

Fish and Game Code: Sections 8550-8559

8550. Herring may be taken for commercial purposes only under a permit, subject to regulations adopted by the commission. The commission may, whenever necessary to prevent overutilization, to ensure efficient and economic operation of the fishery, or to otherwise carry out this article, limit the total number of permits that are issued and the amount of herring that may be taken under the permits. The commission, in limiting the total number of permits, shall take into consideration any restriction of the fishing area and the safety of others who, for purposes other than fishing, use the waters from which herring are taken.

8550.5. (a) A herring net permit granting the privilege to take herring with nets for commercial purposes shall be issued to licensed commercial fishermen, subject to regulations adopted under Section 8550, as follows:

1. To any resident of this state to use gill nets, upon payment of a fee of two hundred sixty-five dollars (\$265).
2. To any nonresident to use gill nets, upon payment of a fee of one thousand dollars (\$1,000).
 - a. The commission shall not require a permit for a person to be a crewmember on a vessel taking herring pursuant to this article. 8552. (a) It is unlawful to take herring for roe on a vessel unless the operator holds a herring permit issued by the department pursuant to commission regulations. The permit may be transferred pursuant to Sections 8552.2 and 8552.6.
 - b. No person may be issued more than one herring permit, and the department shall not issue a herring permit to more than one person except as provided in Section 8552.6.
 - c. Herring permits shall only be issued to and shall be held only by a natural person.
 - d. Herring permits shall not be used as any form of security for any purpose, including, but not limited to, financial or performance obligations.
 - e. The permittee shall be on board the vessel at all times during herring fishing operations, subject only to exceptions provided for in this code and regulations adopted under this code.

8552.1. The commission, in consultation with the department and representatives of the commercial roe herring fishery, and after holding at least one public hearing, may adjust the fees charged for permits; including fees for the issuance or transfer of permits, to a level that will not discourage the transfer of permits or limit entry into the fishery, and that will ensure sufficient funds to cover reasonable department costs associated with the management of the fishery, including research and enforcement costs.

8552.2. Notwithstanding Section 1052, a herring permit may be transferred from a herring permitholder to a nonpermitholder having a minimum of 20 or more herring fishery points, as follows: The permitholder shall mail, by certified or registered mail, to the department and every individual listed on the department's list of maximum 20 or more point herring fishery participants, his or her notice of intention to transfer his or her herring permit, which notice shall specify the gear type to be used under the herring permit; the name, address, and telephone number of the transferor and proposed transferee; and the amount of consideration, if any, sought by the transferor. Sixty days after mailing the notice, the transferor may transfer the permit to any person having 20 or more experience points without the necessity for giving further notice if the transfer occurs within six months of the date the original notice was given. Transfers after that six-month period shall require another 60-day notice of intention to be given. No person may hold more than one herring permit. A true copy of the notice of intention to transfer a permit shall be filed with the department by the transferor under penalty of perjury and shall be available for public review. 8552.3. The commission may, in consultation with representatives of the commercial herring roe fishery, and after holding at least one public hearing, adopt regulations intended to facilitate the transfer of herring permits, including, but not limited to, regulations that would do the following:

- a. Allow an individual to own a single permit for each of the different herring gillnet platoons in San Francisco Bay.
- b. Eliminate the point system for qualifying for a herring permit.
- c. Allow a herring permit to be passed from a parent to child, or between husband and wife.

8552.4. Herring permits that are revoked or not renewed may be offered by the department for a drawing to persons having 20 or more experience points in the fishery on the first Friday of August of each year.

8552.5. The commission shall revoke any herring permit if the holder of the herring permit was convicted of failing to report herring landings or underreported herring landings or failed to correctly file with the department the offer or the acceptance for a permit transferred pursuant to Section 8552.2.

8552.6.

- a. Notwithstanding Section 8552, a herring permit may be issued to two individuals if one of the following criteria is met:
 - 1. The individuals are married to each other and file with the department a certified copy of their certificate of marriage and a declaration under penalty of perjury, or a court order, stating that the permit is community property.
 - 2. The individuals meet both of the following requirements:
 - A. They are both engaged in the herring roe fishery either by fishing aboard the vessel or by personally participating in the management, administration, and operation of the partnership's herring fishing business.
 - B. There is a partnership constituting equal, 50 percent, ownership in a herring fishery operation, including a vessel or equipment, and that partnership is demonstrated by any two of the following:
 - i. A copy of a federal partnership tax return.
 - ii. A written partnership agreement.
 - iii. Joint ownership of a fishing vessel used in the herring fishery as demonstrated on federal vessel license documents.
- b. For purposes of this section, a herring permit does not constitute a herring fishing operation. A herring permit may be transferred to one of the partners to be held thereafter in that partner's name only if that partner has not less than 10 points computed pursuant to paragraph (2) of subdivision (a) of Section 8552.8 and there has been a death or retirement of the other partner, a dissolution of partnership, or the partnership is dissolved by a dissolution of marriage or decree of legal separation. A transfer under this section shall be authorized only if proof that the partnership has existed for three or more consecutive years is furnished to the department or a certified copy of a certificate of marriage is on file with the department and the permit is community property as provided in subdivision (a). The transferor of a permit shall not, by reason of the transfer, become ineligible to participate further in the herring fishery or to purchase another permit.
- c. Notwithstanding subdivision (b), in the event of the death of one of the partners holding a herring permit pursuant to this section, where the partnership existed for longer than six months but less than three years and the surviving partner does not have the minimum points pursuant to subdivision (b) to qualify for a permit transfer, the permit may be transferred on an interim basis for a period of not more than 10 years to the surviving partner if an application is submitted to the department within one year of the deceased partner's death and the surviving partner participates in the fishery for the purpose of achieving the minimum number of points to be eligible for a permit transfer pursuant to Section 8552.2.

