

Proposed Actions and Reasons for Rejecting Those Considerations:

(a) Testimony of Mr. Dan Yoakum, at the Fish and Game Commission Notice Hearing, August 4, 2015.

- 1) Supports the proposed regulations for the HEOK fishery for the 2015-16 season as presented by the Department.

Response:

- 1) Comment supports the Department's proposals for the San Francisco HEOK fishery.

(b) Testimony of Ms. Ashly Blacow, Oceana, at the Fish and Game Commission Notice Hearing, August 4, 2015.

- 1) Supports the proposed regulations for the San Francisco Bay herring fishery for the 2015-16 season as presented by the Department.

Response:

- 1) Comment supports the Department's proposals for the San Francisco Bay herring fishery.

(c) Testimony of Mr. Ken Bates, at the Fish and Game Commission Notice Hearing, August 4, 2015.

- 1) Provided an overview of fishing activity and history in Humboldt Bay.

Response:

- 2) This comment falls outside the scope of the proposed regulations.

(d) Testimony of Anna Weinstein, Audubon California, at the Fish and Game Commission Discussion and Adoption Hearing, October 7, 2015.

- 1) Supports the regulatory proposals presented by the Department for the 2015-16 commercial herring fishing season.

Response:

- 1) Comment supports the Department's proposal for the San Francisco Bay herring fishery.

(e) Testimony of Geoff Shester, Oceana, at the Fish and Game Commission Discussion and Adoption Hearing, October 7, 2015.

- 1) Supports the regulatory proposals presented by the Department for the 2015-16 commercial herring fishing season.

Response:

- 1) Comment supports the Department's proposal for the San Francisco Bay fishery.

There were no other speakers, and no other written comments submitted.

VI. Location and Indexing of Rule Making File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
5355 Skylane Blvd, Suite B
Santa Rosa, California 95403

VIII. 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 not provide a quota or season for the 2015-16 commercial herring fishery. Current regulations specify a quota of 2,500 tons for the 2014-15 season and these regulations cannot apply to subsequent seasons.

A no-change alternative would not increase quota allocation for the HEOK fishery or amend current permit renewal dates.

(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, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. Form Incorporated by Reference and not published in CCR:

Existing Section 164 includes one form previously “incorporated by reference.” Form FG 143 HR is updated and revised in this rulemaking. The revised form remains incorporated by reference and will be readily available on the Department’s website, or at Department offices around the state, for the herring fishers that must use the form.

X. Mitigation Measures Required by Regulatory Action:

The 2015 Final Supplemental Environmental Document has been prepared to review and analyze the proposed regulations for the commercial harvest of Pacific herring throughout the State’s estuarine waters. Other than a recommendation for a new quota for the 2015-16 season, no mitigation measures are necessary.

XI. 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:

Herring roe prices are set on the international market and not directly impacted by California regulations and quotas. Recently, herring roe has declined in value due to a market oversupply and a decline in overall demand. As a result, no adverse incremental economic impact to businesses, including the ability of California businesses to compete with businesses in other states, is anticipated to occur with a quota allocation of 50 tons or more. However, a zero ton quota would eliminate any revenues from the California herring fishery. This impact could be mitigated to the extent that fishermen can pursue other species; the total economic impact should not be significant.

(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:

Due to poor market conditions and low participation by the herring fleet during the 2014-15 season, any quota option over 50 tons will likely result in positive incremental contributions to employment for the State: for example, an increase of about 71 jobs for a quota of 834 tons (see section VII). Conversely, a zero (0) ton quota could adversely impact about four jobs in the fishing industry and related industries. This is based on an employment multiplier of 27 jobs per each million dollar change in direct output from commercial herring fishing activities.

Most commercial herring industry participants are small businesses (as defined under California Government Code Section 11342.610), which may incur a detriment under a quota option less than 50 tons for San Francisco Bay. The total harvest of Pacific herring landed during the 2014-2015 season was 46 tons, though the allowable quota was 2,500 tons. This low exploitation rate and participation level by the herring fleet was driven by poor international market conditions. Due to the small scale and seasonality of the California herring fishery it is unlikely that any of the proposed quota options alone would cause the elimination of existing businesses in the State.

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 also encourages consumption of local seafood.

The Commission does not anticipate any non-monetary benefits to worker safety as a result of the proposed regulation.

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.

UPDATED INFORMATIVE DIGEST\POLICY STATEMENT OVERVIEW

Sections 163 and 164, Title 14, California Code of Regulations, 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 Section 163 will establish the fishing quota for the 2015-16 season in San Francisco Bay:

- Set the San Francisco Bay quota for the 2015-16 season from zero (0) to five percent of the 2014-15 San Francisco Bay spawning biomass estimate for Pacific herring as provided in the 2015 Draft Supplemental Environmental Document. The Department is recommending a quota of five percent or 834 tons.

The proposed regulatory changes in Section 164 will establish the HEOK fishing quota and amend the permit renewal date and form for the San Francisco Bay fishery:

- A minor editorial change will be made to Section 164 indicating a change in the revision date (Rev. 2/14) to (Rev. 06/04/15) on the HEOK Royalty Report Form.
- A minor change will be made to Section 164 indicating that renewal of all HEOK permits are to be received by the Department, or if mailed, postmarked, on or before the first Friday of October each year. The revision is necessary to update the "permit application date" and align with the renewals dates for all other herring permits.
- Increase the San Francisco Bay HEOK quota allocation for individual HEOK permits from 0.79 to 1.0 percent of the overall quota as specified in Section 163 for harvest of herring.

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 also encourages consumption of local seafood.

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.

Update Final Statement of Reasons:

Other than the final herring quota, no modifications were made to the originally proposed language of the Initial Statement of Reasons. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

- **Based on the recommendations contained in the Final Supplemental Environmental Document (FSED) for the Pacific Herring 2015-2016 fishing season, the Fish and Game Commission adopted the harvest option of 834 tons for San Francisco Bay in Subsection 163(g)(4).**
- **In Subsection 164 (g)(3), the Commission adopted the revised Form DFW 143 HR (REV. 06/04/15).**
- **Subsection 164(h)(2) is amended to change the application deadline for renewal of all HEOK permits to be received by the Department, or if mailed, postmarked, on or before the first Friday of October each year.**
- **Subsection 164(j)(4) is amended by increasing the quota allocation for HEOK permits from 0.79 to 1.0 percent of the overall quota as specified in Section 163 for harvest of herring.**

At its October 7, 2015, meeting in Los Angeles, the Commission adopted the regulations as originally proposed.