

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 **7071 and 7078** of the Fish and Game Code and to implement, interpret or make specific Sections **7056, 7071, 7078, 7087, 7857, 7858 and 7881** of said Code, proposes to amend Sections **163 and 163.1**, Title 14, California Code of Regulations, relating to the use of lampara nets for Pacific herring.

Informative Digest/Policy Statement Overview

At its October 14, 2021 meeting, the California Fish and Game Commission (Commission) received and adopted a recommendation from the California Department of Fish and Wildlife (Department) to grant petition 2020-015 AM1 in concept, with details of a proposed rulemaking to be developed by the Department with the petitioner to allow use of lampara nets by commercial herring permittees. The Department has worked with the petitioner to develop the proposed changes detailed in this document, which would amend Section 163 and Section 163.1, Title 14 of the California Code of Regulations (CCR), to allow limited commercial take of herring via small-scale lampara gear by Humboldt Bay herring permit holders.

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

1. Amend 163(b)(3) Classes of Permits, Humboldt Bay Herring Permit to include a single small-scale lampara net as allowable gear.
2. Amend 163.1(c) Gear Requirements to include small-scale lampara nets, and amend ensuing subsections 163.1(c)(1) and 163.1(c)(2) to specify that these apply to gill nets.
3. Add subsection 163.1(c)(5) and 163.1(c)(5)(A) to introduce lampara gear requirements specific to Humboldt Bay herring permit holders, including net dimensions, construction, a single net limit, and to prevent possession of lampara nets alongside gill nets on a vessel participating in the fishery.
4. Add subsections 163.1(h)(2) and 163.1(h)(3) to impose additional Retentions and Discards requirements specific to lampara net use, and refer to new landing requirements in 163.1(j)(7)
5. Amend subsection 163.1(j)(5) to specify that it pertains to the 'herring' sector of the commercial fishery, which may include both lampara and gill-net participants.
6. Add subsections 163.1(j)(7) and 163.1(j)(7)(A) to define maximum daily landing and possession requirements for lampara-caught herring that would count toward any Humboldt Bay herring quota set by the Department, and to set a date past which lampara-caught herring may not be landed during the fishing season.
7. Repeal form FG MR 674 from subsection 163(c)(2)(C), as it has been superseded by form DFW 1108, which is incorporated by reference in subsection 705.1(c).
8. Make non-substantive changes throughout Sections 163 and 163.1 to correct typographical errors, increase consistency with other sections of Title 14, and to use inclusive pronouns.

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. The objectives of this policy include, but are not limited to, recognizing the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with marine living resource conservation policies; managing marine living resources on the basis of the best available scientific and other relevant information that the Commission or Department possesses or receives; and to involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, indigenous tribes, local governments, marine scientists, and the public in marine living resource management decisions. In consideration of this policy, the proposed regulatory action will benefit fishermen, processors, consumers, and the State's economy in the form of a healthy sustainable fishery.

Consistency and Compatibility with Existing Regulations

The Commission has reviewed its own regulations and finds that the proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **August 9, 2023** at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on **August 22, 2023**. 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, PO Box 944209, Sacramento, CA 94244-2090.

Meetings

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 **River Lodge Conference Center, 1800 Riverwalk Drive, in Fortuna, California**, which will commence at **8:00 a.m.** on **August 22, 2023** and may continue at **8:00 a.m.**, on **August 23, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

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, Executive Director, Fish and Game Commission, 715 P 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 Melissa Miller-Henson or David Haug at FGC@fgc.ca.gov or at the preceding address or phone number. **Andrew Weltz, Environmental Scientist, Department of Fish and Wildlife, andrew.weltz@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 regulation 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. This regulatory action will not impose cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

- (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 Commission anticipates impacts on the creation of jobs (1-8 part-time jobs) within the state, the creation of new business, and/or the expansion of businesses (1-4 herring permit holders) in California. The Commission does not anticipate impacts on the elimination of jobs

within the state, or the elimination of existing businesses in California because this regulatory action allows for a new gear type to be used to fish herring in Humboldt Bay that is anticipated to spur economic activity.

The Commission does not anticipate direct benefits to the general health and welfare of California residents, the environment, or to worker safety on a broad scale. However, where applied, benefits to fishermen, processors, consumers, and the state's economy in the form of a healthy and sustainable fishery are expected with the implementation of these regulations.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission 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. The Commission does not anticipate additional Department costs to oversee the herring fishery in Humboldt Bay over what is currently in place.

(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: June 27, 2023

Melissa Miller-Henson
Executive Director