

## STAFF SUMMARY FOR OCTOBER 9-10, 2019

**18. PACIFIC HERRING REGULATIONS****Today's Item**Information Action 

Discuss and consider proposed changes to adopt new and amend existing regulations to implement the *California Pacific Herring Fishery Management Plan* (Herring FMP).

**Summary of Previous/Future Actions**

- |                                   |                                      |
|-----------------------------------|--------------------------------------|
| • MRC vetting                     | Jul 2016–Mar 2019                    |
| • Notice hearing                  | Jun 12-13, 2019; Redding             |
| • Discussion hearing              | Aug 7-8, 2019; Sacramento            |
| • <b>Today's adoption hearing</b> | <b>Oct 9-10, 2019; Valley Center</b> |

**Background**

The draft Herring FMP (see Agenda Item 17, this meeting) initiates the process for concurrently considering and adopting regulations to implement the Herring FMP under authority established through the FMP; this includes revisions to current recreational and commercial Pacific herring regulations (sections 27.60, 28.60, 163, 163.1, 163.5, 164 and 705) and proposed new regulatory sections (Section 28.62; and Article 6, sections 55.00, 55.01 and 55.02). See the Jun 2019 FGC staff summary (Exhibit 3) for a more detailed background.

One of the significant proposed changes is new Section 28.62, related to recreational take of herring; currently there are no limits. However, DFW has proposed a daily bag limit for recreational take of herring in a range from 0-100 pounds; 100 pounds which is the equivalent of two 5-gallon buckets (approximately 260 each bucket). Today, DFW will ask FGC to adopt a recreational bag limit within the range (Exhibit 2).

At FGC's Aug 2019 meeting, DFW notified FGC that the draft Herring FMP received in Jun was missing one of its appendices, titled *Appendix R: Harvest Control Rule Framework Development and Guidance for Amending the Decision Tree*. Appendix R was added to the proposed rulemaking file in Aug, triggering a 15-day notice of availability pursuant to Government Code 11346.8. The notice was mailed to interested parties on Sep 5, 2019 and FGC staff has not received any comments to date.

For today's adoption hearing, DFW has identified two proposed changes that it considers to be errors that can be addressed if FGC selects the "no change" alternative (Exhibit 11). In a memo received Oct 1, 2019 (Exhibit 11), DFW requests that FGC select the "**no change**" alternative for two subsections, 163.1(d) and 164(d)(1):

1. **Subsection 163.1(d)**, related to net tending distance. Members of the commercial industry members provided feedback to DFW and requested to retain the existing Title 14 language; the steering committee did not express opposition to the request.

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Noticed change:

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

No change alternative [original text moved from Section 163(f)(2)(A)]:

(d) Net tending. Permitted vessels shall be in the immediate proximity, not exceeding three nautical miles, of any single gill net being fished. (Exhibit 11)

2. **Subsection 164(d)(1)**, related to herring eggs on kelp gear type, including gear allowances, proposed a rewording of the existing regulatory language with the intent of clarifying the meaning; however, the change inadvertently introduced an error and inconsistency related to the total number of allowable lines and rafts.

Noticed change:

*(1) Not more than two (2) rafts; or two (2) lines; or one (1) raft and one (1) line may be used per permit.*

No change alternative [original text moved from Section 164(j)(1)]:

*(1) Not more than two (2) rafts and/or two (2) lines may be used per permit.*

Finally, DFW has provided a detailed summary of and responses to individual comments received during the 45-day public comment period; for the reasons set forth in its responses to public comments, DFW does not believe the comments warrant changes to the regulations as proposed (Exhibit 11).

**California Environmental Quality Act (CEQA)**

A notice of exemption (Exhibit 13) has been drafted consistent with FGC staff's recommendation to rely on the statutory exemption in Fish and Game Code Section 7078(e), based on the assumption that the Herring FMP will be adopted as an environmental impact report-equivalent under Agenda Item 17 (this meeting), consistent with the Commission's Certified Regulatory Program. Pursuant to Fish and Game Code Section 7078(e), adopting regulations to implement an FMP or FMP amendment shall not trigger an additional review process under CEQA.

**Significant Public Comments**

1. Six commenters are opposed to the recreational daily bag limit as proposed and request a higher bag limit. Commenters state that take by recreational fishermen is minimal based on the amount of times spawning occurs; the majority of fishermen go once or twice a year, and a low number of between 30-50 fishermen participate (see exhibits 5 and 6). Commenter is not aware of recreational fishermen harvesting huge quantities of herring for illicit commercial trade as stated in the initial statement of reasons (Exhibit 10). Commenter has not seen scientific data indicating that recreational take has an impact on the fishery (Exhibit 8). Commenters recommend at least two 5-gallon buckets, or preferably four 5-gallon buckets (see Exhibit 9).

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2. The Environmental Action Committee of West Marin recommends that the recreational take of roe should be prohibited in Tomales Bay, due to the sensitive nature of the eco-system and supports the Herring FMP's maximum daily bag limit of two 5-gallon buckets of Pacific herring (see Herring FMP Exhibit 17.7).

### Recommendation

**FGC staff:** (1) Determine that a statutory exemption applies; and (2) Adopt the proposed regulations as recommended by DFW, unless FGC wishes to select a higher recreational take limit based on comments, in which case select within the 0-10 gallon range and adopt remaining regulations as recommended by DFW.

**DFW:** Adopt a recreational take limit of 5 gallons, adopt the regulations as proposed, except adopt the "No Change" Alternative for subsections 163.1(d) and 164(d).

### Exhibits

1. [DFW transmittal memo](#), received May 24, 2019
2. [Initial statement of reasons](#)
3. [Staff summary for Agenda Item 26, Jun 12-13, 2019 FGC meeting](#) (for background only)
4. [Draft economic and fiscal impact statement](#) (std. 399)
5. [EML from Kirk Lombard](#), received Jul 24, 2019
6. [EML from anonymous stakeholder](#), received Aug 7, 2019
7. EML from Ashley Eagle-Gibbs, Environmental Action Committee of West Marin, received Sep 26, 2019 (see Exhibit 17.7)
8. [EML from Bradley Cain](#), received Jul 24, 2019
9. [EML from Andrew Bland](#), received Jul 24, 2019
10. [EML from John Vogel](#), received Jul 23, 2019
11. [DFW memo and table with responses to public comments](#), received Oct 1, 2019
12. [DFW presentation](#)
13. [Draft notice of exemption](#)

### Motion/Direction

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission determines, based on the record, that this approval is exempt from the California Environmental Quality Act as being subject to the statutory exemption in Fish and Game Code Section 7078(e) and adopts the proposed changes to Section 163 et al, related to the California Pacific Herring Fishery Management Plan implementing regulations with the "No Change" alternatives for subsections 163.1(d) and 164(d).

# Memorandum

**Date:** May 23, 2019

**To:** Melissa Miller-Henson  
Acting Executive Director  
Fish and Game Commission

**From:** Charlton H. Bonham  
Director

**Subject:** **Agenda item for June 13, 2019, Fish and Game Commission Meeting**  
**Re: Request for Notice Authorization Re: California Pacific Herring Fishery Management Plan and Implementing Regulations**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publication of notice of its intent to consider amendments to existing regulations in Title 14, California Code of Regulations (CCR) concerning commercial and recreational Pacific Herring (Herring), for alignment with the California Pacific Herring Fishery Management Plan (Herring FMP). The attached Initial Statement of Reasons for Regulatory Action is provided in support of establishing the proposed implementing regulations. The proposed implementing regulations will cover the following major areas:

- 1) Amendments to existing recreational Herring fishery regulations in Sections 27.60, 28.60 and 28.62:
  - will establish a maximum recreational take limit (bag) for Pacific herring.
  - The Fish and Game Commission is asked to select a bag limit within the range of zero to ten (0-10) gallons, according to the Herring Fishery Management Plan.
  - The Department's recommendation is five (5) gallons, equivalent to about 260 fish or 50 pounds.
- 2) A new Article in Chapter 6.0, Subdivision 1, Division 1, Title 14, CCR and new Sections 55.00, 55.01, and 55.02 will be established. The proposed new sections will:
  - describe the purpose and scope of the Herring FMP;
  - provide relevant definitions used in the Herring FMP; and
  - describe management processes and strategy.

- 3) Commercial Herring fishery regulatory amendments are proposed to Sections 163, 163.1, 163.5, and 164, as well as amendments to Section 705, adopting forms and fees consistent with the new Herring regulations. The purpose of the regulations is to:
- implement the Herring FMP, produced pursuant to the Marine Life Management Act;
  - improve management of the existing commercial fisheries; and
  - support the sustainable and orderly use of this natural resource.

The Draft Herring Fishery Management Plan fulfills the Commission's obligation to comply with the California Environmental Quality Act (CEQA) [Public Resources Code (PRC) §21000 et seq.] in considering and adopting an FMP and associated implementing regulations.

Authorization of this request to publish notice will allow for discussion and possible adoption at the August 7-8, 2019 and October 9-10, 2019 meetings, respectively. The Department requests an effective date of March 1, 2020 for these regulations.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager at (916) 445-6459. The public notice for this rulemaking should identify Environmental Scientist, Andrew Weltz, as the Department's point of contact for this rulemaking. His contact information is (707) 576-2896 or [Andrew.Weltz@wildlife.ca.gov](mailto:Andrew.Weltz@wildlife.ca.gov).

### **Attachments**

ec: Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@Wildlife.ca.gov](mailto:Stafford.Lehr@Wildlife.ca.gov)

Craig Shuman, D. Env.  
Regional Manager  
Marine Region  
[Craig.Shuman@wildlife.ca.gov](mailto:Craig.Shuman@wildlife.ca.gov)

Kirsten Ramey, Program Manager  
Marine Region  
[Kirsten.Ramey@wildlife.ca.gov](mailto:Kirsten.Ramey@wildlife.ca.gov)

Adam Frimodig, Marine Region  
Sr Environmental Scientist  
[Adam.Frimodig@wildlife.ca.gov](mailto:Adam.Frimodig@wildlife.ca.gov)

Melissa Miller-Henson, Acting Executive Director  
Fish and Game Commission  
May 23, 2019  
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Andrew Weltz, Environmental Scientist  
Marine Region  
[Andrew.Weltz@wildlife.ca.gov](mailto:Andrew.Weltz@wildlife.ca.gov)

Wendy Bogdan, Chief  
Office of General Counsel  
[Wendy.Bogdan@wildlife.ca.gov](mailto:Wendy.Bogdan@wildlife.ca.gov)

Nathan Goedde,  
Office of General Counsel  
[Nathan.Goedde@wildlife.ca.gov](mailto:Nathan.Goedde@wildlife.ca.gov)

Mary Loum, Staff Counsel  
Office of General Counsel  
[Mary.Loum@wildlife.ca.gov](mailto:Mary.Loum@wildlife.ca.gov)

Joshua Morgan, Branch Chief  
License and Revenue Branch  
[Joshua.Morgan@Wildlife.ca.gov](mailto:Joshua.Morgan@Wildlife.ca.gov)

Glenn Underwood, Manager  
License and Revenue Branch  
[Glenn.Underwood@wildlife.ca.gov](mailto:Glenn.Underwood@wildlife.ca.gov)

Richard Reyes, Manager  
Automated License Data System (ALDS)  
[Richard.Reyes@wildlife.ca.gov](mailto:Richard.Reyes@wildlife.ca.gov)

Tony Straw, Systems Specialist (ALDS)  
[Tony.Straw@wildlife.ca.gov](mailto:Tony.Straw@wildlife.ca.gov)

David Bess, Chief  
Law Enforcement Division  
[David.Bess@wildlife.ca.gov](mailto:David.Bess@wildlife.ca.gov)

Robert Puccinelli, Captain  
Law Enforcement Division  
[Robert.Puccinelli@wildlife.ca.gov](mailto:Robert.Puccinelli@wildlife.ca.gov)

Michelle Selmon, Program Manager  
Regulations Unit  
[Michelle.Selmon@wildlife.ca.gov](mailto:Michelle.Selmon@wildlife.ca.gov)

Mike Randall, Analyst  
Regulations Unit  
[Mike.Randall@wildlife.ca.gov](mailto:Mike.Randall@wildlife.ca.gov)

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

Title 14, California Code of Regulations.

