

Date of Hearing: July 8, 2025

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

SB 609 (Laird) – As Amended May 23, 2025

PROPOSED CONSENT

SENATE VOTE: 38-0

SUBJECT: FISH: COMMERCIAL FISHING

KEY ISSUE: IN ORDER TO IMPROVE THE EFFICIENCY AND ACCURACY OF COMMERCIAL FISHING ACTIVITY REPORTS AND BE SOMEWHAT MORE CONSISTENT WITH THE CALIFORNIA PUBLIC RECORDS ACT, SHOULD CALIFORNIA’S CONFIDENTIALITY LAWS BE UPDATED TO ALIGN WITH LAWS IN OTHER WEST COAST STATES?

SYNOPSIS

Under the California Public Records Act (CPRA), public records are open to inspection at all times during the office hours of a public agency for inspection by the public, unless exempted. (Government Code Section 7922.525.) A public record is defined as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Section 7920.530.)

In apparent conflict with the CPRA, most information and records about commercial fishing operations that are in the possession of the California Department of Fish and Wildlife (CDFW) are confidential and cannot be released to the public or even shared among regulators. This includes the names and ID numbers of fish businesses, the names and fishing license numbers of commercial fishers, and vessel names and ID numbers.

This author-sponsored bill updates current law regarding the confidentiality of commercial fishing records to align with the confidentiality laws of other West Coast states, more closely align with the California Public Records Act, and assist state and local regulators to enforce commercial fishing laws. This bill is supported by the Nature Conservancy, has no opposition on file, and the Committee on Water, Parks and Wildlife recently approved the bill on consent.

SUMMARY: In order to improve the efficiency and accuracy of commercial fishing activity reports, updates California’s confidentiality laws to align with those in other West Coast states. Specifically, **this bill:**

- 1) Provides that the department may release the information in landing receipts, reports, or other records filed with CDFW, which generally are confidential, only in the following circumstances:
 - a) In accordance with Section 391 or pursuant to a court order.
 - b) To a public or private postsecondary institution engaged in research under the terms of a legally binding confidentiality agreement.

- c) Under other conditions as the commission by regulation may provide.
- 2) Provides that notwithstanding 1), fish business identification numbers, fish business names, commercial fishing license numbers, commercial fisher names, vessel registration identification numbers, and vessel names, exclusively, shall be deemed public information and may be provided upon request.
- 3) Finds that the limitation on public access to fishery records is justified by the following:

In order to protect the privacy of potentially sensitive or proprietary data of commercial fishers, owners of commercial fishing vessels, and fish businesses, while also collecting necessary data regarding the extent and variety of species fished, it is necessary that commercial fishing receipts, reports, or other records and the information contained in them to remain confidential.
- 4) Makes minor technical corrections.

EXISTING LAW:

- 1) Provides that the people have the right of access to information concerning the conduct of the people's business and, therefore, the writings of public officials and agencies shall be open to public scrutiny. Specifies that any law or rule that limits the public right of access shall be adopted with findings demonstrating the interest protected by the limitation. (California Constitution, art. I, Section 3.)
- 2) Provides that, in enacting the California Public Records Act (CPRA), the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code Section 7921.000. All further statutory references are to this code, unless otherwise indicated.)
- 3) Defines "public records" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics and those in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975. (Section 7920.530.)
- 4) Provides that public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided; and that any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Section 7922.525.)
- 5) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Section 7922.000.)

- 6) Requires commercial fishers, and fish businesses to obtain commercial fishing and fish business licenses. (Fish and Game Code (FGC) Sections 7850 *et seq.*; 7880 *et seq.*; and 8030 *et seq.*)
- 7) Requires the reporting of all fish sales, deliveries, transfers, and landings using an electronic fish ticket. Requires the ticket to include the commercial fisher name and identification number, vessel name and license number, and the name and identification number, as applicable, of the receiver of the fish. (FGC Sections 8040 *et seq.*)
- 8) Requires a person engaged in certain activities to obtain a marine aquaria collector's permit or receiver's license (FGC Sections 8033.1, 8597); and requires the reporting of marine aquaria landing receipts. (FGC Section 8043.1.)
- 9) Requires the commercial fishing receipts, reports, or other records reported to CDFW and the information within them to be held confidential and not as public records, except as specifically provided. Requires that reported commercial fishing data be compiled or published as summaries as far as possible in order to not disclose the individual record or business of any person. (FGC Section 8022.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In California, certain information and records about commercial fishing operations are confidential and cannot be released to the public or even shared among regulators. This includes the names and ID numbers of fish businesses, the names and fishing license numbers of commercial fishers, and vessel names and ID numbers. This author-sponsored bill updates current law regarding the confidentiality of commercial fishing records to align with the confidentiality laws of other West Coast states, more closely align with the California Public Records Act, and assist state and local regulators to enforce commercial fishing laws. According to the author:

The Department of Fish and Wildlife is responsible for ensuring that commercial fishing activity is accurately recorded and reported. However, California's stringent confidentiality laws prevent information about commercial fishers and vessels from being shared with those who do the reporting. This results in frequent data entry errors as proper identifications cannot be referenced, requiring the Department to allocate staff time to correcting basic errors. Senate Bill 609 updates California's confidentiality laws to align with those in other West Coast states by designating specific information already considered non confidential by the National Marine Fisheries Service, such as identification numbers and names, to be nonconfidential. This will reduce the amount of time that the Department spends correcting errors and will improve the efficiency and accuracy of commercial fishing activity reporting.

