

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1114

Introduced by Senator Allen

February 17, 2016

An act to amend Section ~~10565 of the Water~~ 8569 of, to add Section 8570 to, to add Article 16.5 (commencing with Section 8584) to Chapter 2 of Part 3 of Division 6 of, and to amend, repeal, and add Sections 8561.5 and 8567 of, the Fish and Game Code, and to amend Section 35650 of the Public Resources Code, relating to ~~stormwater~~ commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1114, as amended, Allen. ~~Stormwater resource planning: project funding.~~ Commercial fishing: swordfish.

(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 or amphibians 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 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 a permit to be transferred under certain circumstances. Existing law establishes an annual fee of \$330 for a permit. Under existing law, a violation of these provisions is a crime.

This bill would prohibit the department from issuing any drift gill net permit after March 1, 2017. The bill would require the department to revoke all latent drift gill net permits, as defined, and would require

the department to revoke all drift gill net permits if the department has not been notified of any landings under any drift gill net permit during any 2 successive fishing seasons. The bill, beginning March 1, 2017, would limit the circumstances under which a drift gill net permit can be transferred to a situation where the permittee permanently retires the permit by transferring the permit to an entity engaged in retiring permits or where a person exchanges the permit for a deep set buoy gear permit. The bill, beginning March 1, 2017, would increase the fee for a drift gill net permit to \$1,500 and would authorize the department to increase the fee to fully recover its costs in administering the drift gill net program.

This bill would authorize the department to adopt regulations establishing a deep set buoy gear fishery for swordfish. The bill would require the department, upon a federal authorization to use deep set buoy gear or similar gear to take swordfish, to issue initial permits to specified persons and would authorize the department to issue additional permits 5 years after the federal authorization to use this gear, subject to specified requirements. The bill would prohibit the use of deep set buoy gear to take swordfish for commercial purposes, except under these permits issued by the department. Because a violation of this provision would be a crime, this bill would impose a state-mandated local program. The bill would require the department to set an annual fee for the permit and a fee for transferring a permit. The bill would require the department to establish measures and incentives that are needed to prevent, reduce, and eliminate the incidence of derelict deep set buoy gear left at sea to the extent that these measures are not established pursuant to federal law.

(2) The California Ocean Protection Act establishes the Ocean Protection Council and requires the council, among other things, to coordinate activities of state agencies that are related to the protection and conservation of coastal waters and ocean ecosystems, and to establish policies to coordinate the collection and sharing of scientific data related to coastal and ocean resources among agencies. The act creates the California Ocean Protection Trust Fund in the State Treasury and authorizes moneys deposited in the fund, upon appropriation by the Legislature, to be expended by the council for projects and activities authorized by the council consistent with the purposes of the act.

This bill would authorize the council to expend funds for the innovation and adoption of sustainable commercial fishing methods

for swordfish and to expend funds to develop marketing and business structures to support a high and stable price for swordfish landed under a deep set buoy gear permit.

(3) 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, the Stormwater Resources Planning Act, authorizes one or more public agencies to develop a stormwater resource plan. The act requires the State Water Resources Control Board, by July 1, 2016, to establish guidance for purposes of the act. The act requires, with certain exceptions, the development of a stormwater resource plan and compliance with the act to receive grants for stormwater and dry weather runoff capture projects from a bond act approved by the voters after January 1, 2014.~~

~~This bill, by March 1, 2017, would require the board to include as part of its guidance a list of potential funding sources available to a public agency to fund projects identified in a public agency's stormwater resource plan.~~

Vote: majority. Appropriation: no. Fiscal committee: 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 have been banned on the*
8 *high seas in many countries worldwide and are banned or are no*
9 *longer authorized in all other states because of the unavoidable*
10 *impacts to marine wildlife, including whales, dolphins, sharks,*
11 *pinnipeds, and sea turtles, including the California state marine*
12 *reptile, the pacific leatherback sea turtle. Many California species*
13 *affected by the drift gill net fishery are protected under state and*
14 *federal law or covered under international agreements, such as*

1 *the sperm whale, leatherback sea turtle, loggerhead sea turtle,*
2 *Bigeye thresher shark, and scalloped hammerhead shark.*

