

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend sections 106 and 107
Add Section 106.5
Title 14, California Code of Regulations
Re: Drift Gill Net Transition Program Implementation

I. **Date of Initial Statement of Reasons:** April 5, 2019

Date of Amended Initial Statement of Reasons: June 7, 2019

II. **Dates and Locations of Scheduled Hearings:** ~~NA~~

<u>Date:</u>	<u>Thursday, May 23, 2019.</u>
<u>Time:</u>	<u>11:00 a.m. to 1:00 p.m.</u>
<u>Location:</u>	<u>CDFW Los Alamitos Office Conference Room 4665 Lampson Avenue, Suite C Los Alamitos, California</u>

III. **Description of Regulatory Action:**

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Background

Existing law prohibits a person from using or operating, or assisting in using or operating, a boat, aircraft, net, trap, line, or other appliance to take fish for commercial purposes, unless the person holds a commercial fishing license issued by the Department of Fish and Wildlife (Department), pursuant to Fish and Game Code (FGC) Section 7850. 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 FGC Section 8561.

Senate Bill 1017 (Allen), signed into law on September 27, 2018, amended several sections in the FGC, including the addition of new 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 the following requirements provided in subdivision (a) of FGC Section 8583:

- Paragraph (1): DGN permittees shall submit their intent to voluntarily participate in the Transition Program to the Department no later than January 1, 2020 on a completed and notarized form provided by the Department.
- Paragraph (2): A permittee who has landed swordfish or thresher shark with a shark or swordfish gill net (defined by FGC Section 8573 to be a net of 14-inch or greater mesh size, hereafter referred to as “large mesh”), or a federal deep set buoy gear exempted fishing permit between April 1, 2012 and March 31, 2018, inclusive, and who then participates in the Transition Program by voluntarily surrendering their DGN permit and all large mesh drift gill net(s) they have in possession receives a specified payment, to the extent that funds for the Transition Program are available:
 - Surrender of a DGN permit only: participant shall receive \$10,000.
 - Surrender of all large mesh gill net(s) in possession: participant shall receive \$100,000.
- Paragraph (3): Those permittees who have not landed swordfish or thresher shark with large mesh drift gill net or federal deep set buoy gear on or after April 1, 2012, but who voluntarily surrender their DGN permit and all large mesh gill net(s) they have in possession, receive \$10,000.
- Paragraph (4): The Department shall notify the voluntary participant of eligibility based on paragraphs (2) and (3) and submit this information to the fiscal agent described under subdivision (b) of FGC Section 8583.
- Paragraph (5): Voluntary participants and the Department must meet several requirements:
 - Voluntary participants must agree to surrender their DGN permit to the Department, as well as all large mesh drift gill nets to an entity approved by the Department for the purpose of destroying the nets.
 - The Department must approve net destruction entities and define through this regulation the criteria for net destruction entities to be approved.
 - Voluntary participants are prohibited from obtaining a new California DGN permit, and must agree not to fish under, transfer, or renew a federal drift gill net permit.

Subdivision (b) of FGC Section 8583 describes the process for the Department to enter into an agreement with a fiscal agent to receive state and nonstate funds

for the Transition Program. When adequate funding is available, the fiscal agent will notify the Department, then make the payment to an eligible voluntary participant, as determined by the Department via the process identified through the proposed regulations.

Pursuant to subdivision (c) of FGC Section 8561, all remaining DGN permits must be surrendered or revoked as of January 31 of the fourth year following the Department's notification to the Legislature that funds for the program are available.

Under existing law (FGC Section 8394.5) a swordfish permit may authorize a person holding that permit to take, possess aboard a boat, and land swordfish for commercial purposes using specified methods, but not including use of a drift gill net, with payment of a fee of \$330. Under existing law, a DGN permittee is exempted from payment of this fee. Amendment to FGC Section 8394.5, resulting from SB 1017, also exempts any person who participates in the Transition Program from future payment of the fee for a swordfish permit, should they continue to take swordfish for commercial purposes by methods not including drift gill net.

Implementation of the Transition Program mandated by recent SB 1017 requires amendments to sections 106 and 107, and the addition of Section 106.5, Title 14, California Code of Regulations (CCR).

Proposed Regulations and Necessity

The proposed regulations will remove references to a logbook that is no longer required, meet the requirements mandated by SB 1017, 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.

