

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Harvest of Herring and Harvest of Herring Eggs

I. Date of Initial Statement of Reasons: May 4, 2012

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: June 20, 2012
Location: Mammoth, CA |
| (b) | Discussion and Adoption Hearing: | Date: October 3, 2012
Location: Sacramento, CA |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

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; 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.

The proposed regulations would establish the fishing quota and season dates and times that fishing operations are allowed for the 2012-2013 season in San Francisco Bay and season dates and times for fishing operations for the 2012-2013 season in Tomales Bay.

Management recommendations to improve or provide for the efficient harvest and orderly conduct of the herring fishery are solicited annually from the Director's Herring Advisory Committee (DHAC), and from interested fishermen and individuals at public meetings. The proposed amendments to Sections 163 and 164, Title 14, California Code of Regulations (CCR), reflect Department of Fish and Game (Department) recommendations presented to the DHAC and recommendations from the DHAC. The Department prepared a Final Supplemental Environmental Document (FSED) for Pacific Herring Commercial Fishing Regulations in 2011, pursuant to the requirements of the California Environmental Quality Act. This

FSED may be viewed at the Department's website:
<http://www.dfg.ca.gov/marine/herring/index.asp>.

Background

Pacific herring gill net fisheries occur in four primary spawning areas; San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. The Department manages these populations as separate stocks. The commercial herring fisheries on these stocks are closely regulated through a catch quota system to provide for adequate protection and utilization of the herring resource. The Department conducts annual assessments of the herring spawning population size (spawning biomass) in San Francisco Bay. In addition to the assessment of spawning biomass, the Department examines the age structure of the spawning population, growth and general condition, biological aspects of the catch, and environmental conditions. These data serve as the basis for establishing fishing quotas for the next season.

The herring eggs on kelp fishery (HEOK) is only permitted in San Francisco Bay. Holders of gill net permits for San Francisco Bay are allowed to convert their permit into a HEOK permit at the start of each season. This fishery is regulated with the gill net fishery and its proportion of the quota is allocated from the total quota set for San Francisco Bay.

A fresh fish herring fishery is permitted in Tomales Bay and San Francisco Bay. Annual quotas for these fisheries are set in conjunction with gill net fisheries for Tomales Bay and San Francisco Bay.

Fishing Quotas

Annual fishing quotas are intended to provide for a sustainable fishery and have been limited to a total commercial take not to exceed 20 percent (harvest percentage) of the spawning biomass. This harvest percentage is based upon the results of a peer reviewed model that assumes stable environmental and biological conditions. Quotas are the principal regulatory tool to establish adequate protection for the herring resource and provide for the long-term yield of the fishery. Each year, the Department recommends a harvest percentage that is not determined by a fixed mathematical formula; rather, the recommendation is based upon the modeling results and takes into account additional data collected each season, including oceanic conditions, growth rates of herring, strength of individual year-classes, and predicted size of incoming year-classes (*i.e.*, recruitment). In response to poor recruitment, or indication of population stress, and/or unfavorable oceanographic conditions, harvest percentages in previous years have been set below 15 percent. For example, a near record low spawning biomass was estimated for both the 2006-2007 and 2007-2008 seasons; therefore, a conservative harvest percentage of 10 percent was recommended for those two seasons. The Department recommended a zero ton quota or no fishery option for the 2009-2010 season when the herring spawning biomass in 2008-2009 fell to a new historical low of 4,833 tons. The Commission adopted this recommendation and no commercial fishery was held in

San Francisco Bay for the 2009-2010 season. This was done to help safeguard the remaining population and allow for stock rebuilding.

Within the overall quota for San Francisco Bay, separate quotas are established for each of the two gill net fishing groups (odd and even). Slight annual adjustments in the quota assignments for each fishing group are needed to account for attrition of permittees and the use of herring permits in the herring eggs on kelp fishery. HEOK fishing occurs only in San Francisco Bay and the fishery is regulated under Section 164, Title 14, CCR. Individual HEOK quotas depend on the total herring fishery quota for San Francisco Bay established by the Commission under Section 163, Title 14, CCR. In 1994, the Commission provided HEOK permittees with a HEOK quota equal to approximately 0.79 percent of the overall quota.

San Francisco Bay

The spawning biomass estimate for the 2011-2012 season is 60,985 tons, well above the historical average (1978-1979 season to the present) of 49,670 tons. Based on length frequency analysis, a large proportion of the 2011-2012 spawning biomass can be attributed to 4-year old herring (2007-2008 year class). Based on historical age analysis the 2011-2012 season will be the last season the Department expects to see the 2007-2008 year class in large numbers. Annual young-of-the-year data collected by the Department in San Francisco Bay showed a robust 2010-2011 year class. This year class will return to San Francisco Bay during the 2012-2013 season as 2-year olds and may help continue the stock rebuilding for the San Francisco Bay herring fishery.

After three consecutive years of increased biomass, the Department continues to be concerned about the age structure of the San Francisco Bay herring population. The percentage of age five and older herring that historically supported the gill net fishery has declined to very low levels. Due to ongoing age structure concerns, the Department will continue to recommend precautionary management principles for safeguarding the spawning population.

San Francisco Bay Quota Options and Recommendation

The Department is providing the Commission a quota option range between zero to 10 percent of the 2011-2012 spawning biomass estimate of 60,985 tons. The Department and DHAC recommend a quota for the 2012-2013 season of 2,854 tons, which is approximately five percent of the spawning biomass for 2011-2012. The 2010-2011 and 2011-2012 biomass estimates share are similar, and as a result the Department proposes an equivalent quota recommendation. This quota represents five percent of the 2010-2011 season biomass and was evaluated in the 2011 FSED for Pacific Herring Commercial Fishing Regulations (<http://www.dfg.ca.gov/marine/herring/index.asp>). Continuing with a conservative harvest rate of approximately five percent will help reduce fishing mortality which is critical for continued stock recovery, fishery

sustainability, and maintain herring's important role in both ocean and bay ecosystems.