Re: California Pacific Herring Fishery Management Plan Implementing Regulations

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

II. Dates and Locations of Scheduled Hearings

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

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

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

III. Description of Regulatory Action

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

The purpose of these proposed amendments to regulations is the implementation of the 2019 California Pacific Herring Fishery Management Plan (Herring FMP). This Fishery Management Plan (FMP) has been produced pursuant to the Marine Life Management Act (MLMA). The amendments are further necessary to improve management of the existing commercial and recreational Pacific Herring (herring) (*Clupea pallasii*) fisheries and to support the sustainable and orderly use of this natural resource.

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

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

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

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

and adjust quotas in San Francisco Bay as needed; and set precautionary quotas in the northern management areas (Tomales Bay, Humboldt Bay and Crescent City Harbor).

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

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

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

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

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

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

INOPERATIVE FISH AND GAME CODE SECTION	DESCRIPTION OF STATUTE	SUPERCEDED BY PROPOSED REGULATION SUBSECTION	FISHERY MANAGEMENT PLAN CHAPTER SECTIONS
8389	Herring Eggs; Authority to prescribe regs, permits, royalty fee, and limits, incidental take HEOK	55.02(a), (d), and (e); 163(b) and (c); 164(a) and (b); 705(a).	7.8, 7.9, 9.1
8550	Fish and Game Commission regulates herring, number of permits, amount of take per permit	55.02(a), (d), and (e).	4.7, 7.7, 7.8, 7.9, 9.1
8550.5	Herring net permit fee	163(a) and (b), 705(a).	7.8, 9.1
8552	Herring Roe permit conditions	163(a), (b), and (h).	4.7, 7.8, 7.9, 9.1
8552.2	Herring permit transferability - experience points	163(b), (h)	7.8, 9.1
8552.3	Fish and Game Commission regulate permit transfers	55.02(e); 163(b), (c), and (h)	7.8, 9.1
8552.4	Department to hold drawing for revoked permits - experience points	163(b) and (d)	4.7, 7.8, 9.1
8552.5	Fish and Game Commission may revoke herring permits	55.02(e), 163(g)	7.8, 9.1
8552.6	Herring permit ownership	163(c), (h), and (e)	7.8, 9.1
8552.7	Transfer fee is \$5000	705(b)	7.8, 9.1
8552.8	Experience points – permit sales and transfers	163(d) and (h)	7.8, 9.1
8553	Fish and Game Commission regulates herring	55.02(d), 55.02(e)	7.9, 9.1
8554	Fish and Game Commission may regulate temporary substitution of permittee	163(e)	7.8, 9.1

INOPERATIVE FISH AND GAME CODE SECTION	DESCRIPTION OF STATUTE	SUPERCEDED BY PROPOSED REGULATION SUBSECTION	FISHERY MANAGEMENT PLAN CHAPTER SECTIONS
8556	Fish and Game Commission regulates take by gill net and mesh size.	55.02(e), 163.1(c)	7.8, 9.1
8557	Fish and Game Commission regulates herring take by round net	55.02(b), 163.1(c)	5.4, 7.8, 9.1
8558	Herring Research Account	163(b), (c), and (d), 705(a)	5.3, 7.8, 9.1
8558.1	Herring Stamp and Fee	163(b), (c), and (d), 705(a)	5.3, 7.8, 9.1
8558.2	Difference between Res and Non-res fees to be deposited in Research Account	163(b), (c), and (d), 705(a)	5.3, 7.8, 9.1
8558.3	1/2 of herring roe fees goes to research	163(b), (c), and (d); 705(a)	7.8, 9.1
8559	FGC shall set experience requirements	163(c), (d), and (h); 705(a)	4.7, 7.8, 9.1

The proposed regulations are drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056.

## PROPOSED REGULATORY CHANGES FOR RECREATIONAL HERRING FISHING

- **Amend Section 27.60. Limit.**

### Proposed Changes

In subsection 27.60(b) Pacific herring is included in the list of species with no limits on recreational catch. The proposed regulations in Section 28.62 will set a limit for recreational take of Pacific herring.

### Necessity and Rationale

As part of the Herring FMP, Section 28.62 will be amended to establish a recreational bag limit for Pacific herring. As a result, it is necessary to delete “Pacific herring” from Section 27.60 so that it does not conflict with this change.

- **Amend 28.60. Herring Eggs.**

### Proposed Changes

Currently, the title of Section 28.60 reads “Herring Eggs”. Including the word “Pacific” in the title correctly refers to Pacific Herring (*Clupea pallasii*). Additional text clarifies that the regulation establishes a daily limit for recreational take of Pacific Herring eggs.

### **Necessity and Rationale:**

This is a non-substantive change to indicate the correct species of herring to which the regulation applies, and to clarify that the regulation establishes a daily limit on recreational take of Pacific Herring eggs.

- **Add Section 28.62. Pacific Herring Bag Limit.**

[Note: the original Section 28.62 was repealed in 1988. In order to use this section number in the present rulemaking, the remaining text (the note section and title affirming the repeal) in Title 14 is deleted in its entirety.]

### **Proposed Change**

Add a new bag limit for recreational take of herring. The proposed regulation sets a recreational daily bag limit in the range of zero to ten (0-10) gallons. The FMP recommends a range between 0 and 100 lb. (45-kg) as a daily bag limit. Ten gallons is equivalent to two 5-gallon buckets of herring, each containing approximately 260 fish.

At the October 10, 2019 meeting, the Commission will make a decision regarding the recreational daily bag limit. This regulation is expected to clarify and reduce the illegal commercialization of recreational take.

### **Necessity and Rationale**

There are currently no regulations governing the recreational take of herring. Reports from Law Enforcement Division personnel indicate that an increase in the observed catch by some participants may be attributable to commercialization of the recreational fishery. The Herring FMP therefore proposes that the recreational fishery be managed using a bag limit.

The Department recommends a bag limit of five gallons, which is equivalent to 50 pounds of herring, or approximately 260 fish. Based on input from stakeholders, this is considered to be an adequate amount to provide a fulfilling recreational experience for participants. This limit is designed to be clear and easily enforceable. Fish and Wildlife Officers suggested measuring catch by using a 5-gallon bucket, which is a common method of holding fish and easy to enforce.

## **IMPLEMENTING THE 2019 CALIFORNIA PACIFIC HERRING FISHERY MANAGEMENT PLAN**

- **Add Article 6. California Pacific Herring Fishery Management Plan to Title 14, CCR:**

This regulatory proposal will add Article 6 California Pacific Herring Fishery Management Plan, specifically including the new sections 55.00, 55.01, and 55.02. Chapter 5.5, Title 14, CCR, sets forth the implementing regulations and management strategies of each of the state's adopted FMPs. Each Article generally describes the 1) Purpose and Scope of each FMP, 2) relevant Definitions used in each FMP, and 3) Management Process and Strategy setting forth the process and timing of management framework (e.g., harvest control rules, allocations).

- **Add Section 55.00. Purpose and Scope.**

This section clarifies the purpose of this article consistent with the objectives and goals of the MLMA. It also states that this article together with other applicable state and federal laws and regulations will govern the herring fisheries. Finally, this section includes a list of the Fish and Game Code sections that are being made inoperative by the new Herring FMP. Pursuant to Fish

and Game Code Section 7071(b) regulations adopted by the Commission to implement a FMP may make inoperative any fishery management statute that applies to that fishery.

○ **Add Section 55.01. Definitions.**

This section provides definitions that are specific to this new article. All definitions in this section are based on and are consistent with the definitions found in the Herring FMP. The definitions are also consistent with other provisions of state and federal laws. Definitions are provided to assure uniform understanding of the provisions.

○ **Add Section 55.02. Management Strategy.**

The Management Strategy will conform to the goals, objectives, criteria, procedures and guidelines set forth in Chapter 7 of the Herring FMP. The Herring FMP is “Incorporated by Reference” and has the effect of regulation in Title 14, CCR. The Herring FMP is a large document that would be unduly cumbersome and impractical to print in its entirety in Title 14. Additionally, it is easily accessible from the Department’s website.

The Management Strategy in Chapter 7 consists of procedures to: 1) monitor herring populations and set quotas in the four management areas (San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor), 2) analyze the data collected via the monitoring protocol to estimate SSB in San Francisco Bay, 3) develop quotas based on current SSB using a HCR in San Francisco Bay, 4) track indicators to monitor ecosystem conditions, and 5) establish additional management measures to regulate fishing.

The Herring FMP prescribes a three-tiered management approach to prioritize monitoring efforts and apply appropriate levels of management to fit the fishery activity level. Using this approach, each management area falls into one of three tiers based on the level of fishing occurring and the amount of information available on the herring population in that area. The level of monitoring effort is dictated by the size and value of the fishery. Quotas are determined based on the information available. When very little information is available, quotas are set in a more precautionary manner to minimize the risk to the stock. Conversely, as greater monitoring occurs higher harvest rates may be appropriate if stock size can support higher levels of catch. Currently, Tomales Bay, Humboldt Bay, and Crescent City Harbor are Tier 1 fisheries, and the San Francisco Bay management area is the only herring fishery in California that currently requires a Tier 3 protocol.

- Tier 1 herring management areas are those areas where low, precautionary quotas are available, but no fishing has occurred in the prior season. If or when any herring permits are fished in a Tier 1 management area, that area will be managed under a Tier 2 management strategy during the subsequent season.
- Tier 2 management includes collection of fishery-dependent data and the potential for collection of additional fishery-independent data via the rapid spawn assessment method, as described in Appendix P of the Herring FMP. A minimal level of quota adjustment may occur under Tier 2 management if the Department estimates SSB for that area. A Tier 2 management area moves to Tier 3 when the Department determines that the size of the fishery, in terms of potential catch or the number of participants, warrants more intensive monitoring. This may occur due to increases in the ex-vessel price of herring, leading to increased utilization of existing permits and requests for new permits.

- Tier 3 requires a more comprehensive management protocol to ensure sustainable harvest and would also require additional staff and resources from the Department. Quotas in Tier 3 management areas are set using an HCR, which is a predetermined rule for determining an appropriate catch limit based on the current SSB estimate. Also, the status of additional environmental and ecosystem indicators, as set forth in the FMP (attachment 1; Section 7.7.2) will be examined in order to monitor current ecosystem conditions and adjust quotas as needed to reduce the ecosystem impacts of fishing, and the Department will include information on these indicators in the Pacific Herring Enhanced Status Report.

A Tier 3 management area may also be assigned to a lower tier should effort change or an active fishery move into a non-active mode.

### **Necessity and Rationale**

The MLMA directs the Department to ensure the sustainable use of the state's living marine resources (Fish and Game Code § 7050(b)). The MLMA identifies FMPs as the primary tool for achieving this goal (Fish and Game Code § 7072). Each FMP shall specify criteria for identifying when a fishery is overfished (Fish and Game Code § 7086(a)) and provide measures to prevent, end, or otherwise address overfishing. Should a fishery become overfished, FMPs provide the Department with the necessary steps to rebuild the fishery in a timely manner not to exceed ten years except in cases where the biology of the fish population or other environmental conditions dictate otherwise. Every recreational and commercial marine fishery shall be managed so that the long-term health of the resource is not sacrificed for short-term benefits.

Beyond aligning with the MLMA, a primary goal of the Herring FMP was to develop and test an HCR for the commercial herring fishery in San Francisco Bay – the most productive and actively fished management area. More than 90% of California's herring landings have come from San Francisco Bay, and it is the only bay where fishing has occurred since 2007. Although the herring fishery in San Francisco Bay has been managed using a quota since its inception in 1972, there has never been a formal rule for setting that quota. An HCR, which is a set of pre-agreed rules for determining a management action in response to changes in indicators of stock status with respect to reference points, is a key component of many effective harvest strategies. A clearly defined HCR increases transparency by providing a pre-determined and structured approach for making annual management decisions based on current stock status, as well as ensures that those decisions are in line with long-term management objectives. While herring fishery management in California has been precautionary in recent years, the proposed HCR provides the necessary tool to transition the ad hoc annual quota-setting process to a more stable, less costly, and more efficient management system. The HCR was developed to: 1) allow for transparency in decision-making, 2) account for ecosystem considerations, 3) reflect current precautionary management, and 4) streamline the rule-making process each year.

