

**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, 8550-8557, 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 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held on Wednesday, August 7, 2013, at 8:30 a.m., or as soon thereafter as the matter may be heard. The exact location of this meeting has not yet been determined. When this information is available, a continuation notice will be sent to interested and affected parties. The continuation notice will also be published in the Regulatory Notice Register. Written comments must be submitted by August 5, 2013 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. All comments must be received no later than August 7, 2013, at the hearing. 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 Sheri Tiemann at the preceding address or phone number. **Mr. Ryan Bartling, Marine Region, Department of Fish and Wildlife, (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 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:

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

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; Benefits of the Regulation to the Health and Welfare of California Residents,**

Worker Safety, and the State's Environment:

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 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, 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: June 11, 2013