



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-2369 Fishing: marine protected areas: violations. (2017-2018)

SHARE THIS:  

Date Published: 08/24/2018 09:00 PM

Assembly Bill No. 2369

CHAPTER 189

An act to amend Sections 7857 and 12000 of, and to add Section 12012.5 to, the Fish and Game Code, relating to fishing.

[Approved by Governor August 24, 2018. Filed with Secretary of State August 24, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, Gonzalez Fletcher. Fishing: marine protected areas: violations.

(1) The Marine Life Protection Act (MLPA) establishes the Marine Life Protection Program to reexamine and redesign California's marine protected area system. Existing law requires the Department of Fish and Wildlife to prepare, and the Fish and Game Commission to adopt, a master plan that guides the adoption and implementation of the program. Under the MLPA, the commission is authorized to regulate commercial and recreational fishing and any other taking of marine species in marine protected areas, but the taking of a marine species in a marine life reserve, a type of marine protected area, is prohibited for any purpose, including recreational and commercial fishing, except as authorized by the commission for scientific purposes.

Existing law generally makes any violation of the Fish and Game Code or any rule, regulation, or order made or adopted under the code a misdemeanor. Existing law makes a violation of a specified regulation relating to marine protected areas, marine managed areas, and special closures an infraction or a misdemeanor, except under certain circumstances, including if the person who violates the regulation holds a commercial fishing license or a commercial passenger fishing boat license. Existing law generally provides that the punishment for a violation of the Fish and Game Code that is a misdemeanor is a fine of not more than \$1,000, or imprisonment in a county jail for not more than 6 months, or by both that fine and imprisonment.

This bill would expand the applicability of a misdemeanor for a violation of this regulation from a person who holds a commercial passenger fishing boat license to a person who is operating a boat or vessel licensed as a commercial passenger fishing boat at the time of the violation. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law provides that any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges a bird, fish, mammal, reptile, or amphibian, or part of any of those animals, for profit or personal gain, is guilty of a misdemeanor punishable by a fine of not less than \$5,000 nor more than \$40,000, or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. Existing law increases the fine for a 2nd or subsequent violation. Existing law exempts fish taken pursuant to a commercial fishing license from this provision.

Existing law generally requires that prosecution for an offense not punishable by death, imprisonment in the state prison, or specified felonies punishable by imprisonment in a county jail, be commenced within one year after commission of the offense, except as specified.

This bill would establish a separate penalty for a person who holds a commercial fishing license, or is operating a boat or vessel licensed as a commercial passenger fishing boat, and, for commercial purposes, either unlawfully takes a fish within a marine protected area, or engages in, or knowingly facilitates another person's, fishing activity within the marine protected area. This penalty would be equivalent to the penalties established for the above-described poaching provision. The bill would also authorize the department to suspend a person's commercial fishing license or commercial passenger fishing boat license, as applicable, or other privilege issued pursuant to the Fish and Game Code, if the person is convicted of a 2nd or subsequent violation that is punishable pursuant to this provision, after having been convicted of a previous violation that is punishable pursuant to this provision that occurred within the previous 10 years. The bill would authorize a suspension to be appealed to the commission. The bill would require prosecution of an offense punishable under this provision to be commenced within 3 years after the commission of the offense. By changing the penalty for this crime, this bill would impose a state-mandated local program.

(2) Existing law applies various conditions 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 of Fish and Wildlife, including a condition that those entitlements are not transferable unless expressly authorized. Existing law authorizes, subject to specified requirements, the transfer of various types of permits to take certain species of fish for commercial purposes upon application to the department.

This bill would require an application to transfer any permit or other entitlement to take fish for commercial purposes to be deferred if the current holder of the permit or other entitlement is awaiting final resolution of any pending criminal, civil, or administrative action that could affect the status of the permit or other entitlement.

(3) 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. The Legislature finds and declares all of the following:

(a) The State of California has established a network of marine protected areas to further the environmental and social goals set out in the Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3 of the Fish and Game Code).

