

AMENDED IN ASSEMBLY JUNE 24, 1997

AMENDED IN SENATE APRIL 22, 1997

AMENDED IN SENATE APRIL 9, 1997

SENATE BILL

No. 463

Introduced by Senator Thompson
(Coauthor: Assembly Member Keeley)

February 19, 1997

An act to *amend Sections 8306.2 and 12009 of, and to add Article 8 (commencing with Section 7400) to Chapter 2 of Part 2 of Division 6 of, the Fish and Game Code, relating to fish, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 463, as amended, M. Thompson. Abalone.

(1) Under existing law, the taking of abalone for purposes other than for profit is regulated by the Fish and Game Commission.

This bill would require a person taking abalone from ocean waters to have an abalone stamp obtained from the Department of Fish and Game for a fee of ~~-\$5~~ \$12, affixed to his or her sport fishing license. The bill would require the fees received pursuant to the bill to be used only for the Recreational Abalone Management Program, as specified in the bill. Because a violation of the stamp requirement in the bill would be a misdemeanor under other provisions of existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would require the Director of Fish and Game to appoint a Recreational Abalone Advisory Committee of 9 members who possess specified qualifications.

(2) Under existing law, ~~black~~ *certain species of abalone* may not be taken at any time for commercial purposes.

This bill would, notwithstanding any other provision of the Fish and Game Code, impose a moratorium on *the* taking or landing ~~red~~ *of all species of abalone* for any purpose in ocean waters south of the mouth of San Francisco Bay including any island *south of the mouth of San Francisco Bay that is* offshore the mainland of California, ~~as specified~~.

This bill would provide that the moratorium shall be for a minimum of 5 years as to each species of abalone and shall not be removed until the department finds that abalone stocks are healthy. The bill would set forth procedures for the department to make that finding and would require the department to make periodic recommendations to the advisory committee established by the bill and to the commission. The bill would provide that the commission shall make the final determination as to whether or not to reopen the fishery.

The bill would also require the department to develop a management plan for the harvest of abalone which would be implemented once the moratorium is lifted.

(3) Existing constitutional law requires money collected pursuant to any state law relating to the protection or propagation of fish and game to be used for activities relating thereto ~~and other existing~~. Existing statutory law requires ~~revenue received by the department~~ *one-half of the revenue from fines and forfeitures imposed or collected for violations of the Fish and Game Code to be deposited in the Fish and Game Preservation Fund and the other one-half to be paid to the county in which the offense was committed.* Existing law also declares the intent of the Legislature that the costs of commercial fishing programs be provided out of specified revenues relating to commercial fishing.

This bill would create the Abalone Restoration and Preservation Fund and require the fees from the abalone stamps described in (1) to be deposited in this fund and would



continuously appropriated the moneys in that fund to the department to be used only for the purposes described in (1).

This bill would require all fines and forfeitures imposed or collected for the taking of abalone for any purpose other than for profit in violation of the bill or any other provision of law to be deposited in the fund and used only for the program described in (1). The bill would also require the fees from the abalone stamps described in (1) to be deposited in the fund one-half to the Abalone Restoration and Preservation Fund and one-half to the county treasury of the county in which the violation occurred.

(4) Existing law provides that abalone diving permits shall be issued to persons who held a valid abalone diving permit in the immediately preceding permit year.

This bill would provide that an applicant who was prevented from obtaining a permit in the preceding year due to the moratorium imposed in (2) may obtain an abalone diving permit once the moratorium is removed if that person held a valid permit in 1997.

(5) Existing law establishes maximum punishments for the illegal take of abalone. These punishments include a fine of \$5,000, imprisonment in the county jail for a period not to exceed one year, the revocation of certain licenses, or any combination of those penalties.

This bill would increase the maximum fine to 5 times the market value of the abalone taken or \$10,000, whichever is greater, and allow for revocation of all commercial and sport licenses issued by the department for up to 10 years.

~~(4)~~

(6) 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.

~~(5) Existing law continuously appropriates the money in the fund to the department to pay necessary expenses incurred in carrying out the Fish and Game Code and other laws for the protection and preservation of, among other things, fish.~~



~~Because the bill would provide new revenues to the fund, would reallocate the use of money in the fund, and would impose new duties on the department, the bill would make an appropriation.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Article 8 (commencing with Section
2 7400) is added to Chapter 2 of Part 2 of Division 6 of the
3 Fish and Game Code, to read:

4

5

Article 8. Abalone

6

7 7400. In addition to a valid California sport fishing
8 license and any applicable license stamp issued pursuant
9 to Sections 7149, 7150, and 7151, a person taking abalone
10 from ocean waters shall have permanently affixed to his
11 or her sport fishing license an abalone stamp that may be
12 obtained from the department or an authorized agent of
13 the department upon payment of a fee of ~~five dollars (\$5)~~
14 *twelve dollars (\$12)*.

