

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, 7881, 8043, 8053, 8389, 8550, 8550.5, 8552, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8555, 8556, 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

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 proposed regulatory changes in Section 163 will establish the fishing quotas for Crescent City Area, Humboldt Bay and Tomales Bay; and for the 2014-2015 season in San Francisco Bay:

- Set the Crescent City Area quota at zero (0) tons or maintain status-quo of 30 tons.
- Set the Humboldt Bay quota at zero (0) tons or maintain status-quo of 60 tons.
- Set the Tomales Bay quota at zero (0) tons or maintain status-quo of 350 tons.
- Replace the language shall “not exceed” with shall “be” with respect to the quotas selected for the Crescent City Area, Humboldt Bay and Tomales Bay.
- Set the San Francisco Bay quota for the 2014-2015 season between zero (0) and 10 percent of the 2013-2014 San Francisco Bay spawning biomass estimate for Pacific herring as provided in the 2014 Draft Supplemental Environmental Document (DSED).

- A minor editorial change will be made to Section 164 indicating a change in the revision date (Rev 2/14) because of a minor revision to the HEOK Royalty Report Form FG 143 HR.

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.

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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be at the Hilton San Diego Mission Valley 901 Camino del Rio South, San Diego, California, on Wednesday, August 6, 2014, at 8:00 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 July 24, 2014 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 July 31, 2014. All comments must be received no later than August 6, 2014 at the hearing in San Diego. 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, Sonke Mastrup, 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 Sonke Mastrup or Sheri Tiemann at the preceding address or phone number. **Ryan Bartling, Marine Region, Department of Fish and Wildlife, phone (707) 576-2877, 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. 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/Results of the Economic Impact Analysis

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:

The Department is providing 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 Assessment, EIA). The potential incremental changes to total State economic output for the no

change, zero (0) ton, 2,444 ton, 2,600 ton, or 5,200 ton quota, options 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 the recommended zero quota allocation 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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

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) ton 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 in 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 in 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: