

Final Regulatory Language

Section 163, Title 14, CCR, is hereby amended as follows:

§ 163. Pacific Herring Permits.

. . . [No changes to subsections (a) and (b)]

(c) Permit Renewal.

(1) Each herring and HEOK permit is required to be renewed annually pursuant to Fish and Game Code § 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 ~~(NEW 10/30/19)~~. 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 ~~(NEW 4/11/19)~~, 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 ~~(NEW 4/11/19)~~ 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 (~~NEW 10/30/19~~) 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 (~~NEW 10/30/19~~).

(C) Each HEOK permittee may designate two authorized agents to operate under his or her permit on the application form DFW 1406 (~~NEW 10/30/19~~). 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 (~~NEW 10/30/19~~) 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 and shall further process all appeals pursuant to the procedure outlined in 14 CCR 671.1(c)(7)(C)-(I).

(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 (~~NEW 10/30/19~~) 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 (~~NEW 10/30/19~~) 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~~ immediately present during harvesting, processing, ~~or~~ and 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).

. . . [No changes to (f) through (i)]

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

Final Regulatory Language

Section 164, Title 14, CCR, is hereby amended as follows:

§ 164. Harvest of Herring Eggs on Kelp.

(a) Definitions. Herring Eggs on Kelp (HEOK) may only be taken by harvesting giant kelp (*Macrocystis* spp.), 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~~ For the purposes of the HEOK fishery only, the following definitions shall apply ~~to the HEOK fishery~~:

(1) “Fishing” means:

(A) the act of suspending giant kelp (*Macrocystis* spp.) for the purposes of taking herring eggs;

(B) the period during which kelp is suspended in anticipation of harvesting; and/or

(C) 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, rinsing, 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).

. . . [No changes to subsections (b) and (c)]

(d) Gear Requirements.

(1) Not more than two (2) rafts and/or two (2) lines 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 while fishing, excluding suspending kelp and harvesting, 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 legible Roman alphabet letters and Arabic numerals at least 2 inches high, ~~the official number of the vessel from which such net is being fished~~ the department registration number of the designated fishing vessel listed on the HEOK permit.

. . . [No changes to subsection (e)]

(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, and/or 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 MR-FG-674 (REV. 5/13), 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.

. . . [No changes to subsection (i)]

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