

AMENDED IN SENATE APRIL 6, 2021
AMENDED IN SENATE MARCH 23, 2021
AMENDED IN SENATE MARCH 5, 2021

SENATE BILL

No. 80

Introduced by Senator McGuire
(Coauthors: Senators Dahle, Dodd, and Nielsen)
(Coauthors: Assembly Members ~~Megan Dahle and Stone~~ *Megan Dahle,*
Stone, and Ting)

December 15, 2020

An act to amend Sections 5523, 8276.4, 8276.5, 8279.1, 8280.3, and 8283 of, and to add Sections 7711 and 8285 to, the Fish and Game Code, and to add Article 15 (commencing with Section 111224) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to commercial fishing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 80, as amended, McGuire. Commercial fishing: inspection: crab traps.

(1) Existing law prohibits a person from using or operating, or assisting in using or operating, a boat, aircraft, net, trap, line, or other appliance to take fish for commercial purposes unless the person holds a commercial fishing license issued by the Department of Fish and Wildlife. Existing law generally requires any person who engages in any business for profit involving fish to have a commercial fish business license issued by the department, and requires specialty licenses for specified classes of fish business. Existing law requires all fish taken or otherwise dealt with under the law to be exhibited upon demand to

any person authorized by the department to enforce any law relating to the protection and conservation of fish. A violation of the Fish and Game Code or a regulation adopted pursuant to the code is a crime.

This bill would require a person who holds a commercial fishing license or a commercial fish business license, upon request of an authorized agent or employee of the department, to immediately relinquish, at no charge, fish or parts of fish caught or landed in California to the department for the purpose of collecting a biological sample. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Ocean Protection Council to make a grant, upon appropriation of funding by the Legislature, for the development and administration of a Dungeness crab task force. Under existing law, the task force is comprised of 21 voting members and 6 nonvoting members, with the voting members representing various fishing and crab processing interests. Existing law requires the task force, among other things, to make recommendations on various topics and requires these recommendations to be forwarded to the Joint Committee on Fisheries and Aquaculture, the Department of Fish and Wildlife, and the Fish and Game Commission upon an affirmative vote of at least $\frac{2}{3}$ of the task force members. Existing law also authorizes a proposed recommendation of the Dungeness crab task force regarding a modification to the Dungeness crab trap limit program to be transmitted to the Director of Fish and Wildlife and the Legislature if the recommendation receives an affirmative vote of at least 15 of the non-ex officio members of the Dungeness crab task force.

This bill would revise the vote threshold for these purposes by requiring an affirmative vote of at least $\frac{2}{3}$ of the voting members of the task force to forward or transit a recommendation.

~~(2)~~

(3) Existing law prohibits a person from using a vessel to take, possess, or land Dungeness crab for commercial purposes using Dungeness crab traps without a Dungeness crab vessel permit. Existing law prohibits the transfer of a Dungeness crab vessel permit except under certain circumstances. Existing law authorizes, upon written approval of the Department of Fish and Wildlife, the owner of a vessel to whom a Dungeness crab vessel permit has been issued to retain that permit upon the sale of that permitted vessel for the purpose of transferring the permit to another vessel to be purchased by that

individual within one year of the time of sale of the vessel for which the permit was originally issued if certain requirements are satisfied.

This bill would delete the requirement that the vessel to which the permit will be transferred be purchased by that individual within one year of the time of sale of the vessel for which the permit was originally issued, and would provide that if the permit is not transferred to a new vessel within one year of the sale of the permitted vessel, the permit shall become void by operation of law.

Existing law authorizes, in the event of loss or destruction of a vessel for which a Dungeness crab vessel permit was issued, or serious damage that renders the vessel inoperable, and upon written approval of the department, the owner of the vessel to whom the permit was issued to retain the permit and to transfer the permit to another equivalent vessel during the period of 2 years after the loss or damage of the vessel for which the permit was originally issued. Existing law provides that, if the permit is not permanently transferred to another vessel owned by the person to whom the vessel permit was originally issued within 2 years of the loss or damage, the permit shall become void by operation of law.

This bill would delete the requirement that the vessel to which the permit will be transferred be owned by the person to whom the vessel permit was originally issued.

(4) Existing law prohibits a person from taking, possessing onboard, or landing Dungeness crab for commercial purposes from a vessel in any ocean waters for 30 days after the opening of those waters for the commercial Dungeness crab fishing season if the opening of the season for those waters has been delayed and the same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes, from ocean waters outside of the delayed waters, before the opening of the delayed waters for the season. This law is commonly referred to as the “fair start law.” Existing law specifies the circumstances in which a delay has occurred for the purposes of the fair start law.

Existing law requires the Department of Fish and Wildlife, on or before November 1, 2020, to adopt regulations establishing criteria and protocols to evaluate and respond to potential risk of marine life entanglement, as prescribed. Upon the effective date of these regulations, existing law authorizes the Director of Fish and Wildlife to restrict the take of Dungeness crab pursuant to the criteria and protocols.

This bill would specify that a delay in the opening of waters implemented pursuant to these criteria and protocols or a delay in the opening of waters in Oregon or Washington by a closure to prevent a risk of marine life entanglement constitutes a delay for purposes of the fair start law.

(3)

(5) Existing law authorizes crab traps to be set and baited 64 hours prior to the opening date of the Dungeness crab season in Fish and Game Districts 6, 7, 8, and 9. Existing law also authorizes crab traps to be set and baited in advance of that opening date in those districts if no other attempt is made to take or possess Dungeness crab in those districts. Existing law also provides, except in Fish and Game Districts 6, 7, 8, and 9, that crab traps may be set and baited 18 hours in advance of the opening date of the Dungeness crab season, if no other attempt is made to take or possess Dungeness crab.

This bill would instead authorize crab traps to be set and baited 64 hours before the opening date of the Dungeness crab season regardless of the Fish and Game District. The bill would also make conforming changes.

