

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Harvest of Herring and Harvesting of Herring Eggs

- I. Date of Initial Statement of Reasons: May 28, 2013

- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: May 22, 2013
Location: Los Angeles, CA

 - (b) Discussion and Adoption Hearing: Date: August 7, 2013
Location: San Luis Obispo, CA

III. Description of Regulatory Action:

- a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Under existing law, herring and herring eggs may be taken for commercial purposes only under a revocable permit, subject to regulations prescribed by the Fish and Game Commission (Commission). Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; landing and monitoring requirements; permit categories and conditions; royalty fees; permit performance deposit requirements; fishing and harvesting restrictions; processing requirements and permit suspension conditions and procedures.

The proposed regulations would establish the 2013-2014 season quotas and dates for fishing operations in San Francisco Bay and Tomales Bay, as well as providing quota options for the Humboldt Bay and Crescent City Harbor herring fisheries. The California Department of Fish and Wildlife (Department) is also recommending a change to current regulations to clarify and streamline rules pertaining to the take of herring for both the sac-roe and fresh fish market in San Francisco and Tomales Bays.

Management recommendations to improve or provide for the efficient harvest and orderly conduct of the herring fishery are solicited annually from the Director's Herring Advisory Committee (DHAC), and from interested individuals at public meetings. The proposed amendments to Sections 163 and 164, Title 14, California Code of Regulations (CCR), reflect Department recommendations based on additional input from the public and DHAC representatives. The Department is preparing a Supplemental Environmental

Document, pursuant to the requirements of the California Environmental Quality Act. This Supplemental Environmental Document was released for public review on May 6, 2013. Certification of the Final Supplemental Environmental Document is scheduled to occur at the August 7-8, 2013, Commission meeting in San Luis Obispo.

Background

Pacific herring gill net fisheries occur in four primary spawning areas; San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. The Department manages these populations as separate stocks. The commercial herring fisheries on these stocks are regulated through a catch quota system to provide for adequate protection and utilization of the herring resource. The Department conducts annual assessments of the herring spawning population size (spawning biomass) in San Francisco Bay. In addition to the assessment of spawning biomass, the Department examines the age composition of the spawning population, growth and general condition, biological aspects of the catch, and environmental conditions. These data serve as the basis for establishing fishing quotas for the next season.

Fishing effort in the San Francisco herring fishery has decreased significantly during the past several years. During the 1990s the number of herring permits peaked at over 450 with over 120 vessels participating. In contrast, during the 2012-2013 season there were 184 roe herring permit renewals and only 34 vessels elected to participate. It should also be noted that no commercial fishing activity has taken place in Tomales Bay since 2007, in Humboldt Bay since 2005 and in Crescent City Harbor since 2002. For the 2012-2013 season, Tomales Bay had 10 permit renewals and Humboldt Bay and Crescent City Harbor had four renewals.

The herring eggs on kelp fishery (HEOK) is only permitted in San Francisco Bay. A maximum of 10 gill net permittees for San Francisco Bay are allowed to convert their permit into a HEOK permit at the start of each season. This fishery is regulated with the gill net fishery and its proportion of the quota is allocated from the total quota set for San Francisco Bay.

Historically, the fresh fish herring fishery has been permitted in Tomales Bay and San Francisco Bay. Annual quotas for these fisheries have been set in conjunction with gill net fisheries for Tomales Bay and San Francisco Bay. Two permits were issued for the fresh fish fishery in San Francisco Bay and no permits were issued for the Tomales Bay fresh fish fishery for the 2012-2013 season.

