

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 107; Section 174; and Section 176
Title 14, California Code of Regulations
Re: Commercial Logbooks
Broadbill Swordfish Harpoon; Gill and Trammel Net Fisheries; and
Trawl Fisheries

- I. Date of Initial Statement of Reasons: June 28, 2018
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: August 22, 2018
 Location: Fortuna, CA
- (b) Adoption Hearing: Date: December 12, 2018
 Location: Oceanside, CA
- III. Description of Regulatory Action:
- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

It is necessary to amend sections 107, 174 and 176, Title 14, California Code of Regulations (CCR) in order to eliminate the use of California forms by the affected fisheries in favor of Federal forms. The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) either has or is in process of developing federal logs that will more accurately reflect the catch and discard in federally managed fisheries for highly migratory species (HMS, as described in Section 1.49); and groundfish (as described in Section 1.91).

Currently, the state's Swordfish Harpoon Log (DFG 107), used by HMS fishermen targeting swordfish, does not provide additional detail that is not already collected on state landing receipts, and is not used for state or federal management. Additionally, the state's General Gill/Trammel Net Fishing Log (DFG 174) does not record discard information needed for managing bycatch in the federal HMS large mesh drift gill net fishery. The state's Trawl Trip Log (DFG 176) does not record needed discard information of federal groundfish species necessary for catch accounting under the federal Trawl Individual Quota (TIQ) program.

Background

The Pacific Fishery Management Council (Council) coordinates west coast management of recreational and commercial HMS and groundfish fisheries in the federal fishery management zone (3 to 200 miles offshore) off Washington, Oregon and California. At present, the HMS harpoon and drift gill net and groundfish TIQ fisheries use state logs to record fishing activity. However, changing fishery management needs require that

additional information be collected and that logs be submitted in a more timely manner than current regulations require. The state's harpoon log is not used in federal fisheries management.

NOAA Fisheries develops regulations to manage federal fisheries based on management measures adopted by the Council. Currently, NOAA Fisheries is in the process of developing new federal logbook requirements for both the federal HMS harpoon and drift gillnet fisheries and the federal groundfish TIQ fishery. One requirement may include use of a federally established electronic logbook, or at minimum, new federal requirements on what information must be required in a logbook, and when and how that information shall be recorded. These logs would include information on discarded fish and bycatch needed for management that are not required by regulations governing the state logs. Additionally, for the TIQ fishery there is an interest in making a logbook for these permittees to use regardless of what gear they are actually fishing (e.g., a single TIQ log that can be used for both trawl and fixed gear, because gear switching is allowed under TIQ).

The Council is adopting the use of electronic monitoring (EM) to replace 100 percent observer coverage in the TIQ fishery, and is considering EM for the HMS drift gill net fishery, as a way to reduce costs to observer coverage and address unobservable vessels. In general, EM replaces observers with onboard cameras to record all fishing activity, including species discarded at sea. In some cases, EM is (or may be in the future) used when vessels are prosecuting fishing activities under a federal Exempted Fishing Permit (EFP). Vessel captains operating under federal EFPs for groundfish are required to fill out the state log for kept fish and an additional federal log to record fish discarded at sea and to submit copies these logs within 24 hours of landing to NOAA Fisheries. The EM recordings are reviewed and both kept and discarded species are identified and enumerated to verify the information on both the logs.

Currently, the state logs are required to be submitted monthly. For the TIQ fishery, however, it is necessary to submit log data more frequently to ensure individual limits are not exceeded. Additionally, both the General Gill/Trammel Net Fishing Log and the Trawl Trip Log lack the necessary discard information for managing the HMS drift gill net and the TIQ fisheries, respectively. Thus, the Council is considering the need to develop electronic logs for both fisheries so that log effort data, including discards, can be transmitted at the end of a fishing trip under EM.

AMEND SECTION 107

Subsection 107(c) would be deleted eliminating the need for state logs recording swordfishing activities, and subsections (d)-(h) would be renumbered and other minor editorial changes made.

Under current regulations, subsection 107(c), all state swordfish harpoon permittees are required to complete a State Swordfish Harpoon Log (DFG 107). The information required on this log is specifically related to fish behavior and catch success and does not include bycatch information. The log does not provide location information beyond fishing block that is included on landing receipts. Current federal regulation (CFR 660.708) requires completion of either a state or federal log for all federal HMS fishing activity, including harpoon.

APPENDIX A:

The form Swordfish Harpoon Log, DFG 107 (10/90) is deleted from Appendix A, Title 14, CCR.

AMEND SECTION 174

Subsection 174(f) would be amended to exempt fishermen from the state log requirement: (1) targeting highly migratory species, and (2) using large mesh (greater than 14 inch) drift gill nets.