(4)

(6) Existing state law, the Sherman Food, Drug, and Cosmetic Law, makes it unlawful to manufacture, sell, deliver, hold, or offer for sale adulterated food. Existing law prescribes when a food is adulterated, including if it bears or contains any poisonous or deleterious substance that may render it injurious to the health of a person or other animal that may consume it. Existing law makes a violation of the Sherman Food, Drug, and Cosmetic Law or a regulation adopted pursuant to that law a misdemeanor.

Existing law authorizes the Director of Fish and Wildlife to order the closure of any waters or otherwise restrict the taking in state waters of any species of fish if the Director of Environmental Health Hazard Assessment, in consultation with the State Public Health Officer, determines that the species or subspecies of fish is likely to pose a human health risk from high levels of toxic substances. Existing law provides for the Director of Fish and Wildlife, upon receiving notification from the Director of Environmental Health Hazard Assessment that a human health risk no longer exists and a request to reopen those waters, to reopen those waters in a manner that promotes a fair and orderly fishery. A violation of the Fish and Game Code or a regulation adopted pursuant to the code is a crime.

This bill would authorize a fishing vessel to transit closed waters in possession of species where take is otherwise restricted pursuant to those provisions if the vessel adheres to electronic monitoring requirements specified by the Department of Fish and Wildlife. The bill would authorize the State Department of Public Health to adopt regulations to authorize the manufacture, sale, delivery, holding, or offering for sale of eviscerated Dungeness crab that is caught in waters where the State Department of Public Health determined that the viscera of Dungeness crab exceed allowable levels of domoic acid for Dungeness crab adopted by the State Department of Public Health if the meat of Dungeness crab does not exceed allowable levels of domoic acid for Dungeness crab adopted by the State Department of Public Health. The bill would require the State Department of Public Health to adopt these regulations consistent with specified requirements. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The bill would require the State Department of Public Health to order the evisceration, as defined, of Dungeness crab if the domoic acid for Dungeness crab exceeds the allowable levels for viscera in certain areas when specified criteria exist. The bill would require the State Department of Public Health to only authorize the evisceration of Dungeness crab by a licensed processor, as defined, that also has a specified plan approved by the State Department of Public Health for handling and preparing eviscerated crab, and would also require the State Department of Public Health to establish labeling requirements for eviscerated crab, as specified, and to require the processor to maintain written recall procedures.

The bill would require the State Department of Public Health to consult with ~~a certain~~ *the* Dungeness crab task force or a successor task force or committee to establish the criteria for the manufacture, sale, delivery, holding, or offering for sale of Dungeness crab caught in areas subject to an evisceration order by the State Department of Public Health. The bill would require the State Department of Public Health to publish notice of the proposed criteria, as specified, and make the criteria effective by operation of law as regulations 90 days after the notice is published.

The bill would authorize the Director of Fish and Wildlife, in accordance with specified requirements, to open waters that are otherwise restricted for the commercial take of Dungeness crab or rock crab during a time period when the State Department of Public Health

authorizes the manufacture, sale, delivery, holding, or offering for sale of rock crab, or eviscerated Dungeness crab pursuant to the above-described provisions. The bill would require the holder of a Dungeness crab vessel permit or rock crab permit to submit to electronic monitoring of the vessel while engaged in the take of Dungeness crab or rock crab, as specified. The bill would authorize a person who takes Dungeness crab or rock crab to sell or provide the Dungeness crab or rock crab only to a processor licensed and approved by the State Department of Public Health, as specified. The bill would require the Director of Fish and Wildlife, when evisceration procedures established pursuant to the bill are no longer in effect, to lift related restrictions in a manner that promotes a fair and orderly fishery. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(5)

(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.

(6)

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares both of the
- 2 following:
- 3 (a) In the event of a human health risk, the Director of Fish and
- 4 Wildlife has the existing authority to impose restrictions on a part
- 5 or parts of an individual fish available through the fishery.
- 6 (b) A statutory framework for providing the Director of Fish
- 7 and Wildlife with authority to impose restrictions on a part or parts
- 8 of an individual fish for public consumption needs to be
- 9 established.
- 10 SEC. 2. Section 5523 of the Fish and Game Code is amended
- 11 to read:

1 5523. (a) (1) If the Director of Environmental Health Hazard
2 Assessment, in consultation with the State Public Health Officer,
3 determines, based on thorough and adequate scientific evidence,
4 that any species or subspecies of fish is likely to pose a human
5 health risk from high levels of toxic substances, the Director of
6 Fish and Wildlife may order the closure of any waters or otherwise
7 restrict the taking in state waters of that species.

8 (2) After the Director of Fish and Wildlife orders the closure
9 of any waters or restricts the taking of any species of fish pursuant
10 to paragraph (1), the Director of Fish and Wildlife shall notify the
11 commission and request that the commission schedule a public
12 discussion of the closure or restriction at its next scheduled full
13 commission meeting.

14 (3) A fishing vessel may transit closed waters in possession of
15 species where take is otherwise restricted pursuant to paragraph
16 (1) if the vessel adheres to electronic monitoring requirements
17 specified by the department.

18 (b) (1) When the Director of Environmental Health Hazard
19 Assessment, in consultation with the State Public Health Officer,
20 determines that a health risk no longer exists, the Director of
21 Environmental Health Hazard Assessment shall notify the Director
22 of Fish and Wildlife and shall request that any waters closed
23 pursuant to subdivision (a) be reopened for fishing and any
24 restrictions imposed pursuant to subdivision (a) be lifted.

25 (2) Upon receiving the notification and request pursuant to
26 paragraph (1), the Director of Fish and Wildlife shall open any
27 waters closed pursuant to subdivision (a) and lift any restrictions
28 imposed pursuant to subdivision (a) in a manner that promotes a
29 fair and orderly fishery.

30 (c) It is unlawful to take any fish from any closed waters or to
31 otherwise violate any restriction on take imposed pursuant to this
32 section.

33 (d) If there is a delay in the opening of any waters for Dungeness
34 crab season pursuant to this section, the Director of Fish and
35 Wildlife may further delay opening those waters in order to provide
36 72-hours notice before a gear setting period. If, with 72-hours
37 notice, the gear setting period would begin on a federal holiday,
38 a state holiday, the day before Thanksgiving Day, December 24,
39 or December 31, the Director of Fish and Wildlife may delay
40 opening those waters for the additional time that is necessary to

1 begin the gear setting period on the next day that is not one of
2 those days.

