

STATE OF CALIFORNIA
DEPARTMENT OF FOOD & AGRICULTURE
MARKETING BRANCH



CALIFORNIA SEA URCHIN COMMISSION LAW

[Chapter 25 of Part 2, Division 22 of the California Food & Agricultural Code]

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CALIFORNIA SEA URCHIN COMMISSION LAW

Contents

Article 1. Declarations and General Provisions.....	1
Article 2. Definitions.....	4
Article 3. The California Sea Urchin Commission.....	6
Article 4. Powers and Duties of the Commission.....	12
Article 5. Implementation and Voting Procedures.....	16
Article 6. Assessments and Records.....	19
Article 7. Continuation or Suspension and Termination	24

Article 1. Declarations and General Provisions

79000.

The sea urchin fishery includes both divers and processors working together to provide a sustainable sea urchin resource and to ensure a reliable supply of quality seafood product for domestic consumption and export, thereby maintaining strong local coastal economies, fair levels of income to the thousands of persons engaged directly and indirectly in commercial fishing enterprises, and historically significant cultural and community resources of California's coast.

79001.

The production and marketing of seafood, including sea urchin, constitute an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

79002.

The production of sea urchin for domestic consumption and export is one of the leading segments of the state's commercial fishing industry. To maintain this significant contribution to the state's economy and public well-being, there is a need to make regulators aware of unique economic factors affecting the sea urchin fishery and how these factors can be integrated with appropriate management measures to protect a sustainable sea urchin resource. In addition, there is a need to make consumers and the general public aware of the nutritional value of seafood, the high quality of sea urchin produced by the industry, and the opportunities available to balance sea urchin production and protection of the natural marine resources of California. The activities made possible by the establishment of a commission will meet this need and further the interests of the industry and the state.

79003.

The establishment of a commission is necessary for the efficient creation and management of a research program to develop improved harvesting and processing practices, an integrated approach to fishery management, and more efficient resource assessment, monitoring and protection tools.

79004.

The successes that the sea urchin fishery in California has enjoyed have come in large part through a commitment by the industry to support appropriate management regulations guiding the harvesting of sea urchin and to fund research into resource assessment and enhancement methodology that has led to significant improvements in understanding the biology of the sea urchin resource. The establishment of a commission will continue and enhance this research effort and the ability of the industry to promote responsible fishery management regulations, all of which will move the industry toward a sustainable position, resulting in increased consumer value and enhanced economic returns.

79005.

The harvesting, processing, and marketing of sea urchin in this state is hereby declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

79006.

No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, the Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, or any statutory or common law against monopolies or combinations in restraint of trade.

79007.

This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

79008.

Opportunity exists for increasing the stability and reliability of the sea urchin fishery. The success of those efforts is uniquely dependent upon effective fishery and resource management, fishery biological research, industry engagement in management decisions, and fishery promotion. A stable and reliable sea urchin fishery provides an important source of jobs for many people in this state and economic activity in many small coastal communities, and serves to ensure the preservation of historically and culturally significant coastal dependent industry.

(Amended by Stats. 2003, Ch. 62, Sec. 102. Effective January 1, 2004.)

79009.

The commission form of administration created by this chapter is uniquely situated to provide those engaged in the sea urchin fishery the opportunity to avail themselves of the benefits of collective action within the broad fields of fishery management, resource protection and enhancement, harvesting and processing practices, and market development, expansion, and research necessary to achieve the purposes of this act.

Article 2. Definitions

79020.

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79021.

“Commission” means the California Sea Urchin Commission.

79022.

“Fiscal year” means from April 1 of a year to March 31 of the next succeeding year.

79023.

“Diver” means an individual licensed to commercially harvest fish pursuant to Section 7850 of the Fish and Game Code, and who in addition holds a valid sea urchin diving permit.

79024.