The herring fishery has been managed by the Commission and the Department through an annual rulemaking process under the Administrative Procedures Act (APA) that includes California Environmental Quality Act (CEQA) compliance. Changing quotas on a yearly basis has required both a rulemaking package to change Title 14 of the CCR, as well as the associated documentation required under CEQA. The work associated with this regulatory process has made it arduous to change the quota each year and constitutes a barrier to a responsive management system. The proposed HCR improves this process by creating a predetermined decision-making framework reflective of management objectives and best available science, and the implementing regulations will establish the authority of the Director of the Department to alter quotas under the framework established in the Herring FMP. Transferring authority to the Department Director from the Commission, with a clear regulatory

framework to limit the Director's discretion and guide decision making, increases efficiency and allows for more adaptive management when critical decisions need to be made. While authority to set the quota is transferred to the Director of the Department, the proposed management strategy maintains the authority of the Commission to establish additional management measures to further regulate fishing in all management areas.

## **AMENDMENTS TO THE REGULATION OF THE PACIFIC HERRING COMMERCIAL FISHERY**

- **Delete the Existing Regulations (including subsections a-j) in Section 163 Title 14, CCR, Harvest of Herring; and replace with Pacific Herring Permits**

### **Proposed Changes**

The current regulations describe the requirements to obtain a permit to commercially take herring in San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor, as well as the allowed methods of take for herring. These regulations will be replaced with new sections (a-i) that clearly describes the classes of permits, application requirements, and renewal and permit transfer procedures.

### **Necessity and Rationale**

The current regulations in Section 163 were initially designed more than 40 years ago, when the modern herring fishery in California began. Since that time, these regulations have been amended more than 30 times in an *ad hoc* fashion as the fishery evolved and issues arose. Now, the Herring FMP will guide management of the fishery, and updated regulations are needed to fully implement that FMP.

- **Section 163. Pacific Herring Permits.**

The new regulations, described in detail by subsection below, will conform the herring commercial fishery to the Herring FMP, anticipated to be adopted by the Commission on October 10, 2019.

- **Add Subsection 163(a) Permit Required.**

### **Proposed Changes**

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

### **Necessity and Rationale**

Under Fish and Game Code Section 8140, the take of fish for commercial purposes is allowed at any time unless otherwise restricted pursuant to state law or regulations. This regulation is needed to make clear a herring permit is required, in order to fully implement the Herring FMP.

- **Add Subsection 163(b) Classes of Permits.**

### **Proposed Changes**

The proposed language in subsection 163(b) eliminates the four permit classes (converted round haul, also known as “CH”; Odd; Even; and December, also known as “DH”, permits) associated with the platoon system in San Francisco Bay, and describes the process for conversion to a permit called the San Francisco Bay Herring Permit. To facilitate this conversion, all existing Odd, Even, and December permits will be automatically converted to Temporary permits on April 1, 2020. Temporary permits allow permittees to fish one full net (65 fathoms) and are transferrable and renewable through March 31, 2025. Permittees who would like to participate in the fishery beyond the 2024-2025 season must obtain a second Temporary permit from a willing seller. If a single permittee holds two Temporary permits they will be automatically and permanently converted to a San Francisco Bay herring permit. Subject to the terms and conditions in the proposed subsections 163 (b), (c) and (h), San Francisco Bay herring permits allow the holder to fish two gill nets at one time (the maximum amount that can be fished from one vessel) and are renewable and transferrable. All existing CH permits will be automatically converted to San Francisco Bay herring permits on April 1, 2020.

The proposed regulations retain the three permit classes in the other herring fishing areas, namely Tomales Bay herring permits, Humboldt Bay herring permits, and Crescent City herring permits. Prior to the adoption of the Herring FMP, HEOK participants were gill net permit holders that elected to fish HEOK instead of gill net. Under the adopted Herring FMP, the HEOK permit will be a separate permit. Existing HEOK participants will be granted a HEOK permit and have one year (until March 31, 2021) to elect to convert it to a Temporary permit. As with permits for herring, HEOK permits are renewable and transferrable subject to the terms and conditions in the proposed subsections 163(c) and (h).

The proposed regulations eliminate partnership herring permits and requires partnerships to designate, by March 15, 2020, a partner to receive the permit.

### **Necessity and Rationale**

The Herring FMP Project Management Consultant Team talked with past and present Department biologists and managers, Law Enforcement staff, and the License and Revenue Branch, as well as industry representatives and conservation groups to understand the need for regulatory changes and the potential impacts of those changes. The changes identified reflect the current nature of both the gill net and HEOK fisheries, standardize and clarify regulatory language, and ensure the regulations are consistent with those used in other fisheries in California.

#### *Gill Net Permits in San Francisco Bay*

During the 1993-1994 season, the Commission made a major change to the permit system which was aimed at reducing the number of vessels in the San Francisco Bay fleet. This change reduced the amount of gear that could be fished by an individual gill net permit from 130 fathoms of net (2 shackles) to 65 fathoms (1 shackle) – effectively limiting each permit to a single net and cutting the amount of gear used in half. This change, coupled with the platoon system, allows each December, Even, and Odd permit holder to fish one full net (65 fathoms) every other week of the season. Given that permit holders are only allowed to hold up to three permits and vessels require four permits on board to fish two full nets during every week of the season, permittees have had to partner up on vessels in order to fish a full complement of gear (two 65 fathom gill nets). To allow this, another regulation change was required to allow two different permittees’ permits to be fished on the same boat simultaneously.

The platoon system and permit restrictions were created to manage a much larger herring fleet than the current one. Restriction on the number of permits date back to the 1980s and 1990s when participation was high, and the platoon system was originally developed to reduce crowding on the fishing grounds while trying to maintain access for the greatest possible number of fishermen. However, since these regulations were established, a decrease in the price of herring has reduced the number of permits held in San Francisco Bay to the lowest number since the fishery began. A survey on the proposed regulatory changes was mailed to all 139 commercial permit holders and 36% of permittees responded. Based on the responses, there is broad support to eliminate the platoon system (73%). The proposed regulations to convert all existing platoon permits to San Francisco Bay herring permits within five years will eliminate the need for permittees to partner up on a single vessel to fish a full complement of gear. The proposed regulation eliminates the outdated and overly complex platoon system. It also reduces the current disproportionate administrative burden associated with the fishery, simplifies enforcement, and provides a path for a capacity reduction (see proposed addition of subsection 163(d), et seq. Applications for New Permits).

The proposed regulations eliminate partnerships to standardize the permitting structure, allowing permits to be issued to individuals, consistent with other permit programs. The proposed language establishes March 15, 2020, as the deadline for partnerships to designate an individual to receive the permit. This deadline would allow the Department two weeks to facilitate the conversion of permits on April 1, 2020.

#### *Permits in Other Areas*

There are no changes to the permit classes for the other areas (Tomales Bay, Humboldt Bay, and Crescent City Harbor).

#### *HEOK Permits*

Originally, HEOK fishermen 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 regulatory changes were therefore designed to maintain parity between the gill net and HEOK sectors. This has led to additional complication in the regulations. The Herring FMP recognizes that the HEOK and gill net fishery sectors are very different, and thus the proposed changes restructure the regulations so that HEOK permits are a separate permit class. Separating the HEOK permit streamlines and clarifies regulations, as many of the proposed changes for the gill net fishery do not apply to the HEOK sector. In developing the proposed permit system for the HEOK sector, the Herring FMP Project Management Consultant Team worked extensively with industry representatives and long-time fishermen to address any concerns while still making the permitting process clear and enforceable

#### ○ **Add Subsection 163(c) Permit Renewal.**

#### **Proposed Changes**

The current regulations specify the qualifying criteria and procedures for the renewal of herring permits across multiple subsections in 163, 163.1, and 164. The proposed language in subsection 163(c) now combines these renewal requirements and procedures for all permit classes. Current regulations specify that permits are to be renewed annually and are only valid for the following season. The proposed language in subsection 163(c)(1) retains that restriction. The proposed regulations also provide non-substantive updates to the language describing that late fees, deadlines, and renewal appeal conditions. Additionally, more specificity on the appeal process is added. The primary changes to the regulations governing permit renewals include:

### *Eligibility Requirements*

Current regulations specify the eligibility requirements for renewing a permit, which include holding a commercial fishing license, being a permittee during the previous herring season, qualifying for an Odd, Even, or DH permit, and having submitted all forms and payment associated with quota overage in the prior year. The proposed regulation removes the language specifying Odd, Even, and December platoons and streamlines the language. The proposed language in 163(c)(2) specifies that applicants may renew a permit provided they meet the following qualifications:

- They hold a current California commercial fishing license;
- Had a valid, unrevoked herring permit in the preceding permit year; and
- Have submitted Release of Property Form FG-MR-674 and payments associated with any quota overages from the prior year. (Note: FG-MR -674 (Rev. 5/13) was deleted with the current text of 163 and is Incorporated by Reference in the proposed text 163(c), without change.)

### *Type of Permit Renewed*

Current regulations specify that upon renewal, current permit holders will be issued a permit for the same area and gear type that they had previously. The proposed language in subsection 163(c)(3) includes a change indicating that applicants will be issued a permit of the same class (as specified in proposed subsection 163(b)) they held in the previous year with the exception of those permittees who hold two Temporary permits. Two Temporary permits will be automatically converted to one San Francisco Bay herring permit.

### *Number of Permits Allowed*

Current regulations in Section 163.1 specify that permit holders in San Francisco Bay may hold no more than one permit in each platoon in San Francisco Bay, and no more than three permits total. The proposed language in subsection 163(c)(4) states that permittees are allowed to hold a maximum of one San Francisco Bay, Tomales Bay, Humboldt Bay, or Crescent City herring permit, and a maximum of one HEOK permit. With the elimination of the platoon structure, the separation of the HEOK permit, and the standardization of the amount of gear allowed under a permit, this reduction in the maximum number of permits permittees are allowed to hold does not result in a loss of fishing rights.

### *Herring Permit Renewals*

Subsection 163(c)(5) retains the requirement that permittees must designate a vessel to fish their permit on when renewing permits, as well as the process for changing vessel designations mid-season. Additional language explains that up to two Temporary permits or one permit of any other class may be assigned to a vessel.

### *HEOK Permit Renewals*

Current regulations specify that the Department must be notified of any vessels assisting with HEOK fishing, and the procedure for notification. The proposed language in subsection 163(c)(6) retains this requirement. As with the current regulations, HEOK permittees may designate up to two other individuals with commercial fishing licenses to act as Authorized Agents for the permittee. The proposed language retains this as well as the description of what an Authorized Agent may do. The proposed changes allow Authorized Agents to serve on up to two permits and identify submission of the Herring-Eggs-on-Kelp Permit Application as the mechanism for replacing an Authorized Agent mid-season.

### *Renewal Deadline*

Proposed subsection 163(c)(7) changes the annual deadline for renewals from the first Friday in October to May 31, 2020. 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 must be received by the Department, or if mailed, postmarked no later than April 30 of each year. It also removes language stating that permits to take herring for commercial purposes will be issued by the Department beginning November 15. In the proposed regulations, permits will be issued as renewal applications are received. The requirement that permits be sent by first class mail is removed.

### *Late Fees and Appeals Process*

Non-substantive changes (same as existing requirement), including reorganization of existing regulations. Additionally, more specificity on the appeal process is added.

## **Necessity and Rationale**

### *Annual Renewal*

Annual renewal requirements from current regulation are maintained in proposed regulatory language, pursuant to Fish and Game Code Section 7858.

### *Eligibility Requirements*

Eligibility requirements from existing regulations are maintained in proposed regulatory language. Platoons are proposed to be eliminated so references to platoons are removed, and the language is streamlined.

### *Type of Permit Renewed*

The proposed references to permit class streamline the language and is consistent with the new language in subsection 163(b) describing the different permit classes. Converting two Temporary permits to one San Francisco Bay herring permit is necessary to facilitate the transition from the existing platoon system to the new permit system in which a single permit allows the holder to fish a full complement of fishing gear without needing to partner with another permittee.

