

Senate Bill No. 2028

CHAPTER 525

An act to amend Sections 6596, 7852.27, 7857, 7858, 8246.6, 8405.1, 8561.5, 8562, 8568, 8569, 9000, 9001.5, and 9001.6 of, and to repeal Sections 8233.1 and 8255 of, the Fish and Game Code, relating to fishing.

[Approved by Governor September 15, 1998. Filed
with Secretary of State September 15, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2028, McPherson. Fishing.

(1) Existing law requires any person who takes fish or amphibia for commercial purposes, as specified, to first obtain a commercial fishing license, permit, or other entitlement, issued by the Department of Fish and Game. Existing law imposes various conditions on the use of those licenses, permits, and entitlements.

This bill would make technical, nonsubstantive changes to those conditions. In addition, the bill would require a person who holds a commercial fishing vessel permit or other entitlement authorizing the use of a vessel for commercial fishing, to also hold a valid commercial boat registration for that vessel, as specified.

(2) Existing law requires a person to obtain a valid lobster permit prior to taking lobsters for commercial purposes. Existing law requires a lobster permit to contain all applicable regulations and requires the permit applicant to sign a statement that he or she has read, understands, and agrees to be bound by all of the terms of the permit.

This bill would delete both of those requirements.

(3) Existing law provides that, with respect to a limited entry fishery, an appeal of a denial of a late renewal application for a commercial permit to take, or of a waiver of any landing requirements, shall be reviewed and decided by the director. Under existing law, the director's decision may be appealed to the Fish and Game Commission.

This bill, instead, would provide that, with respect to a limited entry fishery, the appeal of a denial of a renewal application for a commercial permit, except for a permit to take herring, or the appeal of a denial for a waiver of any landing requirements, shall be reviewed and decided by the department. The bill would require the appeal to be received by the department or, if mailed, postmarked on or before March 31 following the permit year in which the applicant last held a valid permit for that fishery. The bill would allow the department's decision to be appealed to the commission.

Existing law also provides that a person whose application for a commercial salmon fishing vessel permit, a sea cucumber permit, or a finfish trap permit is denied, may appeal that denial to the commission within the time period specified for that permit.

This bill would delete those provisions.

(4) Existing law requires a person to obtain a valid drift gill net shark and swordfish permit prior to taking shark or swordfish for commercial purposes. Existing law provides for that permit to be issued to any prior permittee who possesses a valid drift gill net shark and swordfish permit or who possess an experimental swordfish permit, as specified, and who meets certain conditions. Under existing law, a drift gill net shark and swordfish permit may be transferred, as provided, only to a person who holds both a commercial fishing license and a general gill net permit.

This bill would make minor changes to the application process for a drift gill net shark and swordfish permit and would eliminate the ability of a person to obtain that permit based on his or her prior possession of an experimental swordfish permit. The bill would also eliminate the requirement that a permit transferee hold a commercial fishing license.

(5) Existing law requires a person to obtain a general trap permit prior to taking finfish, mollusks, or crustaceans with traps for commercial purposes. Existing law also requires a person to obtain a finfish trap permit prior to taking finfish in specified waters.

This bill would provide that a person who holds a finfish trap permit is not required to obtain or possess a valid general trap permit when taking finfish with traps.

(6) Under existing law, until April 1, 2002, Korean traps, as defined, and bucket traps, as specified, may only be used to take hagfish.

This bill would provide that, until April 1, 2002, not more than 500 Korean traps or 200 bucket traps may be possessed on board a vessel and in the water to take hagfish. The bill would also prohibit a person who holds a general trap permit from possessing both Korean traps and other types of traps aboard a vessel at the same time.

Because existing law would make a violation of the bill a crime, the bill would impose a state-mandated local program.

(7) 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 6596 of the Fish and Game Code is amended to read:

6596. (a) In addition to a valid California fishing license issued pursuant to Section 7149 and any other applicable license stamp issued pursuant to this code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for purposes other than for profit shall have permanently affixed to his or her fishing license, except a sport fishing license issued pursuant to paragraph (4) of subdivision (a) of Section 7149, an ocean fishing enhancement stamp. A license stamp issued under this subdivision shall be issued for the following fees:

(1) A stamp for a sport fishing or sport ocean fishing license, two dollars and fifty cents (\$2.50). Sport fishing licenses issued pursuant to paragraph (4) of subdivision (a) of Section 7149 are not subject to this requirement.