Section 106, Title 14, CCR is amended 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, thus it is necessary to remove this requirement in this proposed regulatory action to ensure consistency with the 2018 Commission decision for those permittees who will continue to fish until all DGN permits are surrendered or revoked, pursuant to subsection (h) described below.

- Similarly, 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 DGN permits shall be surrendered or revoked, and that Section 106 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 FGC Section 8583. This subsection is necessary to add in the timeline for implementation for the transitional phase-out of DGN permits, consistent with SB 1017.
- Subsequent subsections of Section 106 have been edited and renumbered for consistency.
- References to FGC sections have been updated for capitalization and accuracy of legislative history, and the reference to telegram communication in renumbered subsection (e) is removed due to the outdated nature of this technology.

Section 106.5, Title 14, CCR, is added to describe the Drift Gill Net Transition Program and process as follows:

- 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. This subsection and form are necessary to implement paragraph (1) of subdivision (a) of FGC Section 8583, which requires that the Department provide a form for a permittee to indicate his or her intention, when notarized and postmarked on or before January 1, 2020, 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 that forms will be processed in the order received. This subsection is necessary to implement the first part of paragraph (4) of subdivision (a) of FGC Section 8583. It also helps permittees understand that form processing is dependent on availability of funding for the Transition Program, and that forms and funding eligibility will be processed on a first-come, first-served basis.
- Subsection (c) includes the requirements permittees must agree to when indicating their intent on form DFW 1083 to participate in the Transition Program. Each paragraph (1) – (4) of this subsection is necessary to implement paragraph (5) of subdivision (a) of FGC Section 8583, and clarify for permittees what is expected of their participation in the program

to qualify for available funding. The date of March 31, 2021 is proposed as a deadline for surrender of state DGN permits and nets, so permittees may fish the entirety of the 2020-2021 permit term using their DGN permit and large mesh nets (permits are valid from April 1-March 31 and renewed annually). Additionally, the Department anticipates the non-state funding required by FGC Section 8583(b) will be fulfilled within a few months of completion of these regulations, and likely by January 1, 2020. A deadline of March 31, 2021 will give permittees more than one year to fulfill the requirements of the program, which should be sufficient time.

- 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. This subsection is necessary to ensure permittees are aware of where in the FGC to look for the payment amounts. Additionally, subsection (d) requires permittees to submit a state form STD 204 Payee Data Record (Rev. 5/2018), which is incorporated by reference into these regulations. This form is not a Departmental form, but is required for all state payments and is necessary for audit purposes, as well as compliance with the State Administrative Manual sections 8422.19 and 8422.190. The STD 204 will be available for download at the Department's website, along with the proposed form DFW 1083.
- **Subsection (e) details the process by a permittee may withdraw their intent from participation in the Transition Program. The permittee must have submitted the notarized DFW 1083 form (subsection (a) of Section 106.5), received notification from the Department of fulfilling requirements of FGC Section 8583 (subsection (b)) for consideration as a participant in the Transition Program. This section explains that participants are able to withdraw their intent from program participation at any point before surrendering net(s) and permit (subsection (c) of Section 106.5), and before they have received compensation pursuant to subdivision (2) of FGC Section 8583 (subsection (d) of Section 106.5). The last date by which a participant can notify the Department of their withdrawal of intent to participate in the Transition Program is January 1, 2021. Because the form DFW 1083 is processed in the order received, permittees are notified of funding availability, therefore this date is necessary to allow an approximate three-month window for the Department to notify the next permittee in line of the availability of funding made available from a withdrawal from program participation. This subsection is necessary to clarify to participants how and when a participant can withdraw from participation in the Transition Program.**
- Subsection (ef) 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.

Destruction of nets is primarily intended to mean that the nets may no longer be used for drift gill net fishing; however, ~~Because~~because some entities will recycle the net components for other purposes, this clarifies that the Department considers recycling for non-drift gill net purposes to be consistent with the requirement for destruction of the nets.

