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SB-1017 Commercial fishing: drift gill net shark and swordfish fishery: permit transition program. (2017-2018)

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Senate Bill No. 1017

CHAPTER 844

An act to amend Sections 8394.5, 8561, 8579, and 9028 of, to amend, repeal, and add Section 8561.5 of, and to add Sections 8583 and 8583.5 to, the Fish and Game Code, and to add Section 35651 to the Public Resources Code, relating to fisheries, and making an appropriation therefor.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1017, Allen. Commercial fishing: drift gill net shark and swordfish fishery: permit transition program.

(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. Under existing law, a violation of these provisions is a crime.

The California Ocean Protection 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 Ocean Protection Council for, among other things, grants or loans to public agencies, nonprofit corporations, or private entities for, or direct expenditures on, projects or activities that protect, conserve, and restore coastal waters and ocean ecosystems including through the acquisition from willing sellers of vessels, equipment, licenses, harvest rights, permits, and other rights and property, to reduce threats to ocean ecosystems and resources.

This bill would require the department by March 31, 2020, to establish a voluntary permit transition program that includes specified conditions, including a condition that a permittee who voluntarily surrenders his or her DGN permit and shark or swordfish gill net or nets receive, to the extent that funds for the transition program are available, a specified payment, as prescribed. The bill would require the department to enter into an agreement with a fiscal agent, as defined, for the fiscal agent to receive state and nonstate funds for purposes of the transition program and, upon receipt of adequate funds, to make the payment to a participating permittee. If the department enters into an agreement with a fiscal agent that is a state entity, the bill would continuously appropriate any funds received from nonstate sources to that state entity for purposes of the transition program. The bill would require the Ocean Protection Council to use \$1 million of an appropriation made to it in the Budget Act of

2018 for whale and sea turtle entanglement to fund the transition program. The bill would require the department to notify the Legislature within 10 days of the date that the fiscal agent receives \$1 million from nonstate sources and secures \$1 million through an agreement with the Ocean Protection Council. The bill would require a DGN permit issued pursuant to these provisions to be surrendered or revoked as of January 31 of the 4th year following the department's notification to the Legislature. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.

The bill would, beginning March 31, 2019, prohibit the transfer of a DGN permit.

The bill would provide that the provisions dealing with the drift gill net shark and swordfish fishery do not create or recognize a property right in fish expected to be caught using a DGN permit.

(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 to the above-described index, but exempts the holder of a DGN permit from payment of that fee.

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

(3) Existing law makes it unlawful to use fishing lines, including, but not limited to, troll lines and handlines more than 900 feet in length unless they are used as set lines, as specified.

This bill would also exempt from this prohibition fishing lines more than 900 feet in length if they are used as part of deep-set buoy gear authorized under federal law.

(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.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is in the best interest of the people of the state, the commercial fishing industry, and California's marine resources that fishermen use the most sustainable fishing gear available to harvest seafood off the California coast.

(b) Large-scale pelagic drift gill nets targeting swordfish and sharks have been banned on the high seas and in ocean waters of many countries worldwide and are banned or are no longer permitted by all other states because of the unavoidable impacts to marine wildlife, including whales, dolphins, sharks, pinnipeds, and sea turtles, including the California state marine reptile, the Pacific leatherback sea turtle. Many California species killed by the drift gill net fishery are protected under state and federal law or covered under international agreements, such as the sperm whale, the leatherback sea turtle, the loggerhead sea turtle, the bigeye thresher shark, and the scalloped hammerhead shark.

(c) Impacts to California's marine and coastal resources have been a persistent concern with the use of drift gill nets. According to data collected pursuant to the National Oceanic and Atmospheric Administration's observer program, California's drift gill net fishery discards on average over one-half of all fish caught, kills over 70 different marine species as bycatch, and has among the highest rates of marine mammal and sea turtle interactions across all West Coast fisheries.

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

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

(f) Given the economic and environmental benefits to the people of the state, it is the intent of the Legislature to direct new entrants into the swordfish fishery toward the use of lower impact fishing gears for a modernized fishery, while allowing current participants in the drift gill net fishery to continue those practices for a limited duration of time.

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

8394.5. The fee for the permit issued pursuant to Section 8394 is three hundred thirty dollars (\$330). This permit fee does not apply to the holder of a valid drift gill net shark and swordfish permit required under Article 16 (commencing with Section 8561) or to any person who participates in the permit transition program established by the department pursuant to Section 8583.

SEC. 3. Section 8561 of the Fish and Game Code is amended to read:

8561. (a) Notwithstanding Section 8394, shark and swordfish shall not be taken 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.

(b) A drift gill net shark and swordfish permit shall not be required for the taking of sharks with drift gill nets with a mesh size smaller than eight inches in stretched mesh and twine size no. 18 or the equivalent of this twine size or smaller.

(c) Notwithstanding Section 8102 or any other law, a permit issued pursuant to this section shall be surrendered or revoked as of January 31 of the fourth year following the department's notification to the Legislature pursuant to paragraph (2) of subdivision (b) of Section 8583.