(2) A stamp for each single day sport ocean fin fishing license issued pursuant to subdivision (c) of Section 7149, fifty cents (\$0.50). Sport fishing licenses issued pursuant to paragraph (4) of subdivision (a) of Section 7149 are not subject to this requirement.

(b) In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 7920, the owner of any boat or vessel who, for profit, permits any person to fish therefrom, south of a line extending due west from Point Arguello, shall have a valid commercial ocean fishing enhancement stamp issued for that vessel that has not been suspended or revoked.

(c) Any person who takes, possesses aboard a boat, or lands any white sea bass for commercial purposes, south of a line extending due west from Point Arguello, shall have a valid commercial ocean fishing enhancement stamp issued to that person that has not been suspended or revoked.

(d) The fee for a commercial ocean fishing enhancement stamp shall be twenty-five dollars (\$25).

SEC. 2. Section 7852.27 of the Fish and Game Code is amended to read:

7852.27. At all times when engaged in any activity described in Section 7850 or Article 7 (commencing with Section 8030) for which a commercial fishing license is required, the licensee shall have in his or her possession, or immediately available to the licensee, a valid driver's license or identification card issued by the Department of Motor Vehicles or by the entity issuing driver's licenses from the licensee's state of domicile.

SEC. 3. Section 7857 of the Fish and Game Code is amended to read:

7857. Unless otherwise specified, the following conditions apply to each commercial fishing license, permit, or other entitlement



issued to take, possess aboard a boat, or land fish for commercial purposes and to each commercial boat registration issued by the department, except licenses issued pursuant to Article 7 (commencing with Section 8030):

(a) The person to whom a commercial fishing permit or other entitlement is issued shall have a valid commercial fishing license issued pursuant to Section 7852 that is not revoked or suspended.

(b) The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons:

(1) The person was not lawfully entitled to be issued the license, permit, or other entitlement.

(2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

(3) A violation of any federal law relating to the fishery for which the license, permit, or other entitlement was issued by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

(c) The person to whom the commercial fishing license, permit, or other entitlement is issued shall be present when fish are being taken, possessed aboard a boat, or landed for commercial purposes. This subdivision does not apply to commercial fishing vessel permits or licenses.

(d) The commercial fishing license, permit, or other entitlement shall be in the licensee's, permittee's, or entitled person's possession, or immediately available to the licensee, permittee, or entitled person at all times when engaged in any activity for which the commercial fishing license, permit, or entitlement is required.

(e) Not more than one individual commercial fishing license, permit, or other entitlement of a single type shall be issued to an individual person and not more than one commercial vessel fishing license, permit, or other entitlement of a single type shall be issued for each vessel.

(f) Any landing of fish used to qualify for, or renew, a commercial fishing license, permit, or other entitlement shall be reported on landing receipts delivered to the department pursuant to Section 8046.

(g) In addition to any other requirements in Article 7.5 (commencing with Section 8040), the name of the person issued the commercial fishing license, permit, or other entitlement authorizing the taking of the fish shall be included on the landing receipt for that landing.



(h) An application for a commercial fishing license, permit, or other entitlement shall be made on a form containing the information the department may require. The commercial fishing license, permit, or other entitlement shall be signed by the holder prior to use.

(i) Any person who has had a commercial fishing license, permit, or other entitlement suspended or revoked shall not engage in that fishery, and shall not obtain any other commercial fishing license, permit, or other entitlement that authorizes engaging in that fishery, while the suspension or revocation is in effect.

(j) A commercial fishing license, permit, or other entitlement is not transferable unless otherwise expressly specified in this code.

(k) Every commercial fishing license, permit, stamp, commercial boat registration, or other entitlement issued pursuant to this part, except commercial fish business licenses issued pursuant to Article 7 (commencing with Section 8030), is valid from April 1 to March 31 of the next following calendar year or, if issued after the beginning of that term, for the remainder thereof.

(l) A person who holds a commercial fishing vessel permit or other entitlement authorizing the use of a vessel for commercial fishing shall also hold a valid commercial boat registration for that vessel, issued pursuant to Section 7881, that has not been suspended or revoked.

(m) A person who holds a commercial fishing license, permit, registration, or other entitlement, who moves or acquires a new address shall notify the department of the old and new addresses within three months of acquiring the new address.