- Paragraph (1) of this subsection directs an entity seeking approval by the Department to destroy nets from the Transition Program to send an email to the specified email address and include how the criteria listed under paragraph (2) are met.
- The criteria are the basis by which Department staff would subjectively evaluate entities requesting approval to destroy nets, from a practical and logistical perspective based on knowledge of commercial fisheries net destruction and recycling processes. These criteria, and this subsection, are necessary to inform prospective net destroying entities what is required for consideration for Department approval to destroy nets for the Transition Program. Criteria listed in paragraph (2) include:
 - (A) a legal entity with experience in net destruction. This is necessary to ensure only legally operating entities are participating in the program, and that those entities have the necessary experience to properly dispose of drift gill nets (which can be up to one mile in length and weigh multiple tons).
 - (B) ability to receive the net and any gear that may be connected to it, such as buoys and lead lines. This is necessary for the Department to ensure an entity is capable of handling what is potentially a large amount of fishing gear, and properly destroying it. That could include deconstructing into component parts, either for ultimate destruction or recycling for a non-drift gill net purpose.
 - (C) ability to provide the permittee evidence of receipt of net surrender, including number of nets surrendered. This is necessary to ensure that the permittees can then provide the Department with evidence all nets were surrendered to the net-destroying entity, as required in subsection (c), Section 106.5, Title 14. The number of nets surrendered will be cross-checked against the information provided by the permittee on form DFW 1083.
 - (D) ability to receive nets in at least one location on a list of specified locations. This is necessary to ensure the entity is

available before the March 31, 2021 deadline for permittees to surrender their nets. The listed ports are those with the highest level of activity for the drift gill net fishery, and thus provide the greatest opportunity for permittees to comply with the program.

- (E) ability to transport nets. Because surrender of drift gill nets can lead to a large volume of fishing gear which will need disposal, it is necessary that entities show their ability to transport such large amounts of fishing gear to avoid pile-ups at the ports.
- (F) ability to track nets from collection to destruction and provide evidence upon request. This request is important in order to fulfill the intent of SB 1017 to document the phase-out of the use of large mesh drift gill nets for the swordfish fishery, and for the Department to verify nets have been destroyed (as opposed to resold for drift gill net fishing activity elsewhere).

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.

New form DFW 1083 DECLARATION OF INTENT TO PARTICIPATE IN DRIFT GILL NET TRANSITION PROGRAM

The proposed form (NEW 08/31/19) is mandated by subdivision (a) of FGC Section 8583, and incorporated by reference into subsection (a) of the proposed Section 106.5, Title 14, CCR. The form would be incorporated by reference because it would be unduly expensive and impractical to publish it in Title 14, CCR, and the form will only be used between August 2019 and January 2020. This form is necessary to inform the regulated community of the information the Department will request of each DGN permittee declaring intent to participate in the Transition Program. In order to provide time for DGN permittees to submit the form indicating their intent to participate in the Transition Program by January 1, 2020, it must be incorporated by reference into regulation several months prior. As such, the Department seeks to implement this form no later than August 31, 2019. The form includes the following sections:

Section 1. General Provisions – This section includes the text of FGC Section 8583 in order to provide the language of the Transition Program requirements to DGN permittees interested as prospective program participants up-front.

Section 2. Drift Gill Net Shark and Swordfish Permittee Information – This section includes fields for the commercial fishing license number, DGN permit number, GO ID (issued via the Automated License and Data Service for online payment of Department licenses or special permits), permittee’s name, address, and contact information. This section is necessary to cross-reference the declarant with DGN permittee information, and ensure that the Department’s License and Revenue Branch (LRB) has the most current contact information to process the form. This section is also necessary because it serves as the contact information that will be shared with the fiscal agent for the purposes of processing payment to the eligible participant, as noted in the Instructions on the second page of the form and pursuant to subdivision (b) of FGC Section 8583.

Section 3. Participation in Drift Gill Net Shark and Swordfish Permit Transition Program – This section includes statements of agreement with the Transition Program requirements of FGC Section 8583 and subsection (c) of Section 106.5, Title 14, CCR that the surrendering DGN permittee must initial and swear to abide by. Agreement by initialing statements A-C is required by all voluntary participants, whereas initialing statements D-F will depend on individual fishing activity, and triggers different payout amounts. **The requirement for the permittee to indicate the number, as well as the approximate length of the nets to be surrendered is necessary for the net destroying entities to assess the weight, or overall amount of net they will be processing for destruction.** This section on the form is necessary because it implements the requirements as stated in subsection (c) of Section 106.5, and the March 31, 2021 date by which compliance by voluntary participants must be met. It also documents for the Department and the fiscal agent what level of payout amount each permittee is qualified to receive.

