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AB-1573 Marine fisheries: experimental fishing permits. (2017-2018)

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Assembly Bill No. 1573

CHAPTER 477

An act to amend Sections 90, 7090, 7712, and 8834.1 of, to add Section 1022 to, and to repeal Section 8606 of, the Fish and Game Code, relating to fisheries.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1573, Bloom. Marine fisheries: experimental fishing permits.

(1) Existing law, enacted as part of the Marine Life Management Act of 1998, generally establishes a comprehensive plan for the management of marine living resources. Existing law requires the Department of Fish and Wildlife to develop, and submit to the Fish and Game Commission for its approval, a fishery management master plan, and provides for the preparation and approval of fishery management plans, which form the primary basis for managing California's sport and commercial marine fisheries. Existing law declares various state policies with regard to the management of fishery resources.

Existing law authorizes the department to issue permits, subject to restrictions and regulations that the department determines are desirable, to take or possess, in any part of the state, for scientific, educational, or propagation purposes, mammals, birds and the nests and eggs thereof, fish, amphibians, reptiles, or any other form of plant or animal life.

Existing law requires the commission to encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear by approving permits, known as experimental gear permits, to be issued by the department, consistent with specified policies, for that development or use, subject to certain restrictions.

This bill would repeal these experimental gear permit provisions and instead would authorize the commission to approve experimental fishing permits to be issued by the department for specified purposes that would authorize commercial or recreational marine fishing activity otherwise prohibited by the Fish and Game Code or regulations adopted pursuant to that code. The bill would provide that an experimental fishing permit is subject to certain requirements, including a requirement that activities conducted under the permit be consistent with specified policies enacted as part of the Marine Life Management Act of 1998 and any applicable fishery management plan and a requirement that the permit be subject to certain commission conditions. The bill would require the department to post, and annually update, information regarding approved experimental fishing permits, as specified, on its Internet Web site. The bill would require the department, on or before January 1, 2025, and every 5 years thereafter, to report to the appropriate legislative committees summarizing the benefits of the experimental fishing permit program, as specified. The bill would authorize the commission to charge a permit fee, as prescribed. The bill would make conforming changes.

(2) Under existing law, any violation of the Fish and Game Code, or of any rule, regulation, or order made or adopted under the code, is generally a misdemeanor.

Because a violation of the terms of an experimental fishing permit would be a crime, this bill would impose a state-mandated local program.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the California Fisheries Innovation Act of 2018.

SEC. 2. The Legislature finds and declares all of the following:

(a) Californians value healthy, sustainable ocean fisheries and ecosystems. The Pacific Ocean and its rich marine resources provide valuable environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic benefits to the people of the state.

(b) A large majority of the fisheries in California's waters have not been scientifically assessed or actively managed under approved fishery management plans. This threat to ocean health is exacerbated by climate-driven changes that are already impacting fisheries in dynamic and complex ways.

(c) Well-supervised, strategic experimentation that tests hypotheses or new management approaches, or both, and that is aligned with overarching state management goals and research priorities, would likely accelerate the development of innovative scientific and technology tools for improving state fisheries management.

(d) The federal Exempted Fishing Permit (EFP) program, authorized by the federal Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.), provides a useful model for advancing on-the-water strategic experimentation. The EFP program has a proven track record for leveraging millions of dollars from fishing industry associations, conservation organizations, and independent research entities toward addressing priority research questions and ultimately improving fisheries management.

(e) A streamlined state Experimental Fishing Permit program would represent a significant step toward ensuring that California's ocean management can meet the challenges of rapidly changing and unpredictable ocean conditions, and would deliver effective outcomes that protect the state's natural resources, port communities, and coastal economies.

(f) A state Experimental Fishing Permit program would promote collaborative and cooperative fisheries research and would develop information that would be available for management of state fisheries and, in some cases, inform the development of fishery management plans adopted pursuant to Part 1.7 (commencing with Section 7050) of Division 6 of the Fish and Game Code.

(g) In establishing a state Experimental Fishing Permit program, California also can provide a replicable state model for encouraging valuable and productive collaborative fisheries research in coastal waters.

SEC. 3. Section 90 of the Fish and Game Code is amended to read:

90. The definitions in this chapter govern the construction of Section 1022, Chapter 7 (commencing with Section 1700) of Division 2, and Division 6 (commencing with Section 5500), and all regulations adopted pursuant to those provisions.

SEC. 4. Section 1022 is added to the Fish and Game Code, to read:

1022. (a) The commission may authorize, for research, educational, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing, or any combination of these purposes, an EFP to be issued by the department that authorizes commercial or recreational marine fishing activity otherwise prohibited by this code or any regulation adopted pursuant to this code, subject, at a minimum, to all of the following:

(1) Activities conducted under the EFP shall be consistent with policies set forth in Section 7050 and any applicable fishery management plan.

