

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JULY 1, 2010

AMENDED IN ASSEMBLY JUNE 21, 2010

AMENDED IN SENATE APRIL 19, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1093**

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**Introduced by Senator Wiggins**

February 17, 2010

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An act to amend Sections 8276.2 and 8276.4 of, and to add Section 8276.5 to, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1093, as amended, Wiggins. Dungeness crab: pilot program.

(1) Existing law establishes the Ocean Protection Council and requires the council to, among other things, coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems to improve the effectiveness of state efforts to protect ocean resources within existing fiscal limitations.

Existing law requires the council to make a grant, upon appropriation of funding by the Legislature, for the development and administration of a Dungeness crab task force, and specifies the membership of the task force. Existing law requires the task force to cease to exist on January 1, 2011.

This bill would extend that date to January 1, 2015.

(2) Existing law establishes the Dungeness crab seasons for commercial purposes. Existing law authorizes the Director of Fish and Game to authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab in November of each year for the purpose of quality testing according to a testing program and prohibits the sale of crab taken pursuant to the testing program, except for edible crab meat, which may be used for charitable purposes.

This bill would instead allow the crab taken pursuant to the testing program to be sold *after the opening of the Dungeness crab season in specified districts*, provided the proceeds of the sale are allocated to legitimate costs of the testing program, or used for charitable purposes.

(3) Existing law, until January 1, 2011, authorizes the placement of restrictions on a person's eligibility to take crab in state waters and offshore for commercial purposes.

This bill would delete the sunset date for this authority, and would authorize the director ~~to institute~~, *in consultation with the task force, to develop* a pilot program for Dungeness crab trap limits for all California permits. The bill would require the pilot program to contain specified requirements, ~~and prohibit the pilot program from being implemented, modified, eliminated, or added to without at least 2/3 of the non ex officio members of the Dungeness crab task force voting in favor~~, *unless the director makes a specified finding. The bill would require the director to submit the proposed program to the task force for review and recommendations before implementing the program. The bill would authorize the director to implement the program, except as specified, if the director makes a prescribed finding. The bill would require the director to submit a report that includes the finding and the provisions of the final program to the task force and to certain legislative committees. The bill would authorize the task force to recommend the delay of the implementation of the program by up to 18 months, under prescribed circumstances. The bill would establish a corresponding procedure for modifications to the implemented program.*

(4) Existing law requires all money collected under the Fish and Game Code, or under any other law relating to the protection and preservation of birds, mammals, fish, reptiles, or amphibians, to be deposited into the Fish and Game Preservation Fund, unless otherwise provided.

The bill would require trap tag fees collected pursuant to the pilot program to be deposited in the Dungeness Crab Account of the Fish

and Game Preservation Fund, created by this bill, and moneys in the account would be continuously appropriated to the department for purposes of administering the pilot program. The bill would authorize the department to borrow money from the ~~General Fund~~ *council* for purposes of meeting the necessary expenses of initial organization and operation of the pilot program.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 8276.2 of the Fish and Game Code is  
 2 amended to read:  
 3 8276.2. (a) The director may order a delay in the opening of  
 4 the Dungeness crab fishery after December 1 in Districts 6, 7, 8,  
 5 and 9 in any year. The delay in the opening shall not be later than  
 6 January 15 of any year.  
 7 (b) On or about November 1 of each year, the director may  
 8 authorize one or more operators of commercial fishing vessels to  
 9 take and land a limited number of Dungeness crab for the purpose  
 10 of quality testing according to a testing program conducted by, or  
 11 on behalf of, the Pacific States Marine Fisheries Commission or  
 12 an entity approved by the department. The department shall not  
 13 approve a testing program unless it is funded by the entity  
 14 authorized to conduct the testing program. Crab taken pursuant to  
 15 this section may be sold *after the opening of the Dungeness crab*  
 16 *season in Districts 6, 7, 8, and 9*, provided the proceeds of the sale  
 17 are allocated to legitimate costs of the testing program as  
 18 determined by the director, or used for charitable purposes.  
 19 (c) The director shall order the opening of the Dungeness crab  
 20 season in Districts 6, 7, 8, and 9 on December 1 if the quality tests  
 21 authorized in subdivision (b) indicate the Dungeness crabs are not  
 22 soft-shelled or low quality. The entity authorized to conduct the  
 23 approved testing program may test, or cause to be tested, crabs  
 24 taken for quality and soft shells pursuant to the approved testing  
 25 program. If the tests are conducted on or about November 1 and  
 26 result in a finding that Dungeness crabs are soft-shelled or low  
 27 quality, the director shall authorize a second test to be conducted  
 28 on or about November 15 pursuant to the approved testing program.  
 29 If the second test results in a finding that Dungeness crabs are