3 (e) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 actions taken pursuant to this section.

6 SEC. 3. Section 7711 is added to the Fish and Game Code, to
7 read:

8 7711. (a) A person shall, upon request by an authorized agent
9 or employee of the department, immediately relinquish, at no
10 charge, fish or parts of fish caught or landed in California to the
11 department for the purpose of collecting a biological sample.

12 (b) For purposes of this section, "person" means a person
13 licensed pursuant to Section 7850 or a person licensed pursuant
14 to Article 7 (commencing with Section 8030).

15 SEC. 4. Section 8276.4 of the Fish and Game Code is amended
16 to read:

17 8276.4. (a) The Ocean Protection Council shall make a grant,
18 upon appropriation of funding by the Legislature, for the
19 development and administration of a Dungeness crab task force.
20 The membership of the Dungeness crab task force shall be
21 comprised of all of the following:

22 (1) Two nonvoting members representing the department,
23 appointed by the department.

24 (2) One nonvoting representative of the University of California
25 Sea Grant, appointed by the University of California Sea Grant.

26 (3) Seven members appointed by the Chair of the Ocean
27 Protection Council following a public solicitation for nominations,
28 as follows:

29 (A) One voting and one nonvoting member representing sport
30 fishing interests.

31 (B) Two voting members representing crab processing interests.

32 (C) One voting member representing commercial passenger
33 fishing vessel interests.

34 (D) Two nonvoting members representing nongovernmental
35 organization interests.

36 (4) Seventeen voting members representing commercial fishery
37 interests, elected by licensed persons possessing valid Dungeness
38 crab permits in their respective ports and production levels, as
39 follows:

40 (A) Three members from Crescent City.

- 1 (B) One member from Trinidad.
- 2 (C) Two members from Eureka.
- 3 (D) Two members from Fort Bragg.
- 4 (E) Two members from Bodega Bay.
- 5 (F) Two members from San Francisco.
- 6 (G) Two members from Half Moon Bay.
- 7 (H) Two members from ports south of Half Moon Bay.
- 8 (I) One member who has a valid California nonresident crab
- 9 permit.
- 10 (b) (1) Elected members in each port shall represent the
- 11 following production levels:
 - 12 (A) For ports with one elected member, the member shall
 - 13 represent both the upper and lower production levels.
 - 14 (B) For ports with two elected members, one member shall
 - 15 represent the upper production level and one member shall
 - 16 represent the lower production level.
 - 17 (C) For ports with three elected members, one member shall
 - 18 represent the upper production level, one member shall represent
 - 19 the lower production level, and one member shall represent both
 - 20 the upper and lower production levels.
- 21 (2) Upper and lower production levels shall be determined in
- 22 relation to the average landing, during the five-year period before
- 23 the beginning of an election cycle, of valid crab permitholders who
- 24 landed a minimum of 25,000 pounds of crab during that period.
- 25 (c) Elections shall be held every three years in each port, on a
- 26 staggered basis across ports, in coordination with the department
- 27 or the Ocean Protection Council and with support from an
- 28 administrative team of the Dungeness crab task force. In an election
- 29 year, all elected members in a port shall be subject to reelection.
- 30 There is no limit on the number of terms that may be served by
- 31 any person.
- 32 (d) (1) Each member appointed pursuant to paragraph (1), (2),
- 33 or (3) of subdivision (a) shall select an alternate to serve and, if
- 34 applicable, vote in the member's place in case of the member's
- 35 absence from, or disqualification from participating in, a meeting
- 36 of the task force. If the position of a member appointed pursuant
- 37 to one of those paragraphs becomes vacant, the alternate member
- 38 shall serve until the position is filled as required pursuant to that
- 39 paragraph.

1 (2) Each elected member shall select an alternate in the same
2 port and production level to serve and vote in the member's place
3 in case of the member's absence from, or disqualification from
4 participating in, a meeting of the task force. If the position of the
5 member becomes vacant, the alternate shall serve and vote in the
6 member's place until the next election is held in the port pursuant
7 to subdivision (c).

8 (e) The Dungeness crab task force shall do all of the following:

9 (1) Review and evaluate the commercial Dungeness crab
10 management measures described in Section 8276.5, and make
11 recommendations to the Joint Committee on Fisheries and
12 Aquaculture, the department, and the commission, no later than
13 January 15, 2022, and by January 15 of every third year thereafter
14 through 2028.

15 (2) Make recommendations by the dates specified in paragraph
16 (1) on all of the following: the need for a permanent Dungeness
17 crab advisory committee, the economic impact of the program
18 described in Section 8276.5 on permit holders of different tiers and
19 the economies of different ports, the cost of the program to the
20 department, including enforcement costs, the viability of a buyout
21 program for the permit holders described in subparagraph (G) of
22 paragraph (1) of subdivision (a) of Section 8276.5, refining
23 commercial Dungeness crab management, and the need for
24 statutory changes to accomplish task force objectives.

25 (3) In considering commercial Dungeness crab management
26 options, prioritize the review of pot limit restriction options, current
27 and future commercial fishery effort, season modifications,
28 essential fishery information needs, and short- and long-term
29 objectives for improved management.

30 (f) The task force may establish subcommittees of specific user
31 groups from the task force membership to focus on issues specific
32 to commercial harvest or crab processing. The subcommittees shall
33 report their recommendations, if any, to the task force.

34 (g) The Ocean Protection Council may include in a grant funding
35 to cover department staffing costs, as well as travel costs for task
36 force participants as specified in paragraph (1) of subdivision (a).

37 (h) Except as otherwise provided in Section 8276.5, a
38 recommendation shall be forwarded to the Joint Committee on
39 Fisheries and Aquaculture, the department, and the commission

1 upon an affirmative vote of at least two-thirds of the *voting*
2 *members of the task force* ~~members~~. *force*.