“Handler” means any individual or person working for any individual or business entity licensed as one of the following who can document that they are substantially engaged in the California commercial sea urchin fishery:

- (a) A receiver licensed pursuant to Section 8033 of the Fish and Game Code.
- (b) A processor licensed pursuant to Section 8034 of the Fish and Game Code.
- (c) A wholesaler licensed pursuant to Section 8035 of the Fish and Game Code.
- (d) A business entity or organization licensed pursuant to subdivision (a) of Section 8032 of the Fish and Game Code.

79025.

“Sea urchin” means the following species of fish:

- (a) Red sea urchin (*Strongylocentrotus franciscanus*).
- (b) Purple sea urchin (*Strongylocentrotus purpuratus*).
- (c) Any other species of sea urchin authorized for commercial landing in the state.

79026.

“Sea urchin fishery” means any activity, including economic activity, involved in the harvesting, receiving, processing, manufacturing, or distributing of sea urchin, parts of sea urchin, or products therefrom, for commercial purposes.

Article 3. The California Sea Urchin Commission

79040.

There is in the state government the California Sea Urchin Commission. The commission shall be composed of 11 voting members, including five sea urchin handlers, five sea urchin divers, and one public member, and may include any number of nonvoting members, at the discretion of the commission.

(a) Handlers shall elect five commission members from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery or a person specifically representing one or more handlers.

(b) (1) Divers statewide shall elect five persons from among those persons qualified pursuant to this act and licensed pursuant to the Fish and Game Code to engage in the sea urchin fishery.

(2) One diver member shall be elected from each of the following areas:

(A) San Diego County.

(B) Orange or Los Angeles County.

(C) Ventura County.

(D) Santa Barbara County.

(E) Sonoma or Mendocino County.

(3) Persons nominated for election to the commission as a diver member shall be nominated by a petition signed by not less than five divers eligible to vote pursuant to this chapter.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be nonvoting members of the commission.

(e) If the secretary finds, pursuant to Section 79103, that either the divers or handlers, but not both, have voted in favor of the referendum, the number of commission voting members shall be six, composed of either five divers or five handlers, depending on which portion of the industry voted in favor of the referendum, elected pursuant to this section and one public member.

(f) If the composition of the commission is determined by subdivision (e) it shall also include at least one nonvoting member appointed by the commission representing either divers or handlers, whichever did not vote in favor of the referendum.

(Amended by Stats. 2006, Ch. 499, Sec. 22. Effective January 1, 2007.)

79041.

(a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make the corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

79042.

The commission or the secretary may bring an action for judicial relief from the secretary's written notice, or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

79043.

When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The secretary's response may be a requirement that additional information be provided.

79044.

The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

79045.

Except for nonvoting members, alternates for regular members may be elected in the same manner as members. An alternate shall, in the absence of the member for whom he or she is substituting, serve in place of a member and shall have and be able to exercise all the rights, privileges, and powers of a member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification of a member, an alternate shall act as a member of the commission until a qualified successor is elected or appointed.

79046.

Any vacancy on the commission occurring by the failure of any person elected to the commission as a member or alternate to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal or resignation, shall be filled by another eligible person for the unexpired portion of the term by a majority vote of the remaining members of the commission. The person shall fulfill all the qualifications set forth in this article as required for the person whose office he or she is to occupy.

79047.

Any vacancy on the commission occurring by the failure of the public member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, resignation, or disqualification, shall be filled by another eligible person for the unexpired portion of the term by the secretary from nominees recommended by the commission. The person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to occupy.

79048.

(a) (1) Any handler member and his or her alternate on the commission shall be an individual handler or an employee or representative of one or more handlers who have an ownership interest in a handling facility or who can document a substantial financial interest in processing or causing to be processed sea urchin for market.

(2) Qualifications of handler members and their alternates shall be maintained during their entire term of office.

(b) Any handler member or his or her alternate shall not have been convicted within the two years prior to election to the commission of a violation of any law related to the business of commercially handling any fish or seafood products, not including any technical reporting or paperwork violation.

79049.

(a) Any diver member and his or her alternate on the commission shall be an individual diver who has documented landings of sea urchin in the previous commercial fishing license year. Qualifications of diver members and their alternates shall be maintained during their entire term of office.