During the October 2012 Commission meeting, the Department was asked to provide a recommendation for a gear type change to the fresh fish fishery to allow "cast-netting" as an allowable method of take. Department biological and enforcement staff convened to discuss the feasibility of making such a change to current regulations. It was determined that a modification would require a more comprehensive review of both commercial and recreational

herring regulations. This review would require separate rule making and additional CEQA analysis to address concerns related to the commercialization of recreationally caught herring, specifically herring caught using cast nets. As a result it was determined that amending current regulations to allow fresh fish to be caught during what has historically been the sac-roe season would be the most efficient alternative to allowing for a gear type change. Amended and simplified regulations would allow the take of herring for commercial purposes for both the fresh fish and roe fisheries under one quota and one season with no differentiation from a quota monitoring or enforcement perspective for the Department. It will also streamline and clarify existing herring regulations in Section 163, Title 14.

Fishing Quotas

Annual fishing quotas are necessary to provide for a sustainable fishery and have historically been limited to a total commercial take not to exceed 20 percent (harvest percentage) of the previous season's estimated spawning biomass. This harvest percentage is based upon the results of a peer reviewed model that assumes stable environmental and biological conditions. Quotas are the principal regulatory tool to establish adequate protection for the herring resource and provide for the long-term sustainable yield of the fishery. Each year, the Department recommends a harvest percentage that is not determined by a fixed mathematical formula; rather, the recommendation is based upon the modeling results and takes into account additional data collected each season; including ocean and bay conditions, growth rates of herring, strength of individual year-classes, and predicted size of incoming year-classes (*i.e.*, recruitment). In response to poor recruitment or indication of population stress and/or unfavorable oceanographic conditions, harvest percentages in previous years have been set below 15 percent. For example, a near record low spawning biomass was estimated for both the 2006-2007 and 2007-2008 seasons; therefore, a harvest percentage of 10 percent was recommended for those two seasons. The Department recommended a no fishery option (zero ton quota) for the 2009-2010 season when the herring spawning biomass estimate in 2008-2009 fell to a new low of 4,833 tons. The Commission adopted this recommendation and the commercial fishery was closed in San Francisco Bay for the 2009-2010 season. This was done to help safeguard the population as a forage and reproductive base to allow for stock rebuilding.

Separate allocations are established for each of the two gill net fishing groups (odd and even platoons) from the overall quota for San Francisco Bay. Minor annual adjustments to the quota allocations for each fishing group are needed to account for permittee attrition and the transfer of herring permits to the herring eggs on kelp fishery. HEOK fishing is only allowed in San Francisco Bay and the fishery is regulated under Section 164, Title 14, CCR. The HEOK quota depends on the total herring fishery quota for San Francisco Bay established by the Commission under Section 163, Title 14, CCR. In 1994, the Commission provided HEOK permittees with a HEOK quota equal to approximately 0.79 percent of the overall quota.

San Francisco Bay. As with most coastal pelagic species, herring populations fluctuate depending on a variety of factors, including food availability, spawning conditions, competition, predation, and fishing pressure. The average spawning biomass estimate from the 1979-1980 season to the present equals 51,200 tons of adult herring, and the average spawning biomass estimate from the previous 10 years (“10-year average”) equals 46,870 tons. The Department considers the 10-year average to reflect current biological and environmental conditions and to encompass the life span of a Pacific herring in San Francisco Bay.

The Department uses length frequency analysis and age analysis to determine the age composition of the herring population each season. Using research catch data (1982-present), approximately 80 percent of the spawning population has been comprised of 2, 3 and 4-year-old herring. The remaining spawning population is typically comprised of 5 and 6-year-old herring with very few fish aged seven, eight and nine years. As noted, age and length frequency analysis provides critical information related to year class strength and the proportion of the biomass that can be attributed to a given year class. The Department also collects monthly young-of-the-year herring data in San Francisco Bay. This information is an indicator of spawning success and larval and juvenile survival. Department fishery managers are then able to set appropriate harvest targets, providing a sustainable fishery and ensuring a forage base for other species that depend on herring for food. Since re-opening the fishery for the 2010-2011 season, the Department has recommended quotas less than or equal to five percent of the previous season’s estimated spawning biomass, and actual harvest rates have equaled less than three percent of the total spawning biomass.