### *Number of Permits Allowed*

Eliminating the platoon system and permit conversion process means herring permittees will no longer need to own multiple permits to fish a full complement of gear. It is also important for the opportunity to fish herring be extended to as many participants as possible while still ensuring the biological and economic sustainability of the fishery. The regulations therefore propose that no single permittee be able to hold more than one permit to take herring, not including Temporary permits. HEOK permittees are allowed to hold up to one permit. Historically there has been much less demand for entry into the HEOK fishery, so there is less concern about limiting capacity in what is already a small, niche fishery.

### *Herring Permit Renewals*

The current regulations require permits to be assigned to a vessel in order to be fished. Under the proposed language, up to two Temporary permits can be assigned to a single vessel to allow permittees to continue to work together to fish a full complement of gear during the five year transition period, while only one permit of the other herring permit classes can be assigned to a vessel. The rest of the proposed language largely streamlines the description of the administrative processes associated with designating or changing a vessel. This section also outlines an appeal process for anyone denied a change in vessel designation. The appeal and supporting information is submitted to the Commission in writing, along with a process to allow

for the Department to respond to the appeal. Providing the information in writing helps clarify what issues are in play and can expedite the appeal process. A similar procedure is used in other Department permitting contexts. The 60-day timeline provides adequate time for a permittee to submit an appeal while still putting a limit on how long after denial an appeal can be submitted. The Department's 60-day response period similarly provides an adequate timeline for response while ensuring the next steps in the appeal process occur quickly.

#### *HEOK Permit Renewals*

The HEOK fishery sector, in which harvested kelp is strung from rafts or lines and positioned to induce herring to spawn on the kelp, is unique. Under current regulations, a very large spawn (more than an individual's quota) could occur on a single set of gear. Given that a permittee could only serve as an Authorized Agent on a single permit, once the individual quota was reached on both permits, the remaining eggs on kelp could not be retained and had to be returned to the water. Allowing HEOK permittees to serve as an Authorized Agent on up to two permits facilitates collaboration between permittees. There are large start-up costs associated with transporting kelp and assembling an open pound structure for fishing, and it may be in the best interest of permittees to work together to utilize the smallest amount of gear to obtain the quota. HEOK is considered to be a low-impact fishery since there is no mortality of adult herring in the fishery, and the total amount of eggs that can be taken is restricted under a quota. Because of this, the Department sees no reasons to limit efficiency in this fishery.

The change to the process to designate a new Authorized Agent will bring the process in line with current practices, the form specified in the current regulations (MRD 164) is no longer used and form DFW 1406 will be used to designate and change agents.

#### *Renewal Deadline*

Adjusting the deadline brings the herring fishery in line with other fisheries in California. Previously, having a separate deadline meant additional work for License and Revenue Branch staff. Additionally, under the previous regulations License and Revenue Branch staff had to withhold permits until November 15 instead of issuing them as they received applications as is done in other fisheries. The change in renewal deadline is consistent with the deadline used in other fisheries in California and will increase permit processing efficiency. For the 2020 license year, the proposed regulation sets the deadline to renew at May 31, 2020, allowing an additional month for applicants to renew herring permits. For the initial year, a later deadline is needed because permits will not be converted until April 1, 2020 and additional public outreach is needed to ensure permit holders are aware of the changes in the permitting system and the renewal requirements.

#### *Late fees and appeals process*

Late fees for commercial fishing entitlements are specified in Fish and Game Code Section 7852.2, which is cross-referenced to aid in ease of finding the fees. Additionally, the appeals process for any denied permit renewals is outlined in specificity. The appeal and supporting information are submitted to the Commission in writing, along with a process to allow for the Department to respond to the appeal. Providing the information in writing helps clarify what issues are in play and expedite the appeal process. The 60-day timeline provides adequate time for a permittee to submit an appeal while still putting a limit on how long after denial an appeal can be submitted. The Department's 60-day response period similarly provides an adequate timeline for response while ensuring the next steps in the appeal process occur quickly. A similar procedure is used in other Department permitting contexts.

- **Add Subsection 163(d) Applications for New Permits.**

## **Proposed Changes**

The current regulations specify the qualifying criteria and procedures for obtaining new herring permits across multiple subsections in 163 and 164. The proposed language in Subsection 163(d) now combines the new permit application requirements and procedures for all permit classes. This subsection also makes minor changes to the way the application process for new permits is described to make them consistent with modern regulatory and administrative procedures. The primary changes to the regulations governing applications for new permits include:

### *Permit Caps*

The current regulations (Subsection 163(c)(1)) specify the following caps for each type of permit:

- No more than three permits shall be issued for Crescent City
- No more than four permits shall be issued for Humboldt Bay
- No new gill net permits shall be issued for the Tomales Bay permit area until the 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 number of permits is 160
- No new "DH" permits shall be issued until the number of permits is less than 80
- No new HEOK permits until the number of permits is less than 10

Proposed subsection 163(d)(1) and (2) specify caps on the total number of each class of permit that will be issued. The permit cap in Tomales Bay will be reduced from 35 to 15, and the permit cap under the new permit system in San Francisco Bay will be 30. The number of HEOK, Humboldt Bay, and Crescent City permits will stay the same.

### *Application Instructions*

Current regulations combined application instructions for prior permittees and new applicants. Proposed subsections 163(d)(3) and (4) retain the process for submitting forms and fees for new applicants but reorganizes the requirements for clarity.

### *New Permit Application Deadline*

The proposed language in subsection 163(d)(4) establishes the deadline for new applications as March 31, annually.

### *Random Selection Process*

Current regulations specified that if there were more applicants than permits available, a random selection process would be held, but they did not specify how or when that selection process would take place. The proposed regulations retain the random selection process, but subsection 163(d)(5) now describes the process by which an applicant would be selected and notified.

## **Necessity and Rationale**

### *Permit Caps*

The new permit caps were developed in recognition that California's natural resources should be managed to maximize their long-term benefit to the state and its residents. The caps are intended to help maximize yield while maintaining stable quotas from year to year, minimize the number of years with a zero quota to maintain markets, and match the capacity of the fleet to the amount of take that the resource can sustain. Permit caps for each management area were set in relation to the precautionary quotas identified through the Herring FMP development process.

The Tomales Bay stock was assessed for many years and there is a good understanding of the average historical SSB. Through consultation with industry, the Department determined that a reduced permit cap of 15 permits would be economically optimal. For San Francisco Bay, Department biologists concluded that with the proposed, unadjusted 3,000-ton quota cap in the HCR framework, a fleet of 30 vessels could catch up to 100 tons of herring on average per vessel. Based on consultations with industry, this level of harvest is anticipated to maintain the economic viability of the fleet.

The new permit caps are long-term goals and will be achieved over time through natural attrition in the four management areas.

### *Application Instructions*

The proposed changes are non-substantive to clarify and streamline the regulatory language.

### *New Permit Application Deadline*

Adjusting the application deadline brings it in line with deadlines used in other fisheries, which makes the administrative process more efficient.

### *Random Selection Process*

Including details on the random selection process provides clarity to applicants regarding how and when the process will be conducted, which matches how similar processes work in recreational hunting regulations.

- **Add Subsection 163(e) Conditions of the Permit.**

## **Proposed Changes**

Currently, only herring permit conditions are addressed in Section 163, and HEOK permit conditions are found within Section 164. The proposed subsection 163(e)(1) combines the existing language in section 163 and 164 to state that Herring and HEOK may be taken under a revocable permit that has designated a fishing vessel. Subsection 163(e) goes on to clarify additional conditions for the Herring and HEOK sectors.

### *Herring*

Current regulations specify that permittees can designate a substitute to fish for them under their permit and outline the application process and conditions associated with substitution. For herring, the proposed subsection 163(e)(2)(A) allows the permittee to have any licensed commercial fisherman serve in his place on a designated vessel and engage in fishing provided the permit is aboard.

## *HEOK*

The current regulations describe the conditions of HEOK fishing in Section 164. These are moved to Section 163 and streamlined. The proposed subsection 163(e)(3) outlines that a copy of the permit must be aboard any vessel assisting in HEOK harvesting, processing, or transportation. Additionally, either the permit holder or an Authorized Agent must also be present.

### **Necessity and Rationale**

Currently the conditions for utilizing each of the permits are found throughout sections 163 and 164. By collating and clarifying the permit conditions they will be easier to locate and comply with.

## *Herring*

Permit substitution is a remnant of the old platoon system that caused permit holders to partner up on a single vessel. The proposed change to designate vessels under permits instead of approving substitutions achieves a shared goal between industry and the Department to eliminate paperwork and administrative burden while still maintaining accountability and flexibility within the fishery. For example, it allows permittees to have someone else fish in case of illness, but the permittee is still accountable for all violations committed under his/her permit, regardless of who is fishing (subsection 163(g) Revocation of Permits).

## *HEOK*

The conditions for fishing under a HEOK permit are retained in the proposed regulatory changes. The only changes are organizational.

- **Add Subsection 163(f) Vessel Identification.**

### **Proposed Changes**

Under the current regulations (Subsection 163(d)), any vessels engaged in herring fishing must display the fishing vessel number. The proposed language retains this requirement and adds additional language specifying the conditions of how numbers must be displayed.

### **Necessity and Rationale**

Additional language specifying the conditions for how vessel numbers must be displayed, which are consistent with current regulation, is necessary to effectively implement the conditions of 163(g), which states that all permit holders are responsible for any violation committed by the vessel to which their permits are assigned. This will allow vessel numbers instead of permit numbers to be used to monitor and track fishing gear.

- **Add Subsection 163(g) Revocation of Permits.**

### **Proposed Changes**

Current regulations specify penalties for violations in Section 163.5. Section 163.5 is proposed to be deleted and new penalties for violations are proposed to be described in subsection 163(g). Subsection 163(g) will now state that the Department has the authority to suspend or revoke a permit for any violation of the regulations of the terms and conditions of the permit. It also stipulates that a permit holder is liable for violations committed by any vessel operators or crew members fishing under the permittee's permit. Further, if a violation is committed by a permit holder who is currently fishing under another herring permit (as a crew member, vessel operator, or Authorized Agent), both permits may have the same enforcement action taken against them. The subsection also outlines the consequences and timelines associated with suspension and

revocation and describes the appeals process.

### **Necessity and Rationale**

The existing language regarding penalties in Section 163.5 is somewhat atypical and does not reflect enforcement and penalty provisions common in other fisheries. This mainly reflects a prior agreement negotiated by permit holders in the late 1980s to maintain the ability to fish despite a violation, as suspension or revocation could be costly due to the high value and short season of herring fishery at that time. The penalty system outlined in Section 163.5 allowed permit holders to pay for violations using a point scheme and failed to effectively hold permit holders accountable. To address this, the proposed changes standardize the enforcement procedures to align with other California fisheries and ensure violators are held to the same standards as participants in other limited entry fisheries. This change is based on the basic premise that access to the fishery is a privilege and those that participate must be accountable to the regulations. Clear language on the conditions for permit suspension or revocation and stipulation that all permit holders are responsible for violations that occur under their permit, will serve to increase compliance in the fishery.

Additionally, the appeals process for any suspended or revoked permit is specified. The appeal, with supporting information, is submitted to the Commission in writing, beginning a process that allows for the Department to respond to the appeal. Providing the information in writing helps clarify what issues are in play and expedite the appeal process. The 60-day timeline provides adequate time for a permittee to submit an appeal while still putting a limit on how long after denial an appeal can be submitted. The Department's 60-day response period similarly provides an adequate timeline for response while ensuring the next steps in the appeal process occur quickly. A similar procedure is used in other Department permitting contexts.

- **Add Subsection 163(h) Permit Transfers.**

### **Proposed Changes**

Current regulations governing transfers found in Section 163.1 are proposed to be deleted, and the conditions and procedures associated with permit transfers are proposed to now be described in subsection 163(h). Changes to the transfer process are:

- Proposed language in subsection 163(h)(2) directs permittees seeking to transfer a permit to submit a form DFW 1322-2 with the permit fee specified in subsection 705(b)(11).
- Proposed language in subsection 163(h)(2)(A) waives this fee for the transfer of any Temporary permit, as defined in proposed subsection 163(b)(1)(A).
- New language in subsection 163(h)(3) states that permits may not be transferred until any pending criminal, civil and/or administrative action has been resolved.
- New language in subsection 163(h)(4) gives a permit holder's estate up to two years after the permit holder's death to transfer the permit.
- Proposed language in subsection 163(h)(5) updates the appeals process to go straight to the Commission.

