

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

Amend Sections 163 and 164
Title 14, California Code of Regulations
Re: Commercial Pacific Herring Eggs on Kelp

I. Date of Initial Statement of Reasons: March 27, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: April 15, 2020

Location: Sacramento, CA

(b) Discussion/Adoption Hearing

Date: June 24, 2020

Location: Santa Ana, CA

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

At its October 10, 2019 meeting, the California Fish and Game Commission (Commission) adopted the California Pacific Herring Fishery Management Plan (Herring FMP) and implementing regulations, which included sections 163 and 164. Under those regulations, Pacific Herring (Herring) and Herring eggs on kelp (HEOK) may be taken for commercial purposes under a revocable permit. To fish HEOK, Giant Kelp, *Macrocystis spp.*, is suspended from rafts or cork lines in shallow areas for Herring to spawn upon. Rafts and cork lines are positioned in locations where Herring spawning is expected to occur. Suspended kelp is left in the water until egg coverage reaches a marketable amount or spawning has ended. The product of the HEOK fishery is the egg-coated kelp blades, which are processed, graded by quality, and exported to Japan. Giant Kelp is typically harvested off central California and then transported to San Francisco Bay.

During the Herring FMP and implementing regulations adoption process, the Department of Fish and Wildlife (Department) and Commission received feedback from the HEOK representative of the Director's Herring Advisory Committee (DHAC) on several new regulations proposed for the HEOK fishery. The Department agreed to review and consider changes to the Herring FMP implementing regulations that affect the HEOK fishery, and to consider a follow-up rulemaking effort to amend sections 163 and 164, in order to address concerns heard from the HEOK representative (see Section III(e) of this document). Proposed regulatory amendments to address these concerns were presented to the Commission's Marine Resources Committee meeting on November 5, 2019 by the Department and the HEOK representative. Establishing individual permit allocations of the total HEOK quota was among the changes initially considered. However, upon careful consideration and analysis of this potential change, the Department is not recommending that this change be adopted.

Instead, this change is presented here as an alternative to the proposed regulatory action, and is described below in Section IV of this document.

To understand the need for regulatory changes and evaluate the potential impacts of the proposed changes to sections 163 and 164, the Department's Marine Region staff have discussed the changes with the Law Enforcement Division, License and Revenue Branch, Commission staff, as well as with the HEOK representative. Using this information, the Department is proposing regulatory changes to include: 1) permittee on board requirements, 2) adding rinsing in the definition of processing, 3) gear marking requirements, 4) noise reduction measures, 5) marine mammal deterrent devices, and 6) weekend landings requirements. These proposed amendments to sections 163 and 164 reflect Department recommendations based on additional input from the HEOK representative. No changes are proposed to the Herring FMP itself, and of the Herring FMP implementing regulations adopted by the Commission in October 2019, only sections 163 and 164 are proposed for amendment as part of this follow-up rulemaking.

PROPOSED REGULATORY CHANGES FOR THE COMMERCIAL PACIFIC HERRING EGGS ON KELP FISHERY

- **Amend subsection 163(e)(3)(B), Proximity of Permittee or Authorized Agent to Harvesting, Processing, and Transporting of HEOK.**

Proposed Changes

The existing regulations, subsection 163(e)(3)(B), state that "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." This regulatory action would remove the requirement that the HEOK permittee or authorized agent be 'aboard any vessel' engaged in harvesting, processing, or transporting Herring eggs, and replace this with the requirement that the permittee or authorized agent be 'immediately present during' those activities.

The word "or" will also be removed and replaced with "and" within the list of activities that the permittee or authorized agent will be required to be immediately present during.

Necessity and Rationale

As stated by the HEOK representative (see Section III(e) of this document), much of the fishing activity in the HEOK fishery is not performed from a vessel, instead utilizing rafts and/or lines suspended from permanent structures like piers. Thus, this proposed change would make the regulation more appropriately capture and allow for how fishing is currently occurring in the HEOK fishery sector, and provide HEOK fishery participants with the ability to legally fish HEOK both on and off their registered vessel.

In order to ensure that the regulation is enforceable, the phrase "aboard any vessel" will be replaced with "immediately present". The terms "immediate" and "present" are used in other regulations within Title 14, CCR that affect commercial fishing, and thus the requirement for the HEOK permittee or authorized agent to be "immediately present" will be a familiar requirement to both HEOK fishery participants and the Department's law enforcement officers who will ensure compliance with this proposed regulation.