The Department is concerned about the age structure of the San Francisco Bay herring population. Over the last decade the percentage of age five and older herring that historically supported the gill net fishery has declined. Scientific literature on Pacific herring suggests that this has been a phenomenon in both fished and un-fished populations from California to South-eastern Alaska. However, based on length frequency data and cohort analysis, the proportion of age four and five fish in the San Francisco Bay herring population has increased during the last two seasons. For a population that has been undergoing recovery from the record low 2008-09 spawning biomass, it is expected that there would still be comparatively few age 6+ fish in the current population. Those year classes were associated with the low biomass back in 2008-09, and there is a persistence factor as weak year classes pass through the population. The multi-year process of recovery requires that successive year classes be larger than the preceding ones, resulting in an age composition that is skewed towards the younger ages. As the recovery matures, it is expected that the proportion of older ages in the population should increase. The Department will continue to monitor the age composition of the San Francisco Bay herring population closely and recommend precautionary management principles for safeguarding the spawning population.

Tomales Bay, Humboldt Bay and Crescent City Harbor. No commercial fishing activity has taken place in Tomales Bay since 2007, in Humboldt Bay since 2005 and in Crescent City Harbor since 2002. There is no indication that these areas will receive fishing pressure in the near future and as a result these spawning populations are likely returning to unfished abundance, with one to two generations not being subjected to fishing pressure. In addition, as a result of state wide reduced fishing effort as well as reduced staffing and budget constraints; the Department has discontinued survey efforts in these spawning locations. Should fishing effort increase or staffing levels improve, the Department will reevaluate the need to manage these fisheries and reevaluate current set quotas. At this time the Department is not recommending changes to the current quotas for the fishing areas in Tomales Bay, Humboldt Bay and Crescent City Harbor.

The Department does recommend a minor change to the regulatory language in subsection 163(g)(3) for the Tomales Bay fishery quota, replacing the word “be” with “not exceed” 350 tons per season. This change makes the language clearer and consistent with the provisions in (g)(1) and (g)(2).

Quota Recommendations

San Francisco Bay. In the San Francisco Bay the Department is providing the Commission a quota option range for the 2013-2014 season between zero and 10 percent of the 2012-2013 San Francisco Bay spawning biomass estimate.

Tomales Bay. The Department is not recommending any change to the regulations for the Tomales Bay fishery quota. The fishery quota is currently set at 350 tons.

Humboldt Bay. The Department is not recommending any change to the regulations for the Humboldt Bay fishery quota. Currently, the take of herring in Humboldt Bay shall not exceed 60 tons per season.

Crescent City Harbor. The Department is not recommending any change to the regulations for the Crescent City Harbor herring fishery quota. Currently, the take of herring in Crescent City Harbor shall not exceed 30 tons per season.

Season Date Recommendations

San Francisco Bay. The Department recommends that the Commission adopt the following changes to season dates and fishing times for San Francisco Bay: the dates of the herring fisheries in San Francisco Bay be set to open on January 1 at 5:00 p.m. and close on March 15 at noon. If January 1 falls on a Friday or Saturday, fishing shall commence on the first Sunday

following that date at 5:00 p.m. If the closing date of the fishery falls on a Saturday or Sunday, fishing shall close on the Friday immediately preceding March 15 at noon.

Tomales Bay. The Department recommends that the Commission adopt the following changes to season dates and fishing times for Tomales Bay: that the fishery opens at noon on December 26 and closes at noon on February 22.

Humboldt Bay and Crescent City Harbor. The Department is not recommending any change to the regulations for the Humboldt Bay or Crescent City Harbor herring season dates.

Recommendation for Fresh Fish and Sac-roe in Tomales Bay and San Francisco Bay

The Department is recommending a change to clarify and streamline existing regulations pertaining to the take of herring for both the sac-roe and fresh fish market in San Francisco and Tomales Bays. The Department recommends removing regulations in Section 163 Title 14, pertaining to the take of herring for the fresh fish fishery. References to “sac-roe” would also be removed and simply state “herring”. Amended regulations would allow the take of herring for commercial purposes for both market fisheries under one quota during the herring season (January 1 through March 15). All other regulations related to the permitting and buying of herring would still be in effect and enforceable.