Additionally, fishing effort in the San Francisco herring fishery has decreased significantly during the past several years. During the 1990s the number of herring permits peaked at over 450 with over 120 vessels participating. In contrast, during the 2011-2012 season there were just 190 permit renewals and only 23 vessels elected to participate. Given the decline in the number of participants, a 2,854 ton quota will provide for a fishery while preventing overexploitation.

Tomales Bay

The Department is not recommending any change to the regulations for the Tomales Bay fishery quota. Proposed changes to the season dates are outlined under "Season Dates and Fishing Times" below.

Humboldt Bay and Crescent City Harbor

The Department is not recommending any change to the regulations for the Humboldt Bay or Crescent City Harbor herring fisheries including quotas and season dates.

Season Dates and Fishing Times

Season dates and fishing times for San Francisco Bay and Tomales Bay are adjusted annually to coincide with date changes in the calendar from year to year. Season starting and ending dates are different in these bays due to preferences expressed by the respective DHAC members based on when herring schools are expected to enter each bay.

San Francisco Bay

The Department is recommending that the Commission adopt the DHAC recommended changes to season dates and fishing times for San Francisco Bay. The consensus of the DHAC, which met on March 14, 2012, was to recommend that the dates of the roe herring fisheries for the Odd and Even platoons in San Francisco Bay be set to open from 8:00 a.m. on Wednesday, January 2, 2013, until noon on Friday, March 15, 2013.

Tomales Bay

The Department is recommending that the Commission adopt the DHAC recommended changes to season dates and fishing times for Tomales Bay. The consensus of the Tomales Bay DHAC representatives for setting season dates was to recommend opening at noon on Wednesday, December 26, 2012, until noon on Friday, February 22, 2013.

The proposed regulatory action will benefit fishermen, processors, and the State's economy in the form of a healthy sustainable fishery, and future harvestable herring populations.

- (b) Authority and Reference Sections from the Fish and Game Code for Regulation:

Authority: Sections 1050, 5510, 8389, 8550, 8552.1, 8553 and 8555, Fish and Game Code.

References: Sections 713, 1050, 7850, 7850.5, 7852.2, 8043, 8053, 8389, 8550-8557, and 8559, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

(1) [Informational Summary Packet for San Francisco Bay herring fishery \(attached\)](#).

(2) [Economic Impact Analysis](#)

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

(1) Director's Herring Advisory Committee Meeting, March 14, 2012, Sausalito, California.

(2) Director's Herring Advisory Committee follow up conference call, April 4, 2012.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: No alternatives were identified.

- (b) No Change Alternative:

A no change alternative would provide a quota for the 2012-2013 fishing season of 1,920 tons.

- (c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

See 2011 Final Supplemental Environmental Document – Pacific Herring Commercial Fishing Regulations. This document may be viewed at the Department’s website: <http://www.dfg.ca.gov/marine/herring/index.asp>.

VI. 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:

The Department is providing the Commission a quota option range between zero to 10 percent of the 2011-2012 spawning biomass estimate of 60,985 tons. The potential changes to total State economic output, if the Commission were to choose a 10 percent, five percent, or zero percent option, are \$2,062,000, \$564,000, and \$(753,000), respectively, relative to last season. Both the 10 and five percent options result in positive incremental contributions to total economic output for the State, whereas the zero percent option would result in an adverse economic impact to the State and loss of as much as \$753,000 (2011 dollars) in total economic output. This is based on an economic output multiplier of 1.99 used in calculating total direct, indirect, and induced effects arising from the California herring fishery.

Depending on which harvest option the Commission chooses for 2012-2013, the harvestable quota will be between zero and 6,099 tons. No adverse economic impacts to businesses in California would occur under the Department’s recommended five percent quota of 2,854 tons. Moreover, given the overriding market conditions for herring roe (declining demand overseas and lower prices), none of the quota options are expected to affect the ability of California businesses to compete with businesses in other states.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

Depending on which harvest option the Commission chooses for 2012-2013, the harvestable quota will be between zero and 6,099 tons. Both the 10 percent and five percent harvest options, result in positive incremental contributions to employment for the State of about 13 and four jobs, respectively, whereas a zero percent harvest could result in as much as 196

potential job losses. This is based on an employment multiplier of 12.7 jobs per each million dollar change in direct economic output from fishing activities in the California herring fishery, and a fleet of about 190 permittees.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a herring fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California's herring resources.

(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.

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 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; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota, season dates and times for fishing operations for the 2012-2013 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 2012-2013 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2012-2013 herring season.

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

- Set the San Francisco Bay quota between zero (0) and 10 percent (0 and 6,099 tons) of the 2011-2012 spawning biomass. The Department is recommending that the San Francisco Bay quota be set at 2,854 tons, which is approximately five percent of the 2011-2012 spawning biomass. If the Commission were to adopt this option, a 2,854 ton quota would result in a 5.0 ton individual quota for a "CH" gill net permittee and a 3.1 ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.
- Set the dates of the roe herring fisheries in San Francisco Bay for Odd and Even platoons in San Francisco Bay from 8:00 a.m. on Wednesday, January 2, 2013, until noon on Friday, March 15, 2013.
- Set the dates of the roe herring fishery in Tomales Bay from noon on Wednesday, December 26, 2012, until noon on Friday, February 22, 2013.

The proposed regulatory action will benefit fishermen, processors, and the State's economy in the form of a healthy sustainable fishery, and future harvestable herring populations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.