3 (i) Eligibility to take crab in state waters and offshore for
4 commercial purposes may be subject to restrictions, including, but
5 not limited to, restrictions on the number of traps utilized by that
6 person, if either of the following occurs:

7 (1) A person holds a California Dungeness crab permit with
8 California landings of less than 5,000 pounds between November
9 15, 2003, and July 15, 2008, inclusive, as reported in California
10 landings receipts.

11 (2) A person has purchased a Dungeness crab permit on or after
12 July 15, 2008, from a permitholder whose California landings were
13 less than 5,000 pounds between November 15, 2003, and July 15,
14 2008, inclusive, as reported in California landings receipts.

15 (j) This section shall become inoperative on April 1, 2029, and,
16 as of January 1, 2030, is repealed, unless a later enacted statute,
17 that becomes operative on or before January 1, 2030, deletes or
18 extends the dates on which it becomes inoperative and is repealed.

19 *SEC. 5. Section 8276.5 of the Fish and Game Code is amended*
20 *to read:*

21 8276.5. (a) In consultation with the Dungeness crab task force,
22 or its appointed representatives, the director shall adopt a program,
23 by March 31, 2013, for Dungeness crab trap limits for all California
24 permits. Unless the director finds that there is consensus in the
25 Dungeness crab industry that modifications to the following
26 requirements are more desirable, with evidence of consensus,
27 including, but not limited to, the record of the Dungeness crab task
28 force, the program shall include all of the following requirements:

29 (1) The program shall contain seven tiers of Dungeness crab
30 trap limits based on California landings receipts under California
31 permits between November 15, 2003, and July 15, 2008, as follows:

32 (A) The 55 California permits with the highest California
33 landings shall receive a maximum allocation of 500 trap tags.

34 (B) The 55 California permits with the next highest California
35 landings to those in subparagraph (A) shall receive a maximum
36 allocation of 450 trap tags.

37 (C) The 55 California permits with the next highest California
38 landings to those in subparagraph (B) shall receive a maximum
39 allocation of 400 trap tags.

1 (D) The 55 California permits with the next highest California
2 landings to those in subparagraph (C) shall receive a maximum
3 allocation of 350 trap tags.

4 (E) The 55 California permits with the next highest California
5 landings to those in subparagraph (D) shall receive a maximum
6 allocation of 300 trap tags.

7 (F) The remaining California permits with the next highest
8 California landings to those in subparagraph (E), which are not
9 described in paragraph (1) or (2) of subdivision (i) of Section
10 8276.4, shall receive a maximum allocation of 250 trap tags.

11 (G) The California permits described in paragraphs (1) and (2)
12 of subdivision (i) of Section 8276.4 shall receive a maximum
13 allocation of 175 tags. The tags in this tier shall not be transferable
14 for the first two years of the program.

15 (2) Notwithstanding paragraph (1), the director shall not remove
16 a permit holder from a tier described in paragraph (1), if, after an
17 allocation is made pursuant to paragraph (1), an appeal pursuant
18 to paragraph (8) places a permit holder in a tier different than the
19 original allocation.

20 (3) Participants in the program shall meet all of the following
21 requirements:

22 (A) Unless a participant receives a waiver pursuant to paragraph
23 (4), pay a biennial fee for each trap tag issued pursuant to this
24 section to pay the pro rata share of costs of the program, including,
25 but not limited to, informing permit holders of the program,
26 collecting fees, acquiring and sending trap tags to permit holders,
27 paying for a portion of enforcement costs, and monitoring the
28 results of the program. The fee shall not exceed five dollars (\$5)
29 per trap, per two-year period. All of the trap tags allocated to each
30 permit pursuant to subdivision (a) shall be purchased by the
31 permit holder or the permit shall be void.

32 (B) Purchase a biennial crab trap limit permit of not more than
33 one thousand dollars (\$1,000) per two-year period to pay for the
34 department's reasonable regulatory costs.

35 (C) Not lease a crab trap tag, and transfer a tag only as part of
36 a transaction to purchase a California permitted crab vessel.

37 (D) A Dungeness crab trap that is fished shall contain a trap tag
38 that is fastened to the main buoy, and an additional tag provided
39 by the permit holder attached to the trap. The department shall

1 mandate the information that is required to appear on both buoy
2 and trap tags.

3 (4) The department shall issue a participant a waiver from the
4 biennial fee for each trap tag described in subparagraph (A) of
5 paragraph (3) if the participant is unable to fish due to mandatory
6 military service and the participant submits a request for a waiver
7 to the department at the same time that the participant renews the
8 permit issued pursuant to subparagraph (B) of paragraph (3). A
9 participant who receives a waiver pursuant to this paragraph shall
10 not apply to the department to fish for Dungeness crab during the
11 first year of the waiver, but may apply to fish for Dungeness crab
12 during the second year of the waiver if the participant pays the full
13 cost of the biennial fee for each trap tag. The department shall not
14 limit the number of times a participant may request a waiver.

15 (5) Notwithstanding subparagraph (D) of paragraph (3), a vessel
16 may transit state waters with Dungeness crab traps that are not
17 tagged pursuant to subparagraph (D) of paragraph (3) if the traps
18 contain either a valid Oregon or Washington trap tag, no crab
19 species are onboard the vessel, and the traps are not deployed in
20 state waters.

21 (6) The department shall annually provide an accounting of all
22 costs associated with the crab trap limit program. The department
23 shall use excess funds collected to reduce the cost of the crab trap
24 limit permit fee or tag fee in subsequent years of the program.

25 (7) Permitholders may replace lost tags by application to the
26 department and payment of a fee not to exceed the reasonable costs
27 incurred by the department. The department may waive or reduce
28 a fee in the case of catastrophic loss of tags.

29 (8) Any Dungeness crab permit holder may submit to the director
30 an appeal of a trap tag allocation received pursuant to this section,
31 by March 31, 2014, on a permit-by-permit basis for the purpose
32 of revising upward or downward any trap tag allocation. Any
33 appeal to revise upward a trap tag allocation shall be based on
34 evidence that a permit's California landings during the period
35 between November 15, 2003, and July 15, 2008, inclusive, were
36 reduced as a result of unusual circumstances and that these
37 circumstances constitute an unfair hardship, taking into account
38 the overall California landings history as indicated by landing
39 receipts associated with the permit. The director shall initiate the
40 appeal process within 12 months of receiving an appeal request.