Recommended Amendments to Section 163

Delete References to “roe” and “fresh fish market”:

- In subsection 163(b) the Department recommends removing regulations pertaining to the take of herring for the fresh fish fishery and proposes to eliminate “fresh fish market permits”:
- In subsection 163(c)(1) the Department proposes to change and clarify the existing regulations pertaining to the take of herring or sac-roe. References to “sac-roe” will be removed and simply state “herring for commercial purposes”.
- Subsection 163(c)(1)(E) is amended to delete “and (c)(3)” because that referenced subsection has been renumbered to (c)(2).
- Subsection 163(c)(2) is recommended to be deleted in its entirety. The Department is recommending a change to clarify and streamline existing regulations pertaining to the take of herring for both the sac-roe and fresh fish market in San Francisco and Tomales Bays. The Department recommends removing regulations in 163(c)(2) pertaining to the take of herring for the fresh fish fishery.
- Subsection 163(c)(3) is renumbered to 163(c)(2) because (c)(2) will be deleted; and, the phrase “Herring taken under the authority of subsections (c)(2) and (c)(3) may not be sold for roe purposes” is deleted because permits for Fresh Fish Market and Ocean Waters are no longer recommended to be issued.

- Subsection 163(e)(1) the Department proposes to change and clarify the existing regulations pertaining to the take of herring or sac-roe. References to “sac-roe” will be removed and simply state “herring for commercial purposes”;
- Subsection 163(e)(2) is amended by deleting “San Francisco Bay Area” and replacing with “Santa Rosa”.
- Subsection 163(e)(5) is amended by changing the revision date of Form FG-MR-674 (Rev. 5/02) to (Rev. 5/13). The revisions to the form are necessary because the form must be updated to include the new Department name or other editorial changes. The old and revised forms are attached to this rulemaking.
- Subsection 163(f)(1) is amended by changing “Fish and Game” to “Fish and Wildlife”.
- Subsection 163(f)(2) is amended by deleting “for roe purposes”. The Department proposes to change and clarify the existing regulations pertaining to the take of herring or sac-roe. References to “sac-roe” will be removed:
- Subsection 163(f)(2)(A) is amended by deleting “Fresh fish permittees shall not possess or fish more than 65 fathoms (1 shackle).” The Department recommends removing regulations pertaining to the take of herring for the fresh fish fishery:
- Subsection 163(f)(2) is amended by deleting “roe”; and, deleting the phrase “The meshes of any gill net used or possessed by fresh fish permittees shall not be greater than 2 inches.” The Department recommends removing regulations pertaining to the take of sac-roe or of herring for the fresh fish fishery.
- Subsection 163(g)(3)(A) is deleted in its entirety. The Department recommends removing regulations pertaining to the take of herring for the fresh fish market.
- Subsection 163(g)(4)(B) is deleted in its entirety. The Department recommends removing regulations pertaining to the take of herring for the fresh fish market.
- Subsection 163(g)(5) is deleted in its entirety. The Department recommends that references to sac-roe be removed.
- Subsection 163(j) is amended by deleting “roe” and replacing with “commercial”. The Department recommends that references to sac-roe be removed.

Establish New Quotas for Herring:

- Subsection 163(g)(3) is amended by deleting the word “be” and adding the words “not exceed”. The Department recommends changing the regulatory language for the Tomales Bay fishery to make it clearer and consistent with the provisions in (g)(1) and (g)(2).
- Subsection 163(g)(4) is amended by deleting the current quota of “2,854” tons and replacing it with a quota selected by the Commission based on a recommendation of the Department between zero (0) and 10 percent of the preceding year’s spawning biomass estimate; and, deleting “(gill net

permittees plus fresh fish allocation)”; and deleting “2012-2013” and replacing with the 2013-2014 season.