(b) Any diver member or his or her alternate shall not have been convicted within the two years prior to election to the commission of a violation of any law related to commercial fishing, not including any technical reporting or paperwork violation.

79050.

The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate, respectively, on the commission. The public member and his or her alternate member shall not have any financial interest in the sea urchin fishery.

79051.

(a) The term of office of all members and alternates on the commission, except nonvoting members, shall be two years from the beginning of the fishery season in the year of their election and may serve not more than two consecutive terms. Following the final term, a member may serve up to 12 months or until a qualified successor is elected, whichever occurs first.

(b) A member or alternate who has served the maximum number of sequential years authorized by this section shall be again eligible for election to the commission following a period of not less than 12 months during which he or she has not served as either a member or an alternate.

79052.

The commission shall be, and is hereby declared and created, a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings, records, and acts, when authenticated, shall be prima facie evidence of the truth of all statements therein.

79053.

A quorum of the commission shall be six voting members, including at least two handlers and two divers. Except as provided in Section 79143, the vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

79054.

The secretary or his or her representative shall be notified and may attend each meeting of the commission and any committee meetings of the commission. However, the secretary or his or her representative is not entitled to attend an executive session of the commission or a committee of the commission called for the purpose of discussing potential or actual litigation against the department.

79055.

No member or alternate of the commission or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each member of the commission and each alternate serving in place of a member, except nonvoting members who are officers or employees of a public agency, and each member of a committee established by the commission who is a nonmember of the commission, may receive reasonable and necessary traveling expenses and meal allowances as approved by the commission for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission.

79056.

(a) All funds received by the commission or an agent of the commission from the assessments levied under this chapter or otherwise received by the commission shall be deposited in accounts that the commission may designate and the secretary shall approve. Commission funds shall be expended for the purposes of this chapter only and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

(b) Funds that exceed the amount of funds necessary for the annual operations of the commission and a prudent reserve may be invested by the commission in any of the securities authorized in Section 16430 of the Government Code.

79057.

The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member or alternate of the commission, or any employee or agent thereof, is personally liable for the contracts of the commission. No member or alternate of the commission, or any employee or agent thereof, is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate of the commission, or any employee or agent thereof, is responsible individually for any act or omission of any other member or alternate of the commission, or any employee or agent thereof. Liability is several and not joint, and no member or alternate of the commission, or any employee or agent thereof, is liable for the default of any other member or alternate of the commission, or any employee or agent thereof.

Article 4. Powers and Duties of the Commission

79061.

The commission may adopt and from time to time alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders in accordance with commission procedures for purposes of carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission.

79062.

The commission may administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary, to promote and maintain the sea urchin commercial fishing industry.

79063.

The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and such other officers as it deems necessary. The officers shall have the powers and duties delegated to them by the commission.

79064.

The commission may employ a person or firm to serve at the pleasure of the commission as executive officer of the commission, and other personnel, including legal counsel of its choice, necessary to carry out this chapter. If any person employed by the commission engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action, be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

79065.

The commission may fix the compensation for all employees of the commission.

79066.

The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

79067.

The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, and borrow funds in advance of receipt of assessments as may be necessary in the opinion of the commission for the proper administration and enforcement of this chapter and the performance of its duties.

79068.

The commission shall keep accurate books, records, and accounts of all of its dealings, which shall be subject to an annual audit by an auditing entity or firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all persons subject to this chapter, a copy of which shall also be submitted to the department. In addition, the secretary may, as appropriate, conduct or cause to be conducted a fiscal and compliance audit of the commission.

79069.

The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the sea urchin commercial fishing industry.

79070.

- (a) The commission may carry out industry educational programs with respect to proper methods of handling and preserving the quality of sea urchin to protect the public health, the economic viability of the fishery, and employee and diver safety and may conduct market surveys and analyses.
- (b) The commission may carry out public information programs regarding, but not limited to, the condition of the sea urchin resource, efforts to ensure a sustainable sea urchin resource, sea urchin quality standards the commission may adopt, and other programs to promote the sea urchin fishery. No commission funds shall be expended to advertise brand name sea urchin products.
- (c) The commission may adopt quality standards, a sea urchin fishery logo or trademark, or other promotional tools consistent with this chapter and other applicable laws.

