

## Proposed Regulatory Language

Section 163, Title 14, CCR, is amended to read:

### § 163. Harvest of Pacific Herring Permits.

~~Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon application by the permittee. The fee for any approved transfer or substitution of a permit pursuant to this paragraph shall be the fee specified in Section 705, Title 14, CCR, for any request received by the department after November 15, and must be submitted with the transfer or substitution on the form specified in Section 705, Title 14, CCR, to the department's License and Revenue Branch office. Any permittee denied a transfer pursuant to this paragraph may request a hearing before the commission to show cause why his or her request should not be denied. Permittees shall have their permit(s) in their possession (including the attachment of any changes approved by the department after the permit is issued) and shall be aboard the vessel named on their permit(s) at all times during herring fishing operations, except that the department may authorize a permittee to have a crew member temporarily serve in his or her place aboard the vessel during a season. Applications for temporary permittee substitution must be submitted by the permittee. Two permits may be jointly fished on a single vessel upon approval of a written request by both permittees to the department. In San Francisco Bay a permittee may simultaneously fish his or her own "DH" permit with his or her own respective odd or even permit. A permittee may simultaneously fish his or her own permit and a permit temporarily transferred to him or her on a single vessel within the same fishing group. A permittee serving as a temporary substitute on a permit while simultaneously fishing his or her own permit on a single vessel in the same fishing group shall incur the same penalties on his/her permit for all violations as those incurred against the permit for which he/she is serving as temporary substitute as prescribed in these regulations and in Section 163.5, Title 14, CCR. A person may not serve as a temporary substitute on more than one permit simultaneously on a single vessel in the same fishing group. Any request received by the department from November 1 to November 15 to transfer boats or substitute a permit or to simultaneously fish two permits on a single vessel shall be processed for approval by the department after November 15.~~

~~(a) Qualifications of Permittee. To obtain a permit to take herring a person shall:~~

- ~~(1) Be a currently licensed California commercial fisherman. When a permit is held in partnership (pursuant to the provisions of Section 8552.6 of the Fish and Game Code), both partners must be currently licensed California commercial fishermen.~~
- ~~(2) Have been a permittee during the previous herring season.~~
- ~~(3) Qualify for an odd or even numbered permit as specified in subsection (c)(1)(B).~~
- ~~(4) Qualify for a "DH" gill net permit as specified in subsection (c)(1)(C).~~
- ~~(5) Have submitted a release of property forms and payment for all herring landed in excess of the established quota as specified in subsection (e)(5) of these regulations, and all fees from prior seasons.~~
- ~~(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his or her permit should not be denied.~~

~~(b) Permit Applications. Each applicant for a herring permit shall:~~

- ~~(1) Submit the completed application as specified in Section 705, Title 14, CCR, to the address listed on the application. Applications shall include the fee, as specified in section 8550.5 of the Fish and Game Code.~~

~~(2) Permittees will be issued permits for the same area and gear type they held during the previous season. In San Francisco Bay, round haul permittees who transferred gear type to gill net were designated as CH (600-642)-SF permittees. For every conversion of gear type to gill net by a round haul permittee, the amount of herring allocated to each round haul permittee was transferred from the round haul quota to the gill net quota. For each round haul permit converted prior to October 6, 1995, fishing with gill net gear is authorized in two of the following fishing periods: odd-numbered permits, even-numbered permits, or December herring (“DH”) permits. The permit holder of a converted round haul (“CH”) permit is permanently assigned to the two fishing groups (“DH”, odd-, or even-numbered permit) he or she designated. For every conversion of gear type to gill net by a round haul permittee after October 6, 1995 but before October 2, 1998, the permit is permanently in the two fishing groups (“DH”, odd-, or even-numbered permit) assigned by the department. All remaining round haul permits as of October 3, 1998 were converted to gill net permits and assigned to a single gill net group.~~

~~Upon transfer, the department assigned each converted “CH” permit to a single gill net group (“DH”, odd-numbered, or even-numbered permit) as designated by the permit holder. A round haul herring permit, held in partnership prior to November 3, 1994 and subsequently converted to a “CH” permit prior to October 2, 1998, is not subject to assignment to a single gill net group upon transfer to one of the partners.~~

~~(3) Permit Renewal. Applications for renewal of all herring permits shall be received by the department, or if mailed, postmarked, on or before the first Friday of October each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.~~

~~(4) Subsections (a)(2) and (b) do not apply to permits issued for taking herring in ocean waters.~~

~~(c) Permits.~~

~~(1) Permits to take herring for commercial purposes will be issued by the department beginning November 15. Permits will be sent by first class mail to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay. No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 160. No new “DH” permits shall be issued until the maximum number of permits is less than 80. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all commission regulations as provided in this section, or in the Fish and Game Code, relating to herring.~~

~~(A) The total number of gill net permits issued to individuals not qualifying under subsection (a)(2) shall be the difference in number of permittees meeting such qualifications and the total number of gill net permits authorized by the commission in subsection (c)(1).~~

~~(B) Individuals not qualifying under subsection (a)(2) will be eligible to apply for any available odd- or even-numbered gill net permits provided they are a currently licensed California commercial fisherman.~~

~~(C) Individuals not qualifying and receiving permits under subsections (a)(2) or (c)(1)(B) will be eligible to apply for any available “DH” gill net permits provided they are a currently licensed California commercial fisherman.~~

~~(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall be held.~~

~~(E) Preferential status will not be given for participation on vessels with permits specified in subsection (c)(2) of this section.~~

~~(2) Ocean Waters. No permits shall be issued.~~

~~(d) Vessel Identification. The master of any boat engaged in taking herring under these regulations shall at all times while operating such boat, identify it by displaying on an exposed part of the superstructure, amidship, on each side of the house and visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.~~

~~(e) Monitoring of Herring.~~

~~(1) Any herring taken for commercial purposes shall only be delivered to a person licensed pursuant to subsection (j) of these regulations.~~

~~(2) Gill net permittees shall notify the department's Santa Rosa Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.~~

~~(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.~~

~~(4) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another or from one gear type to another, except that nonmotorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats. In San Francisco Bay a permittee and his/her gear must stay together when delivering fish to market. Except as specified in subsection (e)(6) of these regulations, all fish taken by gill nets shall be retained and landed. Gill net permit vessels may not be used to assist in herring fishing operations during their off-week.~~

~~(5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/13)), which is incorporated by reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.~~

~~(6) Sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.~~

~~(f) Methods of Take.~~

~~(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Wildlife districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees, 51 minutes, 43 seconds N, 122 degrees, 27 minutes, 28 seconds W), to the easternmost point of the Sausalito ferry dock (37 degrees, 51 minutes, 30 seconds N, 122 degrees, 28 minutes, 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees, 12 minutes, 53 seconds N, 122 degrees, 57 minutes, 11 seconds W) to the opposite shore (38 degrees, 12 minutes, 44 seconds N, 122 degrees, 57 minutes, 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in~~

subsection (h)(6) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 47 minutes, 07 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41 degrees, 39 minutes, 31 seconds N, 124 degrees, 08 minutes, 43 seconds W).

(2) The use of round haul nets to take herring is prohibited.

(A) No permittee shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net, as measured at the cork line, in San Francisco and Tomales bays. Said gill nets shall not exceed 120 meshes in depth. In Humboldt Bay and Crescent City Harbor, no permittee shall possess or fish in combination more than 150 fathoms of gill net.

Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one half of the weight must be anchor. Gill nets shall be tended at all times in San Francisco Bay. Tended means the registered gill net permittee shall be in the immediate proximity, not exceeding three nautical miles, of any single gill net being fished.