SEC. 4. Section 7858 of the Fish and Game Code is amended to read:

7858. In addition to the conditions specified in Section 7857, the following conditions apply to a commercial permit to take, possess aboard a boat, or land fish for commercial purposes in a limited entry fishery, as defined in Section 8100:

(a) The permit shall be renewed annually.

(b) Except as otherwise provided by law, an appeal for the denial of a renewal application or for a waiver of any landing requirements shall be reviewed and decided by the department. The appeal shall be received by the department or, if mailed, postmarked on or before March 31 following the permit year in which the applicant last held a valid permit for that fishery. The decision of the department may be appealed to the commission. This section does not apply to permits issued pursuant to Section 8550.

SEC. 5. Section 8233.1 of the Fish and Game Code is repealed.

SEC. 6. Section 8246.6 of the Fish and Game Code is amended to read:

8246.6. A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit



transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision.

SEC. 7. Section 8405.1 of the Fish and Game Code is amended to read:

8405.1. (a) To qualify for a sea cucumber permit for the permit year of April 1, 1997, to March 31, 1998, inclusive, an applicant shall have landed a minimum of 50 pounds of sea cucumbers during any calendar year, or portion thereof, from January 1, 1988, to June 30, 1991, inclusive.

(b) All applications for sea cucumber permits shall be received by the department, or, if mailed, postmarked, by June 30, 1997.

(c) The department shall not issue a sea cucumber permit until the applicant's eligibility pursuant to this section has been verified by the department through either landing receipts or other documentation used by the department.

(d) Applicants for a sea cucumber permit shall specify by gear type, either trawl or dive, the method in which the applicant intends to take sea cucumbers. The gear type of a sea cucumber permit, either trawl or dive, shall not be transferable.

(e) The fee for a sea cucumber permit shall be two hundred fifty dollars (\$250).

(f) Each permittee shall complete and submit an accurate record of all sea cucumber fishing activities on forms provided by the department.

(g) In order to renew a sea cucumber permit for any permit year commencing on or after April 1, 1998, an applicant shall have been issued a sea cucumber permit in the immediately preceding permit year. Applications for renewal of a sea cucumber permit shall be received by the department or, if mailed, postmarked, by June 30 of the permit year.

SEC. 8. Section 8255 of the Fish and Game Code is repealed.

SEC. 9. Section 8561.5 of the Fish and Game Code is amended to read:

8561.5. (a) Notwithstanding Section 8102, a permit issued pursuant to Section 8561 may be transferred by the permittee only if one of the following conditions is met:

(1) The permittee has held the permit for three or more years.

(2) The permittee is permanently injured or suffers a serious illness that will result in a hardship, as determined in a written finding by the director, to the permittee or his or her family if the permit may not otherwise be transferred or upon dissolution of a marriage where the permit is held to be community property.

(3) The permittee has died and his or her surviving spouse, heirs, or estate seeks to transfer the permit within six months of the death of the permittee or, with the written approval of the director, within the length of time that it may reasonably take to effect the transfer.



(b) A permit may be transferred only to a person who holds a valid general gill net permit issued to that person pursuant to Section 8681 that has not been suspended or revoked.

(c) The transfer of a permit shall only become effective upon notice from the department. An application for transfer shall be submitted to the department with such reasonable proof as the department may require to establish the qualification of the person the permit is to be transferred to, the payment to the department of a transfer fee of one thousand five hundred dollars (\$1,500), and a written disclosure, filed under penalty of perjury, of the terms of the transfer.

(d) Any restrictions on participation that were required in a permit transferred pursuant to Section 8102 before January 1, 1990, are of no further force or effect.

SEC. 10. Section 8562 of the Fish and Game Code is amended to read:

8562. Applications delivered to a department office after April 30, or if mailed, postmarked after April 30, shall not be accepted unless approved by the commission pursuant to Section 8569.

SEC. 11. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued to any prior permittee who possesses a valid drift gill net shark and swordfish permit issued pursuant to this section, but only if the permittee meets all of the following requirements:

(a) Possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

(b) Possessed a valid drift gill net shark and swordfish permit during the preceding season and that permit was not subsequently revoked.

(c) During one of the two immediately preceding permit years, either landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars (\$1,000).

SEC. 12. Section 8569 of the Fish and Game Code is amended to read:

8569. (a) Any person who possessed a valid drift gill net shark and swordfish permit during the preceding season and whose application has been denied because the permittee failed to meet the landing requirements specified in subdivision (c) of Section 8568, may appeal to the commission, submitting circumstances surrounding nonuse of the permit and request a waiver of the landing requirement. The commission may authorize issuance of the permit to the applicant if it finds the nonuse of the permit during the preceding season was for reasons beyond the control of the applicant under the circumstances.