The replacing of “or” with “and” within the list of activities will clarify that the permittee or authorized agent is required to be immediately present during all listed activities (i.e. harvesting, processing, and transporting herring eggs).

- **Amend subsections 164(a) and (a)(1), Definition of “Fishing” for HEOK.**

Proposed Changes

The introduction to the definitions section (subsection 164(a)) is proposed for amendment to clarify that the definitions only apply to the HEOK fishery.

The definition of “Fishing” in subsection 164(a)(1) is proposed for amendment to include the period in which kelp is suspended in anticipation of harvesting, as well as itemize sub-items for clarity.

Necessity and Rationale

Existing regulations in subsection 164(a)(1) define “Fishing” as being limited to the acts of suspending kelp and harvesting. The proposed additional language will clarify that fishing is also occurring while kelp is suspended in anticipation of harvesting HEOK. The addition and itemization of subsections 164(a)(1)(A), (B), and (C) will ensure that the newly proposed definition of “fishing” is clear to the regulated public. This new definition of “fishing” is particularly important to the gear marking requirements set forth in subsections 164(d)(1)(E) and (F), which are also proposed for amendment as part of this rulemaking.

Due to concerns that the definition of “fishing” in Section 164 could be applied more broadly and impact other licensing requirements that regulate other fishing activities, it is necessary to clarify that the definitions in Section 164 only apply for the purposes of the HEOK fishery.

- **Amend subsection 164(a)(3) to Add “Rinsing” to Definition of Processing.**

Proposed Changes

The existing regulations state that “Processing” is 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. This proposed regulatory action would include ‘rinsing’ in the definition of Processing in subsection 164(a)(3).

Necessity and Rationale

As identified by the HEOK representative (see Section III(e) of this document), current regulations do not include “rinsing” in the definition of “Processing”. However, to ensure an acceptable high-quality and marketable product, HEOK must be rinsed prior to brining. Therefore, it is necessary to modify the definition of Processing to include rinsing to more accurately capture how processing should occur in the HEOK fishery.

- **Amend subsection 164(d)(1)(E), Light Marking Requirements.**

Proposed Changes

Amend language for light marking requirements in subsection 164(d)(1)(E) to apply only while lines are fishing HEOK, excluding the acts of suspending kelp and harvesting.

Necessity and Rationale

Regulations in subsection 164(a)(5) allow for a maximum of 1,200 ft of line per corkline, from which kelp may be suspended to fish HEOK. As current light marking requirements in subsection 164(d)(1)(E) could result in an unnecessary burden while assembling and disassembling the line during the acts of suspending kelp and harvesting HEOK product, it is necessary to clarify that the light marking requirement does not apply during suspension and harvesting. As a result of these proposed changes, light marking requirements will only be required in the period during which kelp is suspended in anticipation of harvesting (following the proposed amendment of the definition of “fishing” in the HEOK fishery in subsection 164(a)(1)).

- **Amend subsection 164(d)(1)(F), Buoy Marking Requirements.**

Proposed Changes

Add language to subsection 164(d)(1)(f) to clarify the buoy marking requirement and that the Department registration number of the designated vessel is listed on the HEOK permit.

Necessity and Rationale

The current buoy marking requirement in subsection 164(d)(1)(f) is to indicate the “official number of the vessel from which such net is being fished” on suspended lines. This proposed change clarifies the “official number of the vessel” as the Department registration number for that vessel, and also clarifies that this is the vessel number designated by the permittee during renewal, and is listed on the HEOK permit. HEOK fishery participants will be familiar with this Department registration number, as it is the same number issued according to the existing process outlined in subsection 163(c)(6)(B). This change also eliminates the error of including the word “net” in a requirement specific to HEOK cork lines, and recognizes that fishing of these lines does not necessarily occur from just aboard a vessel.

The proposed language will also add the requirement that the identification of the Department registration number be legible on the buoy, in order to assist Department law enforcement officers in identification of fishing equipment ownership.

- **Amend subsection 164(f), Noise Rule.**

Proposed Changes

Remove “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” from subsection 164(f).

Necessity and Rationale

Historically, HEOK fishery participants held permits in the Herring sector (either as gill netters or seiners) and elected to transfer their permit to the HEOK fishery. A number of prior changes to those regulations that affect the HEOK and gill net fisheries were therefore designed to maintain parity between the gill net and HEOK sectors, but resulted in confusion in the regulations between these two fisheries. The Herring FMP implementing regulations adopted

by the Commission in October 2019 largely addressed this confusion, however the requirements concerning noise reduction measures listed in subsection 164(f) were identified by the HEOK representative as being applicable to the gill net fishery, and not the HEOK fishery. This proposed regulatory action would thus remove these non-applicable noise reduction measures currently listed in subsection 164(f), while continuing to require compliance with local ordinances.

- **Amend subsection 164(g), Use of Marine Mammal Deterrent Devices.**

Proposed Changes

In existing regulations, subsection 164(g) states “The use of explosives, seal bombs, or marine mammal deterrent devices in the HEOK sector is prohibited.” This proposed regulatory action would remove “marine mammal deterrent devices” from subsection 164(g), but keep the prohibition of “explosives” and “seal bombs”.

Necessity and Rationale

The proposed change will allow HEOK sector participants to take reasonable action to protect marketable product by discouraging seal and sea lion disturbance of HEOK gear and Herring spawning on that gear. The Department recognizes the concerns of HEOK fishery participants, and the request of the HEOK representative for the allowance of reasonable use of marine mammal deterrent devices such that suspended kelp is not destroyed and Herring are allowed to spawn without harassment by marine mammals. HEOK fishery participants would still be subject to any applicable local, state, and federal laws concerning marine mammal deterrence.

- **Amend subsection 164(h)(4), Reinstate Weekend Landings of HEOK Product.**

Proposed Changes

In existing regulations, subsection 164(h)(4) states “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”. This proposed regulatory action would remove language prohibiting weekend landings in subsection 164(h)(4).

Necessity and Rationale

Prior to the adoption of the Herring FMP and implementing regulations, the HEOK fishery was allowed to land product any day of the week. As part of the Herring FMP implementing regulations, the HEOK fishery was included in the weekend closure to improve the Department’s ability to track the catch relative to the quota and determine when the quota has been reached. However, this change was contested by the HEOK sector DHAC representative (see Section III(e) of this document), as the allowance to harvest and land HEOK on any day of the week, including weekends, is necessary to prevent deterioration and waste of otherwise marketable product. The proposed change to the regulatory language in subsection 164(h)(4) will retain the prohibition of landing/off-loading between the hours of 10:00 p.m. and 6:00 a.m., while allowing HEOK fishery participants to land/off-load HEOK any day of the week.

- **Other Amendments for Clarity.**

Proposed Changes and Rationale

Remove the date associated with Forms: DFW 1322-2 in subsections 163(c)(5)(B) and (C); DFW 1377 in subsections 163(c)(5)(B) and (d)(5)(C); and, DFW 1406 in subsections 163(c)(6)(A), (B), (C), (E), and (d)(5)(D). The current date of each form is indicated in Section 705, subsections (a) and (b). Future changes to these forms and dates will be incorporated by reference in Section 705, and this proposed regulatory change will remove the duplication of dates and avoid future public confusion over the correct version date of each form.

Within sections 163 and 164, the authority and reference citations to Fish and Game Code sections 8389 and 8550 will be removed. Per the Fishery Management Plan provisions of Fish and Game Code Section 7071, the adoption by the Commission in October 2019 of the Herring FMP implementing regulations made Fish and Game Code sections 8389 and 8550 inoperative, and thus they will be removed from sections 163 and 164.

(b) Goals and Benefits of the Regulation

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, recognize the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with marine living resource conservation policies, manage marine living resources on the basis of the best available scientific information and other relevant information that the Commission or Department possesses or receives, and to involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.

In consideration of the above policy, the implementation of these proposed changes to the existing HEOK regulations will support the viability of the fishery, help improve the quality of the product, and remove or update burdensome or unnecessary regulations that are not applicable to the HEOK fishing sector.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Section 163: Authority: Sections 7071 and 7078, Fish and Game Code.
Reference: Section 7071, Fish and Game Code.

Section 164: Authority: Sections 7071 and 7078, Fish and Game Code.
Reference: Section 7071, Fish and Game Code.

Per the Fishery Management Plan provisions of Fish and Game Code Section 7071, the adoption by the Commission in October 2019 of the Herring FMP implementing regulations made Fish and Game Code sections 8389 and 8550 inoperative.

