

creating an economic hardship for permit holders who want to leave the fishery and for fishermen who want to enter the fishery. Many permit holders consider the \$5,000 fee excessive and inequitable during a period when the market value of the permits is relatively low. Lowering the permit fee to \$1,000 would lower the economic barrier for permit transfers while still providing the Department with revenue for herring research and management.

The herring permit transfer fee was not established to cover the administrative costs of transferring a permit but rather as a means to help fund herring research and management. The commercial roe herring fishery has been regulated by fixed numbers of permits since 1973, and the permits were not transferable (except to a working partner or family member upon death of the permit holder) until 1989. Thus, the Department did not initially issue an item of real monetary value, because the permits were not transferable and initial issuance of a permit was at no cost to the recipient except for the annual permit fee. The passage of AB4597 in 1989, with the provision for full transferability of herring permits, assigned a real monetary value to possession of a herring permit without accruable monetary benefit to the state. To rectify that, AB4597 required that a transfer fee be paid to the state.

Anecdotal information from fishermen as well as trends for the number of permit transfers, number of permits reverting to the state, and the number of partnerships indicate that the current transfer fee of \$5,000 is a barrier to the sale and transfer of herring permits. The number of transfers per year dropped markedly after the transfer fee increased from \$2,500 to \$5,000 on April 1, 1997 (Attachment 1). The number of permits reverting to the state has increased dramatically in the last two seasons (Attachment 1); a permit reverts to the state when the permit was not sold and transferred after the death of a permit holder or when the permit holder choose not to renew the permit.

Herring permit transfer procedures are specified in statute (Fish and Game Code Sections 8552.2 and 8552.6). The administrative and fiscal impacts to the Department for completing a transfer are minor. The reduction in the fee will not impact the Department's ability to complete permit transfers.

Existing law (Fish and Game Code Section 8552.7) states that the transfer fees shall be used for research and management of herring. On average, the revenues from the transfer fee represent about four to five percent of the revenue that the Department receives directly from the herring fishery and about seven percent of the revenue deposited in the Herring Dedicated Account for herring management and research. If the number of permit transfers per year stays the same as the average number per year since the transfer fee was increased to \$5,000 on April 1, 1997 (*i.e.*, about four per year), then the Department would lose revenues. However, if the number of permit transfers per year equals the average number of transfers when the fee was less than \$5,000 (*i.e.*, 32 per

year), then the Department would not lose revenues. Any revenues lost due to the lower transfer fee would need to be absorbed by the Department within existing budgets and resources, or the Department would need to find ways to reduce the cost of managing the herring fisheries.

Authorization to Own Multiple Permits in the San Francisco Bay Fishery

The proposed regulations would authorize gillnet permit holders in San Francisco Bay to own permits in more than one platoon (odd-numbered permits, even-numbered permits, and December herring (“DH”) permits), but would prohibit anyone from holding more than one permit per platoon. Individuals holding converted round haul (“CH”) permits that are authorized to fish in two platoons would be allowed to own a permit for the platoon that is not authorized under his or her CH permit. An individual who is a partner of a permit held in partnership would not be allowed to hold another permit (either as sole owner or as a partner) for the same platoon as the permit held in partnership.

Elimination of the Point System

The legislative direction in Section 8552.3 (c) is to only eliminate the point system, not to dispense with qualifying criteria altogether. In issuing limited entry permits, Commission Restricted Access Policy 4.1 encourages giving a preference to fishermen with a record of prior participation in the fishery. The point-system would be eliminated, and new eligibility criteria would be in place for permits that are not held in partnership. The proposed regulations would limit transfers to individuals who meet at least one of the following criteria: have fished in a herring roe fishery in California for at least one season and have held a California commercial fishing license for at least three years; or is a current San Francisco Bay permit holder who is purchasing another San Francisco Bay permit.

The proposed regulations would require the following documents to demonstrate eligibility:

- (1) A copy of a cancelled check in the individual’s name and a notarized copy of a trip settlement sheet showing the income earned while fishing aboard a vessel participating in any California herring roe fishery
- (2) A copy of the individual’s State Franchise Tax return reporting income earned while fishing aboard a vessel participating in a California herring roe fishery
- (3) In cases of a substitution under Fish and Game Code Section 8554, a copy of a fish landing receipt submitted to the department with the individual’s name, the individual’s commercial fishing license number, and landing of roe herring reported on the landing receipt.