(b) Given the high commercial value of certain marine species, existing penalties for violation of take restrictions within components of the marine protected area network by commercial fishers and operators of commercial passenger fishing vessels are insufficient to serve as an effective deterrent to poaching.

(c) It is in the public interest to ensure that poachers pay back the full value of the wildlife resources they take from the public by increasing fines and other penalties for egregious violations to more accurately reflect the value of the state's marine protected area network.

(d) It is in the interest of California's fishing industry to deter illegal poaching in marine protected areas in order to prevent violators from profiting at the expense of law-abiding fishers.

(e) It is in the public interest to prevent permits from being transferred in an effort to avoid suspension or revocation when the permitholder is facing violations that could affect the status of the permit.

SEC. 2. 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 of that term.

(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.

(n) An application to transfer any permit or other entitlement to take fish for commercial purposes shall be deferred if the current holder of the permit or other entitlement is awaiting final resolution of any pending criminal, civil, or administrative action that could affect the status of the permit or other entitlement.

SEC. 3. Section 12000 of the Fish and Game Code is amended to read:

12000. (a) Except as expressly provided otherwise in this code, any violation of this code, or of any rule, regulation, or order made or adopted under this code, is a misdemeanor.

(b) Notwithstanding subdivision (a), a person who violates any of the following statutes or regulations is guilty of an infraction punishable by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or of a misdemeanor:

(1) Section 2009.

(2) Subdivision (a) of Section 6596.1.

(3) Section 7149.8.

(4) Sections 1.14, 1.17, 1.62, 1.63, and 1.74 of Title 14 of the California Code of Regulations.

- (5) Sections 2.00 to 5.95, inclusive, and 7.00 to 8.00, inclusive, of Title 14 of the California Code of Regulations.
- (6) Sections 27.56 to 30.10, inclusive, of Title 14 of the California Code of Regulations.
- (7) Sections 40 to 43, inclusive, of Title 14 of the California Code of Regulations.
- (8) Section 251.7 of Title 14 of the California Code of Regulations.
- (9) Sections 307, 308, and 311 to 313, inclusive, of Title 14 of the California Code of Regulations.
- (10) Sections 505, 507 to 510, inclusive, and 550 to 552, inclusive, of Title 14 of the California Code of Regulations.
- (11) Section 630 of Title 14 of the California Code of Regulations.
- (12) Section 632 of Title 14 of the California Code of Regulations, except if either of the following apply:

(A) The person who violates the regulation holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 or the person who violates the regulation is operating a boat or vessel licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 at the time of the violation. Except as provided in Section 12012.5, a person described in this subparagraph who violates Section 632 of Title 14 of the California Code of Regulations is guilty of a misdemeanor punishable pursuant to Section 12002.

(B) The violation of the regulation occurred within two years of a prior violation of the regulation that resulted in a conviction.

SEC. 4. Section 12012.5 is added to the Fish and Game Code, to read:

12012.5. (a) Notwithstanding Section 12000 or any other provision of this code, a person who holds a commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6, or is operating a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6, and, for commercial purposes, either unlawfully takes a fish, within any meaning provided in Section 86, within a marine protected area, as defined in Section 2852, or engages in, or knowingly facilitates another person's, fishing activity within the marine protected area, is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than forty thousand dollars (\$40,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation that is punishable pursuant to subdivision (a) and the violation occurred within 10 years of a prior violation that is punishable pursuant to subdivision (a) that resulted in a conviction, the department may suspend that person's license described in subdivision (a), as applicable, or other privilege issued pursuant to this code, and that person shall be punished by a fine of not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000), or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) A person whose license or other privilege is suspended pursuant to this section may appeal the suspension to the commission. The commission shall initiate the appeal process within 12 months of the violator's appeal request. The commission shall consider at least the nature, circumstances, extent, and gravity of the person's violations, the person's culpability for the violations, and the injury to natural resources by the violations, and may restore a person's license or other privileges.

(d) 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.

SEC. 5. 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.