(d) Specific Technology or Equipment Required by Regulatory Change

None.

(e) Identification of Reports or Documents Supporting Regulation Change

Appendix S: Public Comments Received, Responses, and Changes to the Draft California Pacific Herring Fishery Management Plan, November 2019

Appendix S of the Herring FMP includes comments made by the HEOK representative to the DHAC regarding these proposed changes along with the reasonable alternatives outlined in section IV of this initial statement of reasons. The specific comments from the HEOK representative are displayed on pages S-18 to S-20 of Appendix S.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The proposed regulatory changes were discussed at the October 10, 2019 Commission meeting, and at the Commission's Marine Resources Committee meeting on November 5, 2019. The 45-day public comment period will provide additional time for public review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

The discussion of alternatives in this document will focus on feasible HEOK management actions that could be modified to either improve HEOK fisheries management or the economics of the participants in the fishery.

- **Amend subsections 163(c)(4)(B), 163(c)(6)(B), 164(h)(6) and add new subsection 163(e)(3)(C), Reinstate individual HEOK permit quotas.**

The existing regulation of subsection 163(c)(4)(B) states that no more than one HEOK permit may be held per permittee, and there is no allocation of any HEOK quota established pursuant to Section 55.02 to individual permittees, effectively giving participants equal access to the quota for this sector of the commercial fishery. This proposed alternative would establish permit allocations by increasing the number of HEOK permits that may be held per permittee to two in subsection 163(c)(4)(B), allowing up to four permits to be fished at a time per vessel in subsection 163(c)(6)(B), allocating the total HEOK quota among permittees in new subsection 163(e)(3)(C), and adjusting 'product landed in excess' language in subsection 164(h)(6).

The Herring FMP and implementing regulations, which were adopted by the Commission in October 2019, eliminated individual permit quotas in the HEOK sector as part of a larger overhaul of the permitting system in the commercial Herring fishery, one of the stated goals of the Herring FMP. This overhauled permitting system streamlines permitting, gear requirements, and management of the fishery, as well as standardizes and clarifies regulatory language. It also ensures that commercial Herring regulations are consistent with those used in other fisheries in California, and that permit fees paid by HEOK-sector participants are consistent with those paid by gill net-sector participants. Additionally, subsection 55.02(d) of the Herring FMP implementing regulations gives the Director of the Department authority to set annual quotas for all fishery sectors, including HEOK. This section of the Herring FMP implementing regulations rendered Fish and Game Code sections 8389 and 8550, which had authorized the Commission to prescribe commercial Herring regulations, permits, and set quotas, inoperative.

The Department does not recommend that this alternative be adopted, as it would re-introduce regulations that were eliminated during the permit overhaul with the express purpose of implementing goals of the Herring FMP. Additionally, adoption of this alternative would require reassessment of permit fees in the HEOK sector, could restrict potential participants from

achieving equal access to any quotas established for this sector, and may be difficult to enforce without further changes to gear marking requirements.

(b) No Change Alternative

Under the “No Change” alternative, the Herring FMP implementing regulations in sections 163 and 164 related to the HEOK fishery would not be modified. As a result, HEOK fishery participants would still be required to comply with the burdensome and unnecessary regulations that have been identified in this document and proposed for change.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as the proposed regulatory changes are intended to simply provide clarification to accommodate HEOK permittee requests. The proposed regulations will support the viability of the fishery, help improve the quality of the product, and remove or update burdensome or unnecessary regulations that are not applicable to the HEOK fishing sector.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The Commission does not anticipate any impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California. The Commission also does not anticipate any benefits to the health and welfare of California residents or worker safety. The proposed regulatory changes are intended to simply provide clarification to accommodate HEOK permittee requests. The proposed regulations will support the viability of the fishery, help improve the quality of the product, and remove or update burdensome or unnecessary regulations that are not applicable to the HEOK fishing sector.