79071.

The commission may conduct, or contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, regarding the importance and methods for maintaining a sustainable sea urchin fishery, fishery management, resource management and enhancement, cost-efficient production practices, and marketing and distribution of sea urchin and sea urchin products. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate.

79072.

The commission may enter into contracts to acquire and render services in preparing plans and conducting programs and other contracts or agreements that the commission may deem necessary for carrying out this chapter.

79073.

The commission may accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting and maintaining the sea urchin fishery.

79074.

The commission may collect information, including, but not limited to, fishery landing statistics, and publish and distribute without charge, a bulletin, newsletter, or other communication to persons subject to this chapter.

79075.

The commission shall establish an assessment rate to defray operating costs of the commission.

79076.

(a) The commission shall establish an annual budget and maintain records of expenditures according to generally accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for ongoing disbursements made in relation to employees of the commission.

(b) The secretary shall review the annual budget and expenditures to ensure that only reasonable and necessary administrative costs are paid for the proper operation of the commission's activities.

79077.

The commission shall submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

79078.

The commission and the secretary shall keep confidential and shall not disclose, except when required by court order after a hearing in a judicial proceeding, all lists of persons subject to this chapter in their possession. However, the commission shall establish procedures to provide divers and handlers access to communication with other divers and handlers regarding nonproprietary matters affecting the commission and persons subject to its jurisdiction. The access shall not include the actual release of the names and addresses of divers and handlers in the possession of the commission or the secretary.

79079.

The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

79080.

The commission may administer any government program engaged in the activities authorized by this chapter and that directly affects the sea urchin fishery, upon the request of an authorized agent of the program.

79081.

The commission may approve payment of a stipend to commission members of not more than one hundred twenty-five dollars (\$125) for each day a member is on official commission business pursuant to Section 79055, not to exceed five hundred dollars (\$500) in any single month.

Article 5. Implementation and Voting Procedures

79100.

(a) Within 60 days of the effective date of this chapter, the secretary shall establish a list of divers and handlers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that divers and handlers submit the names and mailing addresses of all divers and handlers. The secretary also may request assistance of the Director of Fish and Game for the names of all licensed divers and handlers engaged in the sea urchin fishery during the previous season and the volume of landings of each diver. The request for information shall be in writing and the information provided shall be confidential and not made public. Notwithstanding Section 8022 or any other provision of law, the Director of Fish and Game shall comply with the request within 30 days of receipt.

(b) Any diver and handler whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement, identifying himself or herself as a diver or handler, and submitting other supporting documentation. Failure to be on the list does not exempt the person from paying assessments, and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of establishing the commission pursuant to this chapter may contact divers and handlers on the lists through the secretary, in a form and manner prescribed by the secretary, if all expenses associated with those contacts are paid in advance.

79101.

This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds at least one of the following in a referendum vote conducted by the secretary:

(a) At least 40 percent of the total number of divers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the divers who voted in the referendum voted in favor of establishing the commission, and the divers so voting landed a majority of the total quantity of sea urchin landed in the preceding fishing season by all of the divers who voted in the referendum.

(2) A majority of the divers who voted in the referendum voted in favor of establishing the commission, and the divers so voting landed 65 percent or more of the total quantity of sea urchin landed in the preceding fishing season by all of the divers who voted in the referendum.

(b) At least 40 percent of the total number of handlers from the list established by the secretary pursuant to this article participate and that either of the following occurs:

(1) Sixty-five percent of the handlers who voted in the referendum voted in favor of establishing the commission, and the handlers so voting handled a majority of the total quantity of sea urchin in the preceding fishing season by all of the handlers who voted in the referendum.