(B) In Tomales Bay, the length of the meshes of any gill net used or possessed in the fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the fishery shall not be less than 2 or greater than 2 1/2 inches, except that six permittees (designated by the department in writing) participating in department sponsored research on mesh size may use gill nets of another size approved by the department.

Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically under one pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales Bay, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches. In San Francisco Bay, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 20 inches or greater than 25 inches.

(C) No net shall be set or operated to a point of land above lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier. In the Crescent City area and Humboldt Bay gill nets may be set or operated within 300 feet of any pier.

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn from the tip of Peninsula Point (37 degrees, 51 minutes, 43 seconds N, 122 degrees, 27 minutes, 28 seconds W) to the tip of Elephant Rock (southwest of Pt. Tiburon at 37 degrees, 52 minutes, 19 seconds N, 122 degrees, 27 minutes, 03 seconds W). Also, no gill nets shall be set or operated from November 15 through February 15 inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37 degrees, 47 minutes, 54 seconds N,

122 degrees, 22 minutes, 40 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green 4s at 37 degrees, 44 minutes, 23 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y"A" buoy, flashing yellow 4s at 37 degrees, 44 minutes, 46 seconds N, 122 degrees, 19 minutes, 25 seconds W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1" buoy, flashing green 4s at the entrance to Alameda Carrier Channel, 37 degrees, 46 minutes, 38 seconds N, 122 degrees, 20 minutes, 27 seconds W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, flashing green 2.5s at 37 degrees, 48 minutes, 15 seconds N, 122 degrees, 21 minutes, 23 seconds W) and then in a direct line southwesterly to the point of beginning. (Tower C of the Oakland Bay Bridge, at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W).

(E) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area, including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(F) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the herring permit number in contrasting 4-inch black letters.

(G) The use of explosives, seal bombs, or marine mammal deterrent devices in the herring fishery is prohibited inside the waters of San Francisco Bay during the herring season.

(H) All San Francisco Bay herring permittees or their temporary substitutes shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall not exceed 350 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed 834 tons per season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): Tonnage shall be allocated to each fishing group (odd and even) in proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season. Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon.

~~(h) Season:~~

~~(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.~~

~~(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.~~

~~(3) San Francisco Bay: The season shall be from 5:00 p.m. on January 1, until noon on March 15. If the opening date falls on a Friday or Saturday, fishing shall commence on the first Sunday following January 1 at 5:00 p.m. If the closing date of the fishery falls on a Saturday or Sunday, fishing shall close on the Friday immediately preceding March 15 at noon.~~

~~(A) In San Francisco Bay, gill net permittees with odd numbered permits shall be permitted to fish first in odd numbered years beginning January 1 (or as specified in subsection (h)(3) of these regulations), Sunday through Friday and then alternating weeks with even numbered permits until the close of the season.~~

~~(B) In San Francisco Bay, gill net permittees with even numbered permits shall be permitted to fish first in even numbered years beginning January 1 (or as specified in subsection (h)(3) of these regulations), Sunday through Friday and then alternating weeks with odd numbered permits until the close of the season.~~

~~(C) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from 5:00 p.m. on January 1 until noon on March 15.~~

~~(4) In Tomales Bay, the season shall be from noon on December 26 until noon on February 22.~~

~~(5) Herring fishing in San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night. Herring fishing is allowed in Tomales Bay from noon Friday through 5:00 p.m. Sunday night if the department is reimbursed for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the service. Party shall remit payment to the department within 30 days of the postmark date of the department's invoice.~~

~~(6) Ocean Waters: All fishing for herring in ocean waters will be prohibited (except as specified in subsection (f)(1) of these regulations). An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed.~~

~~(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.~~

~~(i) Any permit issued pursuant to this section may be suspended or revoked at any time by the commission for cause after notice and opportunity to be heard, or without a hearing upon conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his/her herring fishing privileges should be restored. A person whose herring permit has been revoked by the commission shall not participate in any herring fishery during the following season. A person whose herring permit has been suspended for the entire season by the commission shall not participate in any herring fishery during the season the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the commission shall not participate in any herring fishery during the period that the permit is suspended. If a herring permit that had a temporary substitute is suspended by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season during the period that the permit is suspended. If a~~

~~herring permit that had a temporary substitute is revoked by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season. If a herring permittee is convicted of a violation, or if the permit is suspended or revoked, due to the actions of a temporary substitute who is simultaneously fishing his or her own permit on a single vessel in the same fishing group, the person who was acting as the temporary substitute will receive the same penalty against his/her own permit as received by the permittee, pursuant to these regulations and Section 163.5, Title 14, CCR. For Category II violations prescribed in Section 163.5(f) against a permit due to the actions of a temporary substitute while simultaneously fishing his/her own permit, equal points or penalties shall be assigned to the permit owned by the temporary substitute.~~

~~(j) Herring's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for commercial purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the filing fee specified in Section 705, Title 14, CCR (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for commercial purposes may be issued subject to the following regulations:~~

~~(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights.~~

~~The serial number and predetermined tare weight shall be permanently marked in letters, and numerals at least 3 inches high on each side of vehicle container or pallet.~~

~~(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load. No herring shall be taken for testing purposes from a load that has not first been weighed and recorded.~~

~~(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weighmaster or his/her deputy prior to commencing unloading operations of another vessel.~~

~~(B) The weighmaster or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his/her complete signature. The weighmaster shall list on the landing receipt the number of fish in, and the weight of, each roe test for the landing reported on the receipt.~~

~~(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.~~

~~(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.~~

~~(3) Prior to weighing herring, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.~~

~~(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.~~

~~(A) The tally sheets shall be composed of four columns:~~

~~1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.~~

~~2. The gross weight;~~

~~3. The tare weight of the bin or containers; and~~

~~4. The net weight of fish. Net weight will include the weight of the herring taken for testing purposes.~~

~~(B) The work or weight tally sheets shall be retained by the permittee for one year, and must be available at all times for inspection by the department.~~

~~(C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be placed in the U.S. Postal system to the department's Santa Rosa Marine Region office within twenty four (24) hours of the truck's departure from the buyer's premises.~~

~~(5) In San Francisco Bay, herring may not be unloaded between the hours of 10:00 p.m. and 6:00 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.~~

~~(6) Every permittee shall comply with all applicable sections of the Fish and Game Code.~~

~~(7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.~~

~~(8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.~~

#### (a) Permit Required.

(1) Pacific Herring (herring) may be taken for commercial purposes only under a revocable permit issued by the department.

(2) Herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable permit issued by the department.

#### (b) Classes of Permits

(1) San Francisco Bay. As of April 1, 2020, all Odd, Even, and December, referred to as 'DH', gill net permits not designated as HEOK in the 2019 permit year will be converted to Temporary permits and all converted roundhaul, referred to as 'CH', gill net permits not designated as HEOK in the 2019 permit year will be converted to San Francisco Bay herring permits. Herring permits issued to partnerships will be converted to individual permits on April 1, 2020. Permit partnerships must designate an individual to receive the permit by March 15, 2020, by contacting the Department's License and Revenue Branch in writing.

(A) Temporary Permit. Each Temporary permit allows the permittee to fish one gill net of 65 fathoms or less in San Francisco Bay (defined in subsection 163.1(a)(1)). Permittees may hold a maximum of two Temporary permits. If a permittee holds two Temporary permits these will be automatically converted to a San Francisco Bay herring permit. Conversion to a San Francisco Bay herring permit is permanent. Subject to the terms and conditions in subsection (h), Temporary permits are transferrable prior to April 1, 2025. At that time, they become non-transferrable and non-renewable. No new Temporary permits will be issued.