- Subsection 163(g)(4)(A) is amended by deleting “2,854 tons (2,854 tons minus fresh fish allocation).” The Department recommends that the take quota be as set forth in amended 163(g)(4).

Establish New Seasons:

- Subsection 163(h)(3) is amended by altering references to dates and times the herring season will be open in San Francisco Bay. The Department recommends that the Commission adopt changes to season dates and fishing times for San Francisco Bay and be set to open each year (depending on calendar days) on January 1 at 5:00 p.m. and close on March 15 at noon.
- The season in Tomales Bay in subsection 163(h)(4) is amended deleting the weekday and year references.

Herring Buyer’s Permit:

- Subsection 163(j)(4)(C) is amended by deleting “San Francisco Bay Area” and replacing with “Santa Rosa” which corrects the location of the Department Marine Region office.
- Subsection 163(j)(5) is amended to modify the referenced hours from “10 p.m. and 6 a.m.” to “10:00 p.m. and 6:00 a.m.” for greater clarity.

Recommended Amendments to Section 164

- Subsection 164(c) is amended by changing “Fish and Game” to “Fish and Wildlife” as the new title of the Department.
- Subsection 164(g)(3) is amended by changing the revision date of Form FG 143 HR (Rev. 5/01) to (Rev. 5/13). Subsection 164(g)(3) is further amended by deleting “San Francisco Bay Area Marine Region office” and replacing with “License and Revenue Branch, Sacramento” as the correct office for filing. The revisions are necessary because the form must be updated to include the new Department name, location and other minor editorial changes. The old and revised forms are attached to this rulemaking.
- Subsection 164(j) is amended by deleting “1200” and replacing with “1,200” for greater clarity.
- Subsection 164(j)(2) is amended by deleting “ten” and replacing with “10” for greater clarity.
- Subsection 164(j)(4) specifies quotas for herring eggs on kelp, each permittee is allocated a quota equal to approximately 0.79 percent of the remaining quota. This formula is recommended by the Department to be amended to clarify and streamline existing regulations pertaining to the take of herring roe consistent with Section 163.
- Subsection 164(j)(5) is amended by deleting “Game” and replacing with “Wildlife”.

- Subsections 164(j)(7) and 164(k)(2) are amended by deleting “San Francisco Bay Area” and replacing with “Santa Rosa” which corrects the location of the Department Marine Region office.
- Subsection 164(m) is amended by deleting “Game” and replacing with “Wildlife”; and, by deleting “Fish and Game Commission” and replacing with “commission”.

- b) Authority and Reference Sections from the Fish and Game Code for Regulation:

Section 163:

Authority cited: Sections 1050, 5510, 8550, 8552.1, 8553 and 8555, Fish and Game Code.

Reference: Sections 713, 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.

Section 164:

Authority cited: Sections 1050, 5510, 8389, 8552.1, 8553 and 8555, Fish and Game Code.

Reference: Sections 713, 1050, 7850, 7850.5, 7852.2, 7881, 8043, 8053, 8389, 8550, 8550.5, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8552.9, 8553, 8554, 8555, and 8556, Fish and Game Code.

- c) Specific Technology or Equipment Required by Regulatory Change: None

- d) Identification of Reports or Documents Supporting Regulation Change:

[Economic Impact Analysis \(attached\)](#).

- e) Public Discussions of Proposed Regulations Prior to Notice Publication:

(1) First Annual Herring Festival, February 9, 2013, Sausalito, California

(2) Town Hall Meeting, February 13, 2013, Sausalito, California.

(3) Director’s Herring Advisory Committee Meeting, April 4, 2013, Santa Rosa, California.

IV. 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 2013-2014 fishing season of 2,854 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 or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

A Supplemental Environmental Document is being prepared to review and analyze the proposed regulations for the commercial harvest of Pacific herring throughout the State's estuarine waters.

