

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Sections 163 and 163.1
Title 14, California Code of Regulations

Re: Commercial Use of Small-Scale Lampara Gear by Humboldt Bay Herring Permittees

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: April 19, 2023
- (b) Final Statement of Reasons Date: August 28, 2023

II. Dates and Locations of Scheduled Hearings

- (a) Notice Hearing
 Date: June 15, 2023 Location: Sacramento, CA
- (b) Discussion/Adoption Hearing
 Date: August 23, 2023 Location: Fortuna, CA

III. Update

On August 23, 2023, the Fish and Game Commission (Commission) voted to adopt the amendments as proposed by the Department of Fish and Wildlife (Department) to sections 163 and 163.4, Title 14, California Code of Regulations (CCR) to allow commercial use of small-scale lampara gear by Humboldt Bay herring permittees, contingent on no substantive comments being received during the continuation notice period through August 25, 2023. No additional comments were received as of 11:59 p.m. on August 25, 2023.

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.

Incorporation by Reference: The document Release of Property form MR-FG-674 (Rev. 5/13) was available to the public during the notice period because it was previously incorporated by reference.

IV. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Responses to public comments received at the June 15, 2023, Commission meeting were included in the pre-adoption memorandum and attachment on July 13, 2023.

Written and oral comments received by the Commission between July 13 and August 25, 2023, are summarized and responses are provided in Attachment 1 to this document.

V. Description of Reasonable Alternatives to Regulatory Action

- (a) Alternatives to Regulation Change

None identified.

(b) No Change Alternative

If the proposed amendments are not adopted, gill nets would continue to be the only allowable gear type for commercial take of herring by Humboldt Bay herring permit holders.

(c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose 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.

(d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

None identified.

VI. 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

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.

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

There are no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

(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.

UPDATED 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.

UPDATE:

At its August 23, 2023, meeting, the Fish and Game Commission adopted the amendments as proposed by the Department of Fish and Wildlife to sections 163 and 163.1, Title 14, CCR to allow commercial use of small-scale lampara nets by Humboldt Bay herring permittees, contingent on no substantive comments being received during the continuation notice period extending through August 25, 2023. No additional comments were received as of 11:59 p.m. on August 25, 2023.

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.