

AMENDED IN SENATE MARCH 21, 2018

SENATE BILL

No. 1017

Introduced by Senator Allen

February 7, 2018

An act to amend Sections 8394.5, 8567, and 8579 of, to amend, repeal, and add Section 8561.5 of, and to add ~~Section 7057~~ to Sections 60.5, 8578, and 8583 to, the Fish and Game Code, relating to fisheries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1017, as amended, Allen. ~~Marine fisheries: observer. Commercial fishing: drift gill net shark and swordfish fishery.~~

(1) 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. 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 that has not been suspended or revoked and is issued to at least one person aboard the boat, except as provided. Existing law authorizes the Director of Fish and Wildlife to close the drift gill net shark and swordfish fishery if, after a public hearing, the director determines the action is necessary to protect the swordfish or thresher shark and mako shark resources and requires the director to reopen the fishery if he or she determines that the conditions that necessitated the closure no longer exist. Existing law authorizes a DGN permit to be transferred to another person under certain circumstances. Existing law establishes an annual fee of \$330 for a DGN permit and requires that fee to be

adjusted annually pursuant to a specified index. Under existing law, a violation of these provisions is a crime.

This bill would require the department, between January 1, 2019, and March 31, 2020, to develop a voluntary permit buyback program, as prescribed, and to implement the program upon appropriation by the Legislature of private or federal funding received by the department for this purpose. The bill would increase the annual fee for a DGN permit to \$1,500 for the license year beginning on April 1, 2019, and to \$3,000 for any license year beginning on or after April 1, 2020, as adjusted pursuant to the specified index. The bill would, beginning March 31, 2019, only authorize the transfer of a DGN permit to an entity engaged in retiring permits.

This bill would require the department, from April 1, 2020, to March 31, 2025, inclusive, to require any permittee, as a condition of receiving a DGN permit, to have an observer on board his or her vessel on each trip in which the permittee uses a drift gill net. The bill would require the department, on or before January 1, 2020, to adopt hard caps to be effective from April 1, 2020, to March 31, 2025, inclusive, for bycatch consistent with a specified alternative adopted by the Pacific Fishery Management Council in September 2015. If the department determines that a hardcap is reached for any species in any given 2-year period, the bill would require the department to immediately close the drift gill net shark and swordfish fishery for the remainder of the period. The bill would require the department to continue the use of observers and hard caps on and after April 1, 2025, if the department makes a specified determination. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(2) Existing law establishes a swordfish permit that authorizes a person holding that permit to take, possess aboard a boat, and land swordfish for commercial purposes using specified methods but not including use of a drift gill net. Existing law establishes a fee of \$330 for a swordfish permit, as adjusted pursuant the above-described index, but exempts the holder of a drift gill net shark and swordfish permit from payment of that fee.

This bill would also exempt any person who participates in the permit buyback program established by the department from payment of the fee for a swordfish permit.

(3) Existing law establishes the Fish and Game Code and sets forth definitions that govern the construction of the code and all regulations adopted under the code.

This bill would define “observer” for these purposes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, enacted as part of the Marine Life Management Act of 1998, generally establishes a comprehensive plan for the management of marine life resources. Existing law requires the Department of Fish and Wildlife to develop, and submit to the Fish and Game Commission for its approval, a fishery management master plan, and provides for the preparation and approval of fishery management plans, which form the primary basis for managing California’s sport and commercial marine fisheries.~~

This bill would define “observer” for these purposes:

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) It is in the best interest of the people of the state, the*
- 4 *commercial fishing industry, and California’s marine resources*
- 5 *that fishermen use the most sustainable fishing gear available to*
- 6 *harvest seafood off the California coast.*
- 7 *(b) Large-scale pelagic drift gill nets targeting swordfish and*
- 8 *sharks have been banned on the high seas and in ocean waters of*
- 9 *many countries worldwide and are banned or are no longer*
- 10 *permitted by all other states because of the unavoidable impacts*
- 11 *to marine wildlife, including whales, dolphins, sharks, pinnipeds,*
- 12 *and sea turtles, including the California state marine reptile, the*
- 13 *Pacific leatherback sea turtle. Many California species killed by*
- 14 *the drift gill net fishery are protected under state and federal law*
- 15 *or covered under international agreements, such as the sperm*
- 16 *whale, the leatherback sea turtle, the loggerhead sea turtle, the*
- 17 *bigeye thresher shark, and the scalloped hammerhead shark.*
- 18 *(c) Impacts to California’s marine and coastal resources have*
- 19 *been a persistent concern with the use of drift gill nets. According*

1 to data collected pursuant to the National Oceanic and
2 Atmospheric Administration's observer program, California's
3 drift gill net fishery discards on average over one-half of all fish
4 caught, kills over 70 different marine species as bycatch, and has
5 among the highest rates of marine mammal and sea turtle
6 interactions across all West Coast fisheries.