To reduce the burden on the permit holder, the proposed regulations would eliminate the requirements that a permit holder mail a notice of intention to transfer to everyone on the Department’s list of individuals with experience points

(commonly called the 20-point list). To facilitate administration of the proposed changes, the proposed regulations specify the requirement for requesting a permit transfer, specify that an application must be for each permit each season, and provide a process to appeal a Department denial of a transfer.

Option 2

Option 2 is based on public comments at the Commission's November meeting and the Commission analysis of Fish and Game Code Section 8552.3 and would include the following proposed changes:

Transfer Fees

The proposed regulations would lower the herring permit transfer fee from \$5,000 to \$1,000. The current fee of \$5,000 is inhibiting transfer of permits, and is creating an economic hardship for permit holders who want to leave the fishery and for fishermen who want to enter the fishery. Many permit holders consider the \$5,000 fee excessive and inequitable during a period when the market value of the permits is relatively low. Lowering the permit fee to \$1,000 would lower the economic barrier for permit transfers while still providing the Department with revenue for herring research and management.

The herring permit transfer fee was not established to cover the administrative costs of transferring a permit but rather as a means to help fund herring research and management. The commercial roe herring fishery has been regulated by fixed numbers of permits since 1973, and the permits were not transferable (except to a working partner or family member upon death of the permit holder) until 1989. Thus, the Department did not initially issue an item of real monetary value, because the permits were not transferable and initial issuance of a permit was at no cost to the recipient except for the annual permit fee. The passage of AB4597 in 1989, with the provision for full transferability of herring permits, assigned a real monetary value to possession of a herring permit without accruable monetary benefit to the state. To rectify that, AB4597 required that a transfer fee be paid to the state.

Anecdotal information from fishermen as well as trends for the number of permit transfers, number of permits reverting to the state, and the number of partnerships indicate that the current transfer fee of \$5,000 is a barrier to the sale and transfer of herring permits. The number of transfers per year dropped markedly after the transfer fee increased from \$2,500 to \$5,000 on April 1, 1997 (Attachment 1). The number of permits reverting to the state has increased dramatically in the last two seasons (Attachment 1); a permit reverts to the state when the permit was not sold and transferred after the death of a permit holder or when the permit holder choose not to renew the permit.

Herring permit transfer procedures are specified in statute (Fish and Game Code

Sections 8552.2 and 8552.6). The administrative and fiscal impacts to the Department for completing a transfer are minor. The reduction in the fee will not impact the Department's ability to complete permit transfers.

Existing law (Fish and Game Code Section 8552.7) states that the transfer fees shall be used for research and management of herring. On average, the revenues from the transfer fee represent about four to five percent of the revenue that the Department receives directly from the herring fishery and about seven percent of the revenue deposited in the Herring Dedicated Account for herring management and research. If the number of permit transfers per year stays the same as the average number per year since the transfer fee was increased to \$5,000 on April 1, 1997 (*i.e.*, about four per year), then the Department would lose revenues. However, if the number of permit transfers per year equals the average number of transfers when the fee was less than \$5,000 (*i.e.*, 32 per year), then the Department would not lose revenues. Any revenues lost due to the lower transfer fee would need to be absorbed by the Department within existing budgets and resources, or the Department would need to find ways to reduce the cost of managing the herring fisheries.

Authorization to Own Multiple Permits in the San Francisco Bay Fishery

The proposed regulations would authorize gillnet permit holders in San Francisco Bay to own permits in more than one platoon (odd-numbered permits, even-numbered permits, and December herring ("DH") permits), but would prohibit anyone from holding more than one permit per platoon. Individuals holding converted round haul ("CH") permits that are authorized to fish in two platoons would be allowed to own a permit for the platoon that is not authorized under his or her CH permit. An individual who is a partner of a permit held in partnership would not be allowed to hold another permit (either as sole owner or as a partner) for the same platoon as the permit held in partnership.

Elimination of the Point System

The proposed regulations would completely eliminate all qualifying criteria for owning a herring gillnet permit. The fishery would be open to anyone with a California commercial fishing license.

Family Transfers

Proposed regulations would allow family transfers between husband and wife and from parent to child without the need for qualifying criteria.

