

Response:

- 1) At the August hearing the Commission did not change the quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries.
- (b) Testimony of Mr. Ken Bates, at the Fish and Game Commission Notice Hearing, June 4, 2014.
- 1) Supports the Commission maintaining the current herring quotas in Crescent City Harbor, Humboldt Bay and Tomales Bay because he does not believe there is sufficient information to close the fisheries at this time.

Response:

- 1) At the August hearing the Commission did not change the herring quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries.
- (c) Testimony of Geoff Shester, Oceana, at the Fish and Game Commission Notice Hearing, June 4, 2014.
- 1) Supports a zero ton quota for the unassessed herring fisheries.

Response:

- 1) At the August hearing the Commission did not change the herring quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries. See comment (f)(1) and (f)(2) and response (f)(2)
- (d) Comment letter received by the Commission, dated June 7, 2014, from Mr. Steven H. Kramer, herring permittee.
- 1) Mr. Kramer recommends that the Commission not change the quotas for the Humboldt Bay to zero.

Response:

- 1) At the August hearing the Commission did not change the herring quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries.
- (e) Comment letter received by the Commission, dated July 2, 2014 from Mr. Ken Bates.
- 1) Mr. Bates rebuts claims by Oceana's Geoffrey Shester that the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries are in jeopardy due to lack of fishery data and the fact that there have been no landings in Humboldt and Crescent City. Mr. Bates indicated his willingness to collect additional data this winter on the status of herring spawning stocks in Humboldt Bay on a voluntary basis in collaboration with Department staff and using Department approved research protocols.

Response:

- 1) Comment noted.
- (f) Comment letter received by the Commission, dated July 30, 2014, from Geoff Shester, Oceana, and on behalf of Audubon California, Earthjustice, Ocean Conservancy, Natural Resources Defense Council and Pew Charitable Trusts.
- 1) Supports the joint recommendation of the Director's Herring Advisory Committee and the Department for a commercial harvest limit on herring in San Francisco Bay of 2,500 tons. Supports maintaining current quotas of 30 tons for Crescent City Harbor, 60 tons for Humboldt Bay, and 350 tons for Tomales Bay.
 - 2) Expressed concern regarding any fishing that may occur in the currently unassessed areas of Crescent City Harbor, Humboldt Bay and Tomales Bay. However, recent communications with herring industry representatives have led to the formulation of a new proposal for addressing data needs in these areas while allowing some fishing to occur. Specifically, in his July 2, 2014 letter to the California Fish and Game Commission, Mr. Ken Bates (Herring permittee from Humboldt Bay) indicated his willingness to collect additional data this winter on the status of herring spawning stocks in Humboldt Bay on a voluntary basis in collaboration with Department staff and using Department approved research protocols.

Response:

- 1) At the August hearing the Commission adopted the Department's proposed quota for San Francisco Bay, and did not change the quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries.
 - 2) The Department stated its desire to study the herring fisheries collaboratively with all interested parties.
- (g) Testimony of Geoff Shester, Oceana, at the Fish and Game Commission Discussion and Adoption Hearing, August 6, 2014
- 1) Mr. Shester reviewed his written comments from the OCEANA letter dated July 30, 2014.

Response:

- 1) See the response to the OCEANA letter (f) above.

(h) Testimony of Anna Weinstein, Audubon California, at the Fish and Game Commission Discussion and Adoption Hearing, August 6, 2014.

- 1) Supports the regulatory program presented by the Department for the next commercial fishing season.

Response:

- 1) Comment supports the Department's proposal for San Francisco, Tomales, Humboldt, and Crescent City fisheries.

There were no other speakers, and no other written comments submitted.

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, Room 1320
Sacramento, California 95814

VIII. Location of Department Files:
Department of Fish and Wildlife
5355 Skylane Blvd, Suite B
Santa Rosa, California 95403

IX. 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 2014-2015 fishing season of 3,737 tons.

(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, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. Form Incorporated by Reference and not published in CCR:

Existing Section 164 includes one form previously “incorporated by reference.” Form FG 143 HR is updated and revised in this rulemaking. The revised form remains incorporated by reference and will be readily available on the Department website, or at Department offices around the state, for the herring fishers that must use the forms.

XI. Mitigation Measures Required by Regulatory Action:

A Final Supplemental Environmental Document (FSED) was prepared to review and analyze the proposed regulations for the commercial harvest of Pacific herring throughout the State’s estuarine waters. At the August 6, 2014, meeting the Commission moved to adopt the findings of the FSED. By selecting within the recommended range (zero to 10% of the previous year’s spawning biomass) a fishing quota of 4.1% in San Francisco Bay and status quo quota options for Tomales Bay, Humboldt Bay and Crescent City Area, no further mitigation measures are required for this regulatory action.