The Commission anticipates some benefit to the state’s environment through the sustainable management of herring egg harvest and of kelp forest habitats to foster and support a diverse balance of species.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None
- (h) Effect on Housing Costs: None

VII. Economic Impact Assessment

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate impacts on the creation or elimination of jobs within the state because the proposed regulatory changes are intended to provide clarification to accommodate HEOK permittee requests and are not anticipated to induce substantial, long-term changes in the demand for labor.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission does not anticipate any new businesses, or elimination of existing businesses, because the proposed regulation is not likely to substantially increase or decrease herring egg harvest within California.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any effects substantial enough to induce the expansion of businesses currently doing business in the state.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission does not anticipate benefits to the health and welfare of California residents as the proposed regulatory changes do not affect existing health and welfare conditions.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety because the proposed regulation does not affect existing working conditions.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates some benefit to the state's environment through the sustainable management of herring egg harvest and of kelp forest habitats to foster and support a diverse balance of species.

Informative Digest/Policy Statement Overview

At its October 10, 2019 meeting, the California Fish and Game Commission (Commission) adopted the California Pacific Herring Fishery Management Plan (Herring FMP) and implementing regulations, which included sections 163 and 164, Title 14, California Code of Regulations (CCR). Under those regulations, Pacific Herring (Herring) and Herring eggs on kelp (HEOK) may be taken for commercial purposes under a revocable permit, subject to such regulations as the Commission shall prescribe. Current regulations in sections 163 and 164, Title 14, CCR specify the number of permits that may be held by an individual, fishing areas, seasons, gear restrictions, and notification requirements for the HEOK fishery.

In response to permittee feedback on the HEOK regulations set forth in sections 163 and 164, Title 14, CCR, the Department of Fish and Wildlife (Department) is proposing several regulatory changes with the intent of providing for the efficient harvest and orderly conduct of the HEOK fishery. These proposed regulatory changes include 1) permittee on board requirements, 2) adding rinsing in the definition of processing, 3) gear marking requirements, 4) noise reduction measures, 5) marine mammal deterrent devices, and 6) weekend landings requirements. No changes are proposed to the Herring FMP itself, and of the Herring FMP implementing regulations adopted by the Commission in October 2019, only sections 163 and 164, Title 14, CCR are proposed for amendment.

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

1. Amend subsection 163(e)(3)(B) to modify language regarding the requirement of a permittee or authorized agent to be aboard any vessel engaged in fishing HEOK by changing the requirement to 'immediately present during' while harvesting, processing or transporting HEOK.
2. Amend subsection 164(a) to modify language to clarify that the definitions in this section apply only to the HEOK fishery.
3. Amend subsection 164(a)(1) to add "the period during which kelp is suspended in anticipation of harvesting" to the definition of fishing, as well as itemize subsections of the definition for clarity.
4. Amend subsection 164(a)(3) to add "rinsing" to the definition of processing.
5. Amend subsection 164(d)(1)(E) to modify light marking requirements so they only apply while lines are fishing, exclusive of suspending and harvesting kelp.
6. Amend subsection 164(d)(1)(F) to add language to clarify the buoy marking requirement and that the Department registration number of the designated vessel is listed on the HEOK permit.
7. Amend subsection 164(f) to modify language regarding the noise reduction rule by eliminating language that applies to gill net gear.
8. Amend subsection 164(g) to remove "marine mammal deterrent devices", thus allowing for reasonable action by HEOK permittees to protect marketable product.
9. Amend subsection 164(h)(4) to reinstate weekend landings of HEOK product.

Editorial changes are also proposed to sections 163 and 164, Title 14, CCR, to remove the dates associated with forms DFW 1322-2, DFW 1377, and DFW 1406, as the current date of each form is already indicated in Section 705, Title 14 CCR.

Additionally, the authority and reference citations in sections 163 and 164, Title 14, CCR will be updated to remove Fish and Game Code sections 8389 and 8550, which became inoperative following the Commission's adoption in October 2019 of the Herring FMP (per Fish and Game Code Section 7071).

Benefits of the Proposed Regulations

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, recognize the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with marine living resource conservation policies, manage marine living resources on the basis of the best available scientific information and other relevant information that the Commission or Department possesses or receives, and to involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.

In consideration of the above policy, the proposed regulatory action will benefit fishermen, processors, and the State's economy in the form of a healthy sustainable fishery, future harvestable Herring populations, and the removal of burdensome or unnecessary regulations that are not applicable to the HEOK fishing sector.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of Herring (Fish and Game Code Section 8550), and the power to adopt fishery management plan implementing regulations (Fish and Game Code sections 7071 and 7078). No other State agency has the authority to promulgate regulations concerning commercial take of Herring and fishery management plan implementation. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the commercial take of Herring and fishery management plan implementation.