### **Necessity and Rationale**

Proposed language specifying that permit transfers shall occur only as provided by regulations, including that the Department may deny transfer requests or revoke approved transfers for violation of relevant permit conditions, regulations, or Fish and Game Code, is consistent with current regulations.

Currently, transfer applicants are required to submit a notarized letter to the Department

requesting a transfer and to pay a non-standard fee of \$1,000 (Subsection 163.1(c)). The proposed regulations make the process consistent with other fisheries by referring to a form and fee identified in Section 705. The forms identified in Section 705 can be easily found and updated as necessary. Other new language in subsection 163(h) requiring all pending criminal, civil and/or administrative action to be resolved prior to transferring a permit increases overall accountability. Currently, there is nothing to prevent a permittee facing suspension or revocation from transferring their permit into someone else's name. Proposed language was therefore added at the request of Law Enforcement staff to make the transfer requirements consistent with those in other fisheries and to hold violators accountable. In the past, the Department has seen permits transferred before an active proceeding is resolved, thus allowing a potential violator to benefit monetarily and avoid the penalty of suspension or revocation. This section will allow all proceedings to finish before the Department makes a determination of whether or not someone is eligible for a transfer.

Waiving the transfer fee in instances of Temporary permit transfers eases any potential burden associated with proposed regulations in subsection 163(b)(1) that will automatically convert existing gill net permits to Temporary permits.

The timeline proposed in subsection 163(h)(4) provides the families of deceased permit holders adequate time to decide how to dispense with the permit, while still ensuring that these permits do not end up in an indeterminate state where they are not actively renewed nor transferred.

Under current regulations applicants who have been denied a transfer may appeal the decision within 60 days by submitting a letter to the San Francisco Bay Area Marine Region Office. If the denial of a transfer is sustained, the applicant may then appeal to the Commission. The proposed language in subsection 163(h) updates the appeals process so that permittees can appeal directly to the Commission. The appeal, with supporting information, is submitted to the Commission in writing. Providing the information in writing helps clarify what issues are in play and can expedite the appeal process. The 60-day timeline provides adequate time for a permittee to submit an appeal while still putting a limit on how long after denial an appeal can be submitted. The Department's 60-day response period similarly provides an adequate timeline for response while ensuring the next steps in the appeal process occur quickly. A similar procedure is used in other Department permitting contexts.

- **Add Subsection 163(i) Research.**

### **Proposed Changes**

Current regulations in Section 163 outline the conditions under which permittees may assist the Department in research. The proposed language in subsection 163(i) allows the Department to authorize permittees to take 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. Participants must provide data and/or samples to the Department as outlined in the authorization letter.

### **Necessity and Rationale**

Although the monitoring protocol identified in the Herring FMP is primarily designed to be carried out by Department staff, its efficacy will be greatly increased through collaboration with fishermen. Department resources are limited and must be allocated where there is the greatest need. Collaboration with key partners could be a useful tool to provide information in areas where the Department lacks the resources to monitor herring populations. The proposed change provides an avenue for collaborative research with permittees, while retaining management

integrity and Department control.

- **Delete the Existing Regulations (including subsections a-e) in Section 163.1 Title 14, CCR, Herring Permit Transfers; and replace with Harvest of Pacific Herring**

### **Proposed Changes**

The regulations currently in Section 163.1 Herring Permit Transfers are deleted and replaced with Harvest of Pacific Herring. Herring permit transfers are fully described in the amended provisions of Section 163.

### **Necessity and Rationale**

The current provisions provide definitions and specify a process for transferring permits within the former system of platoons. However, given that the proposed regulations eliminate the platoon system, this language is now obsolete. The proposed provisions carefully lay out the methods for harvest of herring.

- **Section 163. Harvest of Pacific Herring.**
- **Add Subsection 163.1(a) Harvest of Pacific Herring.**

### **Proposed Changes**

Current regulations (subsection 163(f)) describe the areas where herring may be taken for commercial purposes, and which locations are closed to herring fishing within those areas. The proposed subsection 163.1(a) makes no substantive changes to the areas that can be fished. However, these regulations have been reorganized and edited for clarity.

### **Necessity and Rationale**

Spatial restrictions provide protection for herring spawning habitat. For example, Richardson Bay is considered a conservation area and has never been open to commercial gill net herring fishing. Since subtidal spawn deposition surveys began, a majority of observed spawns have occurred in Richardson Bay. This closure therefore protects herring during spawning in one of the most important spawning areas in San Francisco Bay. Other closures, like that in the Central Bay, protect deep-water areas that herring utilize prior to spawning. This regulation also helps Department staff to locate and monitor HEOK fishing activity. However, no substantive changes to these areas are being proposed and the proposed regulations only make organizational and minor editorial changes for clarity.

- **Add Subsection 163.1(b) Fishing Season.**

### **Proposed Changes**

Current regulations (subsection 163(h)) describe four different season dates for San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Harbor. The proposed regulations instead create a standard start date of January 2 at 5:00 p.m. and a standard end date of March 15 at noon.

## **Necessity and Rationale**

Currently, the herring fishery seasons are: January 1 through March 15 in San Francisco Bay; December 26 through February 22 in Tomales Bay; January 2 through March 9 in Humboldt Bay; and January 14 through March 23 in Crescent City. HEOK is open from December 1 through March 31. The Department conducted a review of these existing regulations and sought input from various stakeholder groups, including permit holders, processors, Law Enforcement staff, recreational fishermen, and the conservation community through surveys, meetings, and public comment periods. The feedback led to the proposal of a single start (January 2) and end (March 15) date for all management areas. The proposed change makes enforcement, management, and quota tracking more efficient and simpler across all of the management areas.

- **Add Subsection 163.1(c) Gear Requirements.**

## **Proposed Changes**

Current regulations (subsection 163(f)) describe the type of gear that may be utilized to take herring for commercial purposes, including length of nets and mesh size, the process for measuring gill nets, and marking requirements. Proposed subsections 163.1(c)(1-3) retain these requirements with no changes other than reorganization and editing for clarity.

The current regulations specify that gill nets must be marked with their permit numbers. Proposed subsection 163.1(c)(4) now specifies that rather than being marked with permit numbers, nets must be marked with the number of the fishing vessel they are being fished from.

## **Necessity and Rationale**

When the herring sac roe fishery first began there were no restrictions on gear type. However, since the 1970s a variety of gear restrictions were established including a transition from round haul to gill net, reduction in amount of gear allowed to be fished per permit, and adjustments in gill net mesh size. Because gear restrictions evolved over many years of regulatory changes, the current regulations related to gear are found throughout different sections, making them difficult to locate. The proposed reorganization of the regulatory language streamlines and clarifies gear requirements. No changes to the mesh size allowed are proposed at this time given that the catch has primarily consisted of age 4+ herring with the current gill net mesh size of 2 inches, which is consistent with the Department's goal of ensuring that all herring are able to spawn prior to becoming vulnerable to the fishery.

The proposed change requiring nets to be marked with the number of the fishing vessel they are being fished from rather than being marked with permit numbers is necessary to maintain consistency with the proposal to eliminate the platoon system in San Francisco Bay, as this will cause permit numbers to change as permit holders consolidate Temporary permits into a single permit – the San Francisco Bay Herring permit. The proposed regulations in subsection 163(g) state that all permit holders are responsible for any violation committed by the vessel their permits are assigned to. Given this, there will be no need to track the specific permit numbers associated with each gill net and instead vessel numbers will be used to monitor and track fishing gear.

The proposed change simplifies tracking in the event of a violation. Instead of needing to look up vessel number associated with a permit number, enforcement can see the vessel associated with the violation, intercept it, and issue a citation.

Proposed language requiring lighted marker buoys at each end of any gill net used is consistent with current regulations.

- **Add Subsection 163.1(d) Net Tending.**

**Proposed Changes**

Current regulations (subsection 163(f)(2)(A)) require that vessels fishing for herring in San Francisco Bay cannot be more than three nautical miles from their net at any time. The proposed subsection 163.1(d) reduces this to a distance of one nautical mile.

**Necessity and Rationale**

The change is proposed to ensure that permittees are close enough to their gear to be easily located by Law Enforcement staff should their gear be set in such a way that constitutes a violation of the regulations. Additionally, it will reduce the loss of nets, which can lead to ghost fishing, as well as allow permittees or their vessel operators and crew to respond quickly should a marine mammal or sea bird become entangled in a net.

- **Add Subsection 163.1(e) Temporal Closures.**

**Proposed Changes**

Current regulations (subsection 163(h)(5)) states that fishing for herring in San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night. The proposed subsection 163(e) extends this regulation to all herring permit areas.

**Necessity and Rationale:**

In San Francisco Bay, weekend restrictions are in place for the commercial herring fishery to prevent conflicts between user groups, primarily recreational boaters that frequent the bay beginning on Friday. The proposed change extends the same weekend restriction to Tomales Bay, Humboldt Bay and the Crescent City Harbor where commercial herring fisheries are currently permitted to fish seven days per week. The proposed regulation change reduces conflict between herring fishers and other user groups in these areas, while also reducing weekend enforcement needs. Additionally, the change provides a temporal refuge for spawning runs, and thus allows for some escapement and possibly limiting fishing pressure on some schools of herring.

- **Add Subsection 163.1(f) Noise.**

**Proposed Changes**

Current regulations (subsection 163(f)(2)(H)) require all participants fishing in San Francisco Bay comply with existing noise ordinances when within 500 meters of a shoreline between the hours of 10:00 p.m. and 7:00 a.m. The proposed regulations move that requirement to subsection 163.1(f) but makes no other substantive changes.

**Necessity and Rationale**

Relocation of the regulation is necessary due to the proposed reorganization of the commercial herring regulations.

- **Add Subsection 163.1(g) Marine Mammals.**

**Proposed Changes**

Current regulations (subsection 163(f)(2)(G)) specify that no marine mammal deterrents may be used in San Francisco Bay. The proposed language in 163.1(g) extends this regulation to all management areas where herring are fished.

**Necessity and Rationale**

Herring nets can attract marine mammals, particularly seals and sea lions. To reduce possible negative interactions, marine mammal deterrent devices like explosives have been used in some places. Use of these devices is currently prohibited inside the waters of San Francisco Bay during the herring season. The proposed regulations extend this prohibition to other areas where herring are fished. The goal is limit impacts to marine mammals and to avoid conflicts and/or harm to other user groups. No other changes are recommended beyond relocating the existing language to the proposed subsection 163.1(g).

- **Add Subsection 163.1(h) Retention and Discards.**

**Proposed Changes**

Current regulations (subsection 163(e)(4)) require all fish caught while fishing for herring to be retained and landed except for a suite of sensitive species including sturgeon, halibut, salmon, steelhead and striped bass. These must be returned to the water immediately as specified in subsection 163(e)(6). The proposed subsection 163.1(h) makes no changes to this regulation other than reorganizing it.

**Necessity and Rationale**

This proposed change would simply reorganize and edit the existing regulatory language to improve overall clarity, without substantive changes.

- **Add Subsection 163.1(i) Notification Requirements.**

**Proposed Changes**

Current regulations (subsection 163(e)(2)) require permittees to notify staff at the Santa Rosa Marine Region office if they stop fishing before the season has ended. The proposed subsection 163(i) retains this regulation and requires permittees to notify the Department when they begin fishing for the season. In addition, these regulations indicate that permittees should utilize the contact information on the permit rather than the Santa Rosa Marine Region telephone number.

**Necessity and Rationale**

The existing regulation was outdated, and the proposed change provides current contact information. The change also provides more flexibility by allowing the Department to alter the office locations based on staff availability or other future changes, as well as modernizes communication options by allowing the potential use of a website for contact. Extending the requirement to include notifications at the beginning and cessation of fishing helps the Department track quotas in a smaller fishery where participants may not be fishing every year. It also helps the Department track permittees who may be targeting herring for the whole fish market rather than the sac roe market.

