

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Add Section 174.1
Title 14, California Code of Regulations
Re: Set Gill Net Service Interval, Gear Marking and Mesh Depth

I. Dates of Statements of Reasons

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|---------------------------------------|-----------------------------|
| (a) Initial Statement of Reasons | Date: March 2024 |
| (b) Pre-adoption Statement of Reasons | Date: July 8, 2024 |
| (c) Final Statement of Reasons | Date: April 22, 2025 |

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: April 17-18, 2024	Location: San Jose
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(b) Discussion Hearing

Date: June 19-20, 2024	Location: Mammoth Lakes
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(c) Adoption Hearing

Date: August 14-15, 2024	Location: Fortuna
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(d) Re-adoption Hearing

Date: April 16-17, 2025	Location: Sacramento
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III. Update

At its August 14, 2024, meeting, the California Fish and Game Commission (Commission) adopted the three proposed regulations on set gill net service interval, gear marking, and mesh depth. As originally stated in the ISOR, proposed language in subsection 174.1(a) for a maximum service interval included a range of 24 to 48 hours. The final maximum service interval of 48 hours was adopted from this range through the Commission's public process. As originally stated in the ISOR, proposed language in subsection 174.1(b) for marking of the headrope included three color options. The final headrope color of orange was adopted via the Commission public process from the following options: red, orange, and/or yellow.

Following initial review by the Office of Administrative Law (OAL), several changes were made to the regulatory language to improve clarity and enforceability while preserving the substance of the adopted regulations (see the *Descriptions of Specific Edits* document, Item 2.D., rulemaking record # 2025-0106-02SR). These changes were noticed to the public on December 19, 2024 for a 15-day comment period that ended on January 3, 2025. No comments were received on the revisions to the regulatory language.

At its April 16-17, 2025 meeting, the Commission adopted the regulatory language as re-noticed in December 2024.

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

Public comments received through July 8, 2024 were responded to in the Pre-Adoption Statement of Reasons ("PSOR"). Comments received between July 8, 2024, and August 14, 2024, are summarized and responded to in the attached table.

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives to a regulatory change were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect. Imposition of performance standards is not a reasonable alternative to these specifically prescribed procedures because management measures require action to be taken to address unacceptable bycatch, and a service interval would reduce bycatch. Similarly for mesh depth, specifications on mesh depth would mean improved efficiency in targeting halibut and white seabass, while reducing bycatch of other species. Alternative markings were voluntarily trialed including a colored tracer line weaved into the headrope, but during outreach efforts with the fleet it was decided the colored nylon strap was the most cost effective and efficient.

(b) No Change Alternative

Without the proposed changes, the outstanding issues concerning unacceptable bycatch in the set gill net fishery would remain unaddressed. The Department of Fish and Wildlife (Department) would be unable to meet its objectives under the 2018 Master Plan for Fisheries or requirements of the Marine Life Management Act.

(c) Consideration of Alternatives

In view of information currently possessed, no 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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

No other alternatives to the proposed regulatory change were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect. The service interval options under consideration ranged from 24 to 48 hours. A 48-hour service interval was adopted, in part to avoid additional transit costs for the approximately 97% of permittees that regularly service their nets at intervals less than 48 hours. Alternative markings were voluntarily trialed including a colored tracer line weaved into the headrope, but during outreach efforts with the fleet it was decided the colored nylon strap was the most cost-effective and efficient. Without the proposed changes, the outstanding issues concerning unacceptable bycatch in the set gill net fishery would remain unaddressed, and the Department would be unable to meet the

requirements of the MLMA.

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 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 **adopted** 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. 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 because this action will not affect the demand for goods and services related to the set gill net fisheries within the state.

- (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 Commission 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. The Commission does not anticipate any benefits to the health and welfare of California residents, or worker safety. The Commission anticipates benefits to the State's environment by sustainably managing California's marine resources.

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

The Commission is aware of the cost impacts that a representative private business would necessarily incur in reasonable compliance with the **adopted** action. Set gill net permit holders would have some additional gear-marking time and material costs and **from reported service interval times, about three percent** may have to undertake some additional vessel travel time to monitor nets if they do not already adhere to the **adopted 48-hour** maximum gill net service interval (see STD399 and Addendum).

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

The Department Law Enforcement Division (LED) staff anticipates a temporary increase in patrol boat time until the set gill net fleets adjust to the **adopted** regulations (see STD399 and 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.

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Attachment 1. Specific Responses to Comments

Responses to unique comments received during the Public Notice period July 8, 2024 through August 14, 2024.

Each individual comment letter is labeled as “#”

Subjects unrelated to the specifics of the regulation are not included.

Comments may be paraphrased for succinctness.

#	Name, Format, Date	Comment	Response
1	Caitlin Birch, Oceana, Oral comment, 8/14/2024	<p>1a. Strongly supports 24 hours, the only regulation that could reduce bycatch.</p> <p>1b. Orange tracer fails to positively mark the gear for entanglements; would like to see unique, custom made lines like has been done in other fisheries.</p>	<p>1a. The Fish and Game Commission (Commission) adopted 48 hours from the range of 24-48 hours that was identified in the Initial Statement of Reasons (ISOR). The proposed 48 hours reflects an improvement from previously having no service interval, allowing gill nets to remain in the water indefinitely. The greatest increase in percent mortality is seen in nets soaked over 56 hours, with a 48 hour service interval decreasing percent mortality of fishes by 20% and elasmobranchs by 13% (ISOR Figure 2). Additionally, even without a required service interval, 72% of gill nets report a 24-hour soak time and only need the additional time when necessary due to personal or financial reasons.</p> <p>Additionally the 48-hour service interval does not prevent gill nets from being retrieved earlier. It allows fishers a buffer if nets cannot be retrieved within 24 hours, and the majority of nets are pulled within 24-hours (ISOR Figure 1).</p> <p>1b. The Commission adopted the Department's recommendation of orange-colored straps from the four options identified in the ISOR (red, orange, yellow or any combinations of these colors). Selecting one color instead of giving flexibility of any of the three colors creates uniformity in gear marking. This proposed gear marking is a result of outreach with the gill net fleet and NOAA Protected Resources Division staff to improve marking of current California set gill net gear to be identified in potential entanglements. Requiring all new custom-made lines would, without external funding, create extreme financial hardship for the fleet. There are very few (34) active gill netters compared to fisheries that require custom lines and, as it's a year round fishery, gill netters have purchased gear material</p>

