

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8550, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 309, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559 of said Code, proposes to amend Section 163, Title 14, California Code of Regulations, relating to the herring fishery.

Informative Digest/Policy Statement Overview

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2003-04 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays.

The Department of Fish and Game (Department) is recommending a closure for the 2003-04 San Francisco Bay herring fishery (Option 1). This results in a proposed fishing quota of zero tons. Conditions for reopening of the fishery, such as a biological threshold, will be outlined in a subsequent regulatory package.

In addition to the recommendation for a fishery closure for the 2002-03 season, the Department is providing the Commission the option of considering a fishery quota within a 2,000- to 3,000-ton range (Option 2). This range is based on alternatives the Department has reviewed but does not recommend as its preferred option. Additional information regarding quotas within this range will be provided to the Commission prior to the 2003 Pre-Adoption Statement.

For Tomales Bay, an initial 300-ton fishing quota (6.8 percent of the 2002-03 estimated spawning biomass of 4,382 tons) is proposed, with provisions to increase the quota in-season if escapement goals are achieved by February 15, 2004. This season, the recommendation for in-season increases is as follows:

- If the spawning escapement is more than 3,000 tons, increase the quota to 400 tons.
- If the spawning escapement is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2003-04 season only, shall be no less than 2 inches or greater than 2 ½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000-01, 2001-02 and 2002-03 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on the size and age composition of herring caught in 2 inch mesh gill nets.

Changes to the Department herring season dates are recommended to coincide with changes in the annual calendar.

The following is a summary of those proposed changes in Section 163, Title 14, CCR:

- Set the dates of the roe herring fisheries in San Francisco Bay from noon on Monday, December 1, 2003 to noon on Tuesday, December 23, 2003 ("DH" gill net platoon only), and from 5:00 p.m. on Sunday, January 4, 2004 to noon on Friday, February 13, 2004. Although the season closure date has traditionally been set in mid-March, the Department is recommending a February closure as a conservative measure should the Commission approve a fishery within Option 2.
- Set the dates of the roe herring fishery in Tomales Bay from 5:00 p.m. on Sunday, December 28, 2003 until noon on Wednesday, December 31, 2003, and from 5:00 p.m. on Sunday, January 4, 2004 to noon on Friday, March 5, 2004.
- Transfer 10 tons of quota from the underutilized herring fresh fish fishery to the gill net fishery for use in any future gill net mesh size study.
- Make minor editorial revisions.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in The Westin Long Beach, 333 E. Ocean Blvd., Long Beach, California on Saturday, August 2, 2003 at 8:30 a.m., or as soon thereafter as the matter may be heard

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California on Friday, August 29, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 25, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August 29, 2003, at the hearing in Santa Rosa, CA. E-mail comments must include the true name and mailing address of the commentor. The regulations as proposed in ~~strikeout~~underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the

proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Eric Larson, Herring Fishery Program, Department of Fish and Game, phone (650) 631-7730, 350 Harbor Blvd., Belmont, CA 94002, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulations proposed would affect approximately 450 commercial herring fishermen and two processing plants in California, all of which are small businesses as defined under Government Code Section 11342.610. These direct impacts arise from interim management measures resulting in the close of the San Francisco herring fishery for the 2003-04 season only. Averaging herring harvests and values from years 2001 and 2002, to represent nominal revenue potential for 2003-04, we would project potential 2003-04 ex-vessel revenues of approximately \$3,125,500. Among the 450 herring permit holders, this represents potential individual revenues of

approximately \$6,900 on average (before deducting costs of doing business) during the 2003-04 fishing season.

The proposed action for the 2003-04 season will not have a long-term significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, although the economic impact of a closure extending beyond one season would need evaluation. The Commission has made an initial determination that the adoption of the recommended regulations may have a temporary adverse economic impact directly affecting a number of California's small businesses. However, these economic impacts will not likely directly affect the ability of California small businesses to compete with businesses in other states. This is because most of the herring landings are transported out of State for "added value" processing and export (primarily to Japan and China).

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Statewide, the closure of the 2003-04 herring fishery would result in a loss of approximately \$3,160,802 of additional economic output foregone. This takes into account the multiplier effect that the herring ex-vessel revenue creates as it cycles through California's economy. We project that each dollar of ex-vessel herring revenue generates another \$2.01 as it moves through other business sectors within California. Recognizing that each \$1 million in commercial fishing revenue supports about 11.6 full- and part-time jobs, we estimate the potential employment impact to be at most 36 jobs Statewide. This is because most of the "added value" processing of California herring takes place out of state, thus the actual employment impact to California would be much lower.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Dated: July 1, 2003