(b) The commission may establish conditions for the issuance of a permit if the person's drift gill net shark and swordfish permit was revoked during a preceding season or if the person possessed a valid permit during the preceding season but did not apply for renewal of his or her permit on or before April 30. The applicant for a permit under this subdivision may appeal to the director for the issuance of the permit under those conditions.

SEC. 13. Section 9000 of the Fish and Game Code is amended to read:

9000. (a) Except as expressly authorized in this article, no person shall use a trap to take any finfish, mollusk, or crustacean in the waters of this state for commercial purposes.

(b) Traps, which are authorized to be used under this article, may be used to take finfish in ocean waters.

(c) Freshwater baitfish traps may be used as provided in Section 8463, and that use is not subject to this article.

SEC. 14. Section 9001.5 of the Fish and Game Code is amended to read:

9001.5. (a) Finfish, other than hagfish, shall not be taken with traps for commercial purposes in ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line except under a valid finfish trap permit issued to the person that has not been suspended or revoked. At least one person aboard each commercial fishing vessel shall have a valid finfish trap permit. Notwithstanding Section 9001, a finfish trap permit holder is not required to obtain or possess a valid general trap permit when taking finfish with traps. Any person who assists in the taking of finfish with traps shall have either a finfish trap permit or a valid general trap permit.

(b) A finfish trap permit shall only be issued to a person who held a finfish trap permit to take finfish during the immediately preceding permit year that has not been suspended or revoked and who landed at least 50 pounds of finfish, other than hagfish, taken in finfish traps as reported on one or more fish landing receipts during the immediately preceding permit year. Applications for renewal of a finfish trap permit shall be received by the department, or, if mailed, postmarked, by May 31 of each year.

SEC. 15. Section 9001.6 of the Fish and Game Code is amended to read:

9001.6. (a) A finfish trap permit issued pursuant to Section 9001.5 authorizes finfish to be taken with finfish traps only subject to the following limitations:

(1) No lobster may be possessed aboard or landed from any vessel for commercial purposes on which finfish are also present unless at least one person on board has a valid finfish trap permit issued to that person pursuant to Section 9001.5 that has not been suspended or



revoked and every person on board has a valid lobster permit issued pursuant to Section 8254 that has not been suspended or revoked and is in compliance with this article and Article 5 (commencing with Section 8250) of Chapter 2 and the regulations adopted pursuant to these articles. Lobster may not be used as bait in finfish traps, and any lobster found in finfish traps that may not be possessed pursuant to this article or Article 5 (commencing with Section 8250) of Chapter 2 shall be returned to the water immediately.

(2) During the period from one hour after sunset to one hour before sunrise finfish traps that are left in the water shall be unbaited with the door secured open. However, if, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(3) Timed buoy release mechanisms commonly termed “popups” may not be used on buoy lines attached to finfish traps.

(4) Trap destruction devices used on finfish traps shall conform to the current requirements for those devices adopted by the commission.

(5) No finfish traps may be within 750 feet of any pier, breakwall, or jetty in District 19, 19A, 19B, 20, 20A, 20B, or 21.

(6) Not more than 50 finfish traps may be used in state waters along the mainland shore.

(7) The mesh of any finfish trap shall measure two inches by two inches.

(b) The fee for the finfish trap permit issued pursuant to Section 9001.5 is one hundred ten dollars (\$110).

(c) Under a general trap permit issued pursuant to Section 9001, Korean traps, defined as molded plastic cylinders not exceeding 6 inches in diameter and 24 inches in length, or “bucket traps” constructed of plastic buckets of five gallons or less in capacity, may be used to take only hagfish for commercial purposes. The number of traps that may be possessed on board a vessel and in the water for the purposes of taking hagfish shall not exceed 500 Korean traps or 200 bucket traps. No permittee may possess both Korean traps and other types of traps aboard a vessel at the same time. When Korean traps or bucket traps are being used or possessed aboard a boat, no species of finfish other than hagfish shall be taken, possessed aboard a boat, or sold for commercial purposes.

(d) This section shall become inoperative on April 1, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 16. The amendments made by this act to subdivisions (a) and (b) of Section 9001.6 of the Fish and Game Code do not constitute a change in, but are declaratory of, existing law.

SEC. 17. 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.

