

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED ACTION
March 26, 2019

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt regulations to amend sections 106 and 107, and add Section 106.5 to Title 14, California Code of Regulations (CCR) implementing the program described in Section 8583 of the Fish and Game Code (FGC). Section 8583 directs the Department to establish a voluntary Drift Gill Net Transition Program (Transition Program), which incentivizes drift gill net permittees to transition out of the drift gill net shark and swordfish fishery, reduces bycatch, and provides for a sustainable swordfish fishery.

The Transition Program allows permittees to voluntarily surrender their drift gill net shark and swordfish permit and large mesh drift gill net(s) to the Department ahead of the prescribed sunset date in exchange for a one-time payment prescribed by FGC Section 8583. The Transition Program specifies the method of participation and other requirements mandated by Section 8583.

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department may adopt the proposed regulations.

PUBLIC HEARING

No public hearing is scheduled for this action. The Department will hold a public hearing if one is requested in writing no later than 15 days prior to the close of the written comment period. If a hearing is requested, the Department will, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department via mail, or e-mail, no later than **5:00pm on May 20, 2019**, to the contact as follows:

California Department of Fish and Wildlife, Regulations Unit
Attn: Ona Alminas, Sr. Environmental Scientist
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Email: Regulations@wildlife.ca.gov

AUTHORITY AND REFERENCE:

Section 106:

Authority: Sections 1050, 7857, 8394, 8561, 8577, and 8583, Fish and Game Code. Reference: Sections 8394.5 and 8561-8569, Fish and Game Code.

Section 106.5:

Authority: Section 8583, Fish and Game Code. Reference: Sections 8573 and 8579, Fish and Game Code.

Section 107:

Authority: Sections 1050, 7857, 7892 and 8394, Fish and Game Code.
Reference: Sections 1050, 7857, 7892, 8394.5, 8577, and 9028, Fish and Game Code.

Informative Digest/Policy Statement Overview

Existing law prohibits the taking of shark and swordfish for commercial purposes with drift gill nets except under a valid drift gill net shark and swordfish permit (DGN permit) issued to that person, pursuant to Fish and Game Code (FGC) Section 8561.

Senate Bill 1017 (Allen), signed into law on September 27, 2018, amended several sections in the FGC, and added FGC sections 8583 and 8583.5. Subdivision (a) of FGC Section 8583 requires the Department to establish a voluntary Drift Gill Net Transition Program (Transition Program) to transition commercial DGN permittees from using drift gill nets for the shark and swordfish fishery. The Department must establish the program by March 31, 2020 in accordance with several requirements provided in FGC Section 8583.

Proposed Regulations

The proposed regulations will remove references to a logbook that no longer required, meet the requirements mandated by SB 1017, address issues with bycatch in the drift gill net fishery, and encourage the transition to more selective and sustainable gears used to catch swordfish. In addition, voluntary transition program participants will be compensated to the extent that funds are available.

Amendments to **Section 106, Title 14, California Code of Regulations (CCR)** are summarized as follows:

- Subsection (d) is removed to eliminate the requirement for drift gill net permittees to submit state logbooks. In 2018, the Fish and Game Commission (Commission) repealed the requirement for a state logbook in the drift gill net shark and swordfish fishery. Section 106 was inadvertently left out of the sections that were amended for the repeal.

- The provision in subsection 106(a)(2) is amended to remove language pertaining to drift gill net shark and swordfish expired permittees complying with subsection (d) dealing with records during the preceding year.
- Subsection (h) of Section 106 is added to implement the provision of subdivision (c) of FGC Section 8561 that all permits issued pursuant to this section shall be surrendered or revoked and this section shall be repealed as of January 31 of the fourth year following the Department's notification to the Legislature, pursuant to paragraph (2) of subdivision (b) of Section 8583 of the Fish and Game Code.
- Subsequent subsections of Section 106 have been edited and renumbered for consistency, and references to FGC sections have been updated for capitalization and accuracy of legislative history.

Section 106.5, Title 14, CCR, is added to describe the Transition Program and process, in summary:

- Subsection (a) incorporates by reference the proposed new form DFW 1083 (NEW 08/31/19), "Declaration of Intent to Participate in Drift Gill Net Transition Program," and directs permittees to submit the form to indicate their intention to participate in the Transition Program.
- Subsection (b) states the Department shall notify in writing the permittee submitting a notarized form of his or her eligibility for the Transition Program, when funding is available, and mentions that forms will be processed in the order received.
- Subsection (c) includes the requirements permittees must agree to on form DFW 1083 when indicating their intent to participate in the Transition Program. The date of March 31, 2021 is proposed as a deadline for surrender of state permits and nets, so permittees may fish up until of the entirety of the 2020-2021 permit term using their DGN permit and large mesh nets.
- Subsection (d) refers to the payment amounts that are prescribed by subdivision (2) of FGC Section 8583 for specified levels of voluntary participation in the Transition Program.
- Subsection (e) adds language defining the criteria for net destruction entities to be approved by the Department to destroy large mesh nets for the Transition Program. These criteria were selected to ensure approved entities had both the experience and capacity necessary to accept, process, and destroy large mesh drift gill nets and provide documentation of destruction to the Department and Transition Program participants.