- **Add Subsection 163.1(j) Landing Requirements.**

### **Proposed Changes**

Current regulations specify the landing requirements for the fishery, including a restriction on landing herring between the hours of 10:00 p.m. and 6:00 a.m., as well as on weekends (subsection 163(j)(4)(C)); restrictions on transferring herring to another boat or leaving unlanded herring unattended (subsection 163(e)(4)); a requirement that herring must be delivered to someone with a Herring Buyer's permit (subsection (e)(1)); regulations describing how the Department will manage the fishery as the quota is approached (subsection 163(e)(2)); and a requirement that any herring caught in excess of the quota must be forfeited to the Department (subsection (e)(5)). All of these restrictions are retained in the language proposed in subsection 163.1(j). The primary change to this section is organizational, with all landing requirements grouped into the same subsection for ease of use. In addition, the restriction on landing herring between the hours of 10:00 p.m. and 6:00 a.m., or on weekends, is extended to all herring fishing areas.

### **Necessity and Rationale**

Landing requirements are mainly intended to help the Department track commercial catch relative to the quota and determine when the quota has been reached. A quota-managed fishery such as herring requires staff to be able to track landings in near or real-time to avoid overages. In San Francisco Bay, herring can only be unloaded between 6:00 a.m. and 10 p.m. Monday through Friday. This restriction was put in place to reduce the noise associated with herring offloading pumps near residential areas such as those in Sausalito, but it also helps Department staff with enforcement and quota monitoring by reducing staffing needs in the middle of the night or on weekends. In the past, this has meant staff needed to be at the docks to meet the boats and collect weight tally sheets from buyers as the boats unloaded. Because of the ability of staff to attend to vessels during off-loading in Tomales and San Francisco bays, the fisheries in these areas were able to achieve very precise quota attainments. The proposed change extends the restriction used in San Francisco Bay that limits the times herring can be unloaded to all the management areas. This change will help Department staff more accurately track the quota across all areas, as well as reduce enforcement needs at night. Proposed regulations describing Department estimation of catch rate, announcement of temporary closure, allotment of remaining quota among permittees, and forfeit of any fish landed in excess of established quota is consistent with current regulations. Grouping herring landing requirements into the same subsection improves the overall clarity of the regulations.

- **Delete the Existing Regulations (including subsections a-f) in Section 163.5 Title 14, CCR; Penalties in Lieu of Suspension or Revocation - Herring Permittees; and replace with Herring Buyers Permit.**

### **Proposed Changes**

Delete current Section 163.5 and instead rely on the proposed regulatory language, subsection 163(g) that specifies the conditions under which permits can be suspended or revoked, and who is accountable for various violations, and the procedure for appealing a suspension or revocation. Subsection (a) of proposed Section 163.5 will instead describe the regulations associated with the Herring Buyer's permit.

### **Necessity and Rationale**

Current regulations in Section 163.5 describe a system of fines associated with various violations in the herring fishery in lieu of suspension and revocation of the permit. This system is no longer relevant to the fishery and the associated regulations will be deleted. The proposed

change to delete this section and instead rely on the proposed subsection 163(g). As discussed above, this change standardizes the enforcement procedures in the Herring fishery to be consistent with other fisheries and makes certain that violators in the fishery are held to the same standard as in any other limited entry fishery in California.

- **Section 163.5. Herring Buyer's Permit**
- **Add 163.5(a) Pacific Herring Buyer's Permit.**

### **Proposed Changes**

The proposed language in subsection 163.5(a) is largely reproduced from subsection 163(j) of the current regulations and has been slightly edited for clarity. In addition, because subsection 164(h) on HEOK landing requirements is proposed to be amended to require that all receivers of HEOK have a Herring Buyer's Permit (the form Herring Buyer's Permit Application DFW 327 (Rev. 4/11/19) is found in 705(a)(3)), additional changes to the language have been made to apply to receiving herring and HEOK.

### **Necessity and Rationale**

This change is necessary to align with the proposed redrafting of Section 163 as well as the proposed language in subsection 164(h). Extending the Herring Buyer's permit to the HEOK sector is necessary to assist the Department in tracking the catch and determining when the quota has been reached in a timely manner.

- **Delete the Existing Regulations (including subsections a-n) in Section 164 Title 14, CCR; Harvesting of Herring Eggs; and replace with Harvest of Herring Eggs on Kelp.**

### **Proposed Changes**

Current regulations in Section 164 describe the requirements for obtaining a permit to take HEOK in San Francisco Bay. Requirements include holding a current gill net permit pursuant to the regulations in Section 163 and electing to designate that permit for use in the HEOK fishery. This section also specifies the allowed methods of take as well as landing and processing requirements. The proposed changes, which are described in detail in the following sections, include the following changes:

- Bring HEOK fees in line with those paid by the gill net sector
- Streamline notification requirements
- Clarify vessel identification requirements
- Clarify cork line identification requirements
- Remove weekend harvest restrictions for the HEOK sector
- Require that anyone receiving HEOK require a Herring Buyer's permit to assist the Department in tracking quotas.

Some sections are proposed to be deleted without replacement. These deletions include:

- Subsection 164(g)(2): language related to royalty fee
- Subsection 164(g)(3): language related to Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (DFW 143 HR (REV. 06/04/15)
- Subsection 164(i): language related to the performance deposit
- Subsection 164(j): language related to raft size specifications prior to 1995
- Subsection 164(k)(4): language related to weekend off loading if Department is reimbursed

- Subsection 164(j)(2): language on the test fishery

All other changes are non-substantive and only seek to improve the organization and clarity of the regulations.

### **Necessity and Rationale**

In the late 1980s when the HEOK fishery began and limited entry permits were first being issued, gill net permittees were given priority over new entrants provided they forfeited their right to fish in the gill net fishery. This was done to remove fishing effort from the gill net fishery, which at the time was at an all-time high. Because of this, anyone fishing for HEOK was subject to current regulations in both sections 163 and 164. Since the beginning of the HEOK fishery, regulations have been amended more than 30 times in an ad-hoc fashion as the fishery evolved and issues arose. The proposed Herring FMP provides an opportunity to streamline and modernize the regulatory language to make it consistent with the administrative and enforcement procedures that are currently used by the Department.

Proposed deletion of the regulatory language (subsection 164(g)(2) and 164(i)) will align the fees of the HEOK fishery with those paid in the gill net fishery. Current fees reflect a previous effort by HEOK participants to discourage new participants from joining the fishery as few new entrants had the resources to put up the 50% performance deposit required prior to the start of the season. Current regulations also state that HEOK permit holders must pay a royalty of \$500 per ton of HEOK taken and the landing fee. This is significantly more than the landing fee (\$5.40/ton) paid by the gill net fleet. By deleting this language, the proposed regulations will eliminate the need for HEOK participants to pay additional fees beyond the standard landing fee.

Current regulations (subsection 164(j)) specify that rafts used in the HEOK fishery prior to the 1995-1996 season (when the current raft size restriction was created) are exempt from the size specifications. None of these rafts are currently used in the fishery and this language is now obsolete.

Current regulations (subsection 164(k)(4)) also state that HEOK may be harvested on Saturdays and Sundays at any time if the permittee reimburses the Department for the cost of operations. However, the Department has no mechanism to process reimbursements and therefore these regulations were never operable. The proposed regulations would therefore delete this language. HEOK permittees will now be allowed to harvest at any time (assuming the notification requirements in proposed subsection 164(e) have been met) but can only land herring eggs between 6:00 a.m. and 10:00 p.m. during the week.

Lastly, current regulations (subsection 164(j)(2)) specify the conditions under which a test fishery for HEOK may occur. These regulations were originally developed to allow fishermen to determine where and when a spawning event may occur. After consultation with industry representatives it is proposed that this regulation be deleted, as the fleet does not use them because they are not an effective way to predict spawns. A more effective way would include taking small test samples of herring, which could be allowed under the proposed language in 163(i). Per the proposed regulation, this test fishery could be structured to also assist the Department with data collection.

- **Section 164. Harvest of Herring Eggs on Kelp.**
- **Add Subsection 164(a) Definitions.**

### **Proposed Changes**

The current regulations (subsection 164(e)) specify definitions related to the allowed method of take for the HEOK fishery. Proposed subsection 164(a) would retain these definitions but reorganize them and add additional definitions for further clarification of proposed regulations in this section, in such a manner as is consistent with current regulations.

### **Necessity and Rationale**

The proposed reorganization only clarifies and streamlines the existing regulations.

- **Add Subsection 164(b) Area Restrictions.**

### **Proposed Changes**

Current regulations in Section 164 describe the areas where HEOK may be taken for commercial purposes, and which locations are closed to herring fishing within those areas. The proposed subsection 164(b) makes no changes to the areas that can be fished. However, these regulations have been reorganized and edited for clarity.

### **Necessity and Rationale**

The proposed reorganization clarifies and streamlines the existing regulations.

- **Add Subsection 164(c) Fishing Season.**

### **Proposed Changes**

The current regulations state that the HEOK fishing season goes from December 1 to March 31 (subsection 164(b)). The proposed subsection 164(c) retains these dates.

### **Necessity and Rationale**

There is no change proposed beyond reorganization.

- **Add Subsection 164(d) Gear Requirements.**

### **Proposed Changes**

Current regulations (Subsection 164(j)) describe the type of gear that may be utilized to take HEOK for commercial purposes, including size of rafts and length of cork lines. The current regulations also describe the marking requirements for gear, as well as restrictions on the amount of gear each permittee may use. The proposed language does not change the amount of gear each permittee can use, but Subsection 164(d)(1) re-words these requirements for clarity.

Additionally, proposed Subsection 164(d) retains the language specifying the maximum dimensions and marking requirements for rafts, but eliminates language allowing rafts in use prior to 1996, which may be larger than the 2,500 square feet. The proposed change also requires rafts to display the fishing vessel number the permit has been assigned to rather than the permit number. Proposed Subsection 164(d) specifies the dimensions and marking requirements for cork lines, including a change that requires signage to mark cork lines. Current regulation (Subsection 164(j)(1)) requires that cork lines be marked with a large sign indicating the permit number the line is being fished under, while the proposed language in Subsection

164(d)(1)(F) requires that cork lines should be marked with a contrasting-colored buoy displaying the official number of the vessel from which such net is being fished with Roman alphabet letters and Arabic numerals at least 2 inches high.

### **Necessity and Rationale**

There are no longer any rafts used that date back to 1996 or earlier, and thus the regulatory language associated with restriction on such rafts is no longer necessary.

As in the gill net fleet, it is proposed that gear will no longer be required to be marked with permits numbers. Instead, gear will be marked with the fishing vessel number of the boat the permit has been assigned to. Because multiple permits can be assigned to the same raft, this change requiring a single fishing vessel number to be displayed is simpler and easier to comply with. The proposed change also simplifies tracking in the event of a violation. Instead of needing to look up vessel number associated with a permit number, Law Enforcement staff can see the vessel associated with the violation, intercept it, and issue a citation.

Current regulations require that cork lines be marked with a large sign that is 14-inch high with 2-inch wide letters, which is cumbersome. The proposed regulations would require the ends of cork lines to instead be marked with a buoy which will make laying out lines and hanging kelp easier. The proposed marking requirements were recommended by Law Enforcement staff and are consistent with how herring gill nets are marked. Under this change it will still be possible for enforcement to identify the location of cork lines and identify what vessel and permit the line is associated with. Lastly, the proposed reorganization simply streamlines and clarifies the language associated with gear requirements, including marking and lighting.

- **Add Subsection 164(e) Notification Requirements.**

### **Proposed Changes**

Current regulations state that HEOK permittees must notify the Department at four different times during the fishing process, and again if anything changes. These are summarized below:

- Within a four-hour period prior to hanging kelp (Subsection 164(i)7)
- At least 12 hours prior to harvesting on a weekday (Subsection 164(k)2)
- During normal business hours (8am to 5pm) prior to harvesting on a weekend (Subsection 164(k)4)
- At 12 hours prior to removing bins or totes from processing facility (Subsection 164(k)9)

The proposed Subsection 164(e) reorganizes the notification requirements into one area of the regulations and standardizes the timeframe among activities requiring notification. The proposed notification process includes:

- A single point of contact that will be specified on the HEOK permit
- Notification is required within 12 hours of the following activities:
  - 1) The suspension of kelp on a raft and/or lines
  - 2) Harvest of HEOK
  - 3) Landing of HEOK
- Elimination of a separate requirement for notification of weekend harvest
- Requirement for permittees to supply the following information:
  - 1) Vessel number
  - 2) Departure point of vessel
  - 3) Location of each raft/line

- 4) Estimated suspension/landing/harvest time
- 5) Point of landing
- 6) A contact number where the permittee or their Authorized Agent can be reached
- Requirement to re-notify the Department if any of the preceding change

**Necessity and Rationale**

The proposed changes related to providing contact and notification information on the permit allow the Department to alter the notification process without having to change regulations. The change standardizes the notification requirements and timeframe. It also ensures that regulations related to notification requirements are clear, reasonable, and relevant to Law Enforcement’s needs. Lastly, reorganizing the requirements into one area improves access and overall clarity.

