

DYNAVAX TECHNOLOGIES CORP

Form S-8

May 28, 2015

As filed with the Securities and Exchange Commission on May 28, 2015

Registration No. 333 -

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

DYNAVAX TECHNOLOGIES CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware 33-0728374

(State of Incorporation)

(I.R.S. Employer Identification Number)

2929 Seventh Street, Suite 100

Berkeley, CA 94710

(510) 848-5100

(Address, Including Zip Code, and Telephone Number,

Including Area Code, of Registrant's Principal Executive Offices)

Dynavax Technologies Corporation Amended and Restated 2011 Equity Incentive Plan

(Full Title of the Plan)

Michael Ostrach

Vice President, Chief Financial Officer

Dynavax Technologies Corporation

2929 Seventh Street, Suite 100

Berkeley, CA 94710

(510) 848-5100

(Name, Address, Including Zip Code, and Telephone Number,

Including Area Code, of Agent for Service)

Copies to:

Glen Y. Sato, Esq.

Cooley LLP

3175 Hanover St.

Palo Alto, CA 94304

(650) 843-5000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

## CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be registered <sup>(2)</sup>	Proposed maximum offering price per share <sup>(3)</sup>	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.001 par value per share, including related rights to purchase Series A Junior Participating Preferred Stock <sup>(1)</sup>	2,250,000	\$21.87	\$49,196,250	\$5,716.60

(1) Each share of the Registrant's Common Stock being registered hereunder, if issued prior to the termination by the Registrant of its rights agreement, dated as of November 5, 2008, between the Registrant and the rights agent named therein, includes Series A Junior Participating Preferred Stock purchase rights (the "Rights"). Prior to the occurrence of certain events, the Rights will not be

exercisable or evidenced separately from the Registrant's Common Stock and have no value except as reflected in the market price of the shares to which they are attached.

(2) Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's common stock, par value \$0.001 per share ("Common Stock"), that become issuable under the Dynavax Technologies Corporation Amended and Restated 2011 Equity Incentive Plan ("Stock Plan") by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.

(3) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h)(1) of the Securities Act, based on the average of the high (\$22.16) and low (\$21.57) prices for the Registrant's Common Stock reported by The NASDAQ Capital Market on May 26, 2015.

PART I

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 2,250,000 shares of the Registrant's Common Stock reserved for issuance under the Stock Plan.

INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION STATEMENT ON FORM S-8

The contents of the Registration Statements on Form S-8 (File No. 333-171552 and 333-190313), filed with the Securities and Exchange Commission (the "Commission") on January 6, 2011 and August 1, 2013, respectively, are incorporated by reference herein.

Item 8. Exhibits.

EXHIBITS

Exhibit Number	Document	Incorporated by Reference		Filed Herewith
		Exhibit Number	Filing Date	
3.1	Sixth Amended and Restated Certificate of Incorporation	<del>S-11</del> S-11/A	February 5, 2004	333-109965
3.2	Amended and Restated Bylaws	<del>S-11</del> S-11/A	February 5, 2004	333-109965
3.3	Form of Certificate of Designation of Series A Junior Participating Preferred Stock	<del>8-K</del> 8-K	November 6, 2008	000-50577
3.4	Certificate of Amendment of Amended	<del>8-K</del> 8-K	January 4, 2010	001-34207

- and Restated  
Certificate of  
Incorporation
- 3.5 Certificate of ~~8-K~~ January 5, 2011 001-34207  
Amendment  
of Amended  
and Restated  
Certificate of  
Incorporation
- 3.6 Certificate of ~~8-K~~ May 30, 2013 001-34207  
Amendment  
of Amended  
and Restated  
Certificate of  
Incorporation
- 3.7 Certificate of ~~8-K~~ November 10, 2014 001-34207  
Amendment  
of the Sixth  
Amended and  
Restated  
Certificate of  
Incorporation
- 4.1 Reference is  
made to  
Exhibits 3.1,  
3.2, 3.3, 3.4,  
3.5, 3.6 and  
3.7 above
- 4.2 Form of ~~§-2/A~~ January 16, 2004 333-109965  
Specimen  
Common  
Stock  
Certificate

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Exhibit Number	Document	Incorporated by Reference Exhibit Number	Filing Date	File No.	Filed Herewith
4.3	Rights Agreement dated as of November 5, 2008, by and between the Company and Mellon Investor Services LLC	<del>8-K</del>	November 6, 2008	000-50577	
4.4	Form of Right Certificate	<del>8-K</del>	November 6, 2008	000-50577	
5.1	Opinion of Cooley LLP				X
23.1	Consent of Independent Registered Public Accounting Firm				X
23.2	Consent of Cooley LLP (contained in Exhibit 5.1 to this Registration Statement)				
24.1	Power of Attorney (see Signature Page)				
99.1	Amended and Restated 2011 Equity Incentive Plan				X
99.2	Form of Restricted Stock Unit Award Notice and Agreement used in connection	<del>99.2</del>	January 6, 2011	333-171552	

with the  
2011 Equity  
Incentive  
Plan  
99.3 Form of ~~9983~~ January 6, 2011 333-171552  
Option  
Notice and  
Agreement  
used in  
connection  
with the  
2011 Equity  
Incentive  
Plan



SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Berkeley, State of California, on this 28th day of May 2015.

DYNAVAX TECHNOLOGIES  
CORPORATION

By: /s/ EDDIE GRAY  
Eddie Gray  
Chief Executive Officer  
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below does hereby constitute and appoint Eddie Gray and Michael Ostrach, and each of them, with full power of substitution and full power to act without the other, his true and lawful attorney-in-fact and agent to act for him in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file this Registration Statement, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully, to all intents and purposes, as they or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ EDDIE GRAY Eddie Gray	Chief Executive Officer and Director (Principal Executive Officer)	May 28, 2015
/s/ MICHAEL OSTRACH Michael Ostrach	Vice President, Chief Financial Officer (Principal Financial Officer)	May 28, 2015
/s/ DAVID JOHNSON David Johnson	Vice President (Principal Accounting Officer)	May 28, 2015
/s/ ARNOLD L. ORONSKY, Ph.D.		May 28, 2015

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Arnold L. Oronsky, Ph.D. Director

/s/ LAURA BREGE May 28, 2015  
Laura Brege Director

/s/ FRANCIS R. CANO, Ph.D. May 28, 2015  
Francis R. Cano, Ph.D. Director

/s/ DENNIS A. CARSON, M.D. May 28, 2015  
Dennis A. Carson, M.D. Director

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Signature	Title	Date
/s/ DANIEL L. KISNER, M.D. Daniel L. Kisner, M.D.	Director	May 28, 2015

/s/ PEGGY V. PHILLIPS Peggy V. Phillips	Director	May 28, 2015
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/s/ STANLEY A. PLOTKIN, M.D. Stanley A. Plotkin, M.D.	Director	May 28, 2015
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/s/ NATALE S. RICCIARDI Natale S. Ricciardi	Director	May 28, 2015
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3.7	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	<del>8-K</del>	November 10, 2014	001-34207	
4.1	Reference is made to Exhibits 3.1,				

	3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 above		
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99.3	Form of Option Notice and Agreement used in connection with the 2011 Equity Incentive Plan	<del>993</del>	January 6, 2011	333-171552	