Section 4. Certification and Signature of Permittee – This section requires the permittee to attest that the information submitted in the declaration form is complete and correct, and that they have read and will abide by applicable provisions of the FGC and the proposed regulations. This section is necessary because it validates and verifies that the information included in the form is complete and truthful, while providing proof to the Department that the applicant understands all related authorities and regulations.

Steps for Surrender of Drift Gill net Shark and Swordfish Permit – These steps outline how a DGN permittee would declare intent for participation in the Transition Program, and surrender their drift gill net shark and swordfish permit. These instructions list the documents that must be submitted with the declaration form, as well as documents required to be submitted at a later date upon notice of eligibility. These instructions are necessary to inform the prospective participant of the documentation and order of surrendering, as well as what to expect if notified of eligibility and the March 31, 2021 deadline for completion of

participant requirements, pursuant to subsection (c) of Section 106.5, Title 14, CCR.

The Note under “Steps for Surrender of Drift Gill Net Shark and Swordfish Permit” reiterates the new subsection (e) of Section 106.5, detailing the process for a permittee to withdraw their intent from participation in the Transition Program. Reiterating this language on this form is necessary to ensure that a permittee who intends to participate in the Transition Program is fully aware of the timeframe and means by which they can withdraw their intent (by submitting written notice postmarked on or before January 1, 2021 to the Department’s License and Revenue Branch).

Instructions for This Form – These instructions include the documents that need to be submitted, including a landing receipt or landing date and location as evidence for those permittees who may qualify for a higher level of payment pursuant to paragraph (2) of subdivision (a) of FGC Section 8583. Contact emails and phone numbers provide the permittee a means to contact the Department with questions, and the address at the bottom includes the reminder that the form must be postmarked by January 1, 2020. These instructions are necessary in order to provide clarity for the prospective participant on what to submit, who to ask questions of, and where to send the form and required documentation.

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

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.

(c) Specific Technology or Equipment Required by Regulatory Change: None.

(d) Identification of Reports or Documents Supporting Regulation Change: None.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. All current DGN permittees were notified by written letter mailed February 12, 2019 of the changes to FGC Section 8561.5 regarding permit transfer, and of this Transition

Program rulemaking process. Subdivision (e) of Section 8561.5 states Section 8561.5 will become inoperative March 31, 2019, and the Section will be repealed on January 1, 2020. Beginning March 31, 2019, the new Section 8561.5 becomes operative, which prohibits the transfer of a DGN permit.

The 45-day comment period provides adequate time for review of the proposed amendments to Sections 106 and 107, and addition of section 106.5, Title 14, CCR.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Department staff that would implement the Fish and Game Code requirements and have the same desired regulatory effect.

(b) No Change Alternative:

If the original regulations are retained, the Department will not be able to meet the requirements mandated by SB 1017. There would be no option for a DGN Transition Program.

(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 negative impact on the environment; therefore, no mitigation measures are needed.

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. Drift gill net gear is not allowed for landing 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 (see STD399 Addendum).

- (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:

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

The cumulative effects of the changes statewide are expected to be neutral regarding the creation or elimination of jobs within the State.

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

The cumulative effects of the changes statewide are expected to be neutral to a small positive impact regarding the creation of new businesses or the elimination of existing businesses within the State. There may be new opportunities for business entities involved in destroying and/or recycling relinquished gill nets.

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

The cumulative effects of the changes statewide are expected to be neutral to a small positive impact regarding expansion of businesses currently doing business within the State. Businesses involved in recycling or destroying relinquished gill nets may experience a temporary increase in availability of inputs.

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

The cumulative effects of the changes statewide are expected to be neutral regarding the health and welfare of California residents.

- (e) Benefits of the Regulation to Worker Safety:

The cumulative effects of the changes statewide are expected to be neutral regarding worker safety.

(f) Benefits of the Regulation 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.

(g) Other Benefits of the Regulation:

The cumulative effects of the proposed regulatory changes statewide will allow California to set the standard for sustainable swordfish fishing globally and follow the lead of other states in implementing sustainable alternatives. California’s standards for sustainability and low environmental impacts in commercial fishing are critical for addressing impacts in foreign fisheries, since these standards frame the scope of international efforts to push for stronger international standards, both diplomatically and as a matter of federal law. The Pacific Fishery Management Council is in the process of authorizing a new innovative technology for fishing swordfish known as deep set buoy gear. This gear could be used to improve and modernize the fishing practices of California’s swordfish fishery. The proposed regulations will also remove references to a logbook that is no longer required, and voluntary Transition Program participants will be benefitted by compensation, to the extent that program funds are available.