7 (d) California should set the standard for sustainable swordfish
8 fishing globally and follow the lead of the other states in
9 implementing sustainable alternatives. California's standards for
10 sustainability and low environmental impacts in commercial fishing
11 are critical for addressing impacts in foreign fisheries, since these
12 standards frame the scope of international efforts to push for
13 stronger international standards, both diplomatically and as a
14 matter of federal law. Continuing the use of destructive fishing
15 gears in California enables the use of similar gears in fisheries
16 that export seafood into the United States and limits federal efforts
17 to restrict, limit, and reduce impacts from those imports.

18 (e) The Pacific Fisheries Management Council is in the process
19 of authorizing a new innovative technology for fishing swordfish
20 known as deep set buoy gear. This gear has been deployed
21 commercially on the East Coast where it has proven to be among
22 the most selective and sustainable gears used to catch swordfish,
23 and results of commercial trials off California demonstrate the
24 gear can effectively catch swordfish with minimal bycatch or
25 bycatch mortality. This gear could be used to improve the fishing
26 practices of California's swordfish fishery.

27 (f) Given the economic and environmental benefits to the people
28 of the state, California should prioritize financial support for the
29 deployment of innovative sustainable gear types. It is the intent of
30 the Legislature to direct new entrants into the swordfish fishery
31 toward the use of lower impact fishing gears for a modern fishery,
32 while allowing current participants in the drift gill net fishery to
33 continue those practices with additional monitoring and bycatch
34 safeguards until retirement.

35 SEC. 2. Section 60.5 is added to the Fish and Game Code, to
36 read:

37 60.5. "Observer" means an independent specialist who serves
38 aboard a fishing vessel for the purpose of monitoring catch and
39 bycatch.

1 *SEC. 3. Section 8394.5 of the Fish and Game Code is amended*
2 *to read:*

3 8394.5. The fee for the permit issued pursuant to Section 8394
4 is three hundred thirty dollars (\$330). This permit fee does not
5 apply to the holder of a valid drift gill net shark and swordfish
6 permit required under Article 16 (commencing with Section ~~8560~~
7 ~~of Chapter 2.~~ 8561) *or to any person who participates in the permit*
8 *buyback program established by the department pursuant to*
9 *Section 8583.*

10 *SEC. 4. Section 8561.5 of the Fish and Game Code is amended*
11 *to read:*

12 8561.5. (a) Notwithstanding Section 8102, a permit issued
13 pursuant to Section 8561 may be transferred by the permittee only
14 if one of the following conditions is met:

15 (1) The permittee has held the permit for three or more years.

16 (2) The permittee is permanently injured or suffers a serious
17 illness that will result in a hardship, as determined in a written
18 finding by the director, to the permittee or his or her family if the
19 permit may not otherwise be transferred or upon dissolution of a
20 marriage where the permit is held to be community property.

21 (3) The permittee has died and his or her surviving spouse, heirs,
22 or estate seeks to transfer the permit within six months of the death
23 of the permittee or, with the written approval of the director, within
24 the length of time that it may reasonably take to effect the transfer.

25 (b) A permit may be transferred only to a person who holds a
26 valid general gill net permit issued to that person pursuant to
27 Section 8681 that has not been suspended or revoked.

28 (c) The transfer of a permit shall only become effective upon
29 notice from the department. An application for transfer shall be
30 submitted to the department with such reasonable proof as the
31 department may require to establish the qualification of the person
32 the permit is to be transferred to, the payment to the department
33 of a transfer fee of one thousand five hundred dollars (\$1,500),
34 and a written disclosure, filed under penalty of perjury, of the terms
35 of the transfer.

36 (d) Any restrictions on participation that were required in a
37 permit transferred pursuant to Section 8102 before January 1, 1990,
38 are of no further force or effect.

39 (e) *This section shall become inoperative on March 31, 2019,*
40 *and, as of January 1, 2020, is repealed.*

1 SEC. 5. Section 8561.5 is added to the Fish and Game Code,
2 to read:

3 8561.5. (a) Notwithstanding Section 8102 or any other law,
4 a permit issued pursuant to Section 8561 may only be transferred
5 by the permittee to an entity engaged in retiring permits.

6 (b) This section shall become operative on March 31, 2019.

7 SEC. 6. Section 8567 of the Fish and Game Code is amended
8 to read:

9 8567. (a) The fee for a drift gill net shark and swordfish permit
10 that expires on March 31, 2019, shall be ~~three hundred thirty~~
11 ~~dollars (\$330)~~; four hundred eighty-two dollars and seventy-five
12 cents (\$482.75).

13 (b) The fee for a drift gill net shark and swordfish permit that
14 is valid for the license year beginning April 1, 2019, to March 31,
15 2020, inclusive, shall be one thousand five hundred dollars
16 (\$1,500).

