a fine of not more than thirty thousand dollars (\$30,000), or by imprisonment pursuant to subdivision (a) of Section 12005, or by both that fine and imprisonment.

(e) Notwithstanding Section 802 of the Penal Code, prosecution of an offense punishable under this section shall be commenced within three years after commission of the offense.

(f) As used in this section:

(1) “Commercial purposes” means import, export, sale, purchase, barter, trade, exchange, or possession for profit or personal gain.

(2) “Fish” means fish as defined by Section 45.

(3) “Wildlife” means wildlife as defined by Section 711.2.

SEC. 3. It is the intent of the Legislature that if both this bill and Senate Bill 123 are enacted, both bills add Section 12012 to the Fish and Game Code, and this bill is enacted last, that Section 12012 of the Fish and Game Code, as added by this bill, prevail over and supersede that section as added by Senate Bill 123.

SEC. 4. 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act



shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1995

Governor

