

## **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, 8550.5, 8552, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8555, 8556, 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, 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.

**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 Embassy Suites -- LAX North, 9801 Airport Boulevard, Los Angeles, California, on October 7, 2015, at 8 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 24, 2015, at the address given below, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 5, 2015. All comments must be received no later than October 7, 2015, at the hearing in Los Angeles, California. 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 Sonke Mastrup or Sheri Tiemann (back-up contact) at the preceding address or phone number. **Ryan Bartling, Marine Region, Department of Fish and Wildlife, phone (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 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.

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 of the Initial Statement of Reasons). 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/expansion of existing businesses in the State.

### Benefits of the Proposed Regulatory Action:

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.

(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.

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: August 11, 2015