Updated 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 is 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 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) clarifies to participants how and when a participant can withdraw from participation in the Transition Program.**
- Subsection (**ef**) adds language defining the criteria for net destruction entities to be approved by the Department to destroy large mesh nets for the Transition Program, **and interprets what net destruction means.** 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.

New form DFW 1083 “Declaration of Intent to Participate in Drift Gill Net Transition Program” is added, in summary:

The proposed form (NEW 08/31/19) is mandated by subdivision (a) of FGC Section 8583, and incorporated by reference into subsection (a) of the proposed Section 106.5, Title 14, CCR. This form is necessary to inform the regulated community of

the information the Department will request of each DGN permittee declaring intent to participate in the Transition Program. Four sections, as well as “Steps for Surrender of Drift Gill Net Shark and Swordfish Permit,” and “Instructions for this Form” make it clear to the permittee how to participate in the Transition Program.

BENEFITS OF THE PROPOSED REGULATIONS:

The proposed regulations 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 via 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 proposed regulations will also remove references to a logbook that is no longer required, and voluntary transition program participants will be compensated to the extent that funds are available.

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 Section 8561, Fish and Game Code, out of the drift gill net fishery (Section 8583 of the Fish and Game Code). The Department has reviewed existing regulations in Title 14 of the California Code of Regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

June 7, 2019

The following changes to the Original Proposed Package address public comments and concern related to how the Transition Program would be implemented. The changes are described as follows:

- **Add a new subsection (e) to Section 106.5 that details the process by a permittee may withdraw their intent from participation in the Transition Program. This new subsection (e) explains the means by which to withdraw (submit written notice to the Department’s License and Revenue Branch), as well as the timing (postmarked on or before January 1, 2021).**
 - **Add to page 2, “Steps for Surrender of Drift Gill Net Shark and Swordfish Permit,” on form DFW 1083 (Declaration of Intent to Participate in Drift Gill Net Transition Program) the language from the new subsection (e) detailing the process for a permittee to withdraw their intent form participation in the Transition Program.**

- **Re-assign the previous subsection (e) as new subsection (f) of Section 106.5, and expand on the interpretation that destroying a drift gill net means that it can no longer be used for drift gill net fishing.**

Insert the words “and approximate length” into the phrase “Indicate number of nets here” on form DFW 1083 under Section 3, Statement E. This changes the language to read “Indicate number and approximate length of nets” so that net destroying entities can assess the weight, or overall amount of net they will be processing for destruction.

PROPOSED REGULATORY LANGUAGE

Section 106, Title 14, California Code of Regulations is amended to read as follows:

§ 106. Permits to Commercially Take Shark and Swordfish Using Drift Gill Nets.

(a) Permit Required.

(1) The owner or operator of a vessel using drift gill nets to take shark and swordfish pursuant to sections 8561-~~8570~~ 8569 of the Fish and Game Code shall have obtained a valid drift gill net shark and swordfish permit and shall be a permittee in possession of said permit when engaged in such activities.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered vessel who has qualified for said permit pursuant to sections 8561-~~8570~~8569 of the Fish and Game Code. ~~The applicant, if the holder of an expired drift gill net shark and swordfish permit, shall have complied with subsection (d) dealing with records during the preceding year.~~

(b) Limitations of Permit. Except as provided in ~~section~~Section 8564 of the Fish and Game Code, no permit shall be valid for more than one vessel at one time.

(c) Cost of Permit. See ~~section~~Section 8567 of the Fish and Game Code.

~~(d) Records. Pursuant to section 190 of these regulations, each permittee shall complete and submit an accurate record of all gill net fishing activities on a form (Gill and Trammel Net Log, DFG 174 (10/89), see Appendix A) provided by the department.~~

~~(e)~~(d) Notification Procedure. The department shall notify permittees if the director, pursuant to ~~section~~Section 8577 of the Fish and Game Code, closes the drift gill net shark and swordfish fishery or any area where the fishery is conducted. The department shall notify a permittee if his permit is suspended pursuant to ~~section~~Section 8576 of Fish and Game Code. In either case, the department shall notify permittees by certified mail and by public announcement on VHF/Channel 16 between 0800 hours and 1000 hours during normal business days. Radio transmissions shall commence 48 hours prior to the effective date of a closure or permit suspension and shall continue for 24 hours after the effective date of such action. It shall be the responsibility of the permittee to daily monitor the named radio channel during the specified hours.