(B) San Francisco Bay Herring Permit. Each San Francisco Bay herring permit allows the permittee to fish two gill nets of 65 fathoms or less each in San Francisco Bay. Permittees may hold a maximum of one San Francisco Bay herring permit. San Francisco Bay herring permits are renewable and transferrable subject to the terms and conditions in subsections (c) and (h). No San Francisco Bay herring permits will be issued



to new applicants until after March 31, 2025.

- (2) Tomales Bay Herring Permit. Each Tomales Bay herring permit allows the permittee to fish two gill nets of 65 fathoms or less each in Tomales Bay (defined in subsection 163.1(a)(2)). Tomales Bay herring permits are renewable and transferrable subject to the terms and conditions in subsections (c) and (h).
- (3) Humboldt Bay Herring Permit. Each Humboldt Bay herring permit allows the permittee to fish in combination no more than 150 fathoms of gill net in Humboldt Bay (defined in subsection 163.1(a)(3)). Humboldt Bay herring permits are renewable and subject to the terms and conditions in subsections (c) and (h).
- (4) Crescent City Herring Permit. Each Crescent City herring permit allows the permittee to fish in combination no more than 150 fathoms of gill net in Crescent City Harbor (defined in subsection 163.1(a)(4)). Crescent City herring permits are renewable and transferrable subject to the terms and conditions in subsections (c) and (h).
- (5) Herring Eggs on Kelp (HEOK) Permit. As of April 1, 2020, all Odd, Even, and DH HEOK permits will be converted to HEOK permits, and all CH HEOK permits will be converted to one (1) HEOK permit and one (1) Temporary permit each. A HEOK permit allows the permittee to take HEOK subject to the terms and conditions in Section 164. Odd, Even, and December permittees with permits designated as HEOK in 2019 have until March 31, 2021 to elect to convert their HEOK permit to a Temporary gill net permit. HEOK permits are renewable and transferrable subject to the terms and conditions in subsections (c) and (h). New applicants may apply for any available HEOK permits after March 31, 2021.

(c) Permit Renewal.

- (1) Each herring and HEOK permit is required to be renewed annually pursuant to Fish and Game Code Section 7858 and shall only be valid for that season.
- (2) An applicant is eligible to renew a herring permit of the same classification if they meet all of the following requirements:
  - (A) Hold a current California commercial fishing license.
  - (B) Have held a valid, unrevoked herring permit in the immediately preceding permit year (April 1-March 31).
  - (C) Have submitted a Release of Property Form FG-MR-674 (Rev. 5/13), which is incorporated by reference herein, and payment for all herring landed in excess of the established quota as specified in subsection 163.1(j) or subsection 164(h) of these regulations, and all fees from prior seasons.
- (3) Applicants for renewal will be issued the same class of permit they held during the previous season, unless they hold two Temporary permits. Applicants who hold two Temporary permits will be issued a San Francisco Bay herring permit.

(4) Number of permits issued.

(A) San Francisco Bay herring permits, Tomales Bay herring permits, Humboldt Bay herring permits, and Crescent City herring permits: No more than one permit will be issued to each applicant.

(B) HEOK permits: No more than one permit will be issued to each applicant.

(5) Herring permit renewals:

(A) Herring permits are renewed by submitting the completed form Commercial Herring Permit Worksheet DFW 1377 with the specified fee, as set forth in subsection 705(a) of these regulations.

(B) Permittees must designate a currently registered vessel on the form DFW 1377. Up to two Temporary permits or one permit of any other classification of herring permit may be assigned to a single vessel. Two Temporary permits held by different permittees may be jointly fished on a single vessel upon submission of the completed form Season Request for Changes to Herring Permits DFW 1322-2 (NEW 4/11/19) specified in subsection 705(b) to the department. No permit shall be valid for more than one vessel at a time.

(C) A change in a permit's vessel designation may be authorized by the department upon application by the permittee using form DFW 1322-2, and payment of the fee, as specified in subsection 705(b) of these regulations. The fee for any approved boat transfer pursuant to this paragraph must be submitted with the form DFW 1322-2 to the department's License and Revenue Branch, Sacramento. Any permittee denied a boat transfer pursuant to this paragraph may submit an appeal in writing to the commission within 60 days of such denial to show cause why his or her request should not be denied. The written appeal shall specifically identify the legal and factual grounds for challenging the department's action. The commission shall forward to the department a copy of all materials received from the applicant. The department shall respond in writing within 60 days of receipt of materials.

(6) HEOK permit renewals:

A) HEOK permits are renewed by submitting the form Herring-Eggs-on-Kelp Permit Application DFW 1406 with the specified fee, as set forth in subsection 705(a) of these regulations.

(B) The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting HEOK. The permittee shall list the name and department registration number issued pursuant to Section 7881 of the Fish and Game Code of any vessel that will be used for harvesting, processing or transporting HEOK under the authority of the permit on the form DFW 1406.

(C) Each HEOK permittee may designate two authorized agents to operate under his or her permit on the application form DFW 1406. A copy of the current California commercial fishing license for each authorized agent shall be submitted with form DFW 1406. Any

person designated as an authorized agent shall act as an authorized agent only after the permittee has received written approval from the department.

(D) An authorized agent:

1. May serve in the place of the permittee for all fishery activities requiring the presence or action of the permittee, including the signing of electronic fish tickets and/or dock tickets;
2. May serve as an authorized agent on up to two permits.

(E) A permittee may replace an authorized agent by submitting a new application form DFW 1406 as specified in subsection 705(a), to the department's License and Revenue Branch, Sacramento.

(7) For the 2020 license year, applications for renewal of herring permits must be received by the department or, if mailed, postmarked no later than May 31, 2020. Beginning in 2021, applications for renewal of herring permits must be received by the department or, if mailed, postmarked no later than April 30 of each year.

(8) Late fees and late fee deadlines are specified in Section 7852.2 of the Fish and Game Code.

(9) Any person denied a permit under this section may submit an appeal in writing to the commission to show cause why his/her permit request should not be denied. The written appeal shall specifically identify the legal and factual grounds for challenging the department's action. Such request must be received by the commission within 60 days of the department's denial. The commission shall forward to the department a copy of all materials received from the applicant. The department shall respond in writing within 60 days of receipt of materials.

(d) Applications for New Permits.

(1) Herring Permits

(A) No new San Francisco Bay herring permits shall be issued until the number of San Francisco Bay herring permits held is less than 30.

(B) No new Tomales Bay herring permits shall be issued until the number of Tomales Bay herring permits held is less than 15.

(C) No new Humboldt Bay herring permits shall be issued until the number of Humboldt Bay herring permits held is less than four (4).

(D) No new Crescent City herring permits shall be issued until the number of Crescent City herring permits held is less than three (3).

(2) HEOK permits

(A) No new HEOK permits shall be issued until the number of HEOK permits held is less than ten (10).

(3) Applications for new herring and HEOK permits shall be made available each year on April 15 through the department's Automated License Data System at department license sales offices, the department's Internet Sales site and at retail License Agents authorized to sell commercial fishing licenses.

(4) Application Requirements

(A) Applicants shall apply by May 31 of each year.

(B) Applicants shall pay the appropriate nonrefundable Drawing Fee as specified in Section 705(a).

(C) Applicants shall possess a Commercial Fishing License valid at the time of application.

(D) Applicants for new HEOK permits shall not currently possess an HEOK permit.

(E) Applicants for new herring permits shall not currently possess a herring permit and must specify the area for the permit they are requesting.

(F) Applicants shall not submit more than one HEOK drawing application for the same license year.

(G) Applicants shall not submit more than one herring drawing application for the same license year.

(H) Each applicant who applies shall receive a "drawing receipt" printed from the terminal or downloaded from the Internet. The receipt shall contain the customer's name and permanent identification number, and proof of entry into drawing.

(5) Permit Random Selection Process.

