

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 200, 205, 265, 7071, 7078, 8032.5, 8389, 8550 and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 205, 210, 255, 7071, 7078, 7120, 7178, 8032.5, 8033 and 8587.1 of said Code, proposes to amend sections 27.60, 28.60, 163, 163.1, 163.5, 164 and 705; and add sections 28.62; add Article 6, sections 55.00, 55.01 and 55.02; Title 14, California Code of Regulations, relating to the California Pacific Herring Fishery Management Plan implementing regulations.

Informative Digest/Policy Statement Overview

The purpose of these proposed amendments to regulations is the implementation of the *California Pacific Herring Fishery Management Plan* (Herring FMP). This Fishery Management Plan (FMP) has been produced pursuant to the Marine Life Management Act (MLMA). The amendments are further necessary to improve management of the existing commercial and recreational Pacific Herring fisheries and to support the orderly use of this natural resource.

Regulations pertaining to California's herring fisheries are currently in multiple sections of Title 14 of the California Code of Regulations (CCR). Section 163 regulates the commercial harvest of herring. Section 163.1 regulates the transfer of herring permits. Section 163.5 stipulates penalties and Section 164 regulates the harvesting of herring eggs. The recreational fishery is not regulated.

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State (Fish and Game Code (FGC) Section 7050(b)). To achieve this goal, the MLMA of 1999 (FGC sections 7050-7090) contemplates the use of FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078) to guide fishery management. FGC subsection 7071(b) also provides authority for the Commission to adopt regulations that implement an FMP or plan amendment.

In accordance with these provisions, the Department has developed a Draft Herring FMP to ensure the long-term sustainability of the resource and the fisheries that rely on it. The Herring FMP includes a proposed overhaul of the limited entry permit system, a Harvest Control Rule (HCR) for the San Francisco Bay fishery, a tiered management framework for setting quotas in all areas, collaborative research protocols, and a proposed daily bag limit for the recreational fishery. Along with the Herring FMP, the Department has also prepared proposed implementing regulations that create new recreational restrictions and deletes or amends existing commercial requirements.

The proposed regulations are divided into four parts: 1) new recreational fishing regulations, 2) regulations to implement the Herring FMP, 3) amendments and additions to the commercial fishing regulations, and 4) provision of forms and fees. The following is a summary of the proposed changes to Title 14, CCR:

1. Add new recreational herring regulations to Section 28.62, Title 14, CCR, and amend existing regulations in sections 27.60 and 28.60, Title 14, CCR. The proposed regulations will:
 - Establish a bag limit within the range of zero to ten (0-10) gallons, which is approximately 0 to 100 pounds, or 0-520 fish. The Department is recommending a daily bag limit of five (5) gallons.
 - Remove "Pacific Herring" from the list of species with no recreational bag limit.
 - Clarify the species (Pacific Herring) in the existing bag limit on recreational take of herring eggs on kelp.

2. Add Article 6 of Chapter 5.5 of Subdivision 1 of Title 14, CCR; California Pacific Herring Fishery Management Plan, and add new Sections 55.00, 55.01, and 55.02. The proposed new sections will:
 - Describe the purpose and scope of the Herring FMP;
 - Provide relevant definitions used in the Herring FMP;
 - Describe the management process and HCR.

3. Delete and redraft all existing commercial regulatory language and associated subsections in sections 163, 163.1, 163.5, and 164 Title 14, CCR.
 - The new language in Section 163 includes all regulations related to permits (both herring and herring eggs on kelp (HEOK)), including permit transfers and revocation conditions.
 - A continued requirement that herring or HEOK taken in excess of the quota be released to the Department using the Release of Property Form FG-MR 674.
 - The new language in Section 163.1 describes methods of commercial take for herring, and
 - Section 163.5 provides regulations for the Herring Buyer's Permit.
 - Section 164 is amended regarding the landing of HEOK, with a new requirement that anyone receiving HEOK must have a Herring Buyer's Permit.
 - The royalty fee of \$500 per ton of herring eggs on kelp will no longer be required.
 - The Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (DFW 143 HR (REV. 06/04/15)), will be repealed and no longer required.
 - Authorized Agent form MRD 164 is repealed, however, agents may be designated on form 1406 Herring Eggs on Kelp Application.

4. Amend Section 705 Commercial Fishing Applications, Permits, Tags, and Fees. Because of the adoption of the Herring FMP, and the adoption of the amendments to the herring fishery regulations as described herein, it is necessary to amend the forms, provide fees to recover reasonable Department costs, and to make the forms consistent with current regulations. The following forms, to be Incorporated by Reference, are attached to the Regulatory Text:
 - DFW 327 (New 4/11/19) 2019-2020 HERRING BUYER'S PERMIT APPLICATION
 - FG-329 Herring Fresh Fish Market Permit is deleted
 - DFW 1406 (New 4/11/19) HERRING-EGGS-ON-KELP PERMIT APPLICATION
 - DFW 1322-2 (New 4/11/19) SEASON REQUEST FOR CHANGES TO HERRING PERMITS: BOAT TRANSFER & SIMULTANEOUS FISHING
 - DFW 1377 (New 4/11/19) COMMERCIAL HERRING PERMIT WORKSHEET
 - A new drawing fee of \$4.50 for Applications for New Herring Permits

These proposed regulations were drafted to achieve the sustainability and social policy objectives enumerated in FGC sections 7050, 7055, and 7056. The amended sections would not conflict with any existing Title 14 regulations. In accordance with FGC Section 7071(b), the implementing regulations of this Herring FMP will render the following sections of the FGC inoperative once they are adopted: FGC sections 8389, 8550, 8550.5, 8552, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8556, 8557, 8558, 8558.1, 8558.2, 8558.3, and 8559.

Benefit of the Regulations

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State. To achieve this goal, the MLMA contemplates the use of FMPs developed by the Department and adopted by the Commission to guide fishery management. The Commission may adopt regulations that implement the FMP.

Consistency with State Regulations

The Commission and Department have conducted a review of the California Code of Regulations and determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the statutory authority to amend regulations pertaining to the herring fishery.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Thursday, August 8, 2019, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Rincon Government Center, One Government Center Lane, Valley Center, California, on Thursday, October 10, 2019, at 8:00 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 26, 2019 at the address given below, or by email to FGC@fgc.ca.gov. All comments (both oral and written) must be received no later than October 10, 2019, at the hearing in Valley Center, California. If you would like copies of any modifications to this proposal, please include your name and mailing address. **Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.**

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, P.O. 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 Melissa Miller-Henson or Sheri Tiemann at the preceding address or phone number. **Andrew Wertz, Environmental Scientist, Department of Fish and Wildlife, (707) 576-2896 or Andrew.Wertz@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. 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 Assessment

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 proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Individuals and businesses will not incur any increase in compliance costs. The decrease in the fleet size may result in more profitable catch per unit effort for individuals. However, harvest volume and fishing intensity will continue to be highly influenced by market prices and many other factors unrelated to Commission regulations.
- (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:**

The proposed action is not anticipated to impact the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California because the proposed regulations will not impose new compliance costs or adversely impact fishing activity in the state.

The proposed action is not anticipated to benefit the health and welfare of California residents or worker safety, but benefits to the State's environment are anticipated through the improved management of 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.
- (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

Dated: July 9, 2019

Melissa Miller-Henson
Acting Executive Director