

Updated Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The state of California manages the commercial set gill net fishery. The Department of Fish and Wildlife (Department) monitors the existing 91 set gill net permits that are issued, of which 34 were active in the past year. There are two main types of set gill nets: 8.5 minimum mesh size which primarily targets California halibut, and 6-inch minimum mesh size which primarily targets white seabass. Gill nets have the potential to result in bycatch, where fish or other marine life taken in a fishery are not targeted and may be discarded as they are not legal to take. "Acceptable bycatch" considers legality of take, potential threat to sustainability, impacts to other fisheries and the ecosystem. Pursuant to the Marine Life Management Act (MLMA), over the past several years the Department has worked in coordination with research partners, Fish and Game Commission (Commission) staff, industry representatives, and the non-government organization (NGO) community to complete a four-step process to determine whether the amount and type of bycatch are considered "acceptable" (Fish and Game Code (FGC) Section 7085). Step 4 of this bycatch evaluation is to develop management measures to address unacceptable bycatch and to improve data collection for the California set gill net fishery.

Proposed subsections (a) through (c) of Section 174.1 outlined in this regulatory proposal are a direct result of this process, and an initial phase of planned regulations aimed to reduce bycatch in the California set gill net fishery. The proposed regulations would establish a service interval for checking or raising set gill nets, require marking of set gill net gear to address concerns related to unidentified set gill net gear in marine mammal entanglements, and define minimum mesh depth for California halibut or white seabass to potentially reduce bycatch and prevent the expansion of set gill net gear.

Subsection 174.1(a) proposes a service interval that includes a range to be decided through the Commission public noticing process of 24 to 48 hours. The flexibility of allowing up to 48 hours between servicing nets would allow for fishers to determine the best time to pull nets depending on conditions and target species while also allowing for decreased fuel costs.

- Subsections (a)(1) and (a)(2) consider exemptions for the cases where a permittee might not be able to comply with the regulation due to unsafe weather conditions or catastrophic events. An allowance for alternative compliance may grant another permittee permission to remove their nets from the water if they are facing catastrophic events, such as vessel mechanical failure or debilitating illness.

Subsection 174.1(a)(3) includes a timeframe of seven consecutive days for consideration of abandonment without servicing, cleaning, or otherwise raising the net if there is no approved exemption pursuant to subsection 174.1(a). Additionally, a set gill net is abandoned if the valid, required gear markings, per FGC 8601.5 and subsection 174.1(b) are not present or legible on the set gill net.

Subsection 174.1(b) proposes a requirement for permittees to incorporate a 1- inch wide, 1-foot-long colored nylon strap weaved into the existing head rope. A proposed marking interval for the straps along the headrope is proposed for 20 fathoms based on discussions with NOAA, industry representatives, stakeholders, or other organizations. Initial outreach with set gill net permittees indicates that this interval marking would be reasonable in terms of the labor it would take to add the markings to the net. Mandating this additional set gill net marking system to be displayed every 20

fathoms will allow for confirmation that a set gill net is from the California set gill net fishery if entangled.

Subsection 174.1(c): FGC establishes specific dimensions for mesh size and net length for the California halibut fishery (8625(a)) and a minimum mesh size for the white seabass fishery (8623(d)). However, there are no standards for the maximum net height (also known as mesh depth) for either California halibut or white seabass. A standard net height for set gill nets is a management measure that has a potential to reduce bycatch and would prevent the expansion of set gill net gear. For the California halibut fishery, a maximum of 25 meshes deep is proposed and for white seabass, a maximum of 50 meshes deep is proposed.

Benefit of the Regulations:

MLMA is intended to ensure the conservation, sustainable use, and restoration of California's marine living resources. In 2019, the Department assessed the state's fisheries under the 2018 Master Plan for Fisheries framework. A prioritization process identified California halibut as a species in need of management attention due to potential risks to bycatch species (including sub legal-sized California halibut) and from a changing climate. The three proposed regulations are a direct result of the MLMA process, and the first phase of regulations aimed to reduce bycatch in the California set gill net fishery.

The benefits of the proposed regulation change include, but are not limited to:

- Opportunity to create a positive conservation impact in southern California.
- Imposing soak time restrictions that reduce the mortality of both discarded elasmobranchs and finfishes in the set gill net fishery.
- Reducing discarded bycatch in the set gill net fishery.
- Creating a gear marking system that will clearly identify where set gill nets are from if entangled on marine mammals.
- Industry supported and trialed gear marking system increases chances of success and prevents undue economic burden to the set gill net fleet.
- Preventing the expansion of set gill net fishing gear.
- Opportunity to be responsive to stakeholder's feedback.

The proposed regulations were created in response to constituents' comments throughout the California Halibut Scaled Management Process.

Consistency and Compatibility with Existing Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing aspects of the commercial gill net industry (FGC Section 8682). No other state agency has the authority to adopt regulations governing the issuance of gill net permits as necessary to establish an orderly gill net fishery. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has examined the CCR for other gill net regulations; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

UPDATE

At the August 14, 2024, Fish and Game Commission meeting, the Commission adopted the following regulations:

Subsection 174.1(a) – The Commission adopted a 48-hour maximum service interval.

Subsection 174.1(b) – The Commission selected orange as the color for the set gill net headrope markings.

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).

The rulemaking was withdrawn on November 25, 2024 to allow for the necessary revisions to the regulatory language to be noticed to the public. These revisions, as detailed in the *Descriptions of Specific Edits to the Regulatory Language*, were publicly noticed for a 15-day comment period on December 19, 2024.

No comments were received during the re-notice period by the deadline of 11:59 PM on January 3, 2025. No further changes were made to the regulatory language.

On February 19, 2025, OAL disapproved the regulations citing failure by the Commission to adopt the final regulation text and various deficiencies in the submitted rulemaking records. To remedy this, at its April 16-17, 2025 meeting the Commission re-adopted the regulations as re-noticed in December 2024.