The Commission adopted Option 2 at the December 9, 2005 meeting.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

1. Sam Liberati, herring fisherman, in a letter dated August 10, 2005 and during

oral testimony at the November 4, 2005 and December 9, 2005 Commission meetings requested the following:

- a. Allow an individual to own a single permit for each of the different herring gillnet platoons in San Francisco Bay.
- b. Reduction of transfer fee to \$1,000.
- c. Eliminate the point system for qualifying for a herring permit.
- d. Allow a herring permit to be passed from a parent to a child, or between husband and wife.

Department Response:

1a-d. Support noted.

2. Ronald Mangué, herring fisherman, in a letter dated October 6, 2005 requested the following:

- a. Reduction of transfer fee to \$1,000.
- b. Allow an individual to own a single permit for each of the different herring gillnet platoons in San Francisco Bay.
- c. Eliminate the point system for qualifying for a herring permit.
- d. Allow a herring permit to be passed from a parent to a child, or between husband and wife.

Department Response:

2a-d. See Response 1a-d above.

3. Eddie Genovese, herring permittee, during oral testimony at the November 4, 2005 Commission Meeting stated that the 20 ton quota should be used in research for the fishery.

Department Response:

The existing regulations, in Section 163, Title 14, already provide for the ability to have 20 tons go toward research.

3. Ernie Koepf, herring permittee, during oral testimony at the December 9, 2005 Commission meeting supported Option 2.

Department Response:

See Response 1a-d. above.

4. Paul Weakland, during oral testimony at the December 9, 2005 Commission meeting made the following comments.

- a. The simpler language is better.
- b. "Widows and orphans E Clampus Vitus".

Department Response:

4a-b. The comments do not pertain to proposed rulemaking.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The Department considered herring permit transfer fees of \$500. The Department would not be able to absorb the lost revenue from a fee as low as \$500 which is one-tenth the current fee.
- (b) No Change Alternative: If the herring permit transfer fee remains at \$5,000, it is expected that the number of transfers will remain low, and the number of permits reverting to the state will continue to rise. If the permit eligibility requirements remain the same, there will be a smaller pool of potential buyers for permits than under the proposed regulations.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. 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 Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

None. No adverse economic impacts are anticipated from the proposed regulations. The proposed regulation, at most, would facilitate the sale

and transfer of herring permits by fishermen desiring to leave the fishery through reduced transactions costs. There are currently 417 herring permit holders. Anecdotal information from the fishermen, and some statistical corroboration at the Department of Fish and Game, indicate that the current transfer fee of \$5,000 may present a barrier to the sale and transfer of herring permits.

- (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:

None. Lowering the transfer fee cost would reduce transactions costs and likely enable some fishermen to retire while capturing a larger portion of the current value of their permit. This would facilitate the perpetual use of permits for ongoing business activities and opportunities, thus preserving or perhaps increasing the number of jobs in the State. This would be in contrast to a permit holder retiring or dying and letting the permit lapse due to a relatively high permit transfer fee of \$5,000.

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

The agency is not aware of any adverse cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Since April 1, 1997 when the transfer fee rose to \$5,000, there have been an average of four permit transfers per year; generating about \$20,000 (four x \$5,000) in transfer fees to the Department. Industry representatives have stated that more fishermen would retire and sell their permits, if transfer fees were lower. Department records on herring permit transfers over the last 17 years appear to confirm that a \$5,000 transfer fee is a barrier to fishermen selling and transferring their permits. The average age of resident herring fishermen rose from 50 years of age in 1996, to 58 years of age in 2004. This suggests that fishermen are keeping their permits longer, and are disinclined to sell them. Based on advertisements in recent commercial fishing trade journals, the current price for a San Francisco Bay herring permit is less than \$10,000. Thus, a \$5,000 transfer fee is at least 50 percent of the revenues generated from sale of a permit at current market prices. This likely deters older fishermen from retiring and selling their herring permits. The average age of herring permit holders at death or retirement was 73.5 years of age from 1996 through 2004. The age composition of herring permit holders in

