

AMENDED IN SENATE MAY 11, 2016

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1114

Introduced by Senator Allen

(Coauthors: Assembly Members Bloom and Mullin)

February 17, 2016

An act to amend Section 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 commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1114, as amended, Allen. 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~~. *permit*. The bill would require the department to revoke all latent drift gill net permits, as defined, *within*

12 months of a federal authorization to use deep set buoy gear or similar gear to take swordfish 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, 31, 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, 31, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 the
15 sperm whale, leatherback sea turtle, loggerhead sea turtle, ~~Bigeye~~
16 *bigeye* thresher shark, and scalloped hammerhead shark.

17 (c) Impacts to California's marine and coastal resources have
18 been a persistent concern with the use of drift gill nets. According
19 to data-~~collect~~ *collected* pursuant to the National Oceanic and
20 Atmospheric Administration's observer program, California's drift
21 gill net fishery kills or injures approximately seven times more
22 whales and dolphins than all other observed fisheries in California,
23 Oregon, Washington, and Alaska combined, and 13 times more
24 than any other single observed fishery on the West Coast.

25 (d) California should set the standard for sustainable swordfish
26 fishing globally and follow the lead of the other states in
27 implementing sustainable alternatives. California's standards for

1 sustainability and low environmental impacts in commercial fishing
2 are critical for addressing impacts in foreign fisheries, since these
3 standards frame the scope of international efforts to push for
4 stronger international standards, both diplomatically and as a matter
5 of federal law. Continuing the use of destructive fishing gears in
6 California enables the use of similar gears in fisheries that import
7 into the United States and limits efforts to reduce impacts from
8 those imports.

9 (e) Deep set buoy gear has been deployed on the East Coast
10 where the gear has proven to be among the most selective and
11 sustainable gears used to catch swordfish. This gear should be used
12 to improve the fishing practices of the north Pacific swordfish
13 stock in California. Deep set buoy gear used under federal
14 exempted fishing permits is proving to be successful in California,
15 and the fishing fleet needs regulatory flexibility to continue to
16 innovate more sustainable and economic gear.

17 (f) Given the economic and environmental benefits to the people
18 of the state, California should prioritize financial support for the
19 deployment of innovative sustainable gear types. It is the intent of
20 the Legislature to direct new entrants into the swordfish fishery
21 toward the use of lower impact fishing gears for a modern fishery,
22 while allowing current participants in the aging drift gill net fishery
23 to continue those practices until retirement.

24 SEC. 2. Section 8561.5 of the Fish and Game Code is amended
25 to read:

26 8561.5. (a) Notwithstanding Section 8102, a permit issued
27 pursuant to this article may be transferred by the permittee only if
28 one of the following conditions is met:

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

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

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

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

4 (c) The transfer of a permit shall only become effective upon
5 notice from the department. An application for transfer shall be
6 submitted to the department with such reasonable proof as the
7 department may require to establish the qualification of the person
8 the permit is to be transferred to, the payment to the department
9 of a transfer fee of one thousand five hundred dollars (\$1,500),
10 and a written disclosure, filed under penalty of perjury, of the terms
11 of the transfer.

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

15 (e) This section shall become inoperative on March 31, 2017,
16 and, as of January 1, 2018, is repealed, unless a later enacted
17 statute, that becomes operative on or before January 1, 2018,
18 deletes or extends the dates on which it becomes inoperative and
19 is repealed.

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

22 8561.5. (a) Notwithstanding Section 8102 or any other law, a
23 permit issued pursuant to this article may be transferred by the
24 permittee only in one of the following circumstances:

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

27 (2) The permittee exchanges the permit pursuant to Section
28 8584.2 for a deep set buoy gear permit.

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

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

32 8567. (a) The fee for a drift gill net shark and swordfish permit
33 shall be three hundred thirty dollars (\$330).

34 (b) This section shall become inoperative on March 31, 2017,
35 and, as of January 1, 2018, is repealed, unless a later enacted
36 statute, that becomes operative on or before January 1, 2018,
37 deletes or extends the dates on which it becomes inoperative and
38 is repealed.