3 *(c) Impacts to California's marine and coastal resources have*
4 *been a persistent concern with the use of drift gill nets. According*
5 *to data collect pursuant to the National Oceanic and Atmospheric*
6 *Administration's observer program, California's drift gillnet*
7 *fishery kills or injures approximately seven times more whales and*
8 *dolphins than all other observed fisheries in California, Oregon,*
9 *Washington, and Alaska combined, and 13 times more than any*
10 *other single observed fishery on the West Coast.*

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

22 *(e) Deep set buoy gear has been deployed on the East Coast*
23 *where the gear has proven to be among the most selective and*
24 *sustainable gears used to catch swordfish. This gear should be*
25 *used to improve the fishing practices of the north Pacific swordfish*
26 *stock in California. Deep set buoy gear used under federal*
27 *exempted fishing permits is proving to be successful in California,*
28 *and the fishing fleet needs regulatory flexibility to continue to*
29 *innovate more sustainable and economic gear.*

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

37 *SEC. 2. Section 8561.5 of the Fish and Game Code is amended*
38 *to read:*

1 8561.5. (a) Notwithstanding Section 8102, a permit issued
2 pursuant to ~~Section 8561~~ *this article* may be transferred by the
3 permittee only if one of the following conditions is met:

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

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

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

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

17 (c) The transfer of a permit shall only become effective upon
18 notice from the department. An application for transfer shall be
19 submitted to the department with such reasonable proof as the
20 department may require to establish the qualification of the person
21 the permit is to be transferred to, the payment to the department
22 of a transfer fee of one thousand five hundred dollars (\$1,500),
23 and a written disclosure, filed under penalty of perjury, of the terms
24 of the transfer.

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

28 (e) *This section shall become inoperative on March 31, 2017,*
29 *and, as of January 1, 2018, is repealed, unless a later enacted*
30 *statute, that becomes operative on or before January 1, 2018,*
31 *deletes or extends the dates on which it becomes inoperative and*
32 *is repealed.*

33 SEC. 3. Section 8561.5 is added to the Fish and Game Code,
34 to read:

35 8561.5. (a) Notwithstanding Section 8102 or any other law,
36 a permit issued pursuant to *this article* may be transferred by the
37 permittee only in one of the following circumstances:

38 (1) The permittee permanently retires the permit by transferring
39 the permit to an entity engaged in retiring permits.

1 (2) *The permittee exchanges the permit pursuant to Section*
2 *8584.2 for a deep set buoy gear permit.*

3 (b) *This section shall become operative on March 31, 2017.*

4 SEC. 4. *Section 8567 of the Fish and Game Code is amended*
5 *to read:*

6 8567. (a) *The fee for a drift gill net shark and swordfish permit*
7 *shall be three hundred thirty dollars (\$330).*

8 (b) *This section shall become inoperative on March 31, 2017,*
9 *and, as of January 1, 2018, is repealed, unless a later enacted*
10 *statute, that becomes operative on or before January 1, 2018,*
11 *deletes or extends the dates on which it becomes inoperative and*
12 *is repealed.*

13 SEC. 5. *Section 8567 is added to the Fish and Game Code, to*
14 *read:*

15 8567. (a) *The fee for a drift gill net shark and swordfish permit*
16 *shall be one thousand five hundred dollars (\$1,500), but the*
17 *department may increase the amount of the fee to fully recover its*
18 *costs in administering this article.*

19 (b) *This section shall become operative on March 31, 2017.*

20 SEC. 6. *Section 8569 of the Fish and Game Code is amended*
21 *to read:*

22 8569. ~~The~~ *Except for a permit revoked pursuant to Section*
23 *8570, the commission may establish conditions for the issuance*
24 *of a permit if the person's drift gill net shark and swordfish permit*
25 *was revoked during a preceding season or if the person possessed*
26 *a valid permit during the preceding season but did not apply for*
27 *renewal of his or her permit on or before April 30. The applicant*
28 *for a permit under this section may appeal to the director for the*
29 *issuance of the permit under those conditions.*

30 SEC. 7. *Section 8570 is added to the Fish and Game Code, to*
31 *read:*

32 8570. (a) *The department shall revoke all latent drift gill net*
33 *permits.*

34 (b) *Notwithstanding Sections 8568 and 8568.5, or any other*
35 *law, the department shall not issue any drift gill net shark and*
36 *swordfish permit after March 31, 2017. The department shall not*
37 *transfer or reissue any permit that has been exchanged pursuant*
38 *to Article 16.5 (commencing with Section 8584), revoked, or*
39 *surrendered.*

1 (c) The department shall revoke all drift gill net shark and
2 swordfish permits if the department has not been notified of any
3 landings under any drift gill net shark and swordfish permit during
4 any two successive fishing seasons.