15 7401. (a) Fees received by the department pursuant
16 to Section 7400 shall be deposited in the ~~Fish and Game~~
17 *Abalone Restoration and Preservation Fund and shall,*
18 *which is hereby created. Notwithstanding Section 13340*
19 *of the Government Code, the moneys in the fund are*
20 *continuously appropriated, without regard to fiscal year,*
21 *to the department to be used only for the Recreational*
22 *Abalone Management Program. For the purposes of this*
23 *article, “program” means the Recreational Abalone*
24 *Management Program. The program shall include the*
25 *following:*

26 (1) Research and management of abalone and abalone
27 habitat. For the purposes of this section, “research”
28 includes, but is not limited to, investigation,
29 experimentation, monitoring, and analysis; and
30 “management” means establishing and maintaining an
31 optimal sustainable utilization.



1 (2) Supplementary funding of department allocations
2 for the enforcement of statutes and regulations
3 applicable to abalone, including, but not limited to, the
4 acquisition of special equipment and the production and
5 dissemination of printed materials, such as pamphlets,
6 booklets, and posters, aimed at compliance with
7 recreational abalone regulations.

8 (3) Direction for volunteer groups relating to abalone
9 and abalone habitat management, presentations of
10 abalone related matters at scientific conferences and
11 educational institutions, and publication of abalone
12 related material.

13 (b) *At least 15 percent of the funds deposited in the*
14 *fund shall be used for program activities south of San*
15 *Francisco. To the extent possible, participants in the*
16 *management activities of the program in that area shall*
17 *be former commercial abalone divers.*

18 (c) The department shall maintain internal accounts
19 that ensure that the fees received pursuant to Section
20 7400 are disbursed for the purposes of subdivision (a). Not
21 more than 20 percent of the fees received pursuant to
22 Section 7400 shall be used for administration by the
23 department.

24 ~~(e)~~

25 (d) Unencumbered fees collected pursuant to Section
26 7400 during any previous calendar year may be expended
27 for the purposes of ~~subdivision (a)~~ *subdivisions (a) and*
28 *(b)*. All interest and other earnings on the fees received
29 pursuant to Section 7400 shall be deposited in the ~~Fish and~~
30 ~~Game Preservation Fund~~ *fund* and shall be used for the
31 purposes of ~~subdivision (a)~~ *subdivisions (a) and (b)*.

32 7402. (a) The director shall appoint a Recreational
33 Abalone Advisory Committee consisting of nine
34 members who shall serve without compensation. The
35 members of the advisory committee shall be selected as
36 follows:

37 (1) Six members who are not officers or employees of
38 the department. The six members shall be residents of
39 California and meet the following requirements:



1 (A) Two members shall reside north of the southern
2 boundary line of Marin County and a line extending due
3 east from the easternmost point of Marin County located
4 in San Pablo Bay. The two members shall be selected from
5 nominations submitted by the Northern California
6 Shellfish Assessment Program ~~and shall be active~~
7 ~~participants in the recreational abalone fishery at large.~~
8 *or by individuals or organizations that actively participate*
9 *in the recreational abalone fishery, except that not more*
10 *than one of the members selected shall be an active or*
11 *former commercial abalone diver or involved in*
12 *commercial seafood processing or marketing.*

13 (B) Two members shall reside south of the southern
14 boundary line of Marin County and a line extending due
15 east from the easternmost point of Marin County located
16 in San Pablo Bay and north of the boundary between
17 Santa Barbara and San Luis Obispo Counties and a line
18 extending due east from the easternmost point in that
19 boundary line. The two members shall be selected from
20 nominations submitted by the Central California Council
21 of Divers, the Southern California Shellfish Assessment
22 Program, the Northern California Shellfish Assessment
23 Program, ~~and shall be active participants in the~~
24 ~~recreational abalone fishery at large.~~ *Program, or by*
25 *individuals or organizations that actively participate in*
26 *the recreational abalone fishery, except that not more*
27 *than one of the members selected shall be an active or*
28 *former commercial abalone diver or involved in*
29 *commercial seafood processing or marketing.*

