

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
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

- I. Date of Initial Statement of Reasons: May 28, 2010
- II. Date of Final Statement of Reasons: September 16, 2010
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 24, 2010
Location: Folsom, CA
 - (b) Discussion and Adoption Hearing: Date: September 16, 2010
Location: McClellan, CA

IV. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

The Commission adopted the California Department of Fish and Game (Department) recommended quota for San Francisco Bay of 1,920 tons, which represents a five percent harvest of the 2009-10 spawning biomass estimate as noted in the Initial Statement of Reasons. Further, the Commission adopted the Department recommendation to integrate the December DH platoon into the Odd and Even platoons. In addition, the Commission adopted the Department recommended season dates for Tomales Bay and San Francisco Bay, removal of regulatory language referencing dates for the ocean waters fishery, and minor changes were made to correct the revision dates on Form 1377 and Form 1406 to reflect the current license year application.

V. Summary of Primary Considerations Raised in Opposition and in Support:

Director's Herring Advisory Committee fishery members, Mr. Sam Liberati (Chairman) and Mr. Nick Sohrakoff (Vice-Chairman), in a letter dated July 14, 2010 (Attachment 1)

Comment 1

Mr. Liberati and Mr. Sohrakoff, representing the Director's Herring Advisory Committee (DHAC), requested that the Commission amend Section 163, Title 14 CCR to remove the existing provision for temporary permittee substitution. The amended regulatory language would allow the captain of the fishing vessel specified on the herring permit to directly serve in the permittee's place aboard the vessel during a season. DHAC members acknowledged that this proposal was not completed in time for inclusion in the Department's draft regulatory package. However, DHAC members requested the Commission consider adoption as an amendment to the Department's package or as a separate item, given the non-controversial nature of the proposed change and the absence of any biological impact.

Response

The Department and DHAC share the goal of streamlining the herring fishery permitting process and reducing the complexity the Department herring regulations. The Department recognizes the DHAC member's proposal may be an important step toward achieving this goal. Given the complexity of the herring permit process the Department will need more time to evaluate enforcement, licensing and legal issues associated with this proposed regulatory change.

Ashley Blacow (Oceana, Pacific Policy and Communications Coordinator), in oral comment at the September 16, 2010, Commission Meeting

Comment 1

Ms. Blacow spoke to the overall management of forage species specifically in regards to Pacific herring; stating that herring are a critically important forage species in the California current ecosystem and serves as prey for many different species of birds, mammals, and commercially important fish.

Response

The Department recognizes the unique role of Pacific herring in California's marine ecosystems as an important forage species during each life history stage from egg to adult.

Comment 2

Ms. Blacow states that Oceana has concerns regarding the Pacific herring population that include; the population crash that occurred last year, the low number of older herring, and a harvest strategy that does not take into account the role of herring in the ecosystem.

Response

The Department remains concerned about the status of the herring population. However, the low, five percent harvest rate recommendation provides for a sustainable fishery while supporting continued stock rebuilding, thus promoting herring's important role in both ocean and bay ecosystems.

Comment 3

Ms. Blacow thanked the Commission for permanently closing the open water fishery in Monterey Bay, but feels more could be done to restore the population to historic levels, restore its natural age structure, and account for herring's role as a forage fish in the ecosystem.

Response

Comment noted

Comment 4

Ms. Blacow further stated that California could benefit from an overall forage species Fishery Management Plan (FMP) that includes Pacific herring and other forage species. This FMP should take into account the role of these fish in the ecosystem and thus help meet the goals of the Marine Life Management Act (MLMA).

Response

The Department is now in the initial stages of preparing an FMP for the Pacific herring fishery. The Department will address ecosystem and habitat issues relevant to the fishery in the Pacific herring FMP as prescribed in the MLMA. Several other coastal pelagic species commercially fished in California are managed under federal fishery management plans.

Comment 5

Oceana believes the FMP should include several overarching principles, such as maintaining herring stocks at levels that provide for sufficient prey for healthy bird, mammal, and fish populations, restoring the natural age structure of the population, and providing a sustainable fishery resource for fishing communities.

Response

The Department agrees with Oceana and the principles mentioned above will be included in the Pacific herring FMP.

Comment 6

In closing, Ms. Blacow stated that the Pacific Fisheries Management Council at their recent June meeting decided to include Pacific herring as an ecosystem component species in their Coastal Pelagic Species FMP. The Department should manage Pacific herring and other forage species with an ecosystem-based management perspective.

Response

Comment noted

Mr. Ed Fotsch, in an e-mail dated August 2, 2010 (Attachment 2)

Comment 7

Mr. Fotsch supports the Department's recommendation.

Response

Comment noted

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: No alternatives were identified.
- (b) No Change Alternative: A no change alternative would provide a quota of zero tons for San Francisco Bay for the 2010-11 fishing season.
- (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 or would be as effective and less burdensome to the affected private persons than the proposed regulation.

IX. 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:

No adverse incremental economic impact to businesses.

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. Recent gains in the Japanese Yen, against the US dollar, could foretell increase demand for California herring roe. However, the Russian federation is emerging as a strong market competitor to the US, with their herring exports to Japan growing at an enormous rate. This growth is reinforced as herring roe continues to hold top market position year to year, with 18 of 25 Japanese seafood firms noting that it was their best-selling commodity.