Under current regulations, subsection 174(f), all state general gill/trammel net permittees are required to complete a state Gill and Trammel Net Fishing Log (DFG 174). This includes state drift gill net permittees who are also required to have a general gill/trammel net permit. Active drift gill net permittees target federally-managed HMS swordfish and sharks using large mesh (greater than 14 inches) as defined in Fish and Game Code Section 8573. Current federal regulation (CFR 660.708) requires completion of either a state or federal log for all federal highly migratory species fishing activity, including drift gill net.

Currently, state drift gill net permittees targeting HMS species under federal permit are required to carry an observer upon request. Fisheries observers are deployed under the authority of the Marine Mammal Protection Act, the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery and Conservation Management Act. This accurately documents the incidental take of sea turtles, marine mammals, and seabirds. Either a new federal log or EM will be developed to ensure that adequate information on bycatch, including ESA and strategic stocks species, and discard data are submitted to fishery managers to track bycatch.

AMEND SECTION 176

Section 176 requires all trawl fishermen to fill out a Trawl Trip Log (DFG 176), but does not specify which fisheries, thus some fishermen targeting invertebrates fill out the Trawl Trip Log (DFG 176) while other fill out the Shrimp/Prawn Trawl Log (DFG 120). To clarify the logbook requirement for each state managed fishery and to eliminate any potential redundancy between state and federal regulations for the groundfish trawl fishery, Section 176, Title 14, CCR, would be amended with the following additions:

- The first paragraph of Section 176 is deleted and rewritten as Subsection 176(a) and would require completion of the Trawl Trip Log (DFG 176) by these fisheries:
 - subsection (a)(1) all California halibut bottom trawl permittees.
 - subsection (a)(2) any finfish trawl fisheries without a specific permit to complete the Trawl Trip Log (DFG 176).
- Subsection (b) exempts federal TIQ permittees targeting federal groundfish from the state trawl log requirement.
- Subsection 176(c) would require completion of the Shrimp/Prawn Trawl Log (DFG 120) by these fisheries:

- subsection (c)(1) all golden/ridgeback prawn trawl, northern pink shrimp trawl, subsection (c)(2) all sea cucumber and southern pink shrimp permittees.
- trawl permittees.
- subsection (c)(3) any invertebrate trawl fishery without a specific permit.

Current regulations, Section 176, require that all trawl vessel operators fill out a state Trawl Trip Log (DFG 176). Additionally, current federal regulation (CFR 660.13) requires that federal groundfish TIQ permittees complete a state trawl log.

The federal groundfish TIQ program was implemented in 2011, changing from fishery-wide quotas for each species or species complex to individual quotas for each permitted vessel. In order to account for all catch (kept and discarded) TIQ vessels have been required to carry an onboard observer at all times to collect discard information (species and weights) and shoreside catch monitors are required for first receivers to collect kept fish information (species and weights) during the offload process. Information collected by observers and catch monitors is used to debit the vessel quota accounts of TIQ vessels, usually within 48 hours, so that vessel operators know how many quota pounds they have available to catch.

The Council is adopting EM for the groundfish TIQ fishery. NOAA Fisheries is developing regulations that would require vessel captains to fill out a state or federal trawl log that identifies and quantifies both the species kept and released. However, the state's Trawl Trip Log (DFG 176) does not include discard information. The EM recordings would then be used to verify the logbook information.

Additionally, there is a need for real time data collection of catch as well as discards so that TIQ quota accounts can be updated within 48 hours. Waiting for a paper log to be submitted and entered into a database could result in TIQ vessels exceeding their individual quotas, given that the timing of logbook submission varies by state (California requires that they be submitted monthly). As a condition of their federal EFP, vessels using EM photograph their completed state paper log and supplemental federal discard log at the end of each fishing trip and submit it electronically within 48 hours of offload so the data can be entered and bycatch debited from their TIQ account. As a long-term solution, a federal electronic logbook for TIQ permittees is being considered by the Council. The added benefit to this federal electronic log would be the ability to capture TIQ vessel effort when switching to fixed gear (trap/pots or longline), which is currently allowed. However, neither California nor Washington have a fixed gear log requirement (Oregon does). Once this federal electronic log is implemented there will no longer be a need for TIQ fishermen to fill out a state Trawl Trip Log.

(b) Goals and Benefits of the Regulation:

The regulation would eliminate an unnecessary burden on fishery participants to provide information that is unnecessary for State management. It would reduce printing, mailing, and data analysis costs to the Department.

(c) Authority and Reference Sections from Fish and Game Code for Regulation:

Section 107

Authority cited: Sections 1050, 7857, 7892, 8026 and 8394, Fish and Game Code.