1 The appeal shall be heard and decided by an administrative law
2 judge of the Office of Administrative Hearings, whose decision
3 shall constitute the final administrative decision. Except as
4 provided in subparagraph (B), any Dungeness crab permitholder
5 requesting an appeal to revise upward the permitholder's trap tag
6 allocation shall pay all expenses, including a nonrefundable filing
7 fee, as determined by the department, to pay for the department's
8 reasonable costs associated with the appeal process described in
9 this paragraph.

10 (b) (1) In addition to criminal penalties authorized by law, a
11 violation of the requirements of the program created pursuant to
12 this section shall be subject to the following civil penalties:

13 (A) Conviction of a first offense shall result in a fine of not less
14 than two hundred fifty dollars (\$250) and not more than one
15 thousand dollars (\$1,000) per illegal trap or fraudulent tag.

16 (B) Conviction of a second offense shall result in a fine of not
17 less than five hundred dollars (\$500) and not more than two
18 thousand five hundred dollars (\$2,500) per illegal trap or fraudulent
19 tag, and the permit may be suspended for one year.

20 (C) Conviction of a third offense shall result in a fine of not less
21 than one thousand dollars (\$1,000) and not more than five thousand
22 dollars (\$5,000) per illegal trap or fraudulent tag, and the permit
23 may be permanently revoked.

24 (2) The severity of a penalty within the ranges described in this
25 subdivision shall be based on a determination whether the violation
26 was willful or negligent and other factors.

27 (3) The portion of monetary judgments for noncompliance that
28 are paid to the department shall be deposited in the Dungeness
29 Crab Account created pursuant to subdivision (e).

30 (c) For the purposes of this section, a proposed recommendation
31 that receives an affirmative vote of at least ~~15~~ *two-thirds* of the
32 ~~non-ex-officio voting~~ members of the Dungeness crab task force
33 may be transmitted to the director or the Legislature as a
34 recommendation, shall be considered to be the consensus of the
35 task force, and shall be considered to be evidence of consensus in
36 the Dungeness crab industry. Any proposed recommendation that
37 does not receive a vote sufficient to authorize transmittal to the
38 director or Legislature as a recommendation shall be evidence of
39 a lack of consensus by the Dungeness crab task force, and shall

1 be considered to be evidence of a lack of consensus in the crab
2 industry.

3 (d) The director may modify the program adopted pursuant to
4 subdivision (a), if consistent with the requirements of this section,
5 after consultation with the Dungeness crab task force or its
6 representatives and after the task force has had 60 days or more
7 to review the proposed modifications and recommend any proposed
8 changes. The director may implement the modifications earlier
9 than 60 days after it is sent to the Dungeness crab task force for
10 review, if recommended by the task force.

11 (e) The Dungeness Crab Account is hereby established in the
12 Fish and Game Preservation Fund and the fees collected pursuant
13 to this section shall be deposited in that account. The money in
14 the account shall be used as follows:

15 (1) By the department, upon appropriation by the Legislature,
16 for administering and enforcing the program.

17 (2) In each fiscal year through the 2029 fiscal year, upon
18 appropriation by the Legislature, of the amount remaining in the
19 account after an allocation pursuant to paragraph (1), the sum of
20 one hundred fifty thousand dollars (\$150,000), if available, shall
21 be allocated to the council to support the administration and
22 facilitation of the Dungeness crab task force.

23 (f) For purposes of meeting the necessary expenses of initial
24 organization and operation of the program until fees may be
25 collected, or other funding sources may be received, the department
26 may borrow money as needed for these expenses from the council.
27 The borrowed money shall be repaid within one year from the fees
28 collected or other funding sources received. The council shall give
29 high priority to providing funds or services to the department, in
30 addition to loans, to assist in the development of the program,
31 including, but not limited to, the costs of convening the Dungeness
32 crab task force, environmental review, and the department's costs
33 of attending meetings with task force members.

34 (g) (1) It is the intent of the Legislature that the department,
35 the council, and the Dungeness crab task force work with the
36 Pacific States Marine Fisheries Commission and the Tri-State
37 Dungeness Crab Commission to resolve any issues pertaining to
38 moving the fair start line south to the border of California and
39 Mexico.

1 (2) For purposes of this subdivision, the resolution of issues
 2 pertaining to the fair start line shall be limited to assessing the
 3 positive and negative implications of including District 10 in the
 4 tri-state agreement, including working with the Tri-State Dungeness
 5 Crab Commission to amend Oregon and Washington laws to
 6 include District 10 in the regular season fair start clause, and
 7 discussion of providing different rules for District 10 with regard
 8 to preseason quality testing.

9 (h) For purposes of this section, “council” means the Ocean
 10 Protection Council established pursuant to Section 35600 of the
 11 Public Resources Code.

12 (i) This section shall become inoperative on April 1, 2029, and,
 13 as of January 1, 2030, is repealed, unless a later enacted statute,
 14 that becomes operative on or before January 1, 2030, deletes or
 15 extends the dates on which it becomes inoperative and is repealed.

16 *SEC. 6. Section 8279.1 of the Fish and Game Code is amended*
 17 *to read:*

18 8279.1. (a) A person shall not take, possess onboard, or land
 19 Dungeness crab for commercial purposes from a vessel in ocean
 20 waters for 30 days after the opening of those waters for the
 21 commercial Dungeness crab fishing season, if both of the following
 22 events have occurred:

23 (1) The opening of the season has been delayed in those waters.

24 (2) The same vessel was used to take, possess onboard, or land
 25 Dungeness crab for commercial purposes, from ocean waters
 26 outside of the delayed waters, before the opening of the delayed
 27 waters for the season.