1 soft-shelled or low quality, the director may order the season  
 2 opening delayed for a period of 15 days and may authorize a third  
 3 test to be conducted on or about December 1. If the third test results  
 4 in a finding that Dungeness crabs remain soft-shelled or of low  
 5 quality, the director may order the season opening delayed for a  
 6 period of an additional 15 days and authorize a fourth test to be  
 7 conducted. This procedure may continue to be followed, except  
 8 that no tests shall be conducted after January 1 for that season, and  
 9 the season opening shall not be delayed by the director later than  
 10 January 15.

11 (d) This section shall become inoperative on April 1, 2012, and,  
 12 as of January 1, 2013, is repealed, unless a later enacted statute  
 13 that is enacted before January 1, 2013, deletes or extends the dates  
 14 on which it becomes inoperative and is repealed.

15 SEC. 2. 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 members representing sport fishing interests.
- 23 (2) Two members representing crab processing interests.
- 24 (3) One member representing commercial passenger fishing  
 25 vessel interests.
- 26 (4) Two ex officio members representing nongovernmental  
 27 organization interests.
- 28 (5) One ex officio representative of Sea Grant.
- 29 (6) Two ex officio members representing the department.
- 30 (7) Seventeen members representing commercial fishery  
 31 interests, elected by licensed persons possessing valid Dungeness  
 32 crab permits in their respective ports and production levels, as  
 33 follows:
  - 34 (A) Four members from Crescent City.
  - 35 (B) One member from Trinidad.
  - 36 (C) Two members from Eureka.
  - 37 (D) Two members from Fort Bragg.
  - 38 (E) Two members from Bodega Bay.
  - 39 (F) Two members from San Francisco.
  - 40 (G) Two members from Half Moon Bay.

1 (H) One member from ports south of Half Moon Bay.

2 (I) One member who has a valid California nonresident crab  
3 permit.

4 (b) For ports with more than one representative, elected members  
5 and their alternates shall represent both the upper and lower, and  
6 in some cases middle, production levels. Production levels shall  
7 be based on the average landing during the previous five years, of  
8 valid crab permit holders who landed a minimum of 25,000 pounds  
9 of crab during the same period.

10 (c) The Dungeness crab task force shall do all of the following:

11 (1) Under the guidance of a professional facilitator hired by the  
12 Ocean Protection Council for this purpose, review and evaluate  
13 Dungeness crab management measures with the objective of  
14 making recommendations to the Joint Committee on Fisheries and  
15 Aquaculture, the department, and the commission no later than  
16 January 15, 2010.

17 (2) Make recommendations, including, but not limited to, the  
18 need for a permanent Dungeness crab advisory committee, refining  
19 sport and commercial Dungeness crab management, establishing  
20 a Dungeness crab marketing commission, and the need for statutory  
21 changes to accomplish task force objectives.

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

27 (d) The task force may establish subcommittees of specific user  
28 groups from the task force membership to focus on issues specific  
29 to sport fishing, commercial harvest, or crab processing. The  
30 subcommittees shall report their recommendations, if any, to the  
31 task force.

32 (e) The Ocean Protection Council may include in a grant funding  
33 to cover department staffing costs, as well as task force participant  
34 travel.

35 (f) A recommendation shall be forwarded to the Joint Committee  
36 on Fisheries and Aquaculture, the department, and the commission  
37 upon an affirmative vote of at least two-thirds of the task force  
38 members.

39 (g) The task force shall cease to exist on January 1, 2015.

