

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE  
NOTICE OF PROPOSED ACTION  
March 5, 2021

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NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt regulations to amend section 106.5, Title 14, California Code of Regulations (CCR) to extend the deadline to participate in the Drift Gill Net Transition Program (Transition Program) described in Section 8583 of the Fish and Game Code (FGC) to allow for the full participation of all voluntary participants. These amendments also aim to clarify that the most recent valid drift gill net shark and swordfish permit held between the 2019/2020 and 2023/2024 permit year will be accepted.

As directed by FGC Section 8583, the Department established the Transition Program to incentivize commercial fishermen to transition out of the drift gill net shark and swordfish fishery, which reduces bycatch and provides for a more sustainable swordfish fishery. The Transition Program allows permittees to voluntarily surrender their drift gill net (DGN) shark and swordfish permit and large mesh DGN(s) to the Department ahead of the prescribed sunset date in exchange for a one-time payment prescribed by FGC Section 8583. The proposed amendments to Section 106.5 would extend the current March 31, 2021 deadline for permittees to complete the Transition Program and extend it to one year from the date of notification of eligibility by the Department or January 31, 2024, whichever is sooner.

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 to the contact below 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 **April 19, 2021**, to the contact as follows:

California Department of Fish and Wildlife, Marine Region  
Attn: Travis Buck, Senior Environmental Scientist  
3883 Ruffin Road  
San Diego, CA 92123

Email: [Travis.Buck@wildlife.ca.gov](mailto:Travis.Buck@wildlife.ca.gov)

## AUTHORITY AND REFERENCE:

### Section 106.5:

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

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

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 required 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 established the Transition Program in sections 106, 106.5, and 107, Title 14, California Code of Regulations (CCR), effective September 15, 2019 (file # 2019-0719-03S). These regulations established a deadline of March 31, 2021 to participate in the Transition Program by surrendering their DGN permit and all large mesh (greater than or equal to 14 inch) net(s). This deadline was implemented with a working assumption that participants would be able to complete the process between the January 1, 2020 statutory deadline to submit forms declaring their intent to participate in the Transition Program and the surrender date of March 31, 2021. Delays in Transition Program implementation brought on by the COVID-19 pandemic and the lack of adequate funding have prevented some potential participants from completing the required steps by the March 31, 2021 deadline. Additionally, existing regulations do not state whether the DGN permit held at the time of declaring intent to participate may be the one surrendered or if a permittee must continue to renew the permit annually until they are notified of their eligibility to participate.

## **PROPOSED REGULATIONS**

The proposed regulation change will extend the deadline to participate in the Drift Gill Net Transition Program from March 31, 2021 to one year following receipt of notification of eligibility from the Department or January 31, 2024, whichever is sooner. The proposed regulation change will also clarify that the most recent valid drift gill net shark and swordfish permit held between the 2019/2020 and 2023/2024 permit year will be

accepted. Additional changes are made throughout to provide consistency with the amended deadline.

Amendments to **Section 106.5, Title 14 CCR** are summarized as follows:

- Subsection (c)(1) is amended to revise the deadline for surrendering their permit and extend it to one year from the date of eligibility notification by the Department or January 31, 2024, whichever is sooner. Text is added to indicate that for the purposes of the program, the most recent valid drift gill net shark and swordfish permit possessed for the 2019/2020 through 2023/2024 permit year will be accepted.
- Subsection (c)(2) is amended to revise the deadline for surrendering 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 and providing the department valid receipt of net relinquishment, and extend it to one year from the date of eligibility notification by the Department or January 31, 2024, whichever is sooner.
- Subsection (d) is amended to revise the deadline for 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 the Section and extend it to one year from the date of eligibility notification by the Department or January 31, 2024, whichever is sooner.
- Subsection (e) is amended to remove the date by which a voluntary participant, who has not received compensation, may withdraw from participation. Previously there was a deadline to withdraw from participation to ensure that funding was not held up by those who were sent notification, but then did not complete the process. However, with amendments requiring completion of net destruction and permit relinquishment within one year of notification, a deadline to withdraw is no longer necessary.
- Subsection (f)(2)(D) is amended to revise the deadline for providing a physical location or locations in the ports of San Diego, Los Angeles, Ventura, or Santa Barbara for entities destroying nets to receive drift gill nets from transition program participants and extend it to January 31, 2024.

### **BENEFITS OF THE PROPOSED REGULATIONS:**

The goal of the regulation change is to allow adequate time for all voluntary participants to complete the transition process and receive compensation. The regulation will benefit voluntary participants by providing them compensation to allow transitioning to other gear types, and will benefit the environment by reducing bycatch in the Drift Gill Net Shark and Swordfish fishery.

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. Many California species killed by the drift gill net fishery are protected under state and federal law or covered under international agreements, such as the sperm whale, the leatherback sea turtle, the loggerhead sea turtle, the bigeye thresher shark, and the scalloped hammerhead shark.

#### **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 – NONE.

#### **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 extends the deadline of a voluntary transition program that provides 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 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 because the proposed regulations will not change the level of commercial fishing activity in the state. Other fishing gear may be used in place of drift gill nets to continue to harvest shark and 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 to extend deadlines. Voluntary participants will be compensated for their participation to surrender their DGN permits and nets.

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

The Department anticipates that continued program implementation will involve an additional personnel cost of \$182,800 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 years 2020-2021 through 2023-2024 (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.

#### 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.

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 with regard to 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 with regard to 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 with regard to 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 with regard to 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 with regard to worker safety.

## 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.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## 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, Senior Environmental Scientist  
3883 Ruffin Road  
San Diego, CA 92123  
Phone: (831) 238-1492  
Email: [Travis.Buck@wildlife.ca.gov](mailto: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: (562) 338-3068  
Email: [John.Ugoretz@wildlife.ca.gov](mailto: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
4. 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/DGNExt>

#### 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).