5 (d) For purposes of this section, “latent drift gill net permit”
6 means a valid drift gill net shark and swordfish permit issued
7 pursuant to this article under which no swordfish or thresher shark
8 was landed in at least three years between 2010 and 2015,
9 inclusive.

10 SEC. 8. Article 16.5 (commencing with Section 8584) is added
11 to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code,
12 to read:

13
14 Article 16.5. Deep Set Buoy Gear Swordfish Fishery

15
16 8584. For purposes of this article:

17 (a) “Actively fished drift gill net permit” means a valid drift
18 gill net shark and swordfish permit issued pursuant to Article 16
19 (commencing with Section 8561) under which swordfish or thresher
20 shark have been landed in at least three years between 2010 and
21 2015, inclusive.

22 (b) “Actively fished drift gill net permitholder” means the named
23 permittee on an actively fished drift gill net permit.

24 (c) “Latent drift gill net permit” means a valid drift gill net
25 shark and swordfish permit issued pursuant to Article 16
26 (commencing with Section 8561) that does not fall within the
27 definition of an actively fished drift gill net permit.

28 (d) “Negligible risk to protected marine wildlife” means no
29 more than a 20 percent probability, as estimated by appropriate
30 statistical methodologies, when available, or a comparable
31 standard, of exceeding take levels established by relevant state
32 and federal standards, including the lowest of any of the following
33 where available and applicable:

34 (1) The zero rate mortality goal or 10 percent of potential
35 biological removal level, as defined under the federal Marine
36 Mammal Protection Act (16 U.S.C. Sec. 1361 et seq.) and
37 implementing regulations.

38 (2) Incidental take limits established under the federal
39 Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

40 (3) Any other applicable state or federal take limit.

1 (4) Any take level estimated under the best available scientific
2 and commercial data to delay the time to recovery by more than
3 10 percent.

4 8584.1. Notwithstanding Section 8394, the department may
5 adopt regulations establishing a deep set buoy gear fishery for
6 swordfish consistent with the requirements of this article and
7 federal law.

8 8584.2. Upon authorization of the use of deep set buoy gear
9 or similar gear to take swordfish pursuant to federal law, the
10 department shall issue permits for the deep set buoy gear fishery
11 according to the following criteria:

12 (a) The department shall issue one deep set buoy gear permit
13 to each of the following:

14 (1) An actively fished drift gill net permitholder.

15 (2) A person who has fished with deep set buoy gear under a
16 federal exempted fishing permit since January 1, 2010.

17 (3) A person who holds a permit pursuant to Section 8394 who
18 has landed swordfish under that permit in at least two years
19 between 2010 and 2015, inclusive.

20 (b) The department may issue two additional deep set buoy gear
21 permits to each actively fished drift gill net permitholder and each
22 person who holds a drift gill net permit but who fished with deep
23 set buoy gear under a federal exempted fishing permit since
24 January 1, 2010, if the person surrenders the drift gill permit to
25 the department in exchange for the two additional deep set buoy
26 gear permits within two years of the federal authorization to use
27 deep set buoy gear or similar gear.

28 (c) The department may issue one additional deep set buoy gear
29 permit to each actively fished drift gill net permitholder and each
30 person who holds a drift gill net permit but who fished with deep
31 set buoy gear under a federal exempted fishing permit since
32 January 1, 2010, if the person surrenders the drift gill permit to
33 the department in exchange for the additional deep set buoy gear
34 permit within four years of the federal authorization to use deep
35 set buoy gear or similar gear.

36 (d) The department may issue one deep set buoy gear permit to
37 a person who held a latent drift gill net permit prior to January
38 1, 2017.