~~(f)~~(e) A permittee may have any person serve in his place on the permittee's vessel and engage in fishing under his drift gill net shark and swordfish permit for not more than 15 calendar days in any one year, except as otherwise provided in ~~sections~~subdivision (b) of Section 8563~~(b)~~ of the Fish and Game Code. A permittee shall notify the department's Los Alamitos office of such a substitution by certified letter ~~or telegram~~ to be received at the Los Alamitos office during normal business hours at least 24 hours prior to the commencement of the trip. Any notice sent in this regard shall include, but is not limited to:

- (1) Name of the vessel;
- (2) Name and commercial fishing license number of the substitute;
- (3) Departure date and port for the trip;
- (4) Termination date and port for the trip.

Conviction of a substitute permittee for a willful violation of any provision of Article 16 (commencing with ~~section~~Section 8560) of chapter 2 or article 1 (commencing with

~~section~~Section 8601), or article 5 (commencing with ~~section~~Section 8680) of chapter 3, part 3, division 6 of the Fish and Game Code or any regulation adopted pursuant thereto, while operating under the substitute permit, shall be cause to revoke or suspend the permit issued pursuant to ~~sections~~Sections 8560-8583 of the Fish and Game Code.

~~(g)~~(f) Conditions of Permit. ~~Permit holders~~Permittees, their agents, servants, employees or those acting under their direction or control, shall comply with all applicable provisions of the Fish and Game Code relating to commercial fish and any regulations adopted pursuant thereto.

~~(h)~~(g) Revocation of Permits. Any permit may be revoked or suspended by the commission, when requested by the department, upon a conviction for a willful violation of any provision of article 16 (commencing with ~~section~~Section 8560) of chapter 2 or article 1 (commencing with ~~section~~Section 8601) or article 5 (commencing with ~~section~~Section 8680) of chapter 3, part 3, division 6 of the Fish and Game Code, or violation of any condition of the permit by the permittee or the permittee's agent, servant, employee or person acting under the permittee's direction or control.

h) 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.

Note: Authority cited: Sections 1050, 7857, 8394, 8561, 8577, and ~~8578, 8583~~ Fish and Game Code.

Reference: Sections 8394.5, ~~8561-8570~~8569, Fish and Game Code.

PROPOSED REGULATORY LANGUAGE

Section 106.5, Title 14, California Code of Regulations is added as follows:

§ 106.5. Drift Gill Net Shark and Swordfish Permit Transition Program.

(a) Drift gill net shark and swordfish permittees with valid permits issued pursuant to Section 106 of these regulations who choose to participate in the transition program shall submit a completed and notarized department form, Declaration of Intent to Participate in Drift Gill Net Transition Program (DFW 1083, NEW 08/31/19) (incorporated herein by reference). All Declarations of Intent to Participate must be postmarked on or before January 1, 2020.

(b) When funds are available, the department shall notify in writing a permittee who submits form DFW 1083 in the order received whether the permittee meets the requirements of Section 8583 of the Fish and Game Code.

(c) Any permittee who meets the requirements of Section 8583 of the Fish and Game Code and voluntarily participates in the transition program shall indicate on form DFW 1083 agreement to:

(1) Upon notification of eligibility in the program pursuant to (b) above, surrender their permit to the department by March 31, 2021.

(2) Upon notification of eligibility in the program pursuant to (b) above, surrender all large mesh (greater than or equal to 14 inch) drift gill nets to an entity approved by the department for the purpose of destroying the nets as defined in subsection (e) of this Section, and provide the department valid receipt of net relinquishment by March 31, 2021.

(3) Be prohibited from obtaining a new California drift gill net shark and swordfish permit.

(4) Upon receipt of payment, not fish under, transfer, or renew a federal drift gill net permit.