Reference: Sections: 1050, 7857, 7892, 8026, 8394, 8394.5, and 8577, Fish and Game Code.

Section 174

Authority cited: Sections 1050, 8026, 8681 and 8682, Fish and Game Code. Reference: Sections 1050, 1700, 7852.2, 8026, 8568, 8573, 8680, 8681, 8682 and 8683, Fish and Game Code.

Section 176

Authority cited: Section Sections 1050, 8026, and 8841, Fish and Game Code. Reference: Section Sections 1050, 8026, and 8841, Fish and Game Code.

- (d) Specific Technology or Equipment Required by Regulatory Change: None.
- (e) Identification of Reports or Documents Supporting Regulation Change: None.
- (f) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

- (b) No Change Alternative:

Section 107

If the regulations are not changed, harpoon permittees will continue to submit the State Swordfish Harpoon Log (DFG 107). This will continue to require printing, mailing, data processing, and data analysis costs by the state and no management information will be obtained that is not already available on landing receipts, and potentially duplicate a federal log requirement when implemented.

Section 174

If the regulations are not changed large mesh drift gill net permittees will continue to fill out the state Gill and Trammel Net Fishing Log (DFG 174) and there will be insufficient data to track fishing effort and the bycatch of ESA-listed, MMPA-protected, and other species. This will require continued printing and mailing costs by the state and potentially duplicate a federal log requirement when implemented.

Section 176

If the regulations are not changed, federal TIQ fishermen will continue to fill out the state Trawl Trip Log. This will require continued mailing costs by the state and potentially duplicate a federal log requirement when implemented. These logs are required to be

submitted monthly, creating a significant time lag between when fishing occurs and the activity showing up in the state and federal data systems, which could result in federal permittees exceeding their individual quota allotments. Additionally, the Trawl Trip Log does not collect the needed discard information for EM. Amending this log to include the discard information required for EM is not sufficient due to the time lag.

Finally, if the regulations are not changed, there will continue to be confusion regarding which log to fill out for California halibut trawl, sea cucumber trawl activity, and other trawl activity that does not require a specific permit. Since the Trawl Trip Log (DFG 176) and the Shrimp/Prawn Trawl Log (DFG 120) do not capture the same information, having fishermen use both logs results in incomplete data for fisheries management and makes it difficult to track compliance.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no impact on the environment.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This rulemaking proposes to increase clarity and efficiency by removing the state logbook requirement for various state and federal fisheries.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed regulatory action would remove the requirement to submit state logbooks for certain fisheries under federal management. This should reduce

fishery participant confusion about which logs to submit and eliminate duplicative effort increasing efficiency for fishermen.

The Commission does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Department would realize a savings of about \$30,000 annually in printing and mailing costs as well as time-savings for existing personnel.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

The proposed regulatory action would remove the requirement to submit state logbooks for certain fisheries under federal management. This should reduce fishery participant confusion about which logs to submit and eliminate duplicative effort increasing efficiency for fishermen. The Department expects to also save personnel time responding to data requests, and on mailing, and printing costs.

Table 1. CDFW Annual Costs Savings.

Fiscal Year	2018/19	2019/20	2020/21
Time-Savings	\$24,278	\$24,715	\$25,061
Mailing	\$3,132	\$3,188	\$3,233
Printing	\$2,100	\$2,138	\$2,168
Total Cost-Savings	\$29,510	\$30,041	\$30,461

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed action will not have an effect on the creation or elimination of jobs because this rulemaking proposes to increase clarity and efficiency by removing the state logbook requirement for various state and federal fisheries.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed action will not have an effect on the creation or elimination of existing businesses within the state because this rulemaking proposes to increase clarity and efficiency by removing the state logbook requirement for various state and federal fisheries.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed action will not have an effect on the expansion of businesses currently doing business within the state because this rulemaking proposes to increase clarity and efficiency by removing the state logbook requirement for various state and federal fisheries.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The proposed regulatory action is not anticipated to benefit the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The proposed regulatory action is not anticipated to benefit worker safety.

(f) Benefits of the Regulation to the State's Environment:

The proposed regulatory action is not anticipated to benefit the state's environment.

(g) Other Benefits of the Regulation:

The regulation would eliminate an unnecessary burden on fishery participants to provide information that is unnecessary for State management. It would reduce printing, mailing, and data analysis costs to the Department.

Informative Digest/Policy Statement Overview

It is necessary to amend sections 107, 174 and 176, Title 14, California Code of Regulations (CCR) in order to eliminate the use of California forms by the affected fisheries in favor of federal forms. The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) either has or is in process of developing federal logs that will more accurately reflect the catch and discard in federally managed fisheries for highly migratory species (HMS) and groundfish under the federal Trawl Individual Quota (TIQ) program.