Public Access to Public Records. Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Section 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election), placed on the ballot by a unanimous vote of both houses of the Legislature. SCA 1 (Burton, Ch. 1, Stats. 2004) amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition

42 (Jun. 3, 2014, statewide direct primary election), placed on the ballot by a unanimous vote of both houses of the Legislature, (SCA 3 (Leno, Ch. 123, Stats. 2013), to further increase public access to government records by requiring local agencies to comply with the CPRA and the Ralph M. Brown Act, and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

Under the California Public Records Act (CPRA), public records are open to inspection at all times during the office hours of a public agency for inspection by the public, unless exempted. (Section 7922.525.) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Section 7920.530.) Despite the CPRA's general rule that public records are open to inspection and subject to disclosure, the CPRA provides exceptions providing that a document, or a portion thereof, is not subject to public disclosure. An exemption can be explicit in the CPRA itself, pursuant to another law, or justified by the agency's determination that, based on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (See Sections 7922.000, 7922.525, 7922.530.)

Confidentiality of commercial fishing records. In apparent contradiction to the goals and principles of the CPRA, California has extremely strict confidentiality laws for commercial fishing records. In fact, current law prohibits disclosure of information and records about fisheries in a manner that is much more restrictive than other states on the West Coast. For example, both Oregon and Washington do not treat the names of commercial fishers as confidential. Oregon makes license numbers publicly available. Paradoxically, both California and Oregon require vessel identification numbers to be publicly displayed on the exterior of the vessel. So in California, the fisher must publicly display their license number, but the CDFW is prohibited from disclosing information about license status to the public upon request. So if a supermarket or farmer's market wanted to ensure that a person seeking to sell fish at their market were properly licensed and in compliance with applicable fishing laws, they could request that the fisher provide a license to them, but they could not verify with CDFW that the license was valid and in effect.

In general, fishing activity and landing receipt data are treated as proprietary business information and are kept confidential across the U.S. West Coast, with limited exceptions. In California, this data is released to the public only in aggregated form, such as information regarding catches by port. To increase efficiency, over the last several years, both the federal government and California have implemented electronic reporting of landing receipts and other fishing records which were previously reported on paper. CDFW staff collect and report the data and work to ensure the accuracy of their records.

Unfortunately, the accuracy of the electronic ticket reporting by commercial fishers and fish businesses is compromised by the misidentification of commercial fishers, fish businesses, and vessels, likely due to the inflexible confidentiality requirements. CDFW processes 45,000–50,000 landing receipts annually and indicates that 50% of the errors identified in these receipts are due to misidentification. CDFW estimates that identifying and correcting these errors takes hundreds of hours of staff time. Because of the confidentiality laws, CDFW is not able to share identifying information with other fishers or businesses for verification purposes, which undermines the overall accuracy of the state's commercial fishing records and undermines their

regulatory efforts. This bill, among other things, will enable CDFW to use these identifying details to correct erroneous landing receipts.

Marine aquaria landing receipts. Any person engaged in the business of receiving live marine species native to California waters for the purpose of wholesaling or retailing these species for the pet industry or hobby purposes must obtain a Marine Aquaria Receiver's License. When these species are transferred from the collector to the receiver, the transaction has to be documented with a landing receipt, which is still done on paper. Recent updates to statute, however, inadvertently also required these landing receipts to be reported electronically.

The bill modifies the inflexible records disclosure provisions in current law related to fishing and fishing license information. It allows CDFW to release the information in landing receipts, reports, or other records filed with CDFW, which generally are confidential, only in the following circumstances:

- 1) In accordance with Section 391 [allowing CDFW to exchange or release to any appropriate federal, state, or local agency or agencies in other states, for purposes of law enforcement] or pursuant to a court order.
- 2) To a public or private postsecondary institution engaged in research under the terms of a legally binding confidentiality agreement.
- 3) Under other conditions as the commission by regulation may provide.

The bill also provides that fish business identification numbers, fish business names, commercial fishing license numbers, commercial fisher names, vessel registration identification numbers, and vessel names, exclusively, are public information and “may be provided upon request.”

It should be noted that, although this language significantly improves existing law in terms of the transparency of information and records related to fisheries, it may not do so to the extent that it could and arguably should in order to promote public access and transparency. The CPRA's premise is that public records and information (all records and information in the possession of a public agency) are *required to be* public and open to inspection *unless* exempt under the CPRA or any other law. Even as amended by the bill, the statute will still provide that all “information in landing receipts, reports, or *other records filed with CDFW*” [emphasis added] are confidential (except as provided), which reverses the CPRA's presumption that all agency records are open to the public.

The bill would give *permission* to CDFW to release (“may be provided”) records that are not confidential -- fish business identification numbers, fish business names, commercial fishing license numbers, commercial fisher names, vessel registration identification numbers, and vessel names -- but does not *require* that CDFW allow public inspection or copying, as required under the CPRA (i.e. “shall be made available for inspection and copying”). Finally, the bill delegates authority to CDFW to authorize release of its presumptively confidential records (everything other than fish business identification numbers, fish business names, commercial fishing license numbers, commercial fisher names, vessel registration identification numbers, and vessel names), which is more appropriately a task of the Legislature than of a public agency. Under the CPRA itself, for example, a public agency has the authority to withhold any record that is a public record on the basis that the public interest in nondisclosure of the record clearly outweighs the public interest served by disclosure of the record in the CPRA's “catch-all” exception. (Section 7922.000.) Here, the agency has broad authority -- without tether to public interests -- to disclose records as it sees fit, as long as it adopts a regulation to that effect. Nevertheless, the bill

would improve the current law by making significantly more information and records in the possession of the CDFW open to the public.

The author may wish, as the bill moves forward, to modify the language of the bill to more closely align its provisions with the presumptions and principles of the CPRA.

REGISTERED SUPPORT / OPPOSITION:**Support**

The Nature Conservancy

Opposition

None on file

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