(2) An EFP is subject to those conditions the commission deems necessary to ensure the protection of marine resources, and shall be revoked if the continued use would have an adverse impact on any resource or allocation of a resource, or other adverse impact to established fisheries or other marine living resources.

(3) (A) Except as provided in subparagraph (B), activities conducted under the EFP shall not involve engaging in bottom trawling in ocean waters of the state.

(B) Activities conducted under the EFP may involve engaging in bottom trawling if the EFP is issued to a person who holds a permit issued pursuant to Section 8494 or 8842 and the activities conducted under the EFP are limited to locations where bottom trawling is authorized under the applicable permit.

(4) An EFP exempts a permittee only from the provisions of this code and regulations adopted pursuant to this code specified in the EFP. All other applicable laws and regulations shall remain in effect.

(5) Permits shall be issued pursuant to the process established in subdivision (b).

(b) The commission shall establish by regulation an expeditious process for department review, public notice and comment, commission approval, and prompt department issuance of EFPs, that is consistent with Section 7059.

(c) Upon completion of the activities authorized in an EFP, or periodically under terms specified by the commission, a person fishing under an EFP shall submit to the commission and the department a final report summarizing the EFP research and findings, and any scientific reports or other publications created as a result of the activity.

(d) Unless otherwise specified by the commission, an EFP issued pursuant to this section is valid for a period of one year. However, the department shall not issue an EFP for the same purposes for more than four consecutive years.

(e) The department shall post, and annually update, information regarding approved EFP activities, including information on the fishery and region affected, the experimental intent, and other relevant information on its Internet Web site.

(f) On or before January 1, 2025, and every five years thereafter, the department shall complete and provide to the appropriate legislative committees a report summarizing the approved EFPs and benefits of the EFP program to the sustainability of California fisheries, efficiency of fishing effort, and reduction of bycatch in California fisheries.

(g) The commission may charge a permit fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of the department and the commission relating to the EFP.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Compensation fishing" means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or fishing that serves as an incentive for participation in those studies. Compensation fishing may include fishing before, during, or following those surveys or studies.

(2) "Conservation engineering" means the study of fish behavior and the development and testing of new gear technology and fishing techniques that promote efficient and sustainable harvest of target species or reduce collateral effects, such as bycatch and adverse effects on habitat, or both.

(3) "EFP" means an experimental fishing permit.

(4) "Exploratory fishing" means fishing to collect data or conduct other research, typically to provide information that could inform the potential opening of a new fishery or an area currently closed to fishing.

SEC. 5. Section 7090 of the Fish and Game Code is amended to read:

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

(b) For purposes of this section, "emerging fishery," in regard to a marine fishery, means both of the following:

(1) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(2) A fishery that is not an established fishery. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(A) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(B) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(C) A fishery for which a population estimate and catch quota is established annually.

(D) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(E) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

(c) The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

(d) The commission, upon the recommendation of the department, may do either, or both, of the following:

(1) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted.

(2) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

(e) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this part. In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years unless extended by the commission. During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but need not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

(f) The commission is authorized to impose a fee on an emerging fishery in order to pay the costs of implementing this chapter. The fees may include, but need not be limited to, ocean fishing stamps and permit fees. The fees may not be levied in excess of the necessary costs to implement and administer this chapter. The commission may reduce fees annually if it determines that sufficient revenues exist to cover costs incurred by the department in administering this chapter. The commission and the department, with the advice of fishery participants and other interested parties, shall consider alternative ways to fund the evaluation of emerging fisheries.

(g) An emerging fishery is subject to this section unless the department incorporates the fishery into a fishery management plan developed under Sections 7070 to 7088, inclusive.

(h) In the event that this section is found to conflict with Section 1022, 8614, or 8615, this section shall prevail.

SEC. 6. Section 7712 of the Fish and Game Code is amended to read:

7712. Where a fishery is closed or restricted due to the need to protect a fishery resource, marine mammals, or sea birds, or due to a conflict with other fisheries or uses of the marine environment, it shall be the policy of the department and the commission, consistent with budgetary and personnel considerations, to assist and foster the development of alternative fisheries or alternative fishing gear for those commercial fishermen affected by the restrictions, closures, or resource losses, including, but not limited to, the issuing of experimental fishing permits pursuant to Section 1022.

SEC. 7. Section 8606 of the Fish and Game Code is repealed.

SEC. 8. Section 8834.1 of the Fish and Game Code is amended to read:

8834.1. It is unlawful for any person to possess salmon on board, or to land salmon from, a vessel on which exists any type of trawl net, except that salmon taken incidentally with other species with a trawl net may be possessed and landed if authorized to be taken incidentally pursuant to Section 663.10 of Part 663 of Title 50 of the Code of Federal Regulations, pursuant to a permit issued by the department under Section 1022, or pursuant to both.

SEC. 9. 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.