39 SEC. 5. Section 8567 is added to the Fish and Game Code, to
40 read:

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

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

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

8 8569. ~~Except for a permit revoked pursuant to Section 8570,~~
9 ~~the~~ The commission may establish conditions for the issuance of
10 a permit if the person's drift gill net shark and swordfish permit
11 was revoked during a preceding ~~season or season, was revoked~~
12 *pursuant to subdivision (a) of Section 8570, or if the person*
13 possessed a valid permit during the preceding season but did not
14 apply for renewal of his or her permit on or before April 30. The
15 applicant for a permit under this section may appeal to the director
16 for the issuance of the permit under those conditions.

17 SEC. 7. Section 8570 is added to the Fish and Game Code, to
18 read:

19 8570. (a) ~~The~~ Within 12 months of the authorization for the
20 use of deep set buoy gear or similar gear to take swordfish
21 pursuant to federal law, the department shall revoke all latent drift
22 gill net permits.

23 (b) Notwithstanding Sections 8568 and 8568.5, or any other
24 law, the department shall not issue any drift gill net shark and
25 swordfish permit after March 31, 2017. ~~The permit. Except as~~
26 *provided in Section 8569, the department shall not transfer or*
27 reissue any permit that has been exchanged pursuant to Article
28 16.5 (commencing with Section 8584), revoked, or surrendered.

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

33 (d) For purposes of this section, "latent drift gill net permit"
34 means a valid drift gill net shark and swordfish permit issued
35 pursuant to this article under which no swordfish or thresher shark
36 was landed in at least three years between 2010 and 2015,
37 inclusive.

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

Article 16.5. Deep Set Buoy Gear Swordfish Fishery

8584. For purposes of this article:

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

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

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

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

(1) The zero rate mortality goal or 10 percent of potential biological removal level, as defined under the federal Marine Mammal Protection Act of 1972 (16 U.S.C. Sec. 1361 et seq.) and implementing regulations.

(2) Incidental take limits established under the federal Endangered Species Act of 1972 (16 U.S.C. Sec. 1531 et seq.).

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

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

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

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

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

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

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

4 (3) A person who holds a permit *issued* pursuant to Section
5 8394 who has landed swordfish under that permit in at least two
6 years between 2010 and 2015, inclusive.

7 (b) The department may issue two additional deep set buoy gear
8 permits to each actively fished drift gill net permitholder and each
9 person who holds a drift gill net permit but who fished with deep
10 set buoy gear under a federal exempted fishing permit since January
11 1, 2010, if the person surrenders the drift gill permit to the
12 department in exchange for the two additional deep set buoy gear
13 permits within two years of the federal authorization to use deep
14 set buoy gear or similar gear.

15 (c) The department may issue one additional deep set buoy gear
16 permit to each actively fished drift gill net permitholder and each
17 person who holds a drift gill net permit but who fished with deep
18 set buoy gear under a federal exempted fishing permit since January
19 1, 2010, if the person surrenders the drift gill permit to the
20 department in exchange for the additional deep set buoy gear permit
21 within four years of the federal authorization to use deep set buoy
22 gear or similar gear.

23 (d) The department may issue one deep set buoy gear permit to
24 a person who held a latent drift gill net permit prior to January 1,
25 2017.

26 8584.3. The department shall not issue permits in addition to
27 those issued pursuant to Section 8584.2 for the deep set buoy gear
28 fishery until five years after deep set buoy gear or similar gear is
29 authorized under federal law. The department shall establish a
30 maximum number of additional permits that may be issued
31 pursuant to this section. The department may issue permits pursuant
32 to this section as appropriate to accommodate additional fishing
33 effort and demonstrated demand for permits if the anticipated
34 levels of fishing effort by the holders of those permits pose no
35 more than a negligible risk to protected marine wildlife.

36 8584.4. Deep set buoy gear shall not be used to take swordfish
37 for commercial purposes, except under a revocable permit issued
38 by the department pursuant to this article.