Section 107 is amended to remove language referring to log book requirements under paragraph (2), subsection (a). This change is necessary to ensure consistency with the 2018 Commission decision to repeal the logbook reporting requirement for this fishery. Additionally, language is added to subsection (f)(1) for consistency with SB 1017 changes to FGC Section 9028 for deep set buoy gear authorized under federal law.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has required that the Department establish a drift gill net shark and swordfish permit transition program to transition the holders of drift gill net permits issued pursuant to FGC Section 8561, out of the drift gill net fishery (FGC Section 8583). The Department has reviewed existing regulations in Title 14 of the CCR, and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

DOCUMENTS RELIED UPON – none.

DOCUMENTS INCORPORATED BY REFERENCE

1. form DFW 1083, “Declaration of Intent to Participate in Drift Gill Net Transition Program”, NEW 08/31/19
2. State form STD 204, Payee Data Record (not a Departmental form), REV 05/2018

DISCLOSURES REGARDING THE PROPOSED ACTION

- (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. Drift gill net gear is not allowed to land swordfish in other west coast states. This action implements a voluntary transition program that provides compensating funding to participants.

- (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 Department anticipates no net 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 because the proposed regulations will not change the level of commercial fishing activity in the state. Other types of fishing gear may be used in place of drift gill nets to continue harvest of swordfish.

The Department does not anticipate any benefits to the health and welfare of California residents or worker safety, but the Department does anticipate a benefit to the State's environment. The cumulative effects of the changes statewide are expected to benefit the state's environment by further reducing bycatch of whales, dolphins, sharks, pinnipeds, and sea turtles, including the California state marine reptile, the Pacific leatherback sea turtle.

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

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Voluntary participants will be compensated for their participation.

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

The Department anticipates that program development and implementation will involve an additional 2.0 personnel at a cost of \$523,000 that will be absorbed within the existing budget and resources. Additionally, the Department will experience revenue losses in swordfish landings fees, drift gill net permit renewal and landings fee revenue over the next three years or transfer fees in fiscal year 2019-20.

(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.

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses specifically involved in the shark and swordfish drift gill net fishery.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes that it is (1) unlikely the program will create additional job opportunities; (2) unlikely to result in the elimination of commercial fishing jobs or existing businesses; and (3) likely to benefit the commercial Swordfish fishery through providing long-term sustainability and reductions in protected resource bycatch.

BENEFITS TO THE STATE'S ENVIRONMENT

The regulations proposed describe the implementation of the Transition Program and specify a sunset date on state drift gill net shark and swordfish permit. With the passage of SB 1017, the Legislature intended to direct participants in the swordfish fishery toward the use of lower impact fishing gears for the Transition Program, and specify a modernized fishery, while allowing current participants in the state drift gill net fishery to continue those practices under a State permit for a limited duration of time. This will lead to a more sustainable fishery over time. The cumulative effects of the changes statewide are expected to benefit the state's environment by further reducing bycatch of whales, dolphins, sharks, pinnipeds, and sea turtles, including the California state marine reptile, the Pacific leatherback sea turtle.

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.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

California Department of Fish and Wildlife, Marine Region
Attn: Travis Buck, Environmental Scientist
8901 La Jolla Shores Drive
La Jolla, CA 92037
Phone: (858) 546-5667
Email: Travis.Buck@wildlife.ca.gov

The backup contact person is:

California Department of Fish and Wildlife, Marine Region
Attn: John Ugoretz, Environmental Program Manager
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
Phone: (805) 568-1226
Email: John.Ugoretz@wildlife.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Travis Buck (see above for contact information).

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying at its office at the Santa Barbara address above. As of the date this notice is published, the rulemaking file consists of:

1. Notice of Proposed Action
2. Initial Statement of Reasons
3. Proposed Regulatory Text, including proposed form DFW 1083, “Declaration of Intent to Participate in Drift Gill Net Transition Program”
4. Form STD 204, Payee Data Record (not a Departmental form, but incorporated by reference).
5. Economic and Fiscal Impact Assessment (Form STD 399) and addendum

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The rulemaking file is available online at:

<https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Travis Buck (see above for further contact information). The Department would accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above, or contacting Travis Buck (see above for further contact information).