

**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, 8389, 8550, 8552.1, 8553 and 8555, of the Fish and Game Code and to implement, interpret or make specific sections 713, 1050, 7850, 7850.5, 7852.2, 8043, 8053, 8389, 8550-8557, and 8559 of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the commercial 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 regulations would establish the fishing quota, season dates and times for fishing operations for the 2009-2010 season in San Francisco Bay based on the most recent biomass assessments of spawning populations of herring as well as season dates and times for fishing operations for the 2009-2010 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2008-09 herring season.

The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

Option 1

- The Department recommended proposed regulations would set the San Francisco Bay quota at 0 tons, which represents a 0 percent harvest of the 2008-09 spawning biomass estimate. If the Commission were to adopt this option, this would close the herring roe and herring-eggs-on-kelp fishery in San Francisco Bay for the 2009-2010 season.
- The Department recommended proposed regulations would close the open ocean fishery 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.
- The Department recommended proposed regulations would set the dates of the roe herring fishery in Tomales Bay from noon on Sunday, December 27, 2009, until noon on Friday, February 26, 2010.

Option 2

- The alternative proposed regulations would allow a quota within the range of zero to 10 percent of the 2008-2009 spawning biomass estimate of 4,844 tons.
- The alternative proposed regulations would allow a harvest rate of seven percent of the 2008-2009 spawning biomass.
- The alternative proposed regulations would create one San Francisco Bay herring season with a common quota for all platoons for the 2009-2010 season.
- The alternative proposed regulations would modify San Francisco Bay herring permit requirements only for the 2009-2010 season, by requiring two permits of any type (DH,

Odd, or Even) for an individual to fish one net (minimum allowed per vessel), and four permits of any type (DH, Odd, or Even) for an individual to fish two nets (maximum allowed per vessel).

- Alternative proposed regulations would allow fishing in San Francisco Bay from 5:00 p.m. on Sunday, January 3, 2010, until noon on Friday, February 26, 2010.

The following are minor editorial changes proposed to improve clarity and consistency of the regulations:

- The proposed regulations would correct the Limited Entry Pacific Herring permit application number in subsection 163(b)(1) and the Herring Eggs on Kelp permit application number in subsection 164(h)(1) to coincide with the 2009-2010 season applications.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, 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 at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, September 3, 2009, 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 27, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 31, 2009. All comments must be received no later than September 3, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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 Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sheri Tiemann at the preceding address or phone number. **Mr. John Mello, Marine Region, Department of Fish and Game, (707) 441-5755 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.fgc.ca.gov>.

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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. 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:

Japan remains the major market for California herring roe (Kazunoko), which is processed for consumption in Japan as a traditional salted roe product or flavored roe product. Very recent gains in the Japanese Yen against the US dollar could provide for future increase in demand for herring roe. Nonetheless overall trends in ex-vessel prices continue to decline. Market observers attribute this decline to changing tastes, preferences, and demographics in Japan over the years.

The California commercial herring fishery takes place in four areas; San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. However, the greatest economic activity is derived from herring ventures in San Francisco Bay, which typically generate about 90 percent of the total average annual value for this California fishery. In real dollars, San Francisco Bay herring landings have averaged about \$2.7 million in ex-vessel value to the fishermen since 2004. All the herring fishermen and herring processing plants are small businesses as defined under Government Code Section 11342.610.

In the 2008-2009 commercial herring season, San Francisco Bay landings amounted to 507 tons total, out of an available 1,118 ton quota. Depending on which option the Commission chooses for 2009-2010, the quota will be between zero and 484 tons (10 percent of the 2008-2009 spawning estimate of 4,844 tons). Given this range relative to last season, the potential direct impacts are \$20,900 to \$479,000 in lost revenue to the fishermen. The resulting total output impact to the State's economy from this potentially lost revenue is \$37,000 to \$850,000. This is based on an economic output multiplier of 1.774 for calculating total direct, indirect, and induced impacts to California's economy from the herring fishery.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or
- (iv) exemption or partial exemption from the regulatory requirements for business.

- (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:

Given a range of \$20,900 to \$479,000 in potential lost revenue to the fishermen, the employment impacts are estimated to be between five to 105 jobs lost. This is based on an employment multiplier of 218.3 jobs per million dollars in lost fishing revenue in the California herring fishery.

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

The agency 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, Government Code: 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. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

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 Carlson, Jr.
Executive Director

Dated: June 30, 2009