- **Add Subsection 164(f) Noise.**

**Proposed Changes**

There are no restrictions on noise that apply to HEOK fishing activities in the current regulations. Proposed Subsection 164(f) extends the same noise restrictions that apply during gill net fishing to HEOK participants.

**Necessity and Rationale**

HEOK fishing also takes place close to shorelines with residential units, and in order to prevent conflict between residents and other user groups, the noise requirements are proposed to be extended to the HEOK fishery as well. This will help maintain consistent regulations between the two sectors.

- **Add Subsection 164(g) Marine Mammals.**

**Proposed Changes**

Currently the regulations in Section 163 specify that no marine mammal deterrent devices may be used in San Francisco Bay during Herring fishing. The proposed regulations retain this restriction and includes it in Section 164 to apply it to the HEOK sector.

**Necessity and Rationale**

Herring spawning on kelp suspended from rafts and lines can attract marine mammals, particularly seals and sea lions. The Department aims to limit any negative interactions between the fishery and marine mammals, and therefore it is proposed to extend the restrictions on the use of marine mammal deterrent devices, such as explosives or “seal bombs”, established for the San Francisco Bay gill net fishery to all management areas and the HEOK fishery. The proposed change also reduces the potential for marine mammal deterrent device usage to impact or interfere with other users in high visibility and high traffic areas.

- **Add Subsection 164(h) Landing Requirements.**

**Proposed Changes**

The current regulations (Subsection 164(k)) outline landing requirements for HEOK. The proposed language in Subsection 164(h) retains this language but makes two substantive changes. The first is a prohibition on landing HEOK on weekends (10:00 p.m. Friday to 6:00 a.m. Monday) in proposed subsection (h)(4). The second is a requirement that anyone receiving HEOK must have a Herring Buyer’s permit. Other changes to this subsection are organizational.

## **Necessity and Rationale**

The proposed landing requirements will improve the Department's ability to track the catch relative to the quota and determine when the quota has been reached. Quota managed fisheries, like the HEOK fishery, requires staff to be able to track landings in near-real time. Due to staffing constraints it has been difficult to track offloading at night and on weekends. Additionally, the Herring Buyer's permit, which requires buyers to report landings to the Department within 24 hours, also assists the Department in tracking catches in a timely manner. This remains necessary because under the transition to electronic landings reporting pursuant to Title 14 Section 197, only the sablefish and groundfish fisheries are required to report landings within 24 hours. All other fisheries are required to report landings within three days, and this could lead to an overage of the quota in the herring fishery.

- **Add Subsection 164(i) Processing Requirements.**

## **Proposed Changes**

Current regulations (Subsections 164(e)(3) and 164(k)(5)) specify the processing requirements for HEOK. Proposed Subsection 164(i) retains these provisions and only makes non-substantive, organizational changes.

## **Necessity and Rationale**

No changes are proposed other than organizational changes for clarity and ease of access.

- **Amend Section 705. Commercial Fishing Applications, Permits, Tags, and Fees.**

## **Proposed Changes**

- Amend subsection (a)(3), adding Herring Buyer's Permit Application DFW 327 and updated fee;
- Amend subsection (a)(4), application form DFW 1406 and fees for Herring Eggs on Kelp (HEOK);
- Delete subsection (a)(5), FG 329 and fee, there will no longer be a Herring Fresh Fish Permit;
- Amend subsection (a)(6), Commercial Herring Permit Worksheet DFW 1377, adding new permit fees by location for commercial herring, and a new Drawing Fee in (a)(6)(E) for applying for new permits in accordance with 163(d).
- Amend subsection (b)(11), application form DFW 1322-2 and a new fee for Permit Transfers in accordance with 163(h).

## **Necessity and Rationale**

The current forms used for the herring fishery have been deleted with the former regulatory text, however, the forms themselves have not undergone significant change. The new forms dated 4/11/19 have an updated form number "DFW" (Department of Fish and Wildlife) and may have small formatting changes.

Because of the adoption of the Herring FMP, and the adoption of the amendments to the herring regulations as described herein, the forms are necessary for application with the new regulations.

- (a)(3) –The form 2019-2020 Herring Buyer's Permit Application DFW 327 (New 04/11/19) is incorporated by reference and provides necessary information to evaluate the request. The fee is updated according to FGC Section 713.
- (a)(4) –The form Herring-Eggs-On-Kelp Permit Application DFW 1406 (New 04/11/19) is

incorporated by reference and provides necessary information to evaluate the request. The fee is updated according to FGC Section 713. (\*Fees: see note below)

- (a)(5) - deleted, in 2013 regulations were changed to eliminate distinctions between whole fish and sac roe fishery sectors, effectively allowing herring to be landed for either purpose, at any time during the roe fishery, therefore the available herring quota can be caught and sold for either roe or fresh fish purposes, eliminating the need for a separate form FG 329 and fee.
- (a)(6) - The form Commercial Herring Permit Worksheet DFW 1377 (New 04/11/19) is incorporated by reference and provides necessary information to evaluate the request. The fee is updated according to FGC Section 713. (\*Fees: see note below)
- Subsection (a)(6)(E) establishes a small processing (Drawing) Fee for participating in a Department drawing for available new permits. The calculation of the proposed fee is provided for in the Economic Impact Analysis of this ISOR.
- (b)(11) - The form Season Request For Changes To Herring Permits: Boat Transfer & Simultaneous Fishing DFW 1322-2 (New 4/11/19) is incorporated by reference and provides necessary information to evaluate the request.
- Subsection (b)(11)(A) deletes the Temporary Substitute fee and adds the Permit Transfer Fee of \$1000. (\*\*Fee: see note below)

\* Note: Under Fish and Game Code Section 710.5(b), it is the legislature's intent for the Department's operation to be funded by the fees collected from the users of wildlife resources. The resident and non-resident fees for the commercial herring fishery are moved from Fish and Game Code Section 8550.5 (made inoperative under the new Section 55, pursuant to FGC 7071(b)) to Section 705. The fees have been and will be subject to annual indexing per FGC Section 713. The fees for herring and HEOK applicants are equal, \$401.50 for residents, and \$1,494.00 for non-residents. Also note that the commercial license and boat registration fees are not subject to this rulemaking and appear on the forms as a convenience to the public.

\*\* Note: The permit transfer fee of \$1000 is moved from the current subsection 163.1(a) (text deleted) to Section 705.

The forms are Incorporated by Reference and attached hereto with the Regulatory Text, per Administrative Procedures Act requirements:

- (1) The Department will demonstrate in the final statement of reasons that it would be cumbersome, unduly expensive, or otherwise impractical to publish the documents in the California Code of Regulations.
- (2) The Department will demonstrate in the final statement of reasons that the documents were made available upon request directly from the Department and were reasonably available to the affected public on the Department website [Wildlife.ca.gov](http://Wildlife.ca.gov).
- (3) The informative digest in the notice of proposed action clearly identifies the documents to be incorporated by title and date of publication or issuance.
- (4) The regulation text states that the documents are incorporated by reference and identifies the document by title and date of publication or issuance.
- (5) The regulation text specifies that the forms are being wholly incorporated by reference.

(b) Goals and Benefits of the Regulation:

Herring support an important and historically significant commercial fishery in California. They are also a critical food source for many predatory fish, marine mammals, and seabirds within the California Current Ecosystem. Their biological and economic importance led the Department to develop the proposed Herring FMP to help ensure the long-term health of the resource. Specifically, the goal of the Herring FMP is to formalize a management strategy that is responsive to environmental and socioeconomic changes and establishes a decision-making process that preserves the sustainability of the fishery while considering the entire ecosystem. To achieve this goal, the Department outlined a number of management objectives for the FMP process, including:

- Overhaul the limited entry permit system to reflect the needs of the modern herring commercial fleet.
- Modernize and streamline existing herring regulations and the annual quota-setting process.
- Develop a HCR for the San Francisco Bay fishery that sustains a commercial fleet, accounts for ecosystem considerations, and reflects current precautionary management.
- Develop regulations for the recreational herring fishery.
- Develop collaborative research protocols and requirements for resuming commercial Herring fishing activities in Tomales Bay, Humboldt Bay, and Crescent City Harbor.
- Encourage collaborative fisheries research to help fill data gaps and integrate the perspectives and expertise of industry members and other stakeholders in the management process.

Implementing the Herring FMP is expected to have wide-ranging social, economic, and ecological benefits. However, to implement the management changes described in the Herring FMP, it is necessary to amend the existing regulations which were drafted decades ago when the fishery was much larger than it is today. When the fishery initially developed, the high value of sac-roe quickly drove up participation levels and increased competition for space in San Francisco Bay. This required intensive management and regulations changed annually as the fishery expanded. Many of these regulations were designed to address socio-economic rather than biological issues. However, price and participation have continued to decline over the past 20 years and many of the regulations intended to manage a much larger fleet are now obsolete and should be deleted. Other regulations are still relevant but need to be updated. A few new regulations need to be created, such as those for the recreational fishery. To that end, the Department has prepared a comprehensive suite of proposed amendments, which are described in this document. These amendments will have the following benefits:

- A more precautionary approach to setting quotas that adjusts the level of risk based on the amount of data collected, while also scaling management effort to the activity level of the fishery.
- Improved transparency in management via a clear, pre-determined HCR process that allows the Department to efficiently set quotas each year.
- Appropriate permit caps within the four management areas that are based on what is sustainable for the Herring stocks and economically optimal for the permit holders.
- Reduced complexity in the permitting system in San Francisco Bay, which was developed for a much larger fleet.

- Separation between the HEOK and gill net permits, so that any future changes deemed necessary for the management of either sector does not trigger a change in the other sector.
- Restored parity in the fees paid between the sectors.
- Standardized enforcement procedures to align with other California fisheries and strengthen accountability within the herring fishery.
- Establishment of uniform season dates for all four management areas, making enforcement, management, and quota tracking easier.
- A mechanism for regulating and estimating the amount of catch in the recreational sector, which currently does not exist.
- More efficient use of Department staff time by transferring quota setting authority from the Commission to the Director of the Department under the management strategy outlined in the Herring FMP.
- Modernized permit application, renewal, and transfer processes that are consistent with current practices in the Department.
- Establishment of a regulatory mechanism that can incentivize collaborative research between the Department and stakeholders.
- Streamlined regulations that standardize fishing and permitting practices across all areas and sectors of the fishery.
- Reorganized regulations that provide language that is clear, easy to follow, and enforceable.

(c) Authority and Reference:

§ 27.60 Authority: Sections 200, 205, 7071 and 8587.1, Fish and Game Code.  
Reference: Sections 205, 7071, 7120, and 8587.1, Fish and Game Code.

§ 28.60 Authority: Sections 200, and 205, Fish and Game Code.  
Reference: Section 205, Fish and Game Code.

§ 28.62 Authority: Sections 200, and 205, Fish and Game Code.  
Reference: Sections 200, and 205, Fish and Game Code.

§55.00, 55.01 and 55.02:  
Authority: Part 1.7 and Article 15, Fish and Game Code.  
Reference: Part 1.7 and Article 15, Fish and Game Code.

§ 163 Authority: Sections 7071, 7078, 8389, and 8550, Fish and Game Code.  
Reference: Sections 7071, 8389, and 8550, Fish and Game Code.

§ 163.1 Authority: Sections 7071, 7078, and 8550, Fish and Game Code.  
Reference: Sections 7071, 7078, and 8550, Fish and Game Code.

§ 163.5 Authority: Sections 7071, 8032.5, and 8389, Fish and Game Code.  
Reference: Sections 7071, 8032, 8032.5, 8033, and 8389, Fish and Game Code.

§ 164 Authority: Sections 7071, 7078, 8389, and 8550, Fish and Game Code.  
Reference: Sections 7071, 8389, and 8550, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None.