(A) Random selection using computer generated random numbers will be used to determine which applicants will be awarded permits and which applicants will be alternates. Successful applicants and a list of alternates shall be determined within 20 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.

(B) Successful applicants will be notified as soon as practical.

(C) Successful herring permit applicants shall submit the completed form Commercial Herring Permit Worksheet DFW 1377 with the specified fee, as set forth in subsection 705(a) of these regulations by July 15.

(D) Successful HEOK Permit applicants shall submit the completed Herring-Eggs-On-Kelp Permit Application DFW 1406 with the specified fee, as set forth in Section 705(a), per the instructions on the application by July 15.

(E) Should permits still be available after that June 30, the alternate list shall be used to award any available permits.

(e) Conditions of the Permit.

(1) Herring may be taken for commercial purposes only in those areas and by those methods specified in Section 163.1 (for herring) or 164 (for HEOK) under a revocable permit issued by the department to an individual for use on a specified fishing vessel.

(2) Herring permits:

(A) A permittee may have any licensed commercial fisherman serve in his or her place on the designated vessel and engage in fishing, provided the permit is aboard the vessel named on the permit(s) at all times during herring fishing operations.

(3) HEOK permits:

(A) A department-issued copy of the permit shall be aboard each vessel engaged in fishing, harvesting, processing, or transporting HEOK under the authority of the permit.

(B) The permittee or his/her authorized agent shall be aboard any vessel that is harvesting, processing or transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).

(f) Vessel Identification.

(1) When herring or HEOK are taken under these regulations, the vessel's commercial registration number shall be displayed on both sides of the boat. The number shall be black, at least 10 inches high, and on a white background. All permittees aboard the boat shall be mutually responsible for the proper display of the vessel's commercial registration number.

(g) Revocation of Permits.

(1) Permit holders, their agents, employees or those acting under their direction or control, shall comply with all applicable provisions of the Fish and Game Code relating to commercial fishing and any regulations adopted pursuant thereto.

(2) Any permit may be suspended, revoked, or canceled by the department upon breach or violation of any regulation pertaining to the take of herring; or violation of the terms or conditions of the permit by the holders thereof, their agents, employees, or those acting under their direction and control.

- (3) The permittee shall be responsible for all vessel operators, authorized agents, or crew members acting under his or her direction or control to ensure compliance with all regulations as provided in this section, or in the Fish and Game Code, relating to herring.
- (4) If a herring permit is suspended or revoked due to the actions of a vessel operator or authorized agent who also holds a herring permit, the person who was acting as the vessel operator or authorized agent will receive the same penalty against his/her own permit as received by the permittee, pursuant to these regulations, Section 163.1 and Section 164.
- (5) A person whose herring permit has been revoked by the department shall not participate in any herring fishery during the season in which it was revoked and the following season. A person whose herring permit has been suspended for the entire season by the department shall not participate in any herring fishery during the season in which the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the department shall not participate in any herring fishery sector during the period that the permit is suspended.
- (6) A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may submit an appeal in writing to the commission within 60 days of such suspension or revocation to show cause why his/her herring fishing privileges should be restored. The written appeal shall specifically identify the legal and factual grounds for challenging the department's action. The commission shall forward to the department a copy of all materials received from the applicant. The department shall respond in writing within 60 days of receipt of materials.

(h) Permit Transfers.

- (1) Except as provided in this section, a permit shall not be assigned or transferred. The department may deny any transfer request submitted in accordance with this section, or may revoke an approved transfer, for violation of any relevant permit condition, section of these regulations, or Fish and Game Code.
- (2) A person with a valid transferable permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The permit holder or the estate of the deceased permit holder shall submit form DFW 1322-2, specified in Section 705(b), and the nonrefundable permit transfer fee specified, for each permit transfer. The transfer shall take effect on the date written notice of approval of the application is given to the transferee by the department. The permit shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to this section.
  - (A) The permit-transfer fee shall be waived in the case of transfer of any Temporary Permit defined in Section 163(b) of these regulations.
- (3) An application for a transfer of a permit shall be deferred when the current permit holder is awaiting final resolution of any pending criminal, civil and/or administrative action that could affect the status of the permit.

- (4) Upon the death of a person with a valid permit, that person's estate shall immediately, temporarily relinquish the permit to the department's License and Revenue Branch, Sacramento. The estate may renew the permit as provided for in this section if needed to keep the permit valid. The estate may transfer the permit pursuant to this section no later than two (2) years from the date of death of the permit holder as listed on the death certificate.
- (5) Any applicant who is denied transfer of a permit may submit an appeal in writing to the commission to show cause why his/permit transfer request should not be denied. The written appeal shall specifically identify the legal and factual grounds for challenging the department's actions. Such request must be received by the commission within 60 days of the date of the department's denial. The commission shall forward to the department a copy of all materials received from the applicant. The department shall respond in writing within 60 days of receipt of materials.

(i) Research.

- (1) Notwithstanding any other portion of this section, the department may authorize the holder of a valid herring permit to collect herring during a closed season or in a closed area, subject to such restrictions regarding gear(s), date(s), location(s), time(s), size, poundage or other matters as specified by the department. Any fish and/or data collected during such activity shall be made available to the department.
- (2) Upon approval, the department's marine regional manager or his or her designee shall issue a Letter of Authorization to the permittee containing all conditions of use.

Note: Authority cited: Sections 7071, 7078, 8389, and 8550, Fish and Game Code. Reference: Sections 7071, 8389, and 8550, Fish and Game Code.

## Proposed Regulatory Language

Section 163.1, Title 14, CCR, is amended to read:

### § 163.1. Herring Permit Transfers Harvest of Pacific Herring.

~~(a) Definitions.~~

~~Individual means a single natural person.~~

~~Individually held means a permit that is not held by a partnership under Fish and Game Code Section 8552.6.~~

~~Permit means a valid entitlement issued pursuant to Fish and Game Code Section 8552, which has not been suspended or revoked, to take herring for roe purposes.~~

~~Fishing group means those platoons whose season is designated in Section 163(a) of these regulations.~~

~~(b) Multiple permits. In the San Francisco Bay fishery, no person may ever hold, either individually or in partnership, more than a total of three permits, and/or more than one permit in any fishing group.~~

~~(c) Notice/application to transfer and transfer fee. A transfer under this regulation does not require the notice to qualified point holders required by Fish and Game Code Section 8552.2. The permit holder must submit a notarized letter, signed by the permit holder, to the department's San Francisco Bay Area Marine Region office requesting transfer of the permit, identifying the individual to whom the permit is to be transferred. Notwithstanding Fish and Game Code Section 8552.7 the fee to transfer a herring permit is one thousand dollars (\$1000). The fees shall be deposited in the Fish and Game Preservation Fund and shall be expended for research and management activities to maintain and enhance herring resources pursuant to subsection 8052(a) of the Fish and Game Code.~~

~~(d) Permit Renewal. Each permit individually held shall be separately renewed according to the procedures in Section 163 of these regulations.~~

~~(e) Appeals. Any individual who is denied the transfer of a permit may appeal in writing to the department's San Francisco Bay Area Marine Region office not more than 60 days from the date of denial. The appeal shall describe the basis for the appeal and contain all supporting evidence. If the denial is sustained, the individual may appeal in writing to the commission within 60 days of the date of the department's decision.~~

(a) Areas. Pacific Herring (herring) may be taken for commercial purposes only in the following areas:

(1) San Francisco Bay. San Francisco Bay is defined as the waters of Fish and Wildlife Districts (District) 11, 12 and 13.

(A) No net shall be set or operated to a point of land above mean lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier.