Under current regulations (subsection 107(c), Title 14, CCR) all State swordfish harpoon permittees are required to complete a State Swordfish Harpoon Log (DFG 107). The information required on this log is specifically related to fish behavior and catch success and does not include bycatch information. The log does not provide location information beyond fishing block that is included on landing receipts. Current federal regulation (CFR 660.708) requires completion of either a state or federal log for all federal HMS fishing activity.

Additionally, under current regulations (subsection 174(f), Title 14, CCR) all state general gill/trammel net permittees are required to complete a State Gill and Trammel Net Fishing Log (DFG 174). This includes State large mesh drift gill net permittees, as described in Fish and Game Code Section 8573, who are also required to have a general gill/trammel net permit. Current federal regulation (CFR 660.708) requires completion of either a state or federal log for all federal highly migratory species (HMS) fishing activity, including drift gill net. These permittees are required to carry a federal observer upon request to accurately document the incidental take of sea turtles, marine mammals, and seabirds. The State's General Gill/Trammel Net Fishing Log (DFG 174) does not record discard information for federal Endangered Species Act (ESA)-listed species needed for managing the federal HMS large mesh drift gill net fishery.

Current regulations (Section 176, Title 14, CCR) require that all trawl vessel operators fill out a State Trawl Trip Log (DFG 176). Additionally, current federal regulation (CFR 660.13) requires that federal groundfish TIQ permittees complete a state trawl log. The Pacific Fishery Management Council is adopting electronic monitoring for the groundfish TIQ fishery. Additionally, there is a need for real time data collection of catch as well as discards so that TIQ quota accounts can be updated within 48 hours. Waiting for a paper log to be submitted and entered into a database could result in TIQ vessels exceeding their individual quotas, given that the timing of logbook submission varies by state (California requires that they be submitted monthly). The State's Trawl Trip Log (DFG 176) does not record needed discard information of federal groundfish species necessary for catch accounting under the federal Trawl Individual Quota (TIQ) program.

AMEND SECTION 107

Subsection 107(c) would be deleted eliminating the need for State logs recording swordfishing activities, and subsections (d)-(h) would be renumbered and Form Swordfish Harpoon Log, DFG 107 (10/90) is deleted from Appendix A.

AMEND SECTION 174

Subsection 174(f) would be amended to exempt fishermen from the State log requirement: (1) targeting highly migratory species, and (2) using large mesh (greater than 14 inch) drift gill nets.

AMEND SECTION 176

Section 176, Title 14, CCR, requires all trawl fishermen to fill out a Trawl Trip Log (DFG 176), but does not specify which fisheries, thus some fishermen targeting invertebrates fill out the Trawl Trip Log (DFG 176) while other fill out the Shrimp/Prawn Trawl Log (DFG 120). To clarify the logbook requirement for each State managed fishery and to eliminate any potential redundancy between State and federal regulations for the groundfish trawl fishery, Section 176, Title 14, CCR, would be amended as follows:

- The first paragraph of Section 176 is deleted and rewritten as Subsection 176(a) and would require completion of the Trawl Trip Log (DFG 176) by these fisheries:
 - subsection (a)(1) all California halibut bottom trawl permittees.
 - subsection (a)(2) any finfish trawl fisheries without a specific permit to complete the Trawl Trip Log (DFG 176).
- Subsection (b) exempts federal TIQ permittees targeting federal groundfish from the state trawl log requirement.
- Subsection 176(c) would require completion of the Shrimp/Prawn Trawl Log (DFG 120) by these fisheries:
 - subsection (c)(1) all golden/ridgeback prawn trawl, northern pink shrimp trawl, and southern pink shrimp permittees.
 - subsection (c)(2) all sea cucumber trawl permittees.
 - subsection (c)(3) any invertebrate trawl fishery without a specific permit.

Benefit of the Regulations

Currently, the permittees in these fisheries complete multiple forms for both the State and federal governments. The State forms do not provide additional information that is necessary for managing the fisheries and, in some cases, will be replaced by more comprehensive electronic monitoring and logbooks. By eliminating the need for State forms and relying on the improved reporting on federal forms, and potentially the electronic forms, the fishery benefits from less paperwork and the State benefits from a better and more useful format for information gathering. The State also benefits from a reduction in staff time and expenses surrounding printing, processing, and maintaining these unnecessary forms.

Consistency with State Regulations

Department staff has conducted a review of the California Code of Regulations and determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the statutory authority to amend regulations pertaining to the logbooks used by these fisheries.