17 (c) The fee for a drift gill net shark and swordfish permit that
18 is valid in any license year beginning on or after April 1, 2020,
19 shall be three thousand dollars (\$3,000), as adjusted pursuant to
20 Section 713.

21 SEC. 7. Section 8578 is added to the Fish and Game Code, to
22 read:

23 8578. (a) From April 1, 2020, to March 31, 2025, inclusive,
24 the department shall require, as a condition of receiving a permit
25 pursuant to Section 8561, every permittee to have an observer on
26 board his or her vessel on each trip in which the permittee uses a
27 drift gill net.

28 (b) On or before January 1, 2020, the department shall adopt
29 hard caps, which shall be effective from April 1, 2020, to March
30 31, 2025, inclusive, for bycatch consistent with the preferred
31 alternative for the California large mesh drift gill net fishery
32 adopted by the Pacific Fishery Management Council in September
33 2015. Notwithstanding Section 8577, if the department determines
34 that a hard cap for any species is reached in any given two-year
35 period, the department shall immediately close the drift gill net
36 shark and swordfish fishery for the remainder of that period.

37 (c) The department shall evaluate bycatch data gathered from
38 observers and determine by April 1, 2025, whether the continued
39 use of observers and hard caps is warranted in order to protect
40 marine life species caught as bycatch in the fishery. If the

1 department determines that the continued use of observers and
2 hard caps is warranted, the department shall adopt regulations
3 to be effective beginning April 1, 2025, to require the continued
4 use of observers and hard caps in the drift gill net shark and
5 swordfish fishery with any adjustments the department deems
6 necessary to protect marine life species caught as bycatch in the
7 fishery.

8 (d) For purposes of this section, “hard cap” means the total
9 maximum number of any marine life species allowed to be injured
10 or killed in a drift gill net before closure of the drift gill net shark
11 and swordfish fishery.

12 SEC. 8. Section 8579 of the Fish and Game Code is amended
13 to read:

14 8579. (a) A permittee shall be subject to the provisions of this
15 article whenever the permittee is using a drift gill net, unless the
16 permittee has surrendered his or her permit to the department. ~~A~~

17 (b) (1) A permittee may surrender his or her permit by notifying
18 the department’s Long Beach office of his or her intentions by
19 telegram or certified letter and by sending or delivering his or her
20 permit to a department office. ~~A~~

21 (2) A permittee may reclaim his or her permit *surrendered*
22 *pursuant to paragraph (1)* at any time during regular working
23 hours, if the permit has not been suspended or revoked.

24 (c) *Paragraph (2) of subdivision (b) does not apply to any permit*
25 *surrendered pursuant to Section 8583.*

26 SEC. 9. Section 8583 is added to the Fish and Game Code, to
27 read:

28 8583. (a) *Between January 1, 2019, and March 31, 2020,*
29 *inclusive, the department shall develop a program to buy back*
30 *permits issued pursuant to Section 8561 that includes the following*
31 *conditions:*

32 (1) *The department shall conduct a reverse sealed bid auction*
33 *for permittees who have landed swordfish or thresher shark on or*
34 *after April 1, 2012. Each qualifying permittee who volunteers to*
35 *participate shall submit an irrevocable bid. The department shall*
36 *purchase permits starting with lowest bids until 75 percent of*
37 *available funds are expended.*

38 (2) *Permittees who have landed swordfish or thresher shark on*
39 *or after April 1, 2007, but not on or after April 1, 2012, and who*
40 *volunteer to participate in the buyback program shall be*

1 compensated three times the five-year average of the value of the
2 permittee's swordfish and thresher shark landings from April 1,
3 2007, to March 31, 2012, or ____ dollars (\$____), whichever is
4 larger.

5 (3) Permittees who have not landed swordfish or thresher shark
6 since April 1, 2007, and who volunteer to participate in the
7 buyback program shall receive ____ dollars (\$____).

8 (4) Any permittee who participates in the buyback program
9 shall be prohibited from obtaining a new California drift gill net
10 permit, shall agree not to fish under a federal drift gillnet permit,
11 shall agree not to transfer or renew a federal drift gillnet permit,
12 and shall surrender his or her large mesh drift gill net.

13 (b) The department shall implement the buyback program
14 developed pursuant to subdivision (a) upon appropriation by the
15 Legislature of private or federal funding received by the
16 department for the purposes of implementing the buyback program.
17 The department shall inform both budget committees and all policy
18 committees with jurisdiction over fisheries issues once it has
19 received funding equal to one-third of the projected cost of the
20 buyback program.

21 SEC. 10. No reimbursement is required by this act pursuant
22 to Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 SECTION 1. ~~Section 7057 is added to the Fish and Game Code,~~
31 ~~to read:~~

32 ~~7057. For purposes of this division, "observer" means an~~
33 ~~independent specialist who serves aboard a commercial fishing~~
34 ~~vessel for the purpose of monitoring catch and bycatch.~~