









STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
Amend Sections 27.60 and 28.60;  
Add Section 28.62; Add Article 6, Sections 55.00, 55.01 and 55.02;  
Amend Sections 163, 163.1, 163.5, 164, and 705;

Title 14, California Code of Regulations.

Re: California Pacific Herring Fishery Management Plan Implementing Regulations

I. Date of Initial Statement of Reasons: May 15, 2019

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:           Date: June 13, 2019  
  Location: Redding, CA

(b) Discussion Hearing:       Date: August 8, 2019  
  Location: Sacramento, CA

(c) Adoption Hearing:         Date: October 10, 2019  
  Location: San Diego, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The purpose of these proposed amendments to regulations is the implementation of the 2019 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 (herring) (*Clupea pallasii*) fisheries and to support the sustainable and orderly use of this natural resource.

The MLMA of 1999, as set forth in Fish and Game Code [Division 6. Fish, Part 1.7 Conservation and Management of Marine Living Resources, sections 90-99.5, 7050-7090, 8585-8589.7], affirms the State's policy of ensuring "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (FGC Section 7050(b)). In this instance that resource is the California Pacific Herring. The Department of Fish and Wildlife (Department) is responsible for the development of the Herring FMP, and implementation of regulations promulgated by the Fish and Game Commission (Commission). The process of developing FMPs and the implementing regulations is expected to make management objectives and marine fishery regulations more readily available and clearer to the Commission, the Department, and the public. The Herring FMP (attachment 1) will be presented to the Commission in June 2019 and is scheduled for adoption at the Commission's October 2019 meeting.

An extensive public scoping process was conducted by the Department to inform the development of the Herring FMP and the proposed implementing regulations. In accordance with the MLMA (FGC Section 7076(a)), the Department sought input from individuals representing a broad range of stakeholder interests to provide advice and assistance in developing the Herring FMP through a series of scoping meetings. A Herring FMP Steering Committee (SC) was formed in the spring of 2016 to provide guidance on objectives as well as develop management recommendations for the Herring FMP. Consisting of commercial herring fleet leaders, representatives from conservation non-governmental organizations (NGOs) and Department staff, the SC evolved out of an informal discussion group that had been meeting since 2012 to discuss the management needs of the herring fishery. The SC provided guidance throughout the Herring FMP process and communicated the goals and strategies of the plan to their wider communities. In 2016, the Department presented the scope of the Herring FMP development process to the Commission and solicited feedback through the public process. In addition, the Department requested feedback from California Native American Tribes on the scope of the Herring FMP and engaged all herring permit holders on the desire and need for regulatory change through a survey. The feedback and results of the survey were used to develop the regulatory proposal. The Herring FMP has benefited from additional input from stakeholders through presentations to the Commission and in other public meetings (both web-based and in-person) (see Part (f), Public Discussions of Proposed Regulations Prior to Notice Publication).

To understand the need for regulatory changes and the potential impacts of those changes, the Herring FMP Project Management Consultant Team talked with past and present Department staff, as well as industry representatives and conservation groups. Using this information, the SC reached consensus on several regulatory amendments to standardize and clarify the regulatory language across sectors and areas, and to make the regulations consistent with those used in other fisheries in California. Proposed regulations for the commercial gill net and herring eggs on kelp (HEOK) sectors, as well as the recreational fishery, are more streamlined and reflective of current conditions.

Once adopted and implemented through the proposed regulations, the Herring FMP will establish a management strategy for the herring recreational and commercial fisheries and detail the procedures by which the Department manages, and the Commission regulates, the herring resource. As the price of herring and participation in the herring fishery has declined over recent decades, many management methods (a platoon system used to divide gill net vessels into groups, the substitution of fishery permits, and the conversion of permits between gear types) have either become outdated or no longer necessary. Chapter 7 of the Herring FMP provides a comprehensive and adaptive management strategy that reflects the current fleet size, is responsive to environmental and socioeconomic changes, and establishes a decision-making process that preserves the sustainability of the fishery while considering the entire ecosystem. The Herring FMP prescribes procedures to: monitor herring populations in the four management areas (San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor); analyze the data collected via the monitoring protocol to estimate Spawning Stock Biomass (SSB); develop quotas based on current SSB using a Harvest Control Rule (HCR) for the San Francisco Bay commercial fishery (attachment 1; Section 7.7); track indicators to monitor ecosystem conditions and adjust quotas in San Francisco Bay as needed; and set precautionary quotas in the northern management areas (Tomales Bay, Humboldt Bay and Crescent City Harbor).

The current regulations for the commercial herring fishery are found in sections 163, 163.1, 163.5 and 164. Section 163 currently describes permits to take herring, methods of take allowed

in the gill net fishery, landing requirements, and requirements for the Herring Buyer's Permit. Section 163.1 describes the conditions for permit transfers. Section 163.5 details penalties for violations in the herring fishery in lieu of suspension and revocation of permits. Section 164 describes the methods of take and landing requirements in the HEOK fishery. Recreational regulations governing the take of HEOK are found in Section 28.60. There are currently no recreational regulations in Section 28.62 on the take of herring, as this language has been repealed.

Upon the adoption of the Herring FMP by the Commission, a corresponding set of implementing regulations must be adopted to enact the Herring FMP. Given the scale of changes to the herring permitting system, the Department recommends deleting all of the existing language in sections 163, 163.1, 163.5, and 164 and drafting new regulatory language in these sections. The new language in 163 will define herring fishing permits (both herring and HEOK), including permit transfers and revocation conditions, making the current language in 163.1 (Herring Permit Transfers) and 163.5 (Penalties in Lieu of Suspension and Revocation) obsolete. The proposed language in Section 163.1 will describe methods of take for herring, the proposed language in Section 163.5 will describe the conditions of the Herring Buyer's Permits, and the proposed language in Section 164 will describe the methods of take for HEOK. In addition, a bag limit for recreational take of herring will be instituted in Section 28.62. General Fishery Management Plan regulations will be found in Chapter 5.5 Article 1, Section 50 et seq.

Additionally, the Fish and Game Code provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery.

- 7071 (b) In the case of any fishery for which the Commission has management authority, ... regulations that the Commission adopts to implement a fishery management plan or plan amendment for that fishery may make inoperative, in regard to that fishery, any fishery management statute that applies to that fishery.
- 7078 (f) Regulations ... shall specify any statute ... that is to become inoperative ... The list shall designate each statute or regulation by individual section number, rather than by reference to articles or chapters.

To implement the conservation and management measurements identified in the Herring FMP, the proposed regulations will render the following sections of the Fish Game Code inoperative once adopted:

































































