(B) No nets shall be set or operated in the following areas:



1. Belvedere Cove north of a line drawn from the tip of Peninsula Point (37° 51' 43" N, 122° 27' 28" W) to the tip of Elephant Rock (southwest of Pt. Tiburon at 37° 52' 19" N, 122° 27' 03" W).

2. No gill nets shall be set or operated inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37° 47' 54" N, 122° 22' 40" W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green 4s at 37° 44' 23" N, 122° 21' 36" W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37° 43' 44" N, 122° 21' 26" W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y"A" buoy, flashing yellow 4s at 37° 44' 46" N, 122° 19' 25" W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1" buoy, flashing green 4s at the entrance to Alameda Carrier Channel (37° 46' 38" N, 122° 20' 27" W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, flashing green 2.5s at 37° 48' 15" N, 122° 21' 23" W) and then in a direct line southwesterly to the point of beginning, Oakland Bay Bridge (Tower C at 37° 47' 54" N, 122° 22' 40" W).

(2) Tomales Bay. Tomales Bay is defined as the waters of District 10 lying south of a line drawn west, 252° magnetic, from the western tip of Tom's Point (38° 12' 53" N, 122° 57' 11" W) to the opposite shore (38° 12' 44" N, 122° 57' 42" W).

(3) Humboldt Bay. Humboldt Bay is defined as the waters of Districts 8 and 9.

(4) Crescent City. Crescent City is defined as Crescent City Harbor and that area of the waters of District 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41° 47' 07" N, 124° 15' 16" W) and Sister Rocks (41° 39' 31" N, 124° 08' 43" W).

(5) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(6) All fishing for herring in ocean waters (except as specified above) is prohibited. An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed.

(b) Fishing Season.

(1) The season shall be open from 5:00 p.m. on January 2, and close at 12:00 pm on March 15.

(A) If the opening date falls on a Friday or Saturday, fishing shall commence on the first Sunday following January 2 at 5:00 p.m.

(B) If the closing date of the fishery falls on a Saturday or Sunday, fishing shall close on the Friday immediately preceding March 15 at 12:00 pm.

(c) Gear Requirements. herring may be taken via set gill nets that meet the following requirements:

(1) Net Length.

(A) San Francisco Bay herring permit holders and Tomales Bay herring permit holders shall fish no more than a total of two (2) gill nets that are 65 fathoms (one shackle) or less each in length, as measured at the cork line. Temporary permit holders shall fish no more than one (1) gill net that is 65 fathoms (one shackle) or less in length, as measured at the cork line, for each Temporary permit held. Said gill nets shall not exceed 120 meshes in depth.

(B) In Humboldt Bay and Crescent City Harbor, no permittee shall fish in combination more than 150 fathoms of gill net. Said gill nets shall not exceed 120 meshes in depth.

(2) Mesh Length. Length of the mesh shall be the average length of any series of ten (10) consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the ten (10) meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while ten (10) meshes are suspended vertically under one-pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter.

(A) In San Francisco Bay and Tomales Bay the average length of the meshes of any gill net used or possessed in the fishery shall not be less than 2 or greater than 2 1/2 inches, and the length of any series of ten (10) consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches.

(B) In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches, and the length of any series of ten (10) consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches.

(3) Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one-half of the weight must be anchor.

(4) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such gill net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the fishing vessel number in contrasting 4 inch black letters.

(d) Net Tending. Permitted vessels shall be in the immediate proximity, not exceeding one nautical miles, of any single gill net being fished.

(e) Temporal Closures. Herring fishing is not permitted from noon Friday through 5:00 p.m. Sunday.

(f) Noise. All San Francisco Bay herring permittees, vessel operators, or crew shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with

residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Marine Mammals. The use of explosives, seal bombs, or marine mammal deterrent devices in the herring fishery is prohibited.

(h) Retention and Discards. All fish taken by gill nets shall be retained and landed except sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.

(i) Notification Requirements.

(1) Permittees shall notify the department using the contact information designated on the permit within 24 hours of beginning fishing for the season.

(2) Permittees shall notify the department using the contact information designated on the permit, within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.

(j) Landing Requirements.

(1) Herring shall not be landed between the hours of 10:00 p.m. and 6:00 a.m. on weekdays, or from 10:00 p.m. Friday to 6:00 a.m. Monday.

(2) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another except that non-motorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats.

(3) A permittee and his/her gear must stay together when delivering fish to market.

(4) Any herring taken for commercial purposes shall only be delivered to a person licensed pursuant to Section 163.5, of these regulations.

(5) The department will estimate from the current catch rate the time at which the herring season catch is estimated to reach any quota established in accordance with Section 55.02(d) of these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to obtain an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees

may be limited to equally-allotted tonnages to preclude exceeding a quota, as may be announced, and, if necessary, additional time may be granted to reach the quotas.

(6) All herring landed in excess of any established quota shall be forfeited to the department by the signing of a Release of Property Form FG-MR-674, as set forth in subsection 163(c). Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

Note: Authority cited: Sections 7071, 7078, and 8550, Fish and Game Code. Reference: Sections 7071, 7078, and 8550, Fish and Game Code.

## Proposed Regulatory Language

Section 163.5, Title 14, CCR, is amended to read:

### **§ 163.5. Penalties in Lieu of Suspension or Revocation—Herring Permittees—Herring Buyer's Permit.**

~~(a) Pursuant to the provisions of section 309 of the Fish and Game Code and sections 163 and 746, Title 14, CCR, any permit issued pursuant to Section 8550 of the Fish and Game Code may be suspended or revoked at any time by the Commission for cause, after notice and an opportunity to be heard, or without a hearing upon conviction of the permittee or his/her substitute (pursuant to Section 163, Title 14, CCR) of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his or her herring fishing or buying privileges should be restored.~~

~~(b) Notwithstanding subsection (a), the Executive Secretary of the Commission shall enter into a stipulated compromise settlement agreement with the consent of the permittee for category I violations, and may enter into a compromise for category II violations with the consent of the permittee. The provisions of this section regarding compromise settlement agreements shall not apply if action is brought to recover civil damages under Section 2014 of the Fish and Game Code from the person subject to action under this section.~~

~~(c) Terms and Conditions of a stipulated compromise agreement may include, but are not limited to, the payment of monetary penalties, the reduction of a revocation to a suspension for a specified period of time, a period of probation not to exceed three years or any other terms and conditions, mutually agreed upon by the Executive Secretary acting for the Commission and the permittee, without further hearing or appeal.~~

~~(d) A compromise settlement agreement may be entered before, during or after the Commission hearing on the matter, but is valid only if executed and signed by the Executive Secretary and the permittee prior to the adoption of the decision by the Commission. Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties as prescribed in subsection (f) of these regulations and shall be due and payable within 30 days after the compromise is entered into. Any and all funds submitted as payment in whole or in part by a permittee of any monetary penalties stipulated in a compromise settlement agreement shall be nonrefundable.~~

~~(e) If the permittee fails to perform all of the terms and conditions of the compromise settlement agreement, such agreement is thereby declared void and the Commission, notwithstanding the compromise settlement agreement, may take any action authorized by section 163 of these regulations against the permittee.~~

~~(f) Procedures for determining monetary penalties:~~

~~(1) Monetary penalties (score range multiplied by the monetary range) for compromise settlement agreements shall be based on the following point system:~~

SCORE RANGE (Total Points)	MONETARY RANGE
1-10	\$200 per point as provided in subsection (f)(2) below.