The interim permit shall enable the surviving partner to participate in the herring fishery. At the end of the interim permit period, the surviving partner, upon application to the department, may be issued the permit if he or she has participated in the fishery and gained the minimum number of experience points for a permit.

8552.7. The department shall reissue a herring permit which has been transferred pursuant to Section 8552.2 or 8552.6 upon payment of a transfer fee by the transferee of the permit. Before April 1, 1997,

the transfer fee is two thousand five hundred dollars (\$2,500), and, on and after April 1, 1997, the transfer fee is five thousand dollars (\$5,000). 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 subdivision (a) of Section 8052.

8552.8.

- a. For purposes of this article, the experience points for a person engaged in the herring roe fishery shall be based on the number of years holding a commercial fishing license and the number of years having served as a crewmember in the herring roe fishery, and determined by the sum of both of the following:
 1. One point for each year in the previous 12 years (prior to the current license year) that the person has held a commercial fishing license issued pursuant to Section 7852, not to exceed a maximum of 10 points.
 2. Five points for one year of service as a paid crewmember in the herring roe fishery, as determined pursuant to Section 8559, three points for a second year of service as a paid crewmember, and two points for a third year as a paid crewmember, beginning with the 1978-79 herring fishing season, not to exceed a maximum of 10 points.
- b. The department shall maintain a list of all individuals possessing the maximum of 20 experience points and of all those persons holding two points or more, grouped in a list by number of points. The list shall be maintained annually and shall be available from the department to all pointholders and to all herring permittees. All pointholders are responsible for providing the department with their current address and for verifying points credited to them by the department.
- c. A herring permittee may use the department's list and rely upon that list in making offers for transfer of his or her permit until the date of the annual distribution of the new list. On and after the date of the annual revision of the list, the permittee shall use the new list.
- d. The point provisions in this section are for purposes of sale of a permit or transfer to a partner of a co-owned permit.

8553. The commission may make and enforce such regulations as may be necessary or convenient for carrying out any power, authority, or jurisdiction conferred under this article.

8554. The commission, in adopting regulations for the commercial herring fishery, shall provide for the temporary substitution of a permittee to take herring, if the permittee is ill or injured, by a crewmember aboard the vessel operated by the permittee. The commission may require that proof of the illness or injury be substantiated to the satisfaction of the department.

8555. The director shall periodically meet and confer with representatives of the commercial herring roe fishery to review regulations and policies of the commission and the department concerning that fishery and to receive recommendations on the regulation and management of that fishery. In particular, those representatives and their legal counsel may recommend to the department, for recommendation to the commission for adoption by the commission as regulations, requirements for the payment of civil damages that may be imposed in lieu of revoking or suspending a permit issued pursuant to this article or for violations of regulations adopted by the commission pertaining to the herring roe fishery.

8556. Notwithstanding any other provision of law, the commission shall determine, by regulation, if drift or set gill nets may be used to take herring for commercial purposes. The commission may also determine, by regulation, the size of the meshes of the material used to make such gill nets.

8557. Notwithstanding any other provision of law, the commission shall determine if round haul nets may be used to take herring in Districts 12 and 13 and the conditions under which those nets may be used.

8558.

- a. There is established a herring research and management account within the Fish and Game Preservation Fund. The funds in the account shall be expended for the purpose of supporting, in consultation with the herring industry pursuant to Section 8555, department evaluations of, and research on, herring populations in San Francisco Bay and those evaluations and research that may be required for Tomales Bay, Humboldt Bay, and Crescent City and assisting in enforcement of herring regulations. The evaluations and research shall be for the purpose of (1) determining the annual herring spawning biomass, (2) determining the condition of the herring resource, which may include its habitat, and (3) assisting the commission and the department in the adoption of regulations to ensure a sustainable herring roe fishery. An amount, not to exceed 15 percent of the total funds in the account, may be used for educational purposes regarding herring, herring habitat, and the herring roe fishery.
- b. The funds in the account shall consist of the funds deposited pursuant to Sections 8558.1, 8558.2, and 8558.3, and the funds derived from herring landing taxes allocated pursuant to subdivision (a) of Section 8052.
- c. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of the funds in the account are met.

8558.1.

- a. No person shall purchase or renew any permit to take herring for commercial purposes in San Francisco Bay without first obtaining from the department an annual herring stamp. The fee for the stamp shall be one hundred dollars (\$100). The revenue from the fee for the herring stamps shall be deposited into the herring research and management account established pursuant to Section 8558.
- b. This section shall become operative on April 1, 1997.

8558.2. The amount of the difference between fees for nonresidents and resident fees, collected pursuant to Section 8550.5, shall be deposited into the herring research and management account established pursuant to Section 8558, and all fees for San Francisco Bay herring permit transfers, collected pursuant to Section 8552.7, shall also be deposited into the herring research and management account.

8558.3. One-half of all royalties collected by the department from the roe-on-kelp fishery collected pursuant to paragraph (2) of subdivision (f) of Section 164 of Title 14 of the California Code of Regulations shall be deposited into the herring research and management account established pursuant to Section 8558. 8559. The commission, in determining experience requirements for new entrants into the herring fishery after January 1, 1987, shall require that any person seeking a permit to operate a vessel to take herring and claiming crew experience shall demonstrate, to the satisfaction of the department, proof of payment as a crewmember in the herring fishery based on tax records or copies of canceled checks offered and accepted as payment for service on a crew in the California herring roe fishery.