1 (h) Eligibility to take crab in state waters and offshore for  
2 commercial purposes may be subject to restrictions, including, but  
3 not limited to, restrictions on the number of traps utilized by that  
4 person, if any of the following occur:

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

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

14 (3) The director institutes a pilot program for Dungeness crab  
15 trap limits pursuant to Section 8276.5.

16 SEC. 3. Section 8276.5 is added to the Fish and Game Code,  
17 to read:

18 8276.5. (a) In accordance with paragraph (1) of subdivision  
19 ~~(b), the director may institute a pilot program for Dungeness crab~~  
20 *(b), in consultation with the Dungeness crab task force, or its*  
21 *appointed representatives, the director may develop a pilot*  
22 *program for Dungeness crab trap limits for all California permits.*  
23 ~~Except as provided in paragraph (2) of subdivision (b), the pilot~~  
24 ~~program~~ *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*  
28 *task force, the pilot program shall include all of the following*  
29 requirements:

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

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

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

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

1 (D) The 55 California permits with the next ~~highest California~~  
2 *highest California* landings to those in subparagraph (C) shall  
3 receive a maximum 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 (h) 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 (h) of Section 8276.4 shall receive a maximum  
13 allocation of 175 trap tags.

14 (2) The department shall do either or both of the following:

15 (A) Obtain new funding to cover the costs of the pilot program  
16 from the council or other funding sources.

17 (B) Collect a fee for each trap tag issued pursuant to paragraph  
18 (1) that covers the pro rata share of costs of the pilot program,  
19 including, but not limited to, informing permit holders of the  
20 program, collecting the fees, acquiring and sending trap tags to  
21 ~~permit holders, and monitoring the results of the program.~~  
22 *permit holders, paying for a portion of enforcement costs, and*  
23 *monitoring the results of the program. The fee shall not exceed*  
24 *two dollars (\$2) per trap per year. In order to reduce the cost of*  
25 *buying and distributing tags, and to increase the amount of the*  
26 *proceeds of the sale of tags that are available for enforcement or*  
27 *other costs, the director may require that tags be used for two*  
28 *years. The cost of a two-year tag shall not exceed four dollars*  
29 *(\$4). All of the trap tags allocated to each permit pursuant to*  
30 *subdivision (a) shall be purchased by the permit holder or the*  
31 *permit shall be void.*

32 (3) An ~~Individual~~ *individual* may appeal a trap tag allocation  
33 received pursuant to paragraph (1) to the director on a  
34 permit-by-permit basis for the purpose of revising upward or  
35 downward any trap tag allocation based on evidence that a permit's  
36 California landings during the period between November 15, 2003,  
37 and July 15, 2008, inclusive, were reduced as a result of unusual  
38 circumstances and that these circumstances constitute an unfair  
39 hardship, taking into account the overall California landings history  
40 as indicated by landing receipts associated with the permit. The

1 director shall initiate the appeal process within 12 months of  
2 receiving an appeal request. The appeal shall be heard and decided  
3 by an administrative law judge of the Office of Administrative  
4 Hearings, whose decision shall constitute the final administrative  
5 decision. An individual requesting an appeal shall pay all expenses  
6 associated with the appeal process described in this paragraph.

7 ~~(4) Unless the director finds that there is consensus in the~~  
8 ~~crab industry that a longer period is desirable, with evidence of~~  
9 ~~consensus, including, but not limited to, the record of the~~  
10 ~~Dungeness crab task force, the director shall not institute a pilot~~  
11 ~~program for Dungeness crab trap tags for a period longer than 3~~  
12 ~~years unless a longer period is authorized by a two-thirds vote of~~  
13 ~~the non-ex-officio members of the Dungeness crab task force. three~~  
14 ~~years.~~

15 ~~(5) Unless new funding is made available specifically for~~  
16 ~~enforcement of the pilot program, the department shall not be~~  
17 ~~required to expend more time or funds on the enforcement of the~~  
18 ~~pilot program than is normally accorded to the crab fishery.~~

19 ~~(6)~~

20 (5) A Dungeness crab trap that is fished shall contain a trap tag  
21 that is fastened to the first buoy.