11+	\$400 per point as provided in subsection (f)(2) below.
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(2) The score range shall be based on a cumulative total of the points assigned in this subsection:

(A) POINTS ASSIGNED FOR CATEGORY I VIOLATIONS ARE AS FOLLOWS:

1. Failure to properly identify vessel (Sec. 163(d))	1 point
2. Improperly marked buoys or flags (Sec. 163(f)(2)(F))	1 point
3. Failure of permittee to have herring permit, commercial fishing license, or boat registration aboard the permit vessel (Sec. 163, para. 1)	2 points
4. Setting or operating nets within 300 feet of specified piers and jetties (Sec. 163(f)(2)(C) and (f)(2)(E))	3 points
5. Failure to "tend" nets (Sec. 163(f)(2)(A))	5 points
6. Failure of herring buyer to permanently mark all vehicles, containers or pallets (Sec. 163(j)(1))	5 points

(B) POINTS ASSIGNED FOR CATEGORY II VIOLATIONS ARE AS FOLLOWS:

1. Unloading fish without recovering both nets and having them aboard vessel (Sec. 163(e)(4))	6 points
2. Fishing in a closed area (Sec. 163(f)(1) and 163(f)(2)(D))	12 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund
3. Failure to remove fishing gear from water by announced time terminating fishery operations (Sec. 163(e)(3))	6 points, plus 1/2 point

	for each hour, or portion thereof, after closing time
4. Possession or use of nets with undersized mesh (Sec. 163 (f)(2)(B))	12 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund
5. Failure to immediately return all halibut, sturgeon, salmon, steelhead and striped bass to the water (Sec. 163(e)(6))	10 points
6. Possession or use of extra nets or nets which exceed maximum length restrictions (Sec. (f)(2)(A))	12 points, plus 1/2 point for every 5 fathoms of net, or portion thereof, exceeding maximum, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold

	or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund
7. Failure of permittee or his or her temporary substitute, authorized by the department, to be aboard the vessel during herring fishing operations (Sec. 163, para 1)	10 points
8. Failure to complete and maintain weight tally sheets (Sec. 163(j)(4))	10 points
9. Failure to immediately complete a Fish and Game receipt upon completion of weighing any load or lot of fish (Sec. 163(j)(2))	15 points

~~(C) For each prior conviction of the permittee within the past three years for violations of the laws or regulations pertaining to the commercial take of herring:~~

~~1. The following additional points shall be assessed:~~

~~(i) For one prior conviction for a violation of the commercial herring fishing laws or regulations within the past three years, the monetary assessment shall be doubled if the total point score (points from prior violation added to points for current violation) is 10 or less, and tripled if such total point score is 11 points or more.~~

~~(ii) For two prior convictions for violations of the commercial herring fishing laws or regulations within the past three years, the monetary assessment shall be quadrupled if the total point score (points from prior convictions added to points for current violation) is 17 or less.~~

~~2. The permit shall be revoked, or suspended for a period of at least 1 year, if the total point score is 18 points or more.~~

~~(3) Conviction of multiple violations, committed at the same time, shall be treated as one conviction for the purposes of implementing the provisions of this section.~~

~~(4) All monetary penalties for compromise agreements assessed under this section shall be deposited by the Department to the Fish and Game Preservation Fund.~~

(a) Pacific Herring Buyer's Permit. A holder of a current fish receiver's license must obtain a separate permit to buy Pacific Herring or herring eggs on kelp (HEOK) for commercial purposes. After approval of form Herring Buyer's Permit Application DFW 327 and payment of the permit fee specified in Section 705(a), a revocable, nontransferable permit to buy Herring or HEOK for commercial purposes may be issued subject to the following regulations:

(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights. The serial number and predetermined tare



weight shall be permanently marked in letters and numerals at least 3 inches high on each side of vehicle container or pallet.

(2) Pursuant to Section 197 of these regulations, an electronic fish ticket (EFT) or dock ticket must be completed immediately upon completion of weighing of any single boatload (hereinafter "load") of herring or HEOK. If a dock ticket is used, the information recorded therein must be used to complete and submit an EFT within three (3) business days.

(A) The EFT or dock ticket for each vessel's load must be completed and signed by both the herring permittee and a certified weighmaster or his/her deputy prior to commencing unloading operations of another herring permittee's load.

(B) The weighmaster or deputy submitting the EFT must include all information required by Section 197 of these regulations and shall sign the EFT and/or dock ticket with his/her complete signature. For herring, the weighmaster shall list the number of fish in, and the weight of, each roe test for the landing reported.

(C) Any completed dock ticket must be retained with the EFT by the weighmaster or deputy and be immediately available to the department at the weigh station, as per Section 197 of these regulations.

(D) Up to ten (10) pounds of herring from each load will be made available by the herring buyer to the department, at no cost, for management purposes. No herring shall be taken for roe percentage testing purposes from a load that has not first been weighed and recorded.

(3) Prior to weighing HEOK, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.

(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.

(A) The tally sheets shall comprise of four columns:

1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.
2. The gross weight;
3. The tare weight of the bin or containers; and
4. The net weight excluding the gross weight of each bin or container. For whole fish, this includes the weight of the herring taken for testing purposes. For HEOK, this excludes the salt and brine.

(B) The weight tally sheets shall be retained by the permittee for one (1) year and must be available at all times for inspection by the department.

(C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be submitted to the department following the instructions on the Herring Buyers Permit within twenty-four (24) hours of the truck's departure from the buyer's premises.

(5) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.

(6) The permit may be revoked by the department upon violation of any provisions contained herein by the holder of the permit, his/her agents, employees, or those acting under his/her direction or control and shall not be renewed for a period of one (1) year from the date of revocation.

Note: Authority cited: Sections 7071, 8032.5 and 8389, Fish and Game Code. Reference: Sections 7071, 8032, 8032.5, 8033 and 8389, Fish and Game Code.

## Proposed Regulatory Language

Section 164, Title 14, CCR, is amended to read:

### § 164. Harvest of Herring Eggs on Kelp.

~~(a) Herring eggs may be taken for commercial purposes only under a revocable, nontransferable permit issued by the department. A department issued copy of the permit shall be aboard each vessel harvesting, processing or transporting herring eggs under the authority of the permit. The permittee or his/her authorized agent shall be aboard any vessel that is harvesting, processing or transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).~~

~~(b) Herring eggs may be harvested only from the waters of San Francisco Bay. The harvest season is December 1 to March 31.~~

~~(c) For purposes of this section, San Francisco Bay is defined as the waters of Fish and Wildlife districts 11, 12, 13 and that part of district 2 known as Richardson Bay.~~

~~(d) No more than 11 permits may be issued under the provisions of these regulations. No new permits shall be issued until the maximum number of permits is less than 10. The commission will review and determine annually whether further action, other than permit attrition, is deemed necessary to achieve a reduction to 10 permits.~~

~~(e) Fishing, Harvesting, and Processing Defined. Unless the context requires otherwise, the following definitions shall apply to the herring eggs on kelp (HEOK) fishery:~~

~~(1) "Fishing" means the act of suspending giant kelp (*Macrocystis pyrifera*) for the purposes of taking herring eggs, and/or the subsequent act of removing herring eggs on kelp from the water for the purposes of transport or harvest. Any person engaged in fishing shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.~~

~~(2) "Harvesting" means the act of removing herring eggs on kelp from the water for the purposes of processing for sale and/or transport to market. Any person engaged in harvesting shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.~~

~~(3) "Processing" means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested herring eggs on kelp, and loading the processed blades into bins or totes. Any person engaged in, or employed for the specific purpose of, processing herring eggs on kelp shall fall under the category of nonapplicability in regard to possession of a commercial fishing license pursuant to Section 7850.5 of the Fish and Game Code. Pursuant to Section 7850.5 of the Fish and Game Code, a person engaged in processing (permittees and authorized agents excepted) may stand aboard a herring eggs on kelp vessel while at a dock or landing, but may not be transported aboard the vessel. A person engaged in processing (permittees and authorized agents excepted) may not stand on the herring eggs on kelp raft, nor physically participate in the removal of herring eggs on kelp from the water.~~

