

State of California
California Department of Fish and Wildlife
Initial Statement of Reasons for Regulatory Action

Amend Section 106.5
Title 14, California Code of Regulations
Re: Drift Gill Net Transition Program Timeline Extension

I. Date of Initial Statement of Reasons: February 24, 2021

II. Dates and Locations of Scheduled Hearings: N/A

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory 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 established the Transition Program in Title 14, California Code of Regulations, effective September 15, 2019 (file # 2019-0719-03S). These regulations establish 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.

SB 1017 established the provisions for payment to voluntary participants in FGC Section 8583 Subdivision (a). Participants with a history of active DGN shark and swordfish fishing and

landings within a listed time period receive payment under the Transition Program of \$10,000 for surrendering their DGN permit and \$100,000 for surrendering their nets. Participants without a history of active DGN shark and swordfish fishing and landings in the listed time period receive payment of \$10,000 for surrendering both their DGN permit and nets.

The bill identified funding for the Transition Program in the amount of \$1,000,000 appropriated to the California Ocean Protection Council (OPC) in Item 0540-101-0001 of Section 2.0 of the Budget Act of 2018 (Chapter 29 of the Statutes of 2018) for whale and sea turtle entanglement. The bill also established a sunset date for California DGN shark and swordfish permits once an additional \$1,000,000 from nonstate sources was secured. OPC completed an agreement to transfer \$1,000,000 for the Transition Program to the fiscal agent, Pacific States Marine Fisheries Commission, in June 2020. Non-state funds of \$1,000,000 were received by the fiscal agent in September 2020, triggering the start of the sunset of state permits for the fishery by January 31, 2024. Based on the required payments, this initial \$2,000,000 allowed for 24 of 44 voluntary DGN shark and swordfish permittees to participate. An additional 20 permittees indicated their intent to participate prior to the January 1, 2020 deadline and have been deemed eligible for inclusion, however an additional \$1,300,000 is required to provide payment to these individuals.

Proposed Regulations and Necessity

The proposed regulation change is necessary in order to allow full participation of all voluntary participants. Without a regulation change, there will not be adequate time for full funding to be obtained and for participants to relinquish their nets as required by statute. The proposed regulation change will extend the deadline to participate in the 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. January 31, 2024 is consistent with the date when all state drift gill net shark and swordfish permits will be revoked pursuant to subdivision (c) of FGC Section 8561. The initial funding to pay out the permittees was not acquired until July 2020, and a second batch of funding was received in September 2020. As such, initial participants have had less than 1 year to complete the process, and there are still 20 potential participants for whom funds are not yet available. Participants who have already completed the process have been able to do so in less than one year.

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. Given that permittees who indicated they would participate likely assumed they would have no need to renew permits, and that the goal of the program is to encourage these permittees to relinquish their nets and remove their permits from the fishery, there is no reason to require individuals to renew permits when they have already committed to participation and are not actively fishing. Additional changes are made throughout to provide consistency with the amended deadline.

Section 106.5 is amended 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 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 FGC Section 8583, 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 for entities destroying nets in the ports of San Diego, Los Angeles, Ventura, or Santa Barbara to receive drift gill nets from Transition Program participants and extend it to January 31, 2024.

(b) Goals and Benefits of the Regulation

The goal of the regulation change is to allow adequate time for all voluntary participants to complete the transition process and receive compensation for surrender of their DGN permits and nets. 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 DGN shark and swordfish fishery.

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

Authority: Section 8583, Fish and Game Code

Reference: Section 8583, Fish and Game Code

(d) Specific Technology or Equipment Required by Regulatory Change

None

(e) Identification of Reports or Documents Supporting Regulation Change

None

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

No public meetings are being held prior to the notice publication. All potential Transition Program Participants were notified by mail and email of the proposed change.

The 45 day comment period provides adequate time for review of the proposed amendment.

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 meet the purpose and need of this proposed change. Consideration of a shorter timeframe of deadline submission of 2022 was rejected due to the potential for funding to still be unavailable in the next year, and allowing a full year for any participant to complete the process once they are notified when funds are available ensures adequate time for each participant to complete the requirements, regardless of when funds are received. Participants who have already completed the process have been able to do so in less than one year.

(b) No Change Alternative

If the original regulations are retained, many potential participants in the Transition Program will be unable to complete the required process by the existing March 31, 2021 deadline and obtain compensation for participation. These permittees thus will likely not transition out of the fishery, thereby circumventing the goal of the program and the requirements mandated by SB 1017.

(c) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

No alternative would lessen adverse impact on small business. The proposed regulation has the potential to benefit small business by allowing individual permittees to voluntarily transition out of the drift gill net shark swordfish fishery in exchange for monetary compensation on an extended timeline.

V. Mitigation Measures Required by Regulatory Action

None

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 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

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 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.

(f) Benefits of the Regulation 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. Many California species taken as by-catch in 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.

(g) Other Benefits of the Regulation

The changes will allow voluntary participants to receive compensation for surrendering their permits and nets and allow them greater opportunities to fish different gear types.

Informative Digest/Policy Statement Overview

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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 transition 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.

Section 106.5 is amended 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.