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STATE OF CALIFORNIA
Fish and Game Commission

July 19, 2011

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 163 and 164, Title 14, California Code of Regulations, relating to the commercial herring fishery, which will be published in the California Regulatory Notice Register on July 22, 2011.

Please note the date of the public hearing related to this matter and associated deadlines for receipt of written comments.

Mr. John Mello, Marine Region, Department of Fish and Game, phone (707) 441-5755, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,


Sheri Tiemann
Staff Services Analyst

Attachment

BOARD OF SUPERVISORS
2011 JUL 22 1 A 10: 17 1

**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, 8550-8557, 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

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the 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; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota, season dates and times for fishing operations for the 2011-2012 season in San Francisco Bay based on the most recent biomass assessments of spawning populations of herring as well as season dates and times for fishing operations for the 2011-2012 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2011-2012 herring season.

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

- Set the San Francisco Bay quota between zero (0) and 10 percent (0 and 5,708 tons) of the 2010-2011 spawning biomass. The Department is recommending that the San Francisco Bay quota be set at 2,854 tons, which is five percent of the 2010-2011 spawning biomass. If the Commission were to adopt this option, a 2,854 ton quota would result in a 5.0 ton individual quota for a "CH" gill net permittee and a 3.3 ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.
- Increase the daily market order from a licensed fish dealer for herring fresh fish market permittees from 500 to 1,000 pounds.
- Set the dates of the roe herring fisheries in San Francisco Bay for Odd and Even platoons in San Francisco Bay from noon on Monday, January 2, 2012, until noon on Friday, March 9, 2012.
- Set the dates of the roe herring fishery in Tomales Bay from noon on Monday, December 26, 2011, until noon on Friday, February 24, 2012.
- Allow San Francisco Bay and Tomales Bay fresh fish market permits to be fished from November 2 until March 31, excluding days during that period when the San Francisco Bay and Tomales Bay limited entry Pacific herring gill net permit fisheries are open.

The following are minor editorial changes proposed to improve clarity and consistency of the regulations:

- The proposed regulations would simplify requirements for herring permit applications due to the implementation of the Department's Automated License Data System (ALDS). ALDS streamlines the license process, so that permittees will no longer be required to submit copies of a current license or registration when renewing permits. This information will be available electronically which eliminates the need for paper documentation. Application form numbers and fee amounts will be removed and replaced with reference to Section 705 of Title 14, CCR, pending approval of amendments to Section 705 in a separate rulemaking. This section contains application numbers and fee amounts for commercial fishing permits.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the State of California Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, August 4, 2011, at 8:30 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, on all actions relevant to this action at a hearing to be held at the Red Lion Hotel, 1830 Hilltop Drive, Redding, California, on Thursday, September 15, 2011, at 8:30 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 8, 2011, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on September 12, 2011. All comments must be received no later than September 15, 2011, at the hearing in Redding, CA. 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, Jon K. Fischer, Deputy 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 Sheri Tiemann at the preceding address or phone number. **Mr. John Mello, Marine Region, Department of Fish and Game, (707) 441-5755 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

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 Department is providing the Commission a quota option range between zero to 10 percent of the 2010-2011 spawning biomass estimate of 57,082 tons. The potential changes to State total economic output, if the Commission were to choose a 10 percent, five percent, or zero percent option, are \$4,262,000, \$1,113,000, and \$(2,053,000), respectively, relative to last season. Both the 10 and five percent options result in positive incremental contributions to economic output for the State, whereas the zero percent option would result in an adverse impact to economic output for the State, and loss of \$2,053,000 (2010 dollars). This is based on an economic output multiplier of 1.774 for calculating total direct, indirect, and induced impacts to California's economy from the herring fishery.

Depending on which harvest option the Fish and Game Commission chooses for 2011-2012, the harvestable quota will be between zero and 5,708 tons. There would be no adverse incremental economic impact to businesses in California under the Department's recommended five percent quota of 2,854 tons. Given current market conditions for herring roe, none of the quota options are expected to adversely affect the ability of California businesses to compete with businesses in other states.

- (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:**

Depending on which harvest option the Fish and Game Commission chooses for 2011-2012, the harvestable quota will be between zero and 5,708 tons. Both the 10 percent and five percent harvest options, result in positive incremental contributions to employment for the State, 524 and 137 jobs, respectively, whereas a zero percent harvest could result in 253 potential job losses. This is based on an employment multiplier of 218.3 jobs per million dollars produced in direct fishing revenue from the California herring fishery.

Assuming a quota is set at the Department's recommended five percent; equal to 2,854 tons, there would be a potential incremental increase in direct fishing revenue of \$627,000, and increase of 137 jobs related to California's herring fishery.

- (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. 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, 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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 12, 2011

Jon K. Fischer
Deputy Executive Director

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Fish and Game Commission

To: ALL INTERESTED AND AFFECTED PARTIES

Notice of Change of Date of Discussion and/or Adoption Hearing for

Sections 300, 311 and 472, Title 14, Re: Resident & Migratory Upland Game Hunting
Discussion and Possible Adoption of Proposed Changes
(OAL Notice Number Z-2011-0510-03)

Section 502, Title 14, Re: Migratory Game Bird (Waterfowl) Regulations for 2011-2012
Discussion and Possible Adoption of Proposed Changes
(OAL Notice Number Z-2011-0510-04)

Sections 2.10, 7.50(b)(1), 27.65 and 29.80, Title 14, Re: Sport Fishing for 2011-2012.
Discussion and Possible Adoption of Proposed Changes
(OAL Notice Number Z-2011-0512-02)

Sections 671.1, 671.8 and 703, Title 14, Re: Inspection of Facilities for Restricted Species
Discussion and Possible Adoption of Proposed Changes
(OAL Notice Number Z-2011-0512-03)

Sections 163 and 164, Title 14, Re: Harvest of Herring and Herring Eggs
Discussion of Proposed Changes
(Note: The adoption is scheduled for the September 15, 2011 meeting in Redding.)
(OAL Notice Number Z-2011-0712-04)

Notices previously mailed Notices indicated that the Commission would hear discussions (and/or possible adoptions) regarding the above listed rulemakings at its August 4, 2011 meeting in Sacramento. The second day of the Commission's two day meeting has been cancelled; therefore, notice is given that the above referenced rulemakings will be heard on August 3, 2011 at the State of California Resources Agency Building Auditorium, 1416 Ninth Street, Sacramento, California. The meeting is scheduled to begin at 8:30 a.m. The public may present oral comments at this meeting, or may send comments by mail to the above address, or by e-mail to fgc@fgc.ca.gov, or by fax to 916-653-5040.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: July 20, 2011