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

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

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

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

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

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

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

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

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

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

8561.5. (a) Notwithstanding Section 8102 or any other law, a permit issued pursuant to Section 8561 may not be transferred.

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

SEC. 6. Section 8579 of the Fish and Game Code is amended to read:

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

(b) A permittee may surrender his or her permit by notifying the department of his or her intentions by submitting a notarized form provided by the department and by sending or delivering his or her permit to a department office as prescribed on the form.

SEC. 7. Section 8583 is added to the Fish and Game Code, to read:

8583. (a) By March 31, 2020, the department shall establish a program to transition the holders of drift gill net permits issued pursuant to Section 8561 out of the drift gill net fishery that includes the following conditions:

(1) A permittee who chooses to participate in the transition program shall indicate his or her intention to the department to participate by submitting a notarized form provided by the department on or before January 1, 2020.

(2) A permittee who has landed swordfish or thresher shark with a shark or swordfish gill net or with a federal deep set buoy gear exempted fishing permit between April 1, 2012, and March 31, 2018, inclusive, and who voluntarily surrenders his or her drift gill net permit issued pursuant to Section 8561 and shark or swordfish gill net or nets shall receive, to the extent that funds for the transition program are available, the following amounts:

(A) Ten thousand dollars (\$10,000) to surrender the permit.

(B) One hundred thousand dollars (\$100,000) to surrender the net or nets.

(3) A permittee who has not landed swordfish or thresher shark on or after April 1, 2012, and who voluntarily surrenders his or her drift gill net permit issued pursuant to Section 8561 and shark or swordfish gill net or nets shall receive, to the extent that funds for the transition program are available, ten thousand dollars (\$10,000).

(4) The department shall inform a permittee who submits a notarized form pursuant to paragraph (1) whether the permittee meets the requirements of paragraph (2) or (3) and the department shall submit this information to the fiscal agent.

(5) Any permittee who participates in the transition program by surrendering his or her permit pursuant to paragraph (2) or (3) shall be prohibited from obtaining a new California drift gill net shark and swordfish permit, shall agree not to fish under a federal drift gill net permit, shall agree not to transfer or renew a federal drift gill net permit, and shall surrender his or her shark or swordfish gill net or nets to an entity approved by the department for the purpose of destroying the nets.

(b) (1) The department shall enter into an agreement with a fiscal agent for the fiscal agent to receive state and nonstate funds made available for purposes of the transition program, to put those funds in an escrow account, and, upon the receipt of adequate funds, to pay the applicable amount described in subdivision (a) to a participating permittee. As part of the agreement, the department shall require the fiscal agent to notify the department within 10 days of the receipt of one million dollars (\$1,000,000) from nonstate sources for purposes of transitioning permittees out of the drift gill net fishery. If the department enters into an agreement with a fiscal agent that is a state entity pursuant to this subdivision, notwithstanding Section 13340 of the Government Code, any funds received from nonstate sources are continuously appropriated to that state entity for purposes of the transition program without regard to fiscal years.

(2) The department shall notify the Legislature pursuant to Section 9795 of the Government Code within 10 days of the date that the fiscal agent receives one million dollars (\$1,000,000) from nonstate sources for purposes of the transition program and secures one million dollars (\$1,000,000) through an agreement with the Ocean Protection Council pursuant to Section 35651 of the Public Resources Code.

(3) For purposes of this section, "fiscal agent" includes any of the following:

(A) The Department of Finance.

(B) The Pacific States Marine Fisheries Commission.

(C) The Controller.

(D) Any appropriate state or federal agency.

SEC. 8. Section 8583.5 is added to the Fish and Game Code, to read:

8583.5. This article does not create or recognize a property right in fish expected to be caught using a permit issued pursuant to Section 8561.

SEC. 9. Section 9028 of the Fish and Game Code is amended to read:

9028. Notwithstanding Sections 8603 and 9025.5, it is unlawful to use fishing lines, including, but not limited to, troll lines and handlines more than 900 feet in length unless they are used as set lines pursuant to Sections 8601 and 9026 or they are used as part of deep-set buoy gear authorized under federal law.

SEC. 10. Section 35651 is added to the Public Resources Code, to read:

35651. The council shall use one million dollars (\$1,000,000) of the amount appropriated to it in Item 0540-101-0001 of Section 2.0 of the Budget Act of 2018 (Chapter 29 of the Statutes of 2018) for whale and sea turtle entanglement to fund the transition program established pursuant to Section 8583 of Fish and Game Code. The council shall enter into an agreement with the fiscal agent described in Section 8583 of the Fish and Game Code to provide funds to the fiscal agent for permittees who participate in the transition program. If the amount described in this section is not necessary due to the number of participants who have indicated an intention to participate in the transition program pursuant to Section 8583 of Fish and Game Code, the council may redirect the remaining funds to other purposes related to whale and sea turtle entanglement.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.