28 (b) For purposes of this section, a delay in the opening of ocean
 29 waters for the commercial Dungeness crab fishing season has
 30 occurred in either of the following circumstances:

31 (1) The opening of those waters for the season has been delayed
 32 pursuant to Section 5523 or ~~8276.2~~ 8276.2 *or the regulations*
 33 *adopted pursuant to Section 8276.1.*

34 (2) The opening of those waters for the season has been delayed
 35 in Oregon or Washington due to the tri-state quality testing program
 36 or by a closure to prevent a risk to human ~~health~~ *health or a risk*
 37 *of marine life entanglement.*

38 (c) A violation of this section does not constitute a misdemeanor.
 39 Pursuant to Section 7857, the commission shall revoke the

1 Dungeness crab vessel permit that was issued for use on the vessel
2 that was used in violation of this section.

3 (d) This section shall become inoperative on April 1, 2029, and,
4 as of January 1, 2030, is repealed, unless a later enacted statute,
5 that becomes operative on or before January 1, 2030, deletes or
6 extends the dates on which it becomes inoperative and is repealed.

7 ~~SEC. 4.~~

8 *SEC. 7.* Section 8280.3 of the Fish and Game Code is amended
9 to read:

10 8280.3. (a) For purposes of this section, the term “length
11 overall” means the horizontal distance between the forward-most
12 and after-most points on the hull of a vessel. The length overall of
13 a vessel does not include attachments fixed to the stern and bow.

14 (b) Notwithstanding Article 9 (commencing with Section 8100)
15 of Chapter 1 and except as provided in this section, a Dungeness
16 crab vessel permit shall not be transferred.

17 (c) (1) The owner of a vessel to whom a Dungeness crab vessel
18 permit has been issued shall transfer the permit for the use of that
19 vessel upon the sale of the vessel by the permitholder to the person
20 purchasing the vessel, except that the permit shall not be transferred
21 if the vessel is more than five feet longer in length overall, as
22 determined by a licensed marine surveyor, than the baseline length
23 on the permit. Thereafter, upon notice to the department, the person
24 purchasing the vessel may use the vessel for the taking and landing
25 of Dungeness crab for any and all of the unexpired portion of the
26 permit year, and that person is eligible for a permit pursuant to
27 this article for the use of that vessel in subsequent years. The person
28 purchasing the vessel shall not transfer the permit for use of that
29 vessel in the Dungeness crab fishery to another replacement vessel
30 during the same permit year.

31 (2) A permit described in subdivision (c) of Section 8280.1 shall
32 not be transferred pursuant to this subdivision.

33 (d) The owner of a vessel to whom the Dungeness crab vessel
34 permit has been issued may transfer the permit to a replacement
35 vessel of equivalent capacity, except as specified in this section.
36 Thereafter, upon notice to the department and payment of the
37 transfer fee specified in Section 8280.6, the replacement vessel
38 may be used for the taking and landing of Dungeness crab for any
39 and all of the unexpired portion of the permit year and that person

1 is eligible for a permit pursuant to this article for the use of that
2 replacement vessel in subsequent years.

3 (e) (1) The owner of a permitted vessel may transfer the permit
4 to a vessel of greater capacity as follows:

5 (A) If the person the permit is to be transferred to purchased
6 the vessel of greater capacity on or before November 15, 1995,
7 the vessel of greater capacity may not be more than 10 feet longer
8 in length overall than the baseline length on the permit.

9 (B) If the person the permit is to be transferred to purchased the
10 vessel of greater capacity after November 15, 1995, the vessel of
11 greater capacity may not be more than five feet longer in length
12 overall than the baseline length on the permit.

13 (2) A permit described in subdivision (c) of Section 8280.1 shall
14 not be transferred pursuant to this subdivision.

15 (f) (1) The department may authorize the owner of a permitted
16 vessel to transfer the permit to a replacement vessel that was owned
17 by the person the permit is to be transferred to on or before April
18 1, 1996, that does not fish with trawl nets that is greater than five
19 feet longer in length overall than the baseline length on the permit,
20 if all of the following conditions are satisfied:

21 (A) A vessel of a larger size is essential to the proposed
22 permit holder for participation in another fishery other than a trawl
23 net fishery.

24 (B) The owner of the permitted vessel held a permit on or before
25 January 1, 1995, for the fishery for which a larger vessel is needed
26 and has participated in that fishery.

27 (C) The permit for the vessel from which the permit is to be
28 transferred qualified pursuant to paragraph (1) of subdivision (b)
29 of Section 8280.1, as that section read on August 1, 2018, or any
30 prior version of that paragraph.

31 (D) The vessel to which the permit is to be transferred does not
32 exceed 20 feet longer in length overall than the baseline length on
33 the permit and the vessel to which the permit is to be transferred
34 does not exceed 60 feet in length overall.

35 (E) A permit was not previously transferred to the same
36 replacement vessel.

37 (2) A permit described in subdivision (c) of Section 8280.1 shall
38 not be transferred pursuant to this subdivision.

39 (g) A transfer of a permit to a larger vessel shall not be allowed
40 more than one time. If a permit is transferred to a larger vessel,

1 any Dungeness crab vessel permit for that permit year or any
2 subsequent permit years for that larger vessel shall not be
3 transferred to another larger vessel. The department shall not
4 thereafter issue a Dungeness crab vessel permit for the use of the
5 original vessel from which the permit was transferred, except that
6 the original vessel may be used to take or land Dungeness crab
7 after that transfer if its use is authorized pursuant to another
8 Dungeness crab vessel permit subsequently transferred to that
9 vessel pursuant to subdivision (d), (e), or (f).