VI. 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:

The Department is providing the Commission analyses on three potential 2013-2014 quota options for San Francisco Bay ranging from zero to 10 percent of the 10-year average biomass estimate of 46,000 tons. The potential incremental changes to total State economic output for these three options, zero, 2,300, or a 4,600 ton quota, are \$(3,784,000), \$(659,000), and \$2,473,000, respectively, relative to 2012-2013 season's 2,854 ton quota and the ex-vessel price/ton. Thus any quota over 2,854 tons could potentially generate incremental increases in ex-vessel landing revenues to the fishermen and increases to total economic output for the State. Conversely, an allowable quota less than 2,854 tons could result in adverse incremental impacts to Statewide economic output of \$3,784,000 and \$659,000 (in 2012 dollars), for zero and 2,300 ton 2013-2014 quotas, respectively. This is based on a total economic output multiplier of 1.899 used in calculating total economic output effects (direct, indirect, and induced) from California commercial herring fishery activity. There is a relationship between quota and economic impact which can be calculated for any quota amount by using the following formula:

$$\underline{\text{[(Proposed Quota \$) - (Prior Quota \$)]}} \times 1.8996 = \text{"total economic output impact in \$"}$$

No adverse incremental economic impacts to businesses in California would occur under a quota allocation of 2,854 tons or more. Moreover, given the overriding market conditions for herring roe (declining demand overseas and

lower prices), an allocation of 2,854 tons or more is not expected to affect the ability of California businesses to compete with businesses in other states.

No commercial herring fishing activity has taken place in Tomales Bay since 2007, in Humboldt Bay since 2005 and in Crescent City Harbor since 2002; thus no adverse incremental economic impacts to businesses would occur under a quota allocation of zero (0) to 30 tons, zero (0) to 60 tons, and zero (0) to 350 tons for Crescent City Harbor, Humboldt Bay, and Tomales Bay, respectively.

No adverse incremental economic impacts to fresh fish businesses in California would occur with a change to existing fresh fish regulations for herring.

- (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 2,854 tons will result in positive incremental contributions to employment for the State: for example, an increase of about 35 jobs for a quota of 4,600 tons. Conversely, a zero or 2,300 ton allowable quota could adversely impact as many as 243 or 9 jobs in the fishing industry and related industries. This is based on an employment multiplier of 26.7 jobs per each million dollar change in direct output from herring fishing activities, and a fleet of about 190 permittees for San Francisco Bay.

Impacts to Small Business: The Commission has determined that the amendments to sections 163 and 164, which establish a fishing quota from zero to 10 percent of the preceding year's spawning biomass, will affect small businesses. Most of the commercial herring industry consists of small businesses which are legally required to comply with the regulation and will possibly incur a detriment from the enforcement of the regulation.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a herring fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment through the continued sustainable management of California's herring resources.

- (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.

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 Sections 163 and 164 will establish the fishing quota and season dates and times that fishing operations are allowed for the 2013-2014 season in San Francisco Bay and Tomales Bay. Proposed regulatory changes will also amend regulations for the take of fresh fish herring to occur concurrently with the sac-roe fishery beginning on January 1 and ending on March 15. The Department is not recommending any change to the regulations for the Humboldt Bay or Crescent City Harbor herring fisheries.

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

- Set the San Francisco Bay quota between zero (0) and 10 percent of the 2012-2013 San Francisco Bay spawning biomass estimate for Pacific herring.
- The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning biomass estimate for Pacific herring in San Francisco Bay.
- Set the dates of the herring fisheries in San Francisco Bay to generally open on January 1 at 5:00 p.m. and close on March 15 at noon.
- Amend and streamline regulations to allow the take of herring for commercial purposes for both sac-roe and fresh fish market fisheries under one quota and one season. All fish landed during the regular herring season could be sold for sac-roe or fresh fish purposes.
- Set the dates of the herring fishery in Tomales Bay from noon on December 26, until noon on February 22.
- Other editorial changes are proposed for clarity, e.g., changing references to the Department of Fish and "Game" to "Wildlife", office location changes, and other non-substantive changes.

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.