~~(f) Permits. Permits shall be issued in two categories:~~

~~(1) Prior permittee. Permits shall be issued to all prior permittees. A prior permittee is defined as a person who has:~~

~~(A) met the requirements under subsection (g) of these regulations, and~~

~~(B) renewed their herring eggs on kelp permit for the immediately preceding herring eggs on kelp season, and~~

~~(C) submitted all fees from prior seasons.~~

~~(2) New permittee. A new permittee is defined as any applicant who held a herring permit issued pursuant to Section 163 of these regulations during the preceding herring season, but does not qualify as a prior permittee as defined above. The total number of permits available to new permittees shall be the difference between the 10 permit limit and the number of permits issued to individuals qualifying as prior permittees. In the event that the number of eligible applicants qualifying for new permits exceeds the number of available permits, a lottery shall be held.~~

~~(g) Permit conditions: Every person operating under a permit to harvest herring eggs shall:~~

~~(1) Forfeit his or her herring fishing privileges authorized pursuant to Section 163 of these regulations during the same season.~~

~~(2) In addition to any license fees required by the Fish and Game Code, pay a royalty of \$500 per ton of herring eggs on kelp taken. (The royalty fee shall include the landing tax imposed pursuant to Article 7.5, (commencing with Section 8040) Chapter 1, Part 3, Division 6, of the Fish and Game Code, and the royalty fee required for the harvesting of kelp pursuant to Section 165, Title 14 CCR).~~

~~(3) Submit a Herring Eggs on Kelp Monthly Landings and Royalty Report (DFW 143 HR (REV. 06/04/15), which is incorporated by reference herein (available at the department's License and Revenue Branch, Sacramento), with payment due to the department's License and Revenue Branch, Sacramento for each month of the season, within 60 days after the close of the month for which it is due.~~

~~(h) Permit applications. Each applicant for a herring eggs on kelp permit shall:~~

~~(1) Submit the completed application as specified in Section 705, Title 14, CCR, to the address listed on the application for the season to which the application applies. No person shall submit more than one application per season. Applications shall include a performance deposit as specified in subsection (i).~~

~~(2) Permit Renewal. Applications for renewal of all Herring Eggs on Kelp permits shall be received by the department, or if mailed, postmarked, on or before the first Friday of October each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.~~

~~(3) Have submitted all fees from prior seasons.~~

~~(i) Each application shall include a performance deposit equal to 50% of the royalty price for the permit (i.e., allotment). The deposit shall be credited to the amount payable by the successful applicants and shall not be refundable. The performance deposit shall be returned to an applicant who does not qualify for a permit.~~

~~(j) Method of Take. Herring eggs may only be taken by harvesting giant kelp (*Macrocystis* sp.), with spawn (i.e., eggs) attached, which has been artificially suspended using the following two methods: rafts and/or lines, a technique commonly known as the "open pond" method. For the purpose of this Section, a raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet. Rafts used by a licensed herring eggs on kelp permittee, prior to the 1995-96 season, are exempt from these size specifications. Such rafts may not be modified to exceed 2,500 square feet total surface area. Any new raft built after the 1995-96 herring eggs on kelp season must meet the specified dimensions. A line is defined as a piece of line of no more than 1,200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks). Kelp lines shall have floats or cork over the entire length of line. Each end of the line must be attached to a permanent structure. Kelp lines suspended from a permanent structure (e.g., pier or dock) shall not be placed as to hinder navigation. If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.~~

~~(1) Not more than two rafts and/or two lines may be used per permit. Two permits may be simultaneously fished on the same raft if each line on the raft is clearly identified with the permit number of the owner. Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards. Each raft shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to the raft. Lines shall be marked at the beginning and the end with a light that may be seen for at least a distance of 100 yards. Each line shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background, permanently affixed to the line.~~

~~(2) Not more than 10 sets of test kelp may be used per permit. Test kelp is defined as one stipe with blades, attached to a length of line for the purpose of testing for spawning activity. A set is defined as one length of line with test kelp attached. Each set must be attached to a permanent structure (e.g., pier, dock) and marked with the herring eggs on kelp permit number, in Roman alphabet letters and Arabic numerals at least 3 inches high, at a point above the waterline. No herring eggs on kelp shall be retained from test kelp sets for testing purposes that have not been weighed and recorded, pursuant to subsection 164(k).~~

~~(3) Rafts and/or lines may not be placed in any waters or areas otherwise closed or restricted to the use of herring gill nets operating pursuant to Section 163 of these regulations, except where written approval is granted by the owners or controlling agency (e.g., Navy, Coast Guard). Rafts and/or lines may be placed in Belvedere Cove or Richardson Bay, only if permittees tie their rafts and/or lines to a~~

permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), and obtain prior written approval. Buoys are not permanent structures.

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations. Each herring eggs on kelp permittee is allocated a quota equal to approximately 1.0 percent of the quota.

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations shall have a current Fish and Wildlife commercial boat registration and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(6) The permittee shall notify the department's License and Revenue Branch, Sacramento in writing with the name and department registration number issued pursuant to Section 7881 of the Fish and Game Code of any vessel that will be used for harvesting, processing or transporting herring eggs under the authority of the permit. The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting herring eggs.

(7) Permittee shall notify the department's Santa Rosa Marine Region office at the telephone number designated on the herring eggs on kelp permit within a 4-hour period prior to the suspension of kelp on a raft and/or lines and supply the following information:

(A) Where the kelp suspension will take place; and

(B) Where the permittee plans to fish the rafts and/or lines; and

(C) A local fax number or mailing address where confirmation of kelp suspension notification can be sent.

(k) Harvesting, Landing and Processing Requirements. Every person who harvests, receives, processes or wholesales herring eggs shall comply with the following requirements.

(1) Obtain all appropriate commercial fish business licenses and permits required by Fish and Game Code sections 8030-8038.

(2) Permittee shall notify the department's Santa Rosa Marine Region office at the telephone number designated on the herring eggs on kelp permit a minimum of 12 hours prior to harvesting herring eggs on kelp on a weekday and supply the following information: description and point of departure of the vessel used; the exact location of each raft and/or line and estimated time of beginning of each operation; and if harvesting occurs, the point of landing and time of landing or off-loading of the herring eggs on kelp harvested. If any of this information changes after notification is given, the permittee shall again notify the department at the telephone number designated on the herring eggs on kelp permit.

~~(3) Herring eggs on kelp may be harvested any time on weekdays, but shall not be off-loaded between the hours of 10:00 p.m. and 6:00 a.m.~~

~~(4) Herring eggs on kelp may be harvested on Saturdays and Sundays at any time if the permittee reimburses the department for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the services. Permittee shall remit payment to the department within 30 days of the postmark date of the department's invoice. Permittee shall notify the department at the phone number designated on the herring eggs on kelp permit, during normal business hours (between 8:00 a.m. and 5:00 p.m., Mondays through Friday) prior to harvesting herring eggs on kelp on Saturday or Sunday, and shall supply the following information:~~

~~(A) Description and point of departure of the vessel used.~~

~~(B) The exact location of each raft and estimated time of the beginning of the harvesting operation, the estimated time of off-loading of the harvested product, and the point of off-loading.~~

~~(C) A local telephone number of the permittee for the immediate confirmation or clarification of the information required in subsection 164(k)(4).~~

~~(5) Permittee shall have a certified scale aboard the vessel at all times if any brining is conducted aboard that vessel. This scale shall be used to determine the total weight of herring eggs on kelp prior to brining. For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of herring eggs on kelp. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of herring eggs on kelp.~~