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			many years in advance to reduce the time with gear out of the water when repairs are necessary. Therefore, in order to prevent undue financial hardship and waste, it is necessary to select a gear marking system that can be applied to the existing gill net gear. Pending external funding opportunities for the fleet, the Department would consider including custom-made lines as an adaptive management measure based on information needs.
2	Scott Webb, Resources Renewal Institute, Oral comment, 8/14/2024	2a. Recommends a 24-hour soak time, only proposed measure that can reduce bycatch.	2. Refer to response 1a above.
3	Laura Deehan, Oral comment, 8/14/2024	3. Requests adoption of 24-hour soak time, concerned with harm to marine life and requests a stronger review to protect sharks and marine life inadvertently caught in gill nets.	3. Refer to response 1a above regarding selection of 48-hour soak time. Additionally, NOAA determined that marine mammal impacts constitute less than 10% of the Potential Biological Removal (PBR) and are therefore considered to be insignificant, and approaching zero mortality and serious injury rate.
4	Tomas Valadez, Oral comment, 8/14/2024	4. Supports package and 24-hour soak time.	4. Refer to response 1a above.
5	Neil Guglielmo, Oral comment, 8/14/2024	5. Requests 48 hours to have the occasional option when needed. Typically goes every 24 hours and goes out early in the morning when there's less wind; 36 hours would be dangerous to go in the night and the markets are closed. When there's few fish, we want the option of going 48 hours occasionally. There's not a net for each	5. The Fish and Game Commission adopted 48 hours.

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		species, we sell our catch and want to protect the species.	
6	Nick Guglielmo Jr., Oral comment, 8/14/2024	6. Requests 48 hour soak time, would like to fish lobster in the morning and go every other day if we're able to. Requesting the option to fish 48 hours, even though 95% of our fishing is 24 hours.	6. The Fish and Game Commission adopted 48 hours.
7	Steve Mardesich, Oral comment, 8/14/2024	7. Requests 48 hours, think there's confusion on how the nets work and can't pull them in the night at 36 hours. Set net fishery is not an hourly fishery, it's an overnight fishery and there has never been a law so we're giving a lot for 48 hours. We try to fish 24 hours whenever possible to avoid seals eating fish.	7. The Fish and Game Commission adopted 48 hours.
8	Ben Grundy, Center for Biological Diversity, Oral comment, 8/14/2024	8a. Concerns with high rates of bycatch in halibut set gill net fishery. NMFS classifies as category 2, bycatch evaluation report confirms marine mammals are caught and killed, tope sharks are also caught and ecologically important fishery that haven't recovered- have high discard mortality. 8b. Asks for phase out of this gear type and use alternative gear type.	8a. Refer to response 3 above. Per the Marine Life Management Act, as part of the California halibut management review process, the Department has worked in coordination with research partners, Commission staff, industry representatives, and the NGO community to complete a four-step process to determine whether the amount and type of bycatch are considered "acceptable" in the set gill net fishery. Through this process management measures have been developed. 8b. Hook and line fishing for California halibut in southern California would not be an appropriate substitute, as it is much more time and labor intensive increasing consumer costs.
9	Michael Beck, Oral comment, 8/14/2024	9. Requests 24-hour soak time. Angel sharks and rays are often trapped and killed in set gill nets, at least need a 24 hour soak time to mitigate the situation. 36 hours is a long time to be sweeping up non-target fish.	9. Refer to response 1a above.
10	Laurel Irvine, Oral	10. Supports 24-hour maximum soak time, concerned with vulnerable shark and ray species. Would like to	10. Refer to response 1a above. An unsafe weather exemption is included in the adopted service interval. The

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	comment, 8/14/2024	recognize fisher safety, need exceptions for incremental weather.	exemption allows gill net permittees to notify law enforcement during small craft advisories or high wind events to get approval to leave their gill nets in the water until it is safe to return.
11	Dan Silver, Oral comment, 8/14/2024	11. Supports max 24-hour soak time. Essential to maintain and restore consumer confidence in sustainability of these fisheries.	11. Refer to response 1a above.
12	Amy Han, Oral comment, 8/14/2024	12. Supports max 24-hour soak time, also supports weather exemptions for fisher safety.	12. Refer to responses 1a and 10 above.
13	Gary Burke, Oral comment, 8/14/2024	13. Target species is anything we can sell and set nets can sell almost anything. Agree with marking and net height but the soak time is important and 36 hours is not practical. Going to be economic harm and more imports from Mexico.	13. The Fish and Game Commission adopted 48 hours.
14	Nick Guglielmo Sr. Oral comment, 8/14/2024	14. Requests 48 hours, we've never had a soak time. Want to protect the resources because it's our livelihood. Our goal is 24 hours in the summer but in the winter we need 48 hours because we also fish lobster, would really be hurting us if we lose 48 hours.	14. The Fish and Game Commission adopted 48 hours.