39 8584.5. (a) The department shall establish measures and
40 incentives that are needed to prevent, reduce, and eliminate the

1 incidence of derelict deep set buoy gear left at sea to the extent
2 that these measures are not established pursuant to federal law.

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

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

8 (2) Requirements for labeling gear.

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

12 8584.6. The department shall establish an annual fee for a deep
13 set buoy gear permit issued pursuant to this article at or below a
14 rate that is sufficient to cover the costs of the department of
15 administering this article.

16 8584.7. (a) A person holding a permit *issued* pursuant to this
17 article may submit an application to the department to transfer the
18 permit to any person holding a license issued pursuant to Section
19 7850, subject to any requirements established by the department
20 governing transferability.

21 (b) The department shall establish a fee to transfer a permit
22 *issued* pursuant to this section at or below a rate that is sufficient
23 to cover the department's administrative costs in processing an
24 application.

25 SEC. 9. Section 35650 of the Public Resources Code is
26 amended to read:

27 35650. (a) The California Ocean Protection Trust Fund is
28 established in the State Treasury.

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

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

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

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

39 (B) Improve the management of fisheries through grants or
40 loans for the development and implementation of fishery

1 management plans pursuant to Part 1.7 (commencing with Section
2 7050) of Division 6 of the Fish and Game Code, a part of the
3 Marine Life Management Act of 1998, that promote long-term
4 stewardship and collaboration with fishery participants to develop
5 strategies that increase environmental and economic sustainability.
6 Eligible projects and activities include, but are not limited to,
7 innovative community-based or cooperative management and
8 allocation strategies that create incentives for ecosystem
9 improvement. Eligible expenditures include, but are not limited
10 to, costs related to activities identified in subdivisions (a), (b), and
11 (d) of Section 7075 of the Fish and Game Code, fishery research,
12 monitoring, data collection and analysis to support adaptive
13 management, and other costs related to the development and
14 implementation of a fishery management plan developed pursuant
15 to this subparagraph.

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

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

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

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

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

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

30 (D) Improve coastal water quality.

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

34 (F) Improve management, conservation, and protection of
35 coastal waters and ocean ecosystems.

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

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

1 (i) Acquisition, installation, and initiation of monitoring and
2 enforcement systems.

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

6 (I) Address coastal water contamination from biological
7 pathogens, including collaborative projects and activities to identify
8 the sources of pathogens and develop detection systems and
9 treatment methods.

10 (J) (i) Provide funding for adaptive management, planning,
11 coordination, monitoring, research, and other necessary activities
12 to minimize the adverse impacts of climate change on California's
13 ocean ecosystem, including, but not limited to, the effects of sea
14 level rise, changes in ocean productivity, and ocean acidification
15 on coastal and ocean habitat, wildlife, fisheries, chemistry, and
16 other key attributes of ocean ecosystems and to increase the state's
17 understanding of the ocean's role in carbon sequestration. Adaptive
18 management strategies, planning, research, monitoring, or other
19 activities shall be designed to improve the management of coastal
20 and ocean resources or aid the state to adapt to climate change
21 impacts.

22 (ii) Information or activities developed under clause (i), to the
23 extent appropriate, shall provide guidance to the State Air
24 Resources Board for the adoption of early action measures for the
25 elimination or reduction of emissions from sources or categories
26 of sources pursuant to the California Global Warming Solutions
27 Act of 2006 (Division 25.5 (commencing with Section 38500) of
28 the Health and Safety Code).

29 (K) (i) Provide funding for the innovation and adoption of
30 sustainable commercial fishing methods for swordfish including
31 deep set buoy gear and other fishing methods with comparably
32 low environmental impacts. In providing this funding, the council
33 may authorize the purchase of all of the following:

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

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

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

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

8 (d) Consistent with the purposes specified in Section 35515,
9 and in furtherance of the findings in Sections 7059 and 7060 of
10 the Fish and Game Code, the council, in authorizing grants or loans
11 for projects or expenditures pursuant to this section, shall promote
12 coordination of state programs and activities that protect and
13 conserve ocean resources to avoid redundancy and conflicts to
14 ensure that the state's programs and activities are complementary.

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