~~(6) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.~~

~~(7) Prior to weighing herring eggs on kelp, each receiver of herring eggs on kelp shall have a scale currently certified and sealed by the County Division of Weights and Measures.~~

~~(8) Weight tally sheets and a landing receipt shall be immediately completed upon the landing and weighing of any single permittee's boat load of harvested herring eggs on kelp (hereinafter "load").~~

~~(A) The landing receipt for each herring eggs on kelp permittee shall be completed and signed by the permittee prior to commencing unloading operations of another permittee's load.~~

~~(B) The landing receipt for each load shall include all information required by Fish and Game Code Section 8043. Tally sheets shall indicate the serial number, the tare weight of the bin or tote, the net weight of the product (eggs on kelp), excluding the salt and brine and the gross weight of each bin or tote. Filled bins or totes shall be weighed when landed on shore, or before they are moved from the premises if processing takes place on shore. The weight tally sheet shall be retained by the permittee for one year and shall be available at all times for inspection by the department. All herring eggs on kelp landed in excess of any established permit quota shall be forfeited to the department by the~~

~~signing of a Release of Property form (FG-MR-674 (Rev. 5/13)), which is incorporated by reference herein). Such excess of herring eggs on kelp shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.~~

~~(9) There shall be no landing or off-loading of herring eggs on kelp from a permittee's vessel, from 10:00 p.m. Friday to 6:00 a.m. Monday, unless brining is conducted at a shore-based facility. If brining occurs on shore, the permittee shall notify the department's designated contact 12 hours prior to the shipping or removal of the bins or totes from the premises.~~

~~(f) These regulations and all sections of the Fish and Game Code pertaining thereto shall be set forth in all permits. Permits shall be issued upon the conditions contained in the application and signed by the applicant that he has read, understands, and agrees to be bound by all terms of the permit.~~

~~(m) A permit may be suspended by the Department of Fish and Wildlife for breach or violation of the terms of the permit by the permittee, or any other person(s) operating under the terms of the permit. Any such suspension may be appealed to the commission pursuant to section 746 of these regulations.~~

~~(n) Authorized agents. Each herring eggs on kelp permittee may designate two authorized agents to operate under his or her permit. To designate an authorized agent, the permittee shall submit to the department's License and Revenue Branch, Sacramento a completed, signed Authorized Agent Form (MRD 164 (8/97)) which is incorporated by reference herein. A permittee may replace an authorized agent by submitting a new Authorized Agent Form to the department's License and Revenue Branch, Sacramento. A copy of the current California commercial fishing license for each authorized agent shall be submitted with each Authorized Agent Form. A person designated on the Authorized Agent Form shall act as an authorized agent only after the permittee has received written approval from the department. An authorized agent:~~

~~(1) May serve in the place of the permittee for all fishery activities requiring the presence or action of the permittee, including the signing of landing receipts;~~

~~(2) Shall possess a current California commercial fishing license;~~

~~(3) Shall not be another herring eggs on kelp permittee unless the other permittee has stopped fishing his or her permit for the season;~~

~~(4) Who does not hold a herring eggs on kelp permit, may act as an authorized agent for more than one herring eggs on kelp permittee.~~

(a) Definitions. Herring Eggs on Kelp (HEOK) may only be taken by harvesting giant kelp (*Macrocystis pyrifera*), with spawn (i.e. eggs) attached, which has been artificially suspended using the following two (2) methods: rafts and/or lines, a technique commonly known as the "open pound" method. Unless the context requires otherwise, the following definitions shall apply to the HEOK fishery:

(1) "Fishing" means the act of suspending giant kelp (*Macrocystis pyrifera*) for the purposes of taking herring eggs, and/or harvesting.



- (2) "Harvesting" means the act of removing HEOK from the water for the purposes of processing for sale and/or transport to market.
- (3) "Processing" means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested HEOK, trimming the product, brining, grading the product, and loading the processed blades into bins or totes.
- (4) A raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet.
- (5) A line is defined as a piece of line of no more than 1,200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks).

(b) Area Restrictions.

- (1) HEOK may be harvested only from the waters of San Francisco Bay. For purposes of this section, San Francisco Bay is defined as the waters of Fish and Wildlife Districts (District 11, 12, 13 and that part of District 2 known as Richardson Bay.
- (2) Rafts and/or lines may not be placed in any waters or areas otherwise closed or restricted to the use of herring gill nets operating pursuant to Section 163.1 of these regulations, except where written approval is granted by the owners or controlling agency (e.g., Navy, Coast Guard).
- (3) Rafts may be placed in Belvedere Cove or Richardson Bay only if they are tied to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), and permittees have obtained prior written approval. Buoys are not permanent structures.

(c) Fishing Season. HEOK fishing season is December 1 to March 31.

(d) Gear Requirements.

- (1) Not more than two (2) rafts; or two (2) lines; or one (1) raft and one (1) line may be used per permit.
  - (A) Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards.
  - (B) Each raft shall be further identified with the fishing vessel number the HEOK permit has been assigned to in Roman alphabet letters and Arabic numerals at least 14 inches high and 2 inches wide, painted on a white background and permanently affixed to the raft.
  - (C) Kelp lines shall have floats or cork over the entire length of line.
  - (D) If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

(E) Lines shall be marked at the beginning and the end with a light that may be seen for at least a distance of 100 yards.

(F) Each line shall be further identified at each end with a contrasting-colored buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished.

(e) Notification Requirements.

(1) Permittees shall notify the department using the contact information designated on the HEOK permit within a 12-hour period prior to beginning the following activities:

(A) The suspension of kelp on a raft and/or lines.

(B) Harvest of HEOK.

(C) Landing of HEOK.

(2) Permittees shall supply the vessel registration number, departure point of vessel, location of each raft, estimated suspension/landing/harvest time, point of landing, and contact number.

(3) If any of this information changes after notification is given, the permittee shall again notify the department using the contact information designated on the HEOK permit.

(f) Noise. All permittees, authorized agents, vessel operators, crew, or employees shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Marine Mammals. The use of explosives, seal bombs, or marine mammal deterrent devices in the HEOK sector is prohibited.

(h) Landing Requirements

(1) For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of HEOK. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of HEOK.

(2) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.

(3) Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore.

- (4) HEOK shall not be landed/off- loaded between the hours of 10:00 p.m. and 6:00 a.m. on weekdays, or from 10:00 p.m. Friday to 6:00 a.m. Monday.
- (5) Any HEOK taken for commercial purposes shall only be delivered to a person having a Herring Buyer's Permit pursuant to subsection 163.5(a) of these regulations.
- (6) All HEOK landed in excess of any quota established in accordance with Section 55.02(d) of these regulations shall be forfeited to the department by the signing of a Release of Property Form FG-MR-674, as set forth in subsection 163(c). Such excess of HEOK shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(i) Processing Requirements.

- (1) Any person engaged in, or employed for the specific purpose of, processing HEOK shall fall under the category of non-applicability in regard to possession of a commercial fishing license pursuant to Section 7850.5 of the Fish and Game Code. Pursuant to Section 7850.5 of the Fish and Game Code, a person engaged in processing (permittees and authorized agents excepted) may stand aboard a HEOK vessel while at a dock or landing, but may not be transported aboard the vessel. A person engaged in processing (permittees and authorized agents excepted) may not stand on the HEOK raft, nor physically participate in the removal of HEOK from the water.
- (2) Permittee shall have a certified scale aboard the vessel at all times if any brining is conducted aboard that vessel. This scale shall be used to determine the total weight of HEOK prior to brining.

Note: Authority cited: Sections 7071, 7078, 8389 and 8550, Fish and Game Code. Reference: Sections 7071, 8389 and 8550, Fish and Game Code.