22 ~~(7)~~

23 (6) The director shall impose penalties and fines for  
24 noncompliance with the requirements of the pilot program *in an*  
25 *amount sufficient to discourage noncompliance. The portion of*  
26 *monetary judgments for noncompliance that are paid to the*  
27 *department shall be deposited in the Dungeness Crab Account*  
28 *established in subdivision (c).*

29 ~~(8)~~

30 (7) With assistance from the council, and if funding is available,  
31 the department shall report on the results of the pilot program. *The*  
32 *Dungeness crab task force may periodically evaluate the impacts*  
33 *of the program and recommend changes to the director, who may*  
34 *modify its provisions in accordance with paragraph (2) of*  
35 *subdivision (b).*

36 (8) *For the purposes of this section, a proposed recommendation*  
37 *that receives an affirmative vote of at least 15 of the non-ex-officio*  
38 *members may be transmitted by the Dungeness crab task force to*  
39 *the director or the Legislature as a recommendation, shall be*  
40 *considered to be the consensus of the task force, and shall be*

1 *considered to be evidence of consensus in the Dungeness crab*  
2 *industry. Any proposed recommendation that does not receive a*  
3 *vote sufficient to authorize transmittal to the director or Legislature*  
4 *as a recommendation shall be evidence of a lack of consensus by*  
5 *the Dungeness crab task force, and shall be considered to be*  
6 *evidence of a lack of consensus in the crab industry.*

7 ~~(b) (1) Prior to implementing the pilot program, the director,~~  
8 ~~with the assistance of the council, shall seek the concurrence of~~  
9 ~~the Dungeness crab task force. The program shall not be~~  
10 ~~implemented without at least two-thirds of the non ex officio~~  
11 ~~members of the Dungeness crab task force voting in favor of~~  
12 ~~concurrence. Dungeness crab task force concurrence may be~~  
13 ~~based on any factor or factors the task force considers significant,~~  
14 ~~including, but not limited to, the amount of the proposed fee~~  
15 ~~collected pursuant to subparagraph (B) of paragraph (2) of~~  
16 ~~subdivision (a).~~

17 ~~(2) The pilot program shall not be modified, eliminated, or added~~  
18 ~~to without the concurrence of at least two-thirds of the non ex~~  
19 ~~officio members of the Dungeness crab task force voting in favor.~~

20 *(b) (1) (A) The director shall submit the proposed program to*  
21 *the Dungeness crab task force for review, and shall not implement*  
22 *the program until the task force has had 60 days or more to review*  
23 *the proposed program and recommend any proposed changes.*  
24 *The director may implement the program earlier than 60 days*  
25 *after it is submitted to the Dungeness crab task force for review,*  
26 *if recommended by the task force.*

27 *(B) After the Dungeness crab task force has reviewed the*  
28 *proposed program, the director may implement the program,*  
29 *subject to any delay pursuant to subparagraph (D), if the director*  
30 *finds that the program represents the consensus view of the crab*  
31 *fishing industry.*

32 *(C) The director shall submit a report that includes the finding*  
33 *pursuant to subparagraph (B) and the provisions of the final*  
34 *program to the Dungeness crab task force and to the Senate*  
35 *Committee on Natural Resources and the Assembly Committee on*  
36 *Water, Parks and Wildlife.*

37 *(D) If, upon receipt of the report, the Dungeness crab task force*  
38 *disagrees with the finding made pursuant to subparagraph (B),*  
39 *the task force may recommend the delay of the implementation of*  
40 *the program by up to 18 months, by an affirmative vote at least 15*

1 of the non-ex officio members, and shall notify, within 60 days of  
2 receipt of the report, the director, the Senate Committee on Natural  
3 Resources, and the Assembly Committee on Water, Parks and  
4 Wildlife of its recommendation. The director shall delay  
5 implementation in accordance with the recommendation of the  
6 Dungeness crab task force, and may thereafter implement the  
7 program. The Dungeness crab task force may vote to rescind a  
8 delay recommendation pursuant to this subparagraph.