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 roe ventures in San Francisco Bay, which typically generate about 90 percent of the total average annual value for this California fishery. In real 2009 dollars, San Francisco Bay herring landings have averaged about \$375,000 in ex-vessel revenue to the fishermen since 2004. All of these herring fishermen and herring processing plants are small businesses as defined under California Government Code Section 11342.610. 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 spawning biomass estimate for the 2009-2010 season was 38,409 tons, which fell below the historical average (1978-1979 season to present) of 49,084 tons. Depending on which harvest option the Commission chooses for 2010-2011, the harvestable quota may be between zero and 3,841 tons (or zero to 10 percent of the 2009-2010 spawning estimate of 38,409 tons). Relative to last year's closed season, this potential harvest range represents a positive incremental impact of \$1.8 million to \$3.6 million in ex-vessel revenue, or direct revenue to the fishermen; assuming the final decision will be between five percent and ten percent of the biomass, respectively. The resulting total output contribution to the State's economy from this direct revenue is \$3.2 million to \$6.5 million. 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.

- (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 potential range of \$1.8 million to \$3.6 million in positive direct revenue to the fishermen, the employment impacts are estimated to be about 397 to 793 jobs supported. This is based on an employment multiplier of 218.3 jobs per million dollars produced in direct fishing revenue from 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:

None.

(h) Effect on Housing Costs:

None.

UPDATED 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; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota, season dates and times for fishing operations for the 2010-2011 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 2010-2011 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2010-2011 herring season. Changes concerning number of permits per vessel, use of gillnet vessels in “off weeks”, number of nets allowed, and herring permits for use in ocean waters are also included.

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 3,841 tons) of the 2009-2010 spawning biomass. The Department is recommending that the San Francisco Bay quota be set at 1,920 tons, which is five percent of the 2009-2010 spawning biomass. If the Commission were to adopt this option, a 1,920 ton quota would result in a 3.4 ton individual quota for a “CH” gillnet permittee and a 4.1 ton individual quota for a non-“CH” gillnet permittee participating in the HEOK fishery.
- Set the dates of the roe herring fishery in Tomales Bay from noon on Sunday, December 26, 2010, until noon on Friday, February 25, 2011.
- Integrate the December DH platoon into the Odd and Even platoons. DH permittees with odd numbered permits would be assigned to the Odd platoon and permittees with even numbered permits would be assigned to the Even platoon.

The Commission adopted the Department recommended proposed regulations for the 2010-2011 commercial herring season.

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 2010-2011 season applications.

The Commission approved of minor amendments to clarify and simplify the regulations.

(Attachment 1)

Commissioners
California Fish and Game Commission
1416 Ninth Street
PO Box 944209
Sacramento CA 94244-2090

14 July 2010

Dear Commissioners,

We, the herring fishery members of the Director's Herring Advisory Committee (DHAC), respectfully wish to submit a regulatory proposal for your consideration in this 2010 regulatory cycle. Specifically, we request an amendment to Section 163, Title 14 CCR to replace the existing provision for temporary permittee substitution with regulatory language to allow the captain of the fishing vessel specified on the herring permit to directly serve in the permittee's place aboard the vessel during a season.

The DHAC discussed this issue at its April 2010 meeting and, with the Department of Fish and Game's support, agreed to draft a proposal for your review and action. Unfortunately it was not completed in time for inclusion in the Department of Fish and Game's draft regulatory package. However, given the non-controversial nature of the proposed change and the absence of any biological impact, we hope that the Commission will approve it for adoption as an amendment to the Department's package or by itself as a separate item.

Thank you for your consideration.

Sincerely,
fishery members of the Director's Herring
Advisory Committee
Mr. Sam Liberati, chairman
Mr. Nick Sohrakoff, vice-chairman

(Attachment 2)

Cc: [REDACTED]

Subject: Hearing re: Herring Fishing in SF Bay

Attn: John Mello, Marine Region, Department of Fish and Game

Dear Mr. Mello,

I am in receipt of your letter dated 26 July, 2010 re: the 2010/11 Herring season and the related information and meeting date. I am supportive of resuming the herring season given the data provided- especially related to herring bio-mass and the need to support fishing jobs- and assuming that the boats respect the sound, light and timing structure previously put in place. As you know those of us who live on the shores of Sausalito have had challenges with noise and trying to get sufficient sleep so that we can dutifully work and pay taxes to the state ;)

I would like to have attended the meeting but unfortunately McClellan CA is a tough trip on a 'school night.' Which leads to the question; if 90+% of the herring activity comes from the SF Bay (and most of that off the shores of Sausalito), why the heck is the hearing related to this matter being held two hours from here; north west of Sacramento? Certainly it can't be for the local residents impacted and my guess is that the fishermen who make a living in the waters in front of my house don't keep their boats in the near-desert area around McClellan.

I run a business and I go where my clients live/work. If I did not, they would not be my clients. Perhaps there is some other reason to hold a hearing so far from the relevant geography but the location pretty much guarantees that none of those impacted from a Sausalito resident standpoint will attend.

Thanks for your consideration.

Edward Fotsch, MD

[REDACTED]