10 (h) (1) Upon the written approval of the department, the owner
11 of a vessel to whom the Dungeness crab vessel permit has been
12 issued, which has California Dungeness crab landings made with
13 trap gear documented on department landing receipts and which
14 has had California Dungeness crab landings amounting to not less
15 than 5,000 pounds cumulative for the past two Dungeness crab
16 seasons, may temporarily transfer the permit to a replacement
17 vessel for which use in the Dungeness crab fishery is not permitted
18 pursuant to this article that is of equivalent size and capacity of
19 the originally permitted vessel, no greater than 10 feet longer in
20 length overall than the vessel from which the permit is transferred,
21 for a period of not more than six months during the current permit
22 year if the vessel for which the permit was issued is seriously
23 damaged, suffers major mechanical breakdown, or is lost or
24 destroyed, as determined by the department, upon approval of the
25 director. The owner of the vessel shall submit proof that the
26 department may reasonably require to establish the existence of
27 the conditions of this paragraph. Only the permittee at the time of
28 the loss, theft, damage, breakdown, or destruction of the vessel
29 may apply for the transfer of the vessel permit. Proof of loss or
30 destruction shall be documented by submission of a copy of the
31 report filed with the United States Coast Guard or any other law
32 enforcement or fire agency that investigated the loss. In the case
33 of mechanical breakdown, the request shall include an estimate of
34 the costs to repair the vessel from a marine surveyor or boat repair
35 yard. The department shall not issue a permit for a replacement
36 vessel pursuant to this subdivision if the permitted vessel was
37 reported lost, stolen, mechanically broken down, destroyed, or
38 damaged for fraudulent purposes. Upon approval by the director,
39 the owner of a vessel granted a six-month temporary transfer under

1 this section may be granted an additional six-month extension of
2 the temporary transfer.

3 (2) Notwithstanding subdivision (e) of Section 8280.2, in the
4 event of loss or destruction of a vessel for which a Dungeness crab
5 vessel permit was issued, or serious damage that renders the vessel
6 inoperable, and upon written approval of the department, the owner
7 of the vessel to whom the permit was issued may retain the permit
8 and may transfer the permit to another vessel of equivalent size
9 and capacity of the vessel that was lost or damaged during the
10 period of two years after the loss or damage of the vessel for which
11 the permit was originally issued. The owner of the lost or damaged
12 vessel shall submit proof that the department may reasonably
13 require to establish the loss or damage of the vessel. Only the
14 permittee at the time of the loss, theft, damage, or destruction of
15 the vessel may apply for the transfer of the vessel permit. Proof
16 of loss or destruction shall be documented by submission of a copy
17 of the report filed with the United States Coast Guard or any other
18 law enforcement or fire agency that investigated the loss. In the
19 case of mechanical breakdown, the request shall include an estimate
20 of the costs to repair the vessel from a marine surveyor or boat
21 repair yard. The department shall not issue a permit for a
22 replacement vessel pursuant to this paragraph if the lost or damaged
23 vessel was reported lost, stolen, destroyed, mechanically broken
24 down, or damaged for fraudulent purposes. The department shall
25 only transfer a permit pursuant to this paragraph if the lost or
26 damaged vessel has a current permit and the owner of the lost or
27 damaged vessel makes assurances in the application that any
28 renewal of the permit that becomes due during the application
29 processing period will be made. If the permit is not permanently
30 transferred to another vessel within two years of the loss or damage,
31 the permit shall become void by operation of law.

32 (i) Upon written approval of the department, the owner of a
33 vessel to whom the Dungeness crab vessel permit has been issued
34 may retain that permit upon the sale of that permitted vessel for
35 the purpose of transferring the permit to another vessel if the
36 requirements of this section are satisfied, including the payment
37 of transfer fees. If the permit is not transferred to a new vessel
38 within one year of the sale of the permitted vessel, the permit shall
39 become void by operation of law.

1 (j) Except as provided in subdivision (c) of Section 8280.1, in
2 the event of the death or incapacity of a permitholder, the permit
3 shall be transferred, upon application, to the heirs or assigns, or to
4 the working partner, of the permitholder, together with the transfer
5 of the vessel for which the permit was issued, and the new owner
6 may continue to operate the vessel under the permit, renew the
7 permit, or transfer the permit upon sale of the vessel pursuant to
8 subdivision (b). The estate of the holder of a transferable
9 Dungeness crab vessel permit may renew that permit as provided
10 for in statute if needed to keep it valid. The estate of the decedent
11 may transfer that permit pursuant to these regulations no later than
12 two years from the date of death of the permitholder as listed on
13 the death certificate.

14 (k) (1) For purposes of this section, the baseline length on a
15 Dungeness crab vessel permit shall be equal to the length overall
16 of the vessel for which the permit was originally issued, as
17 originally documented on the permit, unless updated pursuant to
18 paragraph (2).

19 (2) (A) If, on or before March 31, 2020, the owner of a vessel
20 to whom a Dungeness crab vessel permit has been issued submits
21 to the department a survey reflecting a current length overall of
22 the vessel that is greater than the length overall described in
23 paragraph (1), the baseline length on the permit shall be equal to
24 that current length overall.

25 (B) A survey submitted pursuant to subparagraph (A) shall be
26 conducted by a licensed marine surveyor.

27 (l) This section shall become inoperative on April 1, 2029, and,
28 as of January 1, 2030, is repealed, unless a later enacted statute,
29 that becomes operative on or before January 1, 2030, deletes or
30 extends the dates on which it becomes inoperative and is repealed.

31 ~~SEC. 5.~~

32 *SEC. 8.* Section 8283 of the Fish and Game Code is amended
33 to read:

34 8283. Crab traps may be set and baited 64 hours before the
35 opening date of the Dungeness crab season. Crab traps may be set
36 and baited in advance of that opening date if no other attempt is
37 made to take or possess Dungeness crab.

38 ~~SEC. 6.~~

39 *SEC. 9.* Section 8285 is added to the Fish and Game Code, to
40 read:

1 8285. (a) The director may open waters that are otherwise
2 restricted for the commercial take of Dungeness crab or rock crab
3 pursuant to Section 5523 during a time period when the State
4 Department of Public Health authorizes the manufacture, sale,
5 delivery, holding, or offering for sale of rock crab, or eviscerated
6 Dungeness crab pursuant to Article 15 (commencing with Section
7 111224) of Chapter 5 of Part 5 of Division 104 of the Health and
8 Safety Code, in accordance with the following requirements:

9 (1) The holder of a Dungeness crab vessel permit or rock crab
10 permit shall submit to electronic monitoring of the vessel as
11 specified in paragraph (3) of subdivision (a) of Section 5523 while
12 engaging in the take of Dungeness crab or rock crab to verify the
13 locations where the Dungeness crab or rock crab is taken.

14 (2) A person shall not take, possess onboard, or land Dungeness
15 crab or rock crab under an evisceration order on the same trip in
16 which crab are taken, possessed onboard, or landed from waters
17 outside those covered by the evisceration order.

