

**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, 8552.1, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 7850, 7850.5, 8043, 8053, 8389 and 8550-8559, of said Code, proposes to amend Sections 163 and 164, and add Section 163.1, Title 14, California Code of Regulations, relating to the Commercial Herring Fishery.

Informative Digest/Policy Statement Overview
Sections 163 and 164

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 fishing quotas, specify net measurement methods, modify mesh size in San Francisco Bay, establish season dates and times that fishing operations are allowed, and require reimbursement of Department costs if fishing occurs on the weekend in Tomales Bay.

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

- The proposed regulations would establish fishing quotas by area for the 2005-06 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. Two options are provided for the San Francisco Bay quota. San Francisco Bay Quota Option 1 would set the quota at 5,890 tons which represents 10 percent of the 2004-05 spawning biomass estimate. If the Commission were to adopt this quota, this would result in a 10.4-ton individual quota for a "CH" gill net permittee and a 3.0-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. The Department recommends selecting Option 1 if the minimum mesh size remains at 2 1/8 inches. San Francisco Bay Quota Option 2 would set the quota at 4,502 tons which represents 7.6 percent of the 2004-05 spawning biomass estimate. If the Commission were to adopt this quota, this would result in a 7.9-ton individual quota for a "CH" gill net permittee and a 2.3-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. The Department recommends selecting Option 2 if the minimum mesh size were changed to 2 inches. An initial 400-ton fishing quota (eleven percent of the 2004-05 estimated spawning biomass of 3,686 tons) is proposed for Tomales Bay with provisions to increase the quota in-season if escapement goals are achieved by February 15, 2005.
- The proposed regulations would change the minimum mesh size in the San Francisco Bay gill net fishery from 2 1/8 to 2 inches.
- The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2005-06 season only, shall be no less than 2 inches or greater than 2 1/2 inches. This proposal is a continuation of regulations originally approved for the 2000-01 season to evaluate the effect of reduced mesh size on the length and age composition of herring caught in 2 inch mesh gill nets in Tomales Bay.
- The proposed regulations would allow weekend fishing in Tomales Bay. The Department proposes that should the Commission decide to allow weekend fishing in Tomales Bay, the Department shall be able to submit a detailed invoice to the appropriate party, or parties, for any increase in the cost of operations. The proposed amendment would allow weekend fishing in Tomales Bay.
- The proposed regulations would specify that the length of a gill net used in San Francisco

and Tomales Bay shall be measured along the cork line.

- The proposed regulations would set the dates of the roe herring fisheries in San Francisco Bay from 5 p.m. on Sunday, December 11, 2005 until 6:00 a.m. on Friday, December 23, 2005 and re-open at 5 p.m. on Monday, December 26, 2005 until 6:00 a.m. on Friday, December 30, 2005 ("DH" gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Monday January 2, 2006 until noon on Friday, March 17, 2006.
- The proposed regulations would set the dates of the roe herring fisheries in Tomales Bay from 5:00 p.m. on Sunday, December 25, 2005 until noon on Friday, December 30, 2005, and from 5:00 p.m. on Sunday, January 1, 2006 to noon on Friday, February 24, 2006.
- The proposed regulations would correct the Herring Eggs on Kelp Permit Application number in subsection 164 (h)(1) to coincide with the 2005-06 season application.

Section 163.1

Under existing law (Fish and Game Code Sections 8550 and 8552), Pacific herring may be taken for commercial purposes only under the authority of a permit, and the permits are transferable under the provisions of Fish and Game Code Sections 8552.2, 8552.6, and 8552.7. Fish and Game Code Section 8552.7 currently sets the fee to transfer a herring permit at \$5,000. Under existing law (Fish and Game Code Section 8552.1), the Commission, may adjust the herring permit transfer fee to a level that will not discourage the transfer of permits or limit entry into the fishery, and that will ensure sufficient funds to cover reasonable Department costs associated with management of the fishery.

The proposed regulations would lower the herring permit transfer fee from \$5,000 to \$1,000. The current fee of \$5,000 is inhibiting transfer of permits, and is creating an economic hardship for permit holders who want to leave the fishery and for fishermen who want to enter the fishery. Many permit holders consider the \$5,000 fee excessive and inequitable during a period when the market value of the permits is relatively low. Lowering the permit fee to \$1,000 would lower the economic barrier for permit transfers while still providing the Department with revenue for herring research and management.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Board of Supervisors Chambers, 1050 Monterey Street, 2nd floor, San Luis Obispo, California on Friday, August 19, 2005, 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 in the City Hall, 66 North Lassen Street, Susanville, California, on Friday, September 30, 2005, 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 September 21, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than September 30, 2005, at the hearing in Susanville, CA. All written comments must include the true name and mailing address of the commentor.