(2) A majority of the handlers who voted in the referendum voted in favor of establishing the commission, and the handlers so voting handled 65 percent or more of the total quantity of sea urchin in the preceding fishing season by all of the handlers who voted in the referendum.

79102.

(a) The secretary shall establish a period in which to conduct the referendum, which shall not be less than 10 days or more than 60 days in duration, and may prescribe additional procedures necessary to conduct the referendum, including measures to maximize the likelihood that all eligible persons receive referendum voting materials. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

(b) Nonreceipt of a ballot by an eligible person shall not invalidate a referendum.

79103.

(a) If the secretary finds that a favorable vote has been given, pursuant to Section 79101, the secretary shall certify and give notice of the favorable vote to all affected divers and handlers whose names and addresses are on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, pursuant to Section 79101, the secretary shall certify and declare all provisions of this chapter inoperative. The secretary may conduct other implementation referendum votes one year or more following certification of a previous vote.

(c) If the secretary finds that a favorable vote has been given by either the divers or the handlers, but not both, the secretary shall certify and give notice of the favorable vote to all the divers and handlers whose names and addresses are on file with the secretary and this chapter shall be in effect only with regard to the divers or handlers, but not both, voting in favor of the referendum.

79104.

(a) Prior to the referendum vote conducted by the secretary pursuant to this article, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out Section 79101 shall be deposited in the funds of the commission.

(c) Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

79120.

(a) The commission shall establish an assessment for the season not later than February 1 of each year or continue the previous assessment. The assessment in the first year of the commission's operation shall be one cent (\$0.01) for each pound of sea urchin landed or delivered by divers to handlers in the state. The maximum assessment that can be levied by majority vote of the commission shall not exceed three cents (\$0.03) for each pound of sea urchin landed.

(b) An assessment greater than the amount provided for in this section may not be levied unless and until a greater fee is approved by a majority of the commission and by eligible divers and handlers pursuant to procedures specified in this act.

(c) The diver and the handler shall each pay one-half of the assessment established pursuant to this section. If the divers do not vote, pursuant to this act, to approve the commission, a diver is not required to pay any portion of the assessment. If handlers do not vote, pursuant to this act, to approve the commission, a handler is not required to pay any portion of the assessment. If either divers or handlers, but not both, vote in favor of the commission, the assessment may not exceed one-half of the amounts authorized by this section.

(d) Any assessment that is levied as provided for in this section is a personal debt of every person assessed.

79121.

(a) Every person or entity who handles sea urchin in any quantity shall keep a complete and accurate record of all transactions involving the purchase or sale of sea urchin. The records shall be in a simple form and contain such information as the commission shall prescribe. The records shall be preserved by the handler for a period of three years, and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

(b) The assessment imposed by this article shall be paid consistent with the applicable procedures required for the payment of landing fees pursuant to Article 7.5 (commencing with Section 8040) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code. The fees imposed shall be paid quarterly pursuant to Section 8053 of the Fish and Game Code. If fees are not paid as required, the commission shall collect amounts owed under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, "board" means

the commission and "the date on which the tax became due and payable" means 30 days after the close of the quarter for which it is due.

(c) Sections 8058 to 8070, inclusive, of the Fish and Game Code, shall apply to claims for overpayment of assessments to the commission. For the purposes of this subdivision, "department" as used in those sections, means the commission, and "landing fee" means the assessment imposed under this article.

(Amended by Stats. 2017, Ch. 26, Sec. 44. (SB 92) Effective June 27, 2017.)

79122.

(a) All proprietary information obtained by the commission or the secretary from any source, including, but not limited to, the names and addresses of divers and the volume and value of landings made or purchased, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

(b) Information on volume and value of landings, and any other related information that is required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and any other information that gives only totals, but excludes individual diver or handler information, may be disclosed by the commission.

79123.

The first handler of sea urchin being assessed shall deduct the assessment from amounts paid by him or her to the diver, and shall be a trustee of these assessments until they are paid to the commission at the time and in the manner prescribed by the commission. Failure to collect the assessment from any diver shall not exempt the handler from liability. In addition, failure of a handler to remit the collected diver assessments to the commission shall not relieve the diver of this obligation.