XII. 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 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 provided the Commission analyses on five potential 2014-2015 quota options for San Francisco Bay ranging from zero to 10 percent of the 10-year average biomass estimate of 52,000 tons (see attached Economic Impact Analysis, EIA). The potential incremental changes to total State economic output for these five options: no change, zero (0), 2,444, 2,600, or 5,200 ton quota, are: none, \$(6,874,000), \$(2,378,000), \$(2,091,000), and \$2,691,000, respectively, relative to 2013-2014 season’s 3,737 ton quota and the ex-vessel price per ton.

No adverse incremental economic impacts to businesses in California would occur under a quota allocation of 3,737 tons or more. Moreover, given the recent market conditions for herring roe (increasing demand overseas and higher prices), any allocation of 3,737 tons or less could affect the ability of California businesses to compete with businesses in other states. This is evident in the recent market reports from the National Marine Fisheries Service, showing a 78 percent increase (by weight) in exports of Pacific herring products from California in 2013, relative to 2012. The corresponding

increase in nominal dollar value of exports of Pacific herring products from California was about 59 percent (unadjusted for inflation).

Since no commercial herring fishing activity has taken place in Tomales Bay, Humboldt Bay, and Crescent City Harbor in the last six years, we conclude no adverse incremental economic impacts to businesses under status quo quota allocations for these three areas.

(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:

Any quota option over 3,737 tons will result in positive incremental contributions to employment for the State: for example, an increase of about 38 jobs for a quota of 5,200 tons (see attached EIA). Conversely, a zero (0) or 2,444 ton allowable quota could adversely impact as many as 97 to 33 jobs in the fishing industry and related industries. This is based on an employment multiplier of 27 jobs per each million dollar change in direct output from commercial herring fishing activities.

Most commercial herring industry participants are small businesses (as defined under California Government Code Section 11342.610), which may incur a detriment under a quota option less than 3,202 tons for San Francisco Bay. This 3,202 tons was the total harvest of Pacific herring landed during the 2013-2014 season, though the allowable quota was higher at 3,737 tons.

It is unlikely that any of the proposed quota options would alone cause the elimination of existing businesses in the State. This is in light of the favorable market conditions currently enjoyed by the herring processors and exporters. Given these promising market trends, it is possible that any quota option over 3,737 tons could potentially encourage investment, expansion, and creation of some new businesses in the State.

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

The Commission anticipates benefits to the State's environment and the health and welfare of California residents. The proposed regulation changes are intended to set annual harvest quotas within a range that will maintain sustainable herring populations for their ecological values and commercial use. Maintaining a sustainable herring fishery encourages consumption of a nutritious food.

No provisions of the regulation benefit worker safety because only fishing quotas are being set.

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

The Department 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.

UPDATED INFORMATIVE DIGEST\POLICY STATEMENT OVERVIEW

Sections 163 and 164, Title 14, CCR, specify that 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; and landing and monitoring requirements.

Annual fishing quotas are necessary to provide for a sustainable fishery. The regulatory changes in Section 163 establish the fishing quotas for Crescent City Area, Humboldt Bay, Tomales Bay and San Francisco Bay.

Benefits of the Regulation

The Commission anticipates benefits to the State's environment and the health and welfare of California residents. The proposed regulation changes are intended to set annual harvest quotas within a range that will maintain sustainable herring populations for their ecological values and commercial use. Maintaining a sustainable herring fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety as a result of the proposed regulation.

Consistency with State or Federal Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of herring (sections 8550 and 8553, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to the commercial take of herring. There are no comparable federal regulations for the commercial harvest of herring.

Update:

Other than the final herring quota, no modifications were made to the originally proposed language of the Initial Statement of Reasons.

Based on the recommendations contained in the Final Supplemental Environmental Document (FSED) for the Pacific Herring 2014-2015 fishing season, the Fish and Game Commission adopted the harvest option of 2,500 tons

for San Francisco Bay in Subsection 163(g)(4). The Commission maintained the current quotas for the Crescent City Area, Humboldt Bay, and Tomales Bay herring fisheries as set forth in subsections 163(g)(1)-(3). In Subsection 164(g)(3), the Commission adopted the revised Form FG 143 HR (Rev 2/14).

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION
Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Harvest of Herring and Harvest of Herring Eggs

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

(e) Comment letter received by the Commission, dated July 2, 2014 from Mr. Ken Bates.

- 1) Mr. Bates rebuts claims by Oceana's Geoffrey Shester that the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries are in jeopardy due to lack of fishery data and the fact that there have been no landings in Humboldt and Crescent City. Mr. Bates indicated his willingness to collect additional data this winter on the status of herring spawning stocks in Humboldt Bay on a voluntary basis in collaboration with Department staff and using Department approved research protocols.

Response:

- 1) The Department stated its desire to study the herring fisheries collaboratively with all interested parties. At the August hearing the Commission did not change the quotas for the Crescent City Harbor, Humboldt Bay and Tomales Bay fisheries.