

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1611 (Lowenthal) – As Amended March 9, 2023

SUBJECT: Fish and Game Code: violations

SUMMARY: Makes the violation of specified provisions of the Fish and Game Code (FGC) and regulations, primarily relating to commercial fishing, an infraction or a misdemeanor (i.e., a wobblette). Specifically, **this bill:**

- 1) Adds the following provisions of the FGC and regulations to those which may be punished as an infraction or a misdemeanor:
 - a) Section 2353 (importation declarations);
 - b) Sections 5508 (unable to determine size/weight of fish) and 5509 (unable to determine species of fish);
 - c) Section 5652 (littering within 150 feet of the high water mark of the waters of the state);
 - d) Sections 7850 (commercial fishing license), 7852.27 (having identification while commercial fishing), 7856 (preparation of fish for human consumption aboard a commercial vessel), 7857 (commercial fishing requirements), 7880 (commercial fishing vessel registration), 7881 (commercial boat registration), 7920 [commercial passenger fishing vessel (CPFV) license], 7923 (CPFV records of fish taken), 8026 (CPFV record of fishing activities), 8030 to 8036, inclusive (commercial fish business licenses), 8043 to 8050, inclusive (landing requirements), 8257 (display permit number on vessel used for lobstering), 9001 (general trap permit), 9003 (trap destruction devices), and 9004 (trap service interval and abandonment prohibition);
 - e) Sections 90 (box crab experimental fishing permits), 91 (experimental fishing permits), 107 (swordfish permit), 123 (tidal invertebrate permit), 132.1 (Dungeness crab trap tags, buoy tags, and allocations), 176 (commercial trawl fishing logs), 180 (general trap permits and requirements), 180.2 (trap destruction devices), 180.4 (finfish trap construction), 180.5 (trap buoy marking), 180.6 (hagfish traps), 182 (commercial salmon fishing), 189 (commercial groundfish fishing), 190 (commercial fishing activity records), 195 (CPFV records), and 197 (commercial fisheries landing requirements) of Title 14 of the California Code of Regulations (CCR);
 - f) Subdivision (e) of Section 150.16 of Title 14 CCR (cumulative trip limits for specific nearshore fish species); and
 - g) Section 650 of Title 14 CCR (scientific collecting permit).

EXISTING LAW:

- 1) Provides that any violation of the FGC or any rule, regulation, or order made or adopted under the FGC is a misdemeanor, except where expressly provided otherwise. Generally

makes a misdemeanor punishable by a fine of not more than \$1,000, imprisonment in county jail for not more than six months, or by both the fine and imprisonment. (FGC § 12000; § 12002).

- 2) Makes a violation of specified regulations and provisions of the FGC an infraction or a misdemeanor (FGC § 12000).
- 3) Specifies violations of specified regulations and FGC sections that are punishable as infractions (FGC § 12002.2.1).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill allows violation of specified regulations and provisions of the FGC to be charged or sentenced as an infraction or a misdemeanor. The author's stated purpose in introducing this bill is to improve compliance with various wildlife laws by providing additional tools to wildlife officers and other law enforcement. According to the author, “[This bill] seeks to give wildlife officers, prosecutors, and judges more flexibility to ensure penalties fit the seriousness of violations, address repeat violations with increasingly serious citations and that violations of the sections covered by [this bill] are addressed in general.”
- 2) **Background.** Generally, any violation of the FGC or any rule, regulation, or order made or adopted under the code is a misdemeanor. Section 12000 of the FGC specifies statutes or regulations that may be enforced as an infraction punishable by a fine of not less than \$100 and not to exceed \$1,000, or as a misdemeanor. An infraction is a non-criminal offense that can be punished by a fine, but no jail time. Most FGC misdemeanors, on the other hand, can be punished by up to six months in jail and/or a fine. Some misdemeanors have longer maximum jail sentences and higher fines (e.g. FGC § 12002).

The ability to choose between an infraction and a misdemeanor is commonly known as a wobblette, and allows for prosecutorial or judicial discretion as to how a particular offense can be charged or sentenced. Typically, the charge can be reduced to an infraction either by the prosecutor at the time of charging, or by a judge during sentencing.

Fish and Game Code wobblettes. Ensuring compliance with the FGC is important to advancing DFW’s mission. For example, the completion and timely submission of accurate commercial fishing activity and landing records, such as logbooks and landing receipts, is essential for DFW managers to successfully manage the state’s commercial fisheries. Without this information, fisheries managers cannot track fishing effort, identify problems that may emerge, ensure the sustainability of fish stocks, and safeguard the livelihood of the commercial fishers that depend on them. Furthermore, failure to hold commercial fishers accountable for violations gives them an unfair advantage over those who spend time and effort following the rules.

Under current law, many commercial fishing statutes related to administrative violations must be treated as misdemeanors in the court system. This includes violations like commercial fishing without a license; failure to renew a permit; failure to register a vessel; and missing landing receipts, transportation receipts, fish business license, or fishing activity

logbooks. Violations concerning scientific collecting permits and experimental fishing permits are also misdemeanors.

Some FGC sections and regulations are already wobblettes. This bill adds additional sections of the FGC and Title 14 of the CCR to the wobblette list. FGC infractions are handled in traffic court, and more serious cases, including repeat offenses, can be prosecuted as misdemeanors. Some violations that can only be prosecuted as misdemeanors currently may be more likely to be deferred or dismissed by a judge. As a result, many of these cases do not make it to court as prosecutors may not be willing to file cases that they expect a judge to dismiss. However, if minor violations were a wobblette, wildlife officers could cite it as an infraction. Wildlife officers could still also cite the violation as a misdemeanor if the severity of the violation warranted this. A prosecutor might then be more willing to pursue the case in a misdemeanor court, and a judge and jury more likely to understand the seriousness of the violations.

- 3) **Arguments in support.** A coalition of organizations writes in support, stating that this bill “would ensure that less serious noncompliance, which falls short of a misdemeanor citation but requires more than a warning, can be more effectively addressed. [...] This approach ensures that real consequences are faced for violations regardless of the scale of the incident, while allowing prosecutors to focus on the most serious poaching cases.”
- 4) **Related legislation.** AB 298 (Gonzalez), Chapter 31, Statutes of 2015, makes first time violations of the rules and regulations associated with Marine Protected Areas and Managed Areas an infraction, rather than a misdemeanor, as long as the individual being charged is not a commercial fisherman or piloting a commercial passenger fishing vessel.

SB 392 (Berryhill), Chapter 346, Statutes of 2013, makes a violation of certain regulatory requirements prohibiting the possession of birds taken in excess of daily bag and possession limits enforceable as either a misdemeanor or an infraction.

AB 1423 (Berryhill), Chapter 394, Statutes of 2009, makes a violation of the prohibition on willfully interfering with the participation of any individual engaged in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where the activity is taking place enforceable as either an infraction or a misdemeanor, and made a second violation within two years of a prior violation punishable as a misdemeanor.

AB 1729 (Committee on Water, Parks, and Wildlife), Chapter 285, Statutes of 2007, among other provisions, makes a number of violations of FGC regulations enforceable as an wobblette, including regulations pertaining to the take of squirrels, rabbits, small game and game birds, and bag and possession limits for sport fish.

AB 1420 (Laird), Chapter 291, Statutes of 2003, among other provisions, makes certain provisions relating to fishing licenses and stamps an infraction or misdemeanor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Fish and Game Warden Supervisors and Managers Association
California Marine Sanctuary Foundation
Environmental Action Committee of West Marin
Heal the Bay
Monterey Bay Aquarium
Ocean Conservancy
Wildcoast

Opposition

None on file

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