

**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, 8043, 8053, 8389, 8550-8557, 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

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 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lions Gate Hotel, 3410 Westover Street, McCellan, California, on Thursday, September 16, 2010, 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 8, 2010 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 September 13, 2010. All comments must be received no later than September 16, 2010, at the hearing in McCellan, CA. 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, Jon K. Fischer, Deputy 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 Sheri Tiemann at the preceding address or phone number.

Mr. John Mello, Marine Region, Department of Fish and Game, (707) 441-5755 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 Business, 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, 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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 20, 2010

Jon K. Fischer
Deputy Executive Director