18 (3) A person who takes Dungeness crab or rock crab is
19 authorized to sell or provide the Dungeness crab or rock crab only
20 to a processor licensed under Article 7 (commencing with Section
21 8030) of Chapter 1 and approved by the State Department of Public
22 Health pursuant to Article 15 (commencing with Section 111224)
23 of Chapter 5 of Part 5 of Division 104 of the Health and Safety
24 Code.

25 (4) When furnishing a landing receipt pursuant to Section 8043,
26 the processor shall identify on the landing receipt that the entire
27 Dungeness crab or rock crab received includes any taken from an
28 area under an evisceration order.

29 (b) When evisceration procedures established pursuant to Article
30 15 (commencing with Section 111224) of Chapter 5 of Part 5 of
31 Division 104 of the Health and Safety Code are no longer in effect,
32 the director shall lift any restrictions imposed pursuant to
33 subdivision (a) in a manner that promotes a fair and orderly fishery.

34 (c) Chapter 3.5 (commencing with Section 11340) of Part 1 of
35 Division 3 of Title 2 of the Government Code does not apply to
36 actions taken pursuant to this section.

37 ~~SEC. 7.~~

38 *SEC. 10.* Article 15 (commencing with Section 111224) is
39 added to Chapter 5 of Part 5 of Division 104 of the Health and
40 Safety Code, to read:

Article 15. Eviscerated Crab

111224. (a) For purposes of this article, the following terms have the following meanings:

(1) “Eviscerate” or “evisceration” means the processor’s action of removing and discarding the entire intestinal tract, hepatopancreas, and all associated abdominal organs in accordance with this article.

(2) “Eviscerated Dungeness crab” means Dungeness crab in which the viscera have been removed in accordance with regulations adopted pursuant to this section.

(3) “Hazard Analysis Critical Control Point plan” means a hazard analysis critical control point plan as described in Section 123.6 of Title 21 of the Code of Federal Regulations or a successor federal definition.

(4) “Processor” means any person engaged in commercial, custom, or institutional processing of fish or fishery products in California, in another state, or in a foreign country. A processor includes any person engaged in the production of foods that are to be used in market or consumer tests.

(b) The department may adopt regulations to authorize the manufacture, sale, delivery, holding, or offering for sale of eviscerated Dungeness crab that is caught in waters where the department determined that the viscera of Dungeness crab exceed allowable levels of domoic acid for Dungeness crab adopted by the department if the meat of Dungeness crab does not exceed allowable levels of domoic acid for Dungeness crab adopted by department.

(c) The regulations adopted pursuant to this section shall meet the following requirements:

(1) The department shall only authorize the manufacture, sale, delivery, holding, or offering for sale of eviscerated Dungeness crab that is caught in waters that are not closed for the take of Dungeness crab for commercial purposes pursuant to Section 5523 of the Fish and Game Code due to the meat of the Dungeness crab exceeding the allowable levels of domoic acid.

(2) The department shall only authorize the manufacture, sale, delivery, holding, or offering for sale of eviscerated Dungeness crab by a person licensed pursuant to Article 7 (commencing with Section 8030) of Chapter 1 of Part 3 of Division 6 of the Fish and

1 Game Code and who has a Hazard Analysis Critical Control Point
2 plan approved by the department for handling and preparing
3 eviscerated crab.

4 (3) The department shall adopt written recall procedures.

5 (4) The department shall establish requirements for labeling
6 eviscerated crab to identify harvest location, harvest date, or lot
7 code, or any combination of these things.

8 111224.5. The department shall order the evisceration of
9 Dungeness crab if the domoic acid for Dungeness crab exceeds
10 the allowable levels for viscera in a specified area, when all of the
11 following criteria exist:

12 (a) The Dungeness crab is caught in waters where the Director
13 of Fish and Wildlife has closed the waters or otherwise restricted
14 the take of Dungeness crab for commercial purposes pursuant to
15 Section 5523 of the Fish and Game Code due to the viscera of the
16 Dungeness crab exceeding the allowable levels of domoic acid.

17 (b) The department has determined the viscera of the Dungeness
18 crab exceed the allowable levels of domoic acid.

19 (c) The department has determined the corresponding meat of
20 the Dungeness crab does not exceed the allowable levels of domoic
21 acid.

22 111224.6. (a) (1) The department shall only authorize the
23 evisceration of Dungeness crab by a processor that is licensed
24 pursuant to Article 2 (commencing with Section 110460) and that
25 has a Hazard Analysis Critical Control Point plan approved by the
26 department for handling and preparing eviscerated crab.

27 (2) The department shall establish requirements for labeling
28 eviscerated crab to identify harvest location, harvest date, or lot
29 code, or any combination of these things.

30 (3) The department shall require the processor to maintain
31 written recall procedures.

32 (b) (1) The department shall consult with the Dungeness crab
33 task force established pursuant to Section 8276.4 of the Fish and
34 Game Code or a successor task force or committee to establish the
35 criteria for the manufacture, sale, delivery, holding, or offering for
36 sale of Dungeness crab that is subject to Section 111224.5.

37 (2) The Dungeness crab criteria established under this
38 subdivision shall become effective by operation of law as a
39 regulation adopted under this article 90 days after the department
40 publishes the notice required by paragraph (3).

1 (3) The department shall publish a notice in the California
2 Regulatory Notice Register of the department’s proposed
3 Dungeness crab criteria. The notice shall include the proposed text
4 and justification for the addition, change, or deletion of the
5 Dungeness crab criteria to allow public comment. The department
6 shall consider the public comments.

7 (c) This section shall not be subject to Chapter 3.5 (commencing
8 with Section 11340) of Part 1 of Division 3 of Title 2 of the
9 Government Code.

10 ~~SEC. 8.~~

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

20 ~~SEC. 9.~~

21 *SEC. 12.* This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the California Constitution and shall
24 go into immediate effect. The facts constituting the necessity are:

25 In order to ensure safe and orderly Dungeness and rock crab
26 fisheries upon start of the 2021–22 Dungeness and rock crab fishing
27 seasons, it is necessary for this act to take effect immediately.