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, Robert R. Treanor, 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 Jon Fischer or Jon Snellstrom at the preceding address or phone number. **Becky Ota, Marine Region, Department of Fish and Game, phone (650) 631-6789, 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

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:

Sections 163 and 164

No adverse economic impacts. The proposed action for the 2005-06 season will have no adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed 2005-06 regulations would benefit California's commercial herring fishermen and herring processing plants, all of which are small businesses as defined under Government Code Section 11342.610. Depending on the option selected by the Fish and Game Commission (Commission), direct benefits would accrue to the San Francisco Bay herring fishery in the form of increased catches, revenues, and related economic activity. Harvest quotas for San Francisco Bay herring fishermen would be increased from 3,440 tons to 5,890 tons (Option 1), or from 3,440 to 4,502 tons (Option 2).

Option 1 includes a proposed quota of 5,890 tons for San Francisco Bay in 2005-06, and represents potential increases in ex-vessel revenues of as much as \$2,080,296 in the San Francisco Bay herring fishery, which consists of approximately 388 herring fishermen. This increased revenue projection is based on average price data from the 2004-05 season, assuming that the entire San Francisco quota is harvested in each year ($\$4,994,078_{2005-06} - \$2,913,782_{2004-05} = \$2,080,296$, or $\$2,120,144$ when adjusted for inflation and presented in year 2005 dollars). Additionally, an in-season increase in the Tomales Bay quota, from 400 to 500 tons, is proposed should spawning escapement reach or exceed 4,000 tons before February 15, 2006. The 2005-06 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2004-05. Thus the total ex-vessel revenue potential from all herring quotas, for all 417 herring fishermen, could be as much as \$5,499,339 under the proposed 2005-06 regulation. Using a statewide output multiplier and projected ex-vessel revenues of \$5,499,339, the economic contribution of the 2005-06 herring fishery could be as much as \$11,060,821 in year 2005 dollars. (This is derived by multiplying the projected ex-vessel revenues by a statewide demand output multiplier of 2.0113; e.g. $2.0113 \times \$5,499,339 = \$11,060,821$).

Option 2 has a proposed quota of 4,502 tons for San Francisco Bay in 2005-06, and represents potential increases in ex-vessel revenues of as much as \$901,678 in the herring fishery of 388 fishermen. This increased revenue projection is based on average price data from the 2004-05 season, assuming that the entire San Francisco quota is harvested in each year ($\$3,815,460_{2005-06} - \$2,913,782_{2004-05} = \$901,678$, or $\$918,950$ when adjusted for inflation and presented in year 2005 dollars). As in the above option, an in-season increase in the Tomales Bay quota, from 400 to 500 tons, is proposed should spawning escapement reach or exceed 4,000 tons before

February 15, 2006. The 2005-06 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2004-05. Thus the total ex-vessel revenue potential from all herring quotas, for all 417 herring fishermen, could be as much as \$4,298,145 (in year 2005 dollars) under the proposed Option 2. Using a statewide output multiplier and projected ex-vessel revenues of \$4,298,145 the economic contribution of the 2005-06 herring fishery could be as much as \$8,644,858 in year 2005 dollars. (This is calculated by taking the projected ex-vessel revenues and multiplying by a statewide demand output multiplier of 2.0113; e.g. 2.0113 x \$4,298,145= \$8,644,858).

Changes in the minimum mesh size for herring gill nets would increase fishermen's harvest of the relatively abundant younger (year 2 and year 3) fish. Since the proposed regulations offer a range of 2" to 2 1/4" mesh size, which encompasses the earlier mesh size nets, the proposed regulations do not require fishermen to replace their older nets. For herring fishermen who chose to purchase the new smaller mesh size nets, the cost for a new net is estimated to be around \$1,208 (excluding shipping and handling charges).

Section 163.1

None. No adverse economic impacts are anticipated from the proposed regulations. The proposed regulation, at most, would facilitate the sale and transfer of herring permits by fishermen desiring to leave the fishery through reduced transactions costs. There are currently 417 herring permit holders. Anecdotal information from the fishermen, and some statistical corroboration at the Department of Fish and Game, indicate that the current transfer fee of \$5,000 may present a barrier to the sale and transfer of herring permits.

- (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:

Sections 163 and 164

None.

Section 163.1

None. Lowering the transfer fee cost would reduce transactions costs and likely enable some fishermen to retire while capturing a larger portion of the current value of their permit. This would facilitate the perpetual use of permits for ongoing business activities and opportunities, thus preserving or perhaps increasing the number of jobs in the State. This would be in contrast to a permit holder retiring or dying and letting the permit lapse due to a relatively high permit transfer fee of \$5,000.

- (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.

- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

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

Dated: July 12, 2005

Robert R. Treanor
Executive Director