

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

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. Date of Final Statement of Reasons: July 17, 2019
- III. Dates and Locations of Scheduled Hearings:
- (a) Public Hearing: Date: May 23, 2019
Location: Los Alamitos, CA

IV. **Update:**

The Department of Fish and Wildlife's (Department) 45-day public comment (notice) period for the Drift Gill Net Transition Program (Transition Program) rulemaking commenced with publication of the notice of the Initial Statement of Reasons (ISOR) ("Original ISOR") in the California Regulatory Notice Register No. Z-2019-0325-01, on April 5, 2019, and ended at 5:00pm on May 20, 2019. Seven individual requests for the Department to hold a public hearing pursuant to Government Code subsection 11346.8(a) were received in advance of 15 days prior to the close of the written comment period (**Appendix A**).

A public hearing was held on Thursday, May 23, 2019 from 11:00 a.m. to 1:00 p.m. at the Department's Los Alamitos Office Conference Room, located at 4665 Lampson Avenue, Suite C, Los Alamitos, California. In addition, the Department made the hearing accessible via a webinar and teleconference phone line. The minutes from this public hearing are provided in **Appendix A**.

The following changes to the Original ISOR address public comments and concerns related to how the Transition Program would be implemented. The changes required the posting of an additional 15-day continuation notice ("Amended ISOR"), which are described as follows:

- Add a new subsection (e) to Section 106.5, Title 14, California Code of Regulations (CCR) that details the process by which 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 of proposed form DFW 1083 (Declaration of Intent to Participate in Drift Gill Net Transition Program), "Steps for Surrender of Drift Gill Net Shark and Swordfish Permit," the language from the new subsection (e) detailing the process for a permittee to withdraw their intent to participate in the Transition Program.
- Re-assign the previous subsection (e) as new subsection (f) of Section 106.5, Title 14, CCR, and define "destroying" a drift gill net as meaning 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 proposed 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.

The proposed regulations included the incorporation by reference of new form DFW 1083 (NEW 08/31/2019), "Declaration of Intent to Participate in Drift Gill Net Transition Program," This form is proposed to 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. Another 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 form DFW 1083.

The Department adopted the regulations as amended by this continuation notice on July 17, 2019.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Refer to **Appendix B** – responses to comments for the Original ISOR, as well as **Appendix C** – responses to comments for the Amended ISOR.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

Department of Fish and Wildlife
1416 Ninth Street, Suite 1342-A
Sacramento, California 95814

VII. 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 Senate Bill (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.

IX. 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 businesses, 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 businesses, 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.

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 California Department of Fish and Wildlife (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.

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 (a) 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 (f) 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 logbook 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 (e)(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 the 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.

UPDATE

The following changes to the Original Initial Statement of Reasons (ISOR) address public comments and concerns related to how the Transition Program would be implemented. The changes required the posting of an additional 15-day continuation notice (“Amended ISOR”), which are described as follows:

- **Update the informative digest to include a summary of the proposed new form DFW 1083 (Declaration of Intent to Participate in Drift Gill Net Transition Program), and to correct the reference under Section 107 to subsection (e)(1) from (f)(1) for consistency with SB 1017 changes to FGC Section 9028.**
- **Add a new subsection (e) to Section 106.5 that details the process by which 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 of form DFW 1083, “Steps for Surrender of Drift Gill Net Shark and Swordfish Permit,” the language from the new subsection (e) detailing the process for a permittee to withdraw their intent to participate in the Transition Program.**

- **Re-assign the previous subsection (e) as new subsection (f) of Section 106.5, and define “destroying” a drift gill net as meaning 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.**
- **Since the posting of the 15-day re-notice for the Amended ISOR, the Department made the following non-substantive changes for clarity and consistency, as reflected in this Final Statement of Reasons.**
 - **First paragraph of the Informative Digest: included full name of the California Department of Fish and Wildlife in the first mention of Department.**
 - **Third paragraph of the Informative Digest: include the words “shark and” before “swordfish” so the first sentence reads “...encourage the transition to more selective and sustainable gears used to catch shark and swordfish.”**
 - **Fourth bullet under the description for the addition of Section 106.5, Title 14, CCR: clarify the reference to Fish and Game Code as subdivision (a) of Section 8583, under which paragraph (2) falls.**
 - **Under “Benefits of the Proposed Regulations” in the Informative Digest: added the word “the” before “state drift gill net” so the sentence reads “...specify a sunset date on the state drift gill net shark and swordfish permit.”**
 - **Proposed Title 14, Section 106, subsection (e)(4): remove the proposed change to capitalize “Sections” in the phrase “...permit issued pursuant to sections 8560-8583 of the Fish and Game Code,” keeping the word “sections” lowercase.**
 - **Proposed Title 14, Section 106.5, subsection (c)(2): update the reference to subsection (f) of Section 106.5 from subsection (e) that was added with the 15-day renote of the Amended ISOR.**
 - **Proposed Title 14, Section 106.5, subsection (d): clarify the reference to Fish and Game Code as subdivision (a) of Section 8583, under which paragraph (2) falls.**
 - **Proposed form DFW 1083, page 2, “Steps for Surrender of Drift Gill Net Shark and Swordfish Permit,” second bullet under item 3: update the reference from the previous subsection (e) to subsection (f) of Section 106.5 regarding gill net destruction so that the bullet reads, “...to an entity approved to destroy drift gill nets (subsection (f) of Section 106.5, Title 14)...”**

- **Proposed form DFW 1083, page 1, Section 3, Statement E: the six words “...[,] upon notification of eligibility to participate[,]...” and a second set of six words “...on or before March 31, 2021...” were inadvertently deleted from this section of the form when the Department added the three words “...and approximate length” to Statement E during the 15-day continuation notice in the Amended ISOR. The accidental removal of these twelve words from Statement E was not indicated by strikeout. Because the twelve words were included in Statement E of Section 3 with the original 45-day notice, and the Department did not receive any comments on this inadvertent deletion, the Department has re-included these twelve words into Statement E with the final form DFW 1083 to read: “I possess one or more large-mesh (\geq 14 inch mesh) drift gill net(s) and, upon notification of eligibility to participate, agree to relinquish all such nets to a net destroying entity approved by the Department on or before March 31, 2021 (indicate number and approximate length of nets here).”**

The Department of Fish and Wildlife adopted the final regulations on July 17, 2019, as amended in the 15-day continuation notice in the Amended ISOR dated June 7, 2019.