2004 is as follows: 0.9 percent are age 18-30, 8.0 are percent age 30-40, 22.2 percent are age 40-50, 40.1 percent are age 50-60, 16.5 percent are age 60-70, 8.5 percent are age 70-80, and 3.8 percent are age 80 or older. Based on this current age composition of the 417 herring fishermen, there are 22 individuals at or above the threshold age (that is, average age at death or retirement) of 73.5 years. The Department anticipates that these 22 permit holders are likely to transfer their permits soon after implementation of a transfer fee reduction. Thus, in the first couple years of a new \$1,000 transfer fee, there may be 10 to 15 transfers a year, representing \$10,000 to \$15,000 in Department revenues in each year. Thereafter, the Department expects the annual number of transfers to average about 2.2 over the next five years, and about 2.8 over the next 10 years, based on the 2004 age structure of the herring permit holders and assuming a retirement threshold age of 73.5 years. However, permit sale and transfer activity is dependent on, among other things, the availability of qualified and willing buyers.

Compared to historical permit transfers, which average four transfers per year, under the reduced transfer fee the Department would likely lose revenues of up to \$9,000 per year in the first couple of years. This revenue loss would occur even with anticipated increases in the number of transfers to about 11 in year one and year two of the proposed regulations. If the number of transfers thereafter average 2.8 a year, annual losses in transfer revenues would be approximately \$17,200 for the Department. This assumes that all other factors potentially affecting permit transfer activity stay the same (e.g., ex-vessel value of the product, Japanese economy, foreign exchange rates, out-of-state competition, and existing inventories). Japan imports nearly all of the herring roe from fisheries in California. Current indications are that the Japanese economy is not likely to rebound dramatically in the next few years.

- (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

Updated Informative Digest/Policy Statement Overview

Under existing law (Fish and Game Code Section 8550), Pacific herring may be taken for commercial purposes only under the authority of a permit, and herring permits are transferable under the provision of Fish and Game Code Sections 8552.2 and 8552.6. Fish and Game Code Section 8552.7 currently sets the fee to transfer a herring permit at \$5,000, but existing law (Fish and Game Code Section 8552.1) authorizes the Fish and Game Commission (Commission) to adjust the herring permit transfer fee to a level that will not discourage the transfer of permits or limit entry into the fishery, and that will ensure sufficient funds to cover reasonable Department of Fish and Game (Department) costs associated with management of the fishery.

Existing law (Fish and Game Code Section 8552.3) provides the Commission with the authority to adopt regulations to facilitate transfer of herring permits including regulations that would allow an individual to own a permit for each of the three gill net platoons (also called fishing groups and designated DH, Odd, and Even) in San Francisco Bay; eliminate the point system for qualifying for a herring permit; and allow a herring permit to be transferred from a parent to child or between spouses, when those individuals are otherwise qualified to participate in the fishery.

Existing law (Fish and Game Code Section 8552.2) limits permit transfers to individuals with at least 20 herring fishery points (also known as experience points) unless the permit is transferred to partner in a partnership established under the provision of Fish and Game Code Section 8552.6. Permits held in partnership may be transferred to one of the partners if that partner has at least 10 experience points and the partnership has existed for at least three consecutive years. Fish and Game Code Section 8552.8 establishes the basis for earning experience points in the roe herring fishery.

Based on public comments at the Commission's November meeting and its analysis of Fish and Game Code Section 8552.3, the Commission requested that a second option be considered for the elimination of the point system and the family transfer of herring permits. Both Options propose regulations that would lower the herring permit transfer fee from \$5,000 to \$1,000. **In Option 1**, the proposed regulations to facilitate transfers are based on recommendations received from a group of Director's Herring Advisory Committee members and on a proposal received by the Commission at their August 18-19 by a herring permittee. Those regulations would: authorize permit holders in San Francisco Bay to hold permits in more than one platoon; eliminate the point system and establish new eligibility criteria for permit transfer; specify the documents needed to demonstrate eligibility; eliminate the requirements that a permit holder mail a notice of intention to transfer to everyone on the Department's list of individuals with experience points (commonly called the 20-point list). **Option 2 proposes regulations that would eliminate all eligibility criteria for owning a herring permit and allow the transfer of a herring permit from husband to wife and parent to child without restrictions. Both options** propose regulations that would also specify the requirement for requesting a permit transfer, specify that an application

must be for each permit each season, and provide a process to appeal a Department denial of a transfer.