39 8584.3. The department shall not issue permits in addition to
40 those issued pursuant to Section 8584.2 for the deep set buoy gear

1 fishery until five years after deep set buoy gear or similar gear is
2 authorized under federal law. The department shall establish a
3 maximum number of additional permits that may be issued
4 pursuant to this section. The department may issue permits
5 pursuant to this section as appropriate to accommodate additional
6 fishing effort and demonstrated demand for permits if the
7 anticipated levels of fishing effort by the holders of those permits
8 pose no more than a negligible risk to protected marine wildlife.

9 8584.4. Deep set buoy gear shall not be used to take swordfish
10 for commercial purposes, except under a revocable permit issued
11 by the department pursuant to this article.

12 8584.5. (a) The department shall establish measures and
13 incentives that are needed to prevent, reduce, and eliminate the
14 incidence of derelict deep set buoy gear left at sea to the extent
15 that these measures are not established pursuant to federal law.

16 (b) The measures and incentives established pursuant to
17 subdivision (a) may include, but are not limited to, all of the
18 following:

19 (1) Registration of individual buoy systems under a tag issued
20 by the department.

21 (2) Requirements for labeling gear.

22 (3) Incentives for the retrieval and retention of gear, including,
23 fees for the issuance of buoy tags to replace lost buoy tags and
24 time delays for the issuance of replacement buoy tags.

25 8584.6. The department shall establish an annual fee for a
26 deep set buoy gear permit issued pursuant to this article at or
27 below a rate that is sufficient to cover the costs of the department
28 of administering this article.

29 8584.7. (a) A person holding a permit pursuant to this article
30 may submit an application to the department to transfer the permit
31 to any person holding a license issued pursuant to Section 7850,
32 subject to any requirements established by the department
33 governing transferability.

34 (b) The department shall establish a fee to transfer a permit
35 pursuant to this section at or below a rate that is sufficient to cover
36 the department's administrative costs in processing an application.

37 SEC. 9. Section 35650 of the Public Resources Code is
38 amended to read:

39 35650. (a) The California Ocean Protection Trust Fund is
40 established in the State Treasury.

(b) Moneys deposited in the fund may be expended, upon appropriation by the Legislature, for both of the following:

(1) Projects and activities authorized by the council consistent with Chapter 3 (commencing with Section 35600).

(2) Upon authorization by the council, for grants or loans to public agencies, nonprofit corporations, or private entities for, or direct expenditures on, projects or activities that do one or more of the following:

(A) Eliminate or reduce threats to coastal and ocean ecosystems, habitats, and species.

(B) Improve the management of fisheries through grants or loans for the development and implementation of fishery management plans pursuant to Part 1.7 (commencing with Section 7050) of Division 6 of the Fish and Game Code, a part of the Marine Life Management Act of 1998, that promote long-term stewardship and collaboration with fishery participants to develop strategies that increase environmental and economic sustainability. Eligible projects and activities include, but are not limited to, innovative community-based or cooperative management and allocation strategies that create incentives for ecosystem improvement. Eligible expenditures include, but are not limited to, costs related to activities identified in subdivisions (a), (b), and (d) of Section 7075 of the Fish and Game Code, fishery research, monitoring, data collection and analysis to support adaptive management, and other costs related to the development and implementation of a fishery management plan developed pursuant to this subparagraph.

(C) Foster sustainable fisheries, including grants or loans for one or more of the following:

(i) Projects that encourage the development and use of more selective fishing gear.

(ii) The design of community-based or cooperative management mechanisms that promote long-term stewardship and collaboration with fishery participants to develop strategies that increase environmental and economic sustainability.

(iii) Collaborative research and demonstration projects between fishery participants, scientists, and other interested parties.

(iv) Promotion of value-added wild fisheries to offset economic losses attributable to reduced fishing opportunities.

1 (v) The creation of revolving loan programs for the purpose of
2 implementing sustainable fishery projects.

3 (D) Improve coastal water quality.

4 (E) Allow for increased public access to, and enjoyment of,
5 ocean and coastal resources, consistent with sustainable, long-term
6 protection and conservation of those resources.

7 (F) Improve management, conservation, and protection of
8 coastal waters and ocean ecosystems.

9 (G) Provide monitoring and scientific data to improve state
10 efforts to protect and conserve ocean resources.