9 (E) The requirement for submitting a report imposed under  
10 subparagraph (C) is inoperative four years after the report is due,  
11 pursuant to Section 10231.5 of the Government Code, and the  
12 report shall be submitted in compliance with Section 9795 of the  
13 Government Code.

14 (2) (A) If the program is implemented pursuant to paragraph  
15 (1), the director may modify or eliminate the program, after  
16 consultation with the Dungeness crab task force or its  
17 representatives, after the task force has had 60 days or more to  
18 review the proposed modifications and recommend any proposed  
19 changes. The director may implement the modifications earlier  
20 than 60 days after it is sent to the Dungeness crab task force for  
21 review, if recommended by the task force.

22 (B) After the Dungeness Crab Task Force has reviewed the  
23 modifications, the director may implement any proposed changes,  
24 subject to any delay pursuant to subparagraph (D), if the director  
25 finds that the proposed changes represent the consensus in the  
26 crab fishing industry.

27 (C) The director shall submit a report that includes the finding  
28 pursuant to subparagraph (B) and the proposed changes to the  
29 Dungeness crab task force and to the Senate Committee on Natural  
30 Resources and the Assembly Committee on Water, Parks and  
31 Wildlife.

32 (D) If, upon receipt of the report, the Dungeness crab task force  
33 disagrees with the finding made pursuant to subparagraph (B),  
34 the task force may recommend the delay of the implementation of  
35 the proposed modifications by up to 18 months, by an affirmative  
36 vote of at least 15 of the non-ex officio members, and shall notify,  
37 within 60 days of receipt of the report, the director, the Senate  
38 Committee on Natural Resources, and the Assembly Committee  
39 on Water, Parks and Wildlife of its recommendation. The director  
40 shall delay modifications in accordance with the recommendation

1 *of the Dungeness crab task force, and may thereafter implement*  
2 *the modifications. The Dungeness crab task force may vote to*  
3 *rescind a delay recommendation pursuant to this subparagraph.*

4 *(E) The requirement for submitting a report imposed under*  
5 *subparagraph (C) is inoperative four years after the report is due,*  
6 *pursuant to Section 10231.5 of the Government Code, and the*  
7 *report shall be submitted in compliance with Section 9795 of the*  
8 *Government Code.*

9 *(3) For the purposes of this subdivision, evidence of consensus*  
10 *in the crab fishing industry includes, but is not limited to, the voting*  
11 *record of the Dungeness crab task force.*

12 *(c) The Dungeness Crab Account is hereby established in the*  
13 *Fish and Game Preservation Fund and the fees collected pursuant*  
14 *to subparagraph (B) of paragraph (2) of subdivision (a) shall be*  
15 *deposited in that account. Notwithstanding Section 13340 of the*  
16 *Government Code, the money in the account is continuously*  
17 *appropriated, without regard to fiscal years, to the department for*  
18 *purposes of administering and enforcing the pilot program.*

19 *(d) If the director implements a pilot program, for purposes of*  
20 *meeting the necessary expenses of initial organization and*  
21 *operation of the pilot program until fees may be collected pursuant*  
22 *to subparagraph (B) of paragraph (2) of subdivision (a), or other*  
23 *funding sources may be received, the department may borrow*  
24 *money as needed for these expenses from the General Fund in the*  
25 *State Treasury. The borrowed money shall be repaid with interest*  
26 *council. The borrowed money shall be repaid within one year from*  
27 *the fees collected, or other funding sources received, as provided*  
28 *in this section. The council shall give high priority to providing*  
29 *funds or services to the department, in addition to loans, to assist*  
30 *in the development of the pilot program, including, but not limited*  
31 *to, the costs of convening the Dungeness crab task force,*  
32 *environmental review, and the department's costs of attending*  
33 *meetings with task force members.*

34 *(e) (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 ~~move~~ evaluate moving the fair*  
38 *start line south to the border of California and Mexico.*

39 *~~(2) For purposes of this subdivision, "fair start line" means the~~*  
40 *~~boundary line of a specific region fishing vessels are required to~~*

1 ~~commit to fishing for a period of time prior to being able to leave~~  
2 ~~that region to go fish another area.~~

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

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

O