Option 1

Under Option 1, the proposed regulations would limit transfers to individuals who meet at least one of the following criteria:

- Have fished in the a herring roe fishery in California for at least one season and have held a California commercial fishing license for at least three years and provides documentation
- Is a spouse or child of the current permit holder who is otherwise qualified, or
- Is a current San Francisco Bay permit holder who is purchasing another San Francisco Bay permit.

In addition, the proposed regulations would authorize permit holders in San Francisco Bay to own permits in more than one platoon (odd-numbered permits, even-numbered permits, and December herring (“DH”) permits), but would prohibit anyone from holding more than one permit per platoon. Individuals holding converted round haul (“CH”) permits that are authorized to fish in two platoons would be allowed to own a permit for the platoon that is not authorized under his or her CH permit.

Option 2

Under Option 2, the proposed regulations would eliminate all eligibility criteria for owning a herring gillnet permit, and allow family transfers between husband and wife and parent to child without restriction.

In addition, the proposed regulations would authorize permit holders in San Francisco Bay to own permits in more than one platoon (odd-numbered permits, even-numbered permits, and December herring (“DH”) permits), but would prohibit anyone from holding more than one permit per platoon. Individuals holding converted round haul (“CH”) permits that are authorized to fish in two platoons would be allowed to own a permit for the platoon that is not authorized under his or her CH permit.

The Commission adopted Option 2 at the December 9, 2005 meeting.



State of California
CALIFORNIA FISH AND GAME COMMISSION

ADDENDUM TO FINAL STATEMENT OF REASONS
Certification of Compliance with Sections 8552.1 and 8552.3 of the Fish
and Game Code

The Fish and Game Commission (Commission) hereby certifies that it has complied with sections 8552.1 and 8552.3 of the Fish and Game Code. The Department of Fish and Game (Department) and Commission conducted an ongoing consultation and dialogue with Pacific herring fishery participants. This consultation occurred through both a series of facilitated Director's Herring Advisory Committee meetings, California Environmental Quality Act public meetings, Commission meetings, and individual dialogue consistent with sections 8552.1 and 8552.3 of the Fish and Game Code. Industry members introduced the proposed changes to the Commission at the Commission's August 19, 2005 meeting in San Luis Obispo.

Date: March 24, 2006

Jon Fischer
Assistant Executive Director

REGULATORY LANGUAGE

Section 163.1, Title 14, CCR is amended to read:

163.1 Herring Permit Transfers ~~Fee~~.

(a) Definitions.

Individual means a single natural person.

Individually held means a permit that is not held by a partnership under Fish and Game Code Section 8552.6.

Permit means a valid entitlement issued pursuant to Fish and Game Code Section 8552, which has not been suspended or revoked, to take herring for roe purposes.

Fishing group means those platoons whose season is designated in Section 163(a) of these regulations.

(b) Multiple permits. In the San Francisco Bay fishery, no person may ever hold, either individually or in partnership, more than a total of three permits, and/or more than one permit in any fishing group.

(c) Notice/application to transfer and transfer fee. A transfer under this regulation does not require the notice to qualified point holders required by Fish and Game Code Section 8552.2. The permit holder must submit a notarized letter, signed by the permit holder, to the department's San Francisco Bay Area Marine Region office requesting transfer of the permit, identifying the individual to whom the permit is to be transferred. Notwithstanding Fish and Game Code Section 8552.7 the fee to transfer a herring permit is one thousand dollars (\$1000). The fees shall be deposited in the Fish and Game Preservation Fund and shall be expended for research and management activities to maintain and enhance herring resources pursuant to subsection 8052(a) of the Fish and Game Code.

(d) Permit Renewal. Each permit individually held shall be separately renewed according to the procedures in Section 163 of these regulations.

(e) Appeals. Any individual who is denied the transfer of a permit may appeal in writing to the department's San Francisco Bay Area Marine Region office not more than 60 days from the date of denial. The appeal shall describe the basis for the appeal and contain all supporting evidence. If the denial is sustained, the individual may appeal in writing to the commission within 60 days of the date of the department's decision.

Note: Authority cited: Sections 8552.1, 8552.3 and 8553, Fish and Game Code. Reference: Sections 8552, 8552.1, 8552.2, 8552.3 and 8552.7, Fish and Game Code.