30 (C) Two members shall reside south of the boundary
31 between Santa Barbara and San Luis Obispo Counties
32 and a line extending due east from the easternmost point
33 in that boundary line. The two members shall be selected
34 from nominations submitted by the Greater Los Angeles
35 Council of Divers, the San Diego Council of Divers, the
36 Channel Islands Council of Divers, the Southern
37 California Shellfish Assessment Program, ~~and shall be~~
38 ~~active participants in the recreational abalone fishery at~~
39 ~~large.~~ *or by individuals or organizations that actively*
40 *participate in the recreational abalone fishery, except*



1 *that not more than one of the members selected shall be*
2 *an active or former commercial abalone diver or involved*
3 *in commercial seafood processing or marketing.*

4 (2) One member shall represent the department
5 enforcement activities and shall be selected from
6 personnel in the Wildlife Protection Branch.

7 (3) Two members shall be marine scientists who are or
8 have been involved in abalone research at universities,
9 state universities, or in state or federal programs. ~~At least~~
10 *Not more than one of the persons shall be an officer or*
11 *employee of the department.*

12 (b) No member shall be involved in or profit from the
13 ~~commercial harvest or~~ culture for sale (commercial
14 aquaculture) of abalone.

15 (c) The advisory committee shall meet at least once
16 each calendar year to review proposals and recommend
17 to the director projects and budgets for the expenditure
18 of fees received pursuant to Section 7400. The committee
19 may review progress reports and the results of projects
20 funded under this article and make recommendations to
21 the director regarding abalone resource management.

22 ~~7403. Notwithstanding Sections 1463 to 1463.28,~~
23 ~~inclusive, of the Penal Code, Section 13003 of this code, or~~

24 ~~7403. Notwithstanding any other provision of law, the~~
25 ~~money collected from any fine or forfeiture imposed or~~
26 ~~collected for the taking of abalone for any purpose other~~
27 ~~than for profit in violation of this article or any other~~
28 ~~provision of law shall be deposited in the Fish and Game~~
29 ~~Preservation Fund and shall be used only for the~~
30 ~~program. be deposited as follows:~~

31 (a) *One-half in the Abalone Restoration and*
32 *Preservation Fund.*

33 (b) *One-half in the county treasury of the county in*
34 *which the violation occurred.*

35 7404. (a) Notwithstanding Section 200 or 7600, Article
36 7 (commencing with Section 8300) of Part 3, or any other
37 provision of this code, a moratorium is imposed on the
38 taking or landing of ~~red~~ *all species of* abalone for
39 commercial, recreational, or other purposes in ocean
40 waters of the state south of the line due west from the



1 center of the mouth of San Francisco Bay ~~or in~~, including
2 ocean waters of the state south of that line around any
3 island offshore the mainland of California, including, but
4 not limited to, the Farallon Islands and the Santa Barbara
5 Channel Islands.

6 (b) *The moratorium imposed by subdivision (a) shall*
7 *be for a minimum of five years as to each species of*
8 *abalone and shall only be removed after the department*
9 *makes a biological finding that the abalone stocks are*
10 *healthy. The department, with the approval of the*
11 *Recreational Abalone Advisory Committee, shall*
12 *establish criteria to assist the department in making this*
13 *finding. All of the ocean waters affected by the*
14 *moratorium shall be analyzed in light of the criteria. The*
15 *criteria shall seek to measure suitable habitats for abalone*
16 *that are not dominated by sea otter populations and shall*
17 *include, but not be limited to, the following:*

18 (1) *Ensuring that an adequate population of abalone*
19 *exists.*

20 (2) *Verifying that a sufficient number of healthy*
21 *abalone exists in varying sizes.*

22 (3) *Confirming that a reasonable percentage of the*
23 *former abalone habitat has been recovered.*

24 (c) *If the fishery for a species of abalone is already*
25 *closed to commercial or sport fishing as of January 1, 1998,*
26 *the time during which the fishery was closed shall be*
27 *deducted from the five-year minimum moratorium*
28 *imposed by subdivision (b) for that species.*

29 (d) *At the end of the initial five-year moratorium for*
30 *each species of abalone, the department shall prepare*
31 *and submit a recommendation to the advisory*
32 *committee, as to whether or not to reopen the abalone*
33 *fishery for that species based on the criteria in subdivision*
34 *(b). If the department recommends that the fishery be*
35 *reopened and this recommendation is approved by a*
36 *majority of the advisory committee, the recommendation*
37 *shall be forwarded to the commission. The commission*
38 *shall make the final determination as to whether or not*
39 *to reopen the fishery.*



1 (e) If the commission determines not to reopen the
2 fishery for one or more species of abalone, the
3 moratorium shall continue for those species. The
4 department shall then collect and evaluate field census
5 data every three years following the commission's
6 determination and shall prepare a recommendation to
7 the advisory committee at the end of each three-year
8 period as to whether or not to reopen the fishery for those
9 species. At the end of each three-year period, if the
10 department recommends that the fishery be reopened
11 and this recommendation is approved by a majority of the
12 advisory committee, the recommendation shall be
13 forwarded to the commission. The commission shall make
14 the final determination as to whether or not to reopen the
15 fishery.

