

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 240, 1050, 5510, 8550, 8553 and 8555, of the Fish and Game Code (FGC) and to implement, interpret or make specific sections 240, 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559 of said Code, proposes to amend subsection (h)(6) of Section 163, Title 14, California Code of Regulations (CCR), relating to Pacific herring open ocean commercial fishing regulations.

Informative Digest/Policy Statement Overview

Under existing law, herring and herring eggs may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission (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; landing and monitoring requirements; permit categories and conditions; royalty fees; permit performance deposit requirements; fishing and harvesting restrictions; processing requirements and permit suspension conditions and procedures.

Emergency regulatory action by the Fish and Game Commission (Commission) to close the ocean waters herring fishery on July 1, 2009, or soon thereafter is needed to protect the San Francisco Bay Pacific herring stock due to a dramatic decline in biomass. It is thought that the ocean waters fishery is comprised of Pacific Herring from the San Francisco Bay population. At low population levels, the San Francisco stock is considered to be depressed and protecting the remaining population is vital to ensure future rebuilding of the of the stock and maintaining Pacific herring's role in a healthy functioning ecosystem. Emergency action is needed to close the ocean fishery on July 1, 2009, because herring landings for this fishery occur between April and August, with 93 percent of the landings occurring in July and August. Given the recent decline of the San Francisco Bay stock, the Department of Fish and Game (Department) believes it appropriate to put in place additional conservation safeguards to protect herring during the current ocean waters season. Closing the ocean waters fishery would help protect the remaining herring population from further decline. The Department is also recommending a zero harvest or no fishery option to the Commission for the 2009-2010 San Francisco Bay gill net and herring-eggs-on-kelp fisheries. This option is being presented to the Commission at the June 25, 2009 meeting for consideration during the regular rulemaking process. An emergency closure of the ocean waters fishery would prohibit the targeting of herring, protect any San Francisco stock from additional fishing mortality in ocean waters, and conserve more herring for stock rebuilding. Closing the ocean waters fishery on July 1, 2009 or soon thereafter would help achieve the Departments goal of protecting this valuable resource.

The following is a summary of the proposed changes in subsection (h)(6) of Section 163, Title 14, CCR:

- The Department's proposed regulations would close the ocean waters fishery beginning July 1, 2009 or soon thereafter that takes place for herring, primarily in Monterey Bay. An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed at any time during 2009 so that the prohibition on targeting herring would not inadvertently or unduly affect the fisheries for Pacific sardine and market squid.

Section 240 Finding

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth in the attached "Statement of Facts Constituting Need for Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation or protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof. The Commission specifically finds that the adoption of this regulation will protect the remaining herring stock from further depletion.

Public Comments on Proposed Emergency Regulations

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; and to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

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) Costs/Savings in Federal Funding to the State: None
- (b) Nondiscretionary Costs/Savings to Local Agencies: None
- (c) Programs Mandated on Local Agencies or School Districts: None
- (d) 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, Government Code: None
- (e) Effect on Housing Costs: None
- (f) Costs or Savings to State Agencies: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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 action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 25, 2009

John Carlson, Jr.
Executive Director