11 (H) Protect, conserve, and restore coastal waters and ocean
12 ecosystems, including any of the following:

13 (i) Acquisition, installation, and initiation of monitoring and
14 enforcement systems.

15 (ii) Acquisition from willing sellers of vessels, equipment,
16 licenses, harvest rights, permits, and other rights and property, to
17 reduce threats to ocean ecosystems and resources.

18 (I) Address coastal water contamination from biological
19 pathogens, including collaborative projects and activities to identify
20 the sources of pathogens and develop detection systems and
21 treatment methods.

22 (J) (i) Provide funding for adaptive management, planning,
23 coordination, monitoring, research, and other necessary activities
24 to minimize the adverse impacts of climate change on California's
25 ocean ecosystem, including, but not limited to, the effects of sea
26 level rise, changes in ocean productivity, and ocean acidification
27 on coastal and ocean habitat, wildlife, fisheries, chemistry, and
28 other key attributes of ocean ecosystems and to increase the state's
29 understanding of the ocean's role in carbon sequestration. Adaptive
30 management strategies, planning, research, monitoring, or other
31 activities shall be designed to improve the management of coastal
32 and ocean resources or aid the state to adapt to climate change
33 impacts.

34 (ii) Information or activities developed under clause (i), to the
35 extent appropriate, shall provide guidance to the State Air
36 Resources Board for the adoption of early action measures for the
37 elimination or reduction of emissions from sources or categories
38 of sources pursuant to the California Global Warming Solutions
39 Act (Division 25.5 (commencing with Section 38500) of the Health
40 and Safety Code).

1 (K) (i) *Provide funding for the innovation and adoption of*
2 *sustainable commercial fishing methods for swordfish including*
3 *deep set buoy gear and other fishing methods with comparably*
4 *low environmental impacts. In providing this funding, the council*
5 *may authorize the purchase of all of the following:*

6 (I) *Deep set buoy gear for a person who holds an exempted*
7 *fishing permit as of January 1, 2016, issued by the National Marine*
8 *Fisheries Service to take swordfish in the fishery governed pursuant*
9 *to the Highly Migratory Species Fishery Management Plan.*

10 (II) *Deep set buoy gear for the first 10 persons who exchange*
11 *their permits pursuant to Section 8584.2.*

12 (ii) *Develop marketing and business structures to support a*
13 *high and stable price for swordfish landed under a permit issued*
14 *pursuant to Article 16.5 (commencing with Section 8584) of*
15 *Chapter 2 of Part 3 of Division 6 of the Fish and Game Code.*

16 (c) Grants or loans may be made to a private entity pursuant to
17 this section only for projects or activities that further public
18 purposes consistent with Sections 35510, 35515, and 35617.

19 (d) Consistent with the purposes specified in Section 35515,
20 and in furtherance of the findings in Sections 7059 and 7060 of
21 the Fish and Game Code, the council, in authorizing grants or loans
22 for projects or expenditures pursuant to this section, shall promote
23 coordination of state programs and activities that protect and
24 conserve ocean resources to avoid redundancy and conflicts to
25 ensure that the state's programs and activities are complementary.

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

35 ~~SECTION 1. Section 10565 of the Water Code is amended to~~
36 ~~read:~~

37 ~~10565. (a) By July 1, 2016, the board shall establish guidancee~~
38 ~~for this part that shall include, but is not limited to, the following:~~

1 ~~(1) Identifying types of local agencies and nongovernmental~~
2 ~~organizations that need to be consulted in developing a stormwater~~
3 ~~resource plan.~~

4 ~~(2) Defining appropriate quantitative methods for identifying~~
5 ~~and prioritizing opportunities for stormwater and dry weather~~
6 ~~runoff capture projects.~~

7 ~~(3) Defining the appropriate geographic scale of watersheds for~~
8 ~~stormwater resource planning.~~

9 ~~(4) Other guidance the board deems appropriate to achieve the~~
10 ~~objectives of this part.~~

11 ~~(b) By March 1, 2017, the board shall include as part of its~~
12 ~~guidance for this part a list of potential funding sources available~~
13 ~~to a public agency to fund projects identified in a public agency's~~
14 ~~stormwater resource plan.~~