16 (f) Once the fishery is reopened for any species of
17 abalone, the field census data relevant to that species shall
18 continue to be made at intervals agreed upon by the
19 department and the advisory committee. The field
20 census data shall be evaluated by the department, and
21 after consultation with the advisory committee, shall be
22 reported to the commission.

23 7405. During the time of the moratorium imposed by
24 Section 7404, the department shall develop a
25 management plan for the harvest of abalone. The
26 management plan shall provide for recovery of abalone
27 stocks through regular monitoring, limit access to abalone
28 refuges where appropriate, and provide for adequate
29 enforcement to ensure recovery of abalone stocks. The
30 management plan shall be implemented for each species
31 of abalone once the moratorium is removed for that
32 species.

33 SEC. 3. Section 8306.2 of the Fish and Game Code is
34 amended to read:

35 8306.2. (a) Abalone diving permits shall be issued to
36 persons who held a valid abalone diving permit in the
37 immediately preceding permit year that has not been
38 suspended or revoked.

39 (b) An applicant who was prevented from obtaining
40 an abalone diving permit in the preceding year, as a result



1 of the moratorium imposed by Section 7404, may obtain
 2 an abalone diving permit once the moratorium is
 3 removed if that person held a valid abalone diving permit
 4 in 1997 that was not suspended or revoked.

5 (c) If the commission determines that abalone diving
 6 permits may be issued under this subdivision, an abalone
 7 diving permit may be issued to an applicant if the
 8 applicant does not qualify as a prior permittee and if the
 9 applicant meets either of the following conditions:

10 (1) The applicant has at least two years experience as
 11 an abalone diver under a permit issued pursuant to
 12 Section 8300.1 or former Section 8306.8, as it read before
 13 January 1, 1993.

14 (2) The applicant has at least three years' experience
 15 as an abalone crewmember under a permit issued
 16 pursuant to Section 8300.2 or former Section 8306.8, as it
 17 read before January 1, 1993.

18 ~~(e)~~

19 (d) If the total number of abalone diving permits
 20 which the commission determines may be issued exceeds
 21 the number of abalone diving permits issued pursuant to
 22 subdivisions (a) ~~and~~, (b), and (c), abalone diving permits
 23 may be issued to applicants under this subdivision if the
 24 applicant does not qualify as a prior permittee and the
 25 applicant meets either of the following conditions:

26 (1) The applicant has at least three years experience
 27 as an abalone diver or crewmember.

28 (2) The applicant successfully completes a proficiency
 29 test administered by the department, under regulations
 30 prescribed by the commission.

31 *SEC. 4. Section 12009 of the Fish and Game Code is*
 32 *amended to read:*

33 12009. Notwithstanding Section 12000 and except as
 34 provided in Section 8312, the maximum punishment for
 35 a violation of any provision of Article 8 (commencing
 36 with Section 7400) of Chapter 2 of Part 2 of Division 6 or
 37 Article 7 (commencing with Section 8300) of Chapter 2
 38 of Part 3 of Division 6 or any regulation adopted
 39 thereunder, or of Section 7121 involving abalone, is a fine
 40 of five thousand dollars ~~(\$5,000)~~ times the market value

1 *of the abalone taken, or ten thousand dollars (\$10,000),*
2 *whichever is greater, imprisonment in the county jail for*
3 *a period not to exceed one year, the revocation of any*
4 ~~*license issued pursuant to Sections 8032 to 8036, inclusive*~~
5 *commercial and sport fishing licenses issued by the*
6 *department for a period not to exceed 10 years, or any*
7 *combination of these penalties.*

8 SEC. 5. No reimbursement is required by this act
9 pursuant to Section 6 of Article XIII B of the California
10 Constitution because the only costs that may be incurred
11 by a local agency or school district will be incurred
12 because this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section
15 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article
17 XIII B of the California Constitution.

18 Notwithstanding Section 17580 of the Government
19 Code, unless otherwise specified, the provisions of this act
20 shall become operative on the same date that the act
21 takes effect pursuant to the California Constitution.