(d) A permittee who the department has determined meets the requirements of Section 8583 of the Fish and Game Code, who complies with subsection (c) of this Section by March 31, 2021, and who submits a completed state form STD 204, Payee Data Record (Rev. 5/2018, incorporated by reference herein) shall be compensated pursuant to subdivision (2) of Section 8583 of the Fish and Game Code.

(e) Any permittee who has completed the steps outlined in subsections (a) or (b) of this Section may withdraw their intent to participate in the Transition Program prior to receipt of compensation outlined in subsection (d) of this Section by submitting written notice postmarked on or before January 1, 2021 to the department's License and Revenue Branch.

(ef) The department shall approve entities upon written request for the purpose of destroying large mesh drift gill nets pursuant to the transition program. ~~Destruction~~ **Destroy means modification of the nets to the point they may no longer be used for the purpose of drift gill net fishing, and** may include recycling net components for non-drift gill net purposes.

(1) Written requests shall be submitted to the department at CPSHMS@wildlife.ca.gov.

(2) Written requests shall document how the entity meets the following criteria:

(A) Be a legal entity, with experience in receiving and destroying commercial fishing gear.

(B) Be able to receive drift gill nets, including attached floats, buoys, and lead lines, from transition program participants, and able to properly deconstruct the nets to prepare all components for destruction.

(C) Be able to provide transition program participants with evidence of receipt of surrendered nets identifying the transition program participant and number of nets surrendered.

(D) Be able to provide a physical location or locations in the ports of San Diego, Los Angeles, Ventura, or Santa Barbara between January 1, 2020 and March 31, 2021 to receive drift gill nets from transition program participants.

(E) Be able to transport surrendered drift gill nets designated for destruction.

(F) Be able to trace surrendered drift gill nets from collection to destruction and provide the department with evidence of net destruction upon request.

Note: Authority cited: Section 8583 Fish and Game Code.

Reference: Sections 8573 and 8579, Fish and Game Code.

PROPOSED REGULATORY LANGUAGE

Section 107, Title 14, California Code of Regulations is amended to read as follows:

§ 107. Broadbill Swordfish

(a) Permit Required.

(1) The owner or operator of a vessel taking broadbill swordfish for commercial purposes shall have obtained a valid swordfish permit and shall be in possession of said permit when engaged in such activities.

(2) To Whom Issued. The department shall issue a permit to the owner or operator of a currently registered vessel. ~~The applicant, if the holder of an expired swordfish permit, shall have complied with subsection 107(e) dealing with records during the preceding year, or during the last year such applicant held a permit, in order to be eligible for a permit.~~

(b) Vessel Identification. Permittees vessel shall display its assigned permit number in 10" high x 2"-wide black Roman alphabet letters and Arabic numerals. Figures shall be black on a white background on both sides of the superstructure of the vessel. Numbers shall be displayed at all times while operating under a swordfish permit.

(c) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.

(d) Cost of Permit. See Section 8394.5 of the Fish and Game Code.

(e) Methods of Take.

(1) Swordfish may be taken only with hand-held hook and line, deep set buoy gear authorized under federal law, or handthrusted harpoon.

(2) Aircraft may be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.

Only aircraft with current FAA registration which are registered with the department pursuant to Section 7892, Fish and Game Code, and aircraft pilots licensed pursuant to Section 7850, Fish and Game Code, may conduct flights for permittees. Such aircraft shall display the letters "SW" on the underside of each wing in block Roman alphabet at least 24 inches high x 3 inches wide, black in color and on a white background.

(f) Notification Procedure. The department shall notify permittees if the director, pursuant to Section 8577 of the Fish and Game Code, closes the swordfish harpoon fishery or any area where the fishery is conducted. The department shall notify permittees by mail and by public announcement on VHF/Channel 16 between 0800 hours and 1000 hours during normal business days. Radio transmissions shall commence 48 hours prior to the effective date of a closure and shall continue for 24 hours after the effective date of such action. It shall be the responsibility of the permittee to daily monitor the named radio channel during the specified hours.

(g) Revocation of Permits. Any permit may be revoked and canceled by the commission upon breach or violation of any fish and game law or regulation or violation of the terms or conditions of the permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

Note: Authority cited: Sections 1050, 7857, 7892, 8026 and 8394, Fish and Game Code. Reference: Sections 1050, 7857, 7892, 8026, 8394, 8394.5, ~~and 8577, and 9028,~~ Fish and Game Code.