79124.

When the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for violating this chapter, including but not limited to, failing to pay assessments or to collect assessments, shall also include identical liability upon each director or officer of the corporation.

79125.

Any person who fails to pay any assessment, including submitting any records required by the commission, within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1½ percent interest per month on the unpaid balance.

79126.

In addition to any other penalty imposed, the commission may require any person who fails to pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the commission as assurance that all payments to the commission will be made when due.

79127.

It is a misdemeanor for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission, or in any way to affect the shipment and marketing of sea urchin with the intent to avoid payment of assessments.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) When engaged in the fishing of sea urchin or in the wholesale or retail trade of sea urchin, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons to whom sea urchin were sold or from whom sea urchin were received, and the quantity sold or received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

79128.

The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission, or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79129.

(a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and for the obtaining of injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding sea urchin until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

79130.

Any action by the commission for any violation of this chapter shall be commenced within two years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within two years from the date of the act of which the person complains.

79131.

The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

79132.

(a) The commission may consult and enter into agreements with the Director of Fish and Wildlife, if necessary and appropriate, to assist in the administration and enforcement of this chapter, including, but not limited to, collecting assessments authorized by this chapter and providing routine information regarding the persons that may be subject to this chapter.

(b) The commission may enter into an agreement with the director regarding the expenses associated with the distribution of two hundred dollars (\$200) of the total fee for a sea urchin permit authorized pursuant to, and described in, Sections 9054.5 and 9055 of the Fish and Game Code.

(c) If an agreement is established, the commission shall reimburse the Department of Fish and Wildlife for reasonable administrative costs associated with the agreement.

(Amended by Stats. 2023, Ch. 876, Sec. 25. (SB 500) Effective January 1, 2024.)

Article 7. Continuation or Suspension and Termination

79140.

Every five years, commencing with the fifth year following certification of the commission, the secretary shall hold a hearing to determine whether the operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among eligible persons regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall be continued in effect if the secretary finds that a majority of the eligible persons voting in the referendum, voted in favor of continuing this chapter.

79141.

If the secretary finds after conducting a hearing that no substantial question exists or that a favorable vote has been given, the secretary shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the fishing season of the year in which the certification is made. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 79144. No bond or security shall be required for any such referendum.

79142.

The process specified in Section 79140 shall be conducted by the commission every fifth year following the initial certification of the commission, unless a referendum is conducted as the result of a petition pursuant to Section 79143. In that case, the hearing, and the referendum if required, shall be conducted every fifth year following the industry petitioned referendum.

79143.

(a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to achieve its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the current fishing season.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with him or her requesting a suspension signed by 20 percent of the divers and handlers who landed or handled not less than 20 percent of the total quantity of sea urchin in the immediately preceding fishing season, hold a referendum among the divers and handlers to determine if the operations of the commission shall be

suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by the weight of evidence that this chapter has not tended to achieve its declared purposes.

(c) The secretary shall establish a referendum period, which shall not be less than 10 days or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of divers and handlers from the list established by the secretary participate in the referendum, the secretary shall suspend the operation of this chapter if he or she finds either one of the following has occurred:

(1) Sixty-five percent or more of the divers and handlers who voted in the referendum voted in favor of suspension, and the divers and handlers so voting sold or handled a majority of the total quantity of sea urchin in the preceding fishing season by all of the divers and handlers who voted in the referendum.

(2) A majority of the divers and handlers who voted in the referendum voted in favor of suspension, and the divers and handlers so voting landed or handled 65 percent or more of the total quantity of sea urchin in the preceding fishing season by all of the divers and handlers who voted in the referendum.

79144.

After the effective date of suspension of this chapter, the operation of the commission shall be concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating operations of the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding fishing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the prorated refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program conducted or used to fund activities related to the subject matter of this chapter.

79145.

Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all eligible persons affected by the suspension whose names and addresses are on file.