(e) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: Draft 2019 California Pacific Herring Fishery Management Plan.

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

### **Herring FMP Steering Committee**

A new model of FMP development was used to create the Herring FMP in which a small group of stakeholders representing various interest groups worked with Department scientists and managers to develop the scope of the Herring FMP and provide guidance along the way. The SC was formed out of an informal discussion group that had been meeting since 2012 to discuss the management needs of the Herring fishery. This group, which included herring fleet leaders, conservation NGO staff, and Department staff, produced a draft process blueprint, timeline and budget for the Herring FMP, identified a Fiscal Agent, and raised funds for outside consultants to manage the Herring FMP development process. In order to develop a management plan that had the support of all SC members, regular meetings were held with the SC to provide updates on progress and receive guidance on how to proceed. Throughout the process the Department retained authority over the final contents of the Herring FMP, and approval for final submission to the Commission.

### **Public Scoping Process**

Once the Herring FMP development process was initiated, a document describing the intended scope of the project was widely distributed to alert stakeholders of the management issues to be addressed. This scoping document was distributed to the public via a number of channels, including by mail to current permit holders, on the Department's Marine Region Management News website, as well as on the Herring Management blog, and via email to the Director's Herring Advisory Committee (DHAC) members and any other interested parties that email addresses were available for. The scoping document also was distributed to 120 federal and 13 state tribes. The results of the scoping process were presented to the Marine Resources Committee (MRC) at a public meeting in March 2017 for guidance and support for the intended scope. The MRC adopted the intended scope, which guided the remainder of the Herring FMP development process.

### **Commercial Permit Holder Meetings and Survey**

Each year the Department meets with the DHAC. During the Herring FMP development process these meetings provided opportunities to provide updates on the progress of Herring FMP to the herring fleet and other interested attendees. While these meetings focused primarily on changes affecting the San Francisco Bay gill net sector, additional one-on-one meetings were also held with representatives of the smaller sectors to ensure that the needs of these sectors were being addressed. The Department also sought feedback from the fleet on potential regulatory changes via a survey that was mailed to all permit holders. Based on the survey results, the Department worked with the Herring FMP Project Management Consultant Team to develop a draft proposal for regulatory changes that had broad support. A meeting for all permit holders was held in January 2018 (coincidental with the herring season to maximize attendance), and the draft regulatory change proposal and management strategy for setting herring quotas were presented to the fleet. At this meeting, permit holders had the opportunity to ask questions and provide comments. The meeting was also broadcasted via webinar to enable remote participation.

### **Commission and MRC Meetings**

The initiation of the development of the Herring FMP was announced at the April 2016 Commission meeting in Santa Rosa, and the Herring FMP Project Management Consultant Team was introduced. Short presentations were provided at subsequent MRC meetings to inform Commissioners about the intended development process and to provide updates. In July 2016 the overall goals and timeline for Herring FMP development was presented, as well as the public notification process, which was ongoing at that time. The results of the public scoping process were shared at the March 2017 MRC meeting as well as the current intended scope of the Herring FMP. To support the development of a management strategy, a presentation providing an overview of the analyses underway was given at the July 2017 MRC meeting. During the March 2018 MRC meeting a more in-depth presentation was given to describe the core pieces of the proposed management strategy, including development of a HCR that accounts for ecosystem needs and a collaborative research protocol. During the July 2018 MRC meeting a presentation was given to describe conducting an external peer review and updates to the HCR framework, collaborative research, regulations and permitting, and timeline. During the March 2019 MRC meeting a presentation was given to provide an update on the commercial herring fishery catch and participation over time, and Herring FMP updates including peer review recommendations and the agreed HCR framework.

The Herring FMP and proposed recreational and commercial regulations were discussed at the following MRC and Commission meetings (2016-2019). At each of these meetings members of the public were given the opportunity to ask questions and/or provide comments.

1. April 13, 2016 Commission meeting
2. July 21, 2016 MRC meeting
3. March 23, 2017 MRC meeting
4. July 21, 2017 MRC meeting
5. March 6, 2018 MRC meeting
6. July 17, 2018 MRC meeting
7. March 20, 2019 MRC meeting

### **Public Meetings and Opportunities for Public Comment**

Throughout the Herring FMP development process, the public has been able to submit questions or comments to Department staff via email or by phone. In addition, a public meeting was held in Sausalito in April 2016 to announce the initiation of the Herring FMP and to allow the public to ask questions. Once a management strategy was developed and agreed upon by the SC, that strategy was presented at a public meeting in Sausalito in January 2018. The meeting was filmed and posted online.

### **Notice of Preparation and Scoping Meeting for CEQA Process**

On August 25, 2018, the Department held a meeting to alert the public they had prepared an Initial Study, detailed project description, and a preliminary analysis of the environmental impacts pursuant to CEQA. The meeting was publicized using the Herring FMP email list, on the Herring Management blog, and on the Department's Marine Region website. The meeting provided an opportunity for people to ask questions and provide feedback on what environmental impacts they were most concerned about. The public was also allowed to submit comments by email or mail from August 17 to September 21, 2018.

## **IV. Description of Reasonable Alternatives to Regulatory Action**

- (a) Alternatives to Regulation Change:

During the development of the Herring FMP a number of alternatives to the individual changes presented in the Herring FMP were considered. The discussion of alternatives in this document will focus primarily on feasible management actions that could be modified to either improve the economics of the participants in the fishery or reduce environmental effects by increasing the HCR. However, these alternatives were considered during the Herring FMP development and were found to be less effective at jointly meeting both environmental and economic goals and objectives for this fishery. Based on the available science as well as feedback from environmental and industry stakeholders and the general public, the Department recommends the management approach detailed in the Herring FMP and the corresponding regulatory changes described in Section III of this document.

#### 1. A recreational bag limit of 100 pounds

In soliciting public comment on the proposed management strategy in the Herring FMP, many recreational participants responded that a 50-pound daily bag limit (about one 5-gallon bucket, or approximately 260 fish) was sufficient to meet their needs. However, there were some recreational participants who felt that this amount of catch was too limiting because there are so few spawns during the year that are accessible by recreational participants. Some participants commented that they share herring with family members and would like to see a higher bag limit of 100 pounds (two 5-gallon buckets, or approximately 400 fish) to facilitate this. While it is true that not all spawning events are accessible to recreational fishermen, those that are vulnerable to recreational take typically experience very intense fishing pressure, with reports of hundreds of fishermen lined up shoulder to shoulder on piers and jetties and in the intertidal zone, fishing with hook and line or cast nets. Thus, the recreational fishing pressure on some spawning events may be significant. It is the Department's goal to protect the sustainability of the resource while maintaining a satisfying recreational experience and based on feedback this can likely be achieved with a bag limit of 50 pounds or 5 gallons.

#### 2. A HCR with a 25,000 ton cut-off for San Francisco Bay

Under this alternative, the HCR for San Francisco Bay would be structured to have a cutoff at 25,000 tons versus the 15,000 tons in the HCR that the SC came to consensus on and recommended. Under this HCR, in years where the SSB was estimated to be below the 25,000 ton cutoff, no fishing would occur and the quota for the coming season would be zero. Above the 25,000 ton cutoff, the harvest rate would ramp up from 5% to 10% until the SSB reaches 40,000 ton. After that point, the quota would be capped at 4,000 tons.

The HCR with a higher cutoff threshold was designed to provide a more conservative approach to managing the fishery and ensure that more herring would be available to predators within the California Current Ecosystem during low biomass years. However, based on analysis of HCR performance using Management Strategy Evaluation (MSE), the higher cutoff resulted in only marginal improvements in the projected SSB in the long term, with considerable decreases in average catch and increases in the probability of zero quota years. One of the key performance metrics considered in the MSE simulations was the probability of being above a critical low biomass threshold (defined as 10% of unfished biomass) in the last 10 years of a 50-year simulation. The recommended HCR with a 15,000 ton cutoff had a 96% probability of the stock size being above this critical threshold, while a 25,000 ton cutoff only increased that probability by 1%. Additionally, the HCR with a 25,000 ton cutoff had only a slightly higher probability of reaching the target biomass than the agreed upon HCR (64% vs 60%). In summary, while the HCR with a 25,000 ton cutoff is designed to provide more forage for predators in years with low biomass, it only minimally improves the long term size of the herring SSB.

The HCR with a 25,000 ton cutoff also had significant negative impacts on economic performance metrics. This HCR had an average catch that was 30% lower than the recommended HCR and the highest variability in catch of any HCR analyzed, and was projected to cause fishery closures 38% of the time. As a result, the relatively modest gains in terms of meeting the stock size objectives were deemed to come at too high of an economic cost by the SC, and the consensus was that the recommended HCR should be used to set quotas.

### 3. Alternative fishing gear.

This alternative would allow additional fishing gear to be permitted for the commercial sector besides gill net gear with the prescribed mesh size. Round haul gear, which is a type of purse seine, was previously used in the fishery until 1994, when the Commission adopted regulations stating that all round haul permittees had five years to convert their permit to a gill net permit. At the time, the rationale behind this change was that round haul gear caught smaller, younger, lower value fish, and it was suspected that seiners increased mortality in the fishery by catching and releasing herring during roe percentage testing (attachment 1; Appendix K for a full history of the round haul conversion process). Seine nets are also more efficient than the gill net gear and can take considerably more fish in a shorter time period. This can mean that herring schools that spawn early in the season make up a disproportionate amount of the catch each year, and thus may contribute less spawning each year.

During the public scoping and public comment periods of the Herring FMP, the Herring FMP Project Management Consultant Team received a few requests to consider allowing the use of alternative gear types to take herring. In addition to one comment asking the Department to re-allow purse seine gear, there were other requests to consider other types of gear with smaller mesh than the currently used gill nets, including lampara gear and cast nets. The Department and the SC considered the pros and cons of these various options. It was decided that a return to round haul gear would not be considered due to the concerns listed above. However, lampara and cast net gear types were discussed because stakeholders have expressed an interest in facilitating a fresh fish fishery for a local market, and feel these gears would allow for smaller catches of higher quality fish necessary to fulfill fresh fish market orders, which could evolve into a lucrative market for herring.

However, any consideration of new gear types needs to examine the potential impact of smaller sized mesh on the health of the resource. One of the management objectives outlined in the Herring FMP is that all herring are able to spawn at least once prior to becoming vulnerable to the fishery. Herring mature between their second and third year, and the current restrictions on gill net mesh sizes have resulted in the consistent take of herring that are primarily four years of age and older (attachment 1; Section 7.8.3 of the Herring FMP). Any allowance of new gear types would need to carefully consider the age of herring targeted by that gear and whether it is compatible with the management objectives for this fishery. It is important to note that it is possible to take herring of a quality compatible with the fresh fish market by using the currently approved gill net gear with different handling practices.

#### (b) No Change Alternative:

Under the “No Change” alternative, the Herring FMP implementing regulations and proposed commercial and recreational regulatory changes would not be adopted. Instead, the fishery would continue to be managed without a comprehensive management plan under current regulations. This alternative does nothing to promote a comprehensive management plan for the

herring fisheries and does not bring herring management into conformance with the MLMA through adoption of implementing regulations as directed by the Legislature. While this alternative is not expected to result in immediate adverse impacts to the herring resource and fisheries, due to the generally conservative nature of current regulations (e.g. quotas, gear restrictions, temporal and spatial restrictions, etc.), it would forego the greater opportunity for sustainable management under a comprehensive FMP as required by the MLMA. The proposed commercial and recreational changes will clarify and improve enforcement of existing regulations and provide for a more orderly fishery.

(c) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

Most commercial herring industry participants are small businesses (as defined under California Government Code Section 11342.610). In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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. Individuals and businesses will not incur any increase in compliance costs. The decrease in the fleet size may result in more profitable catch per unit effort for individuals. However, harvest volume and fishing intensity will continue to be highly influenced by market prices and many other factors unrelated to Commission regulations.

(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 proposed action is not anticipated to impact the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California because the proposed regulations will not impose new compliance costs or adversely impact fishing activity in the state.

The proposed action is not anticipated to benefit the health and welfare of California

residents or worker safety, but benefits to the State's environment are anticipated through the improved management of Herring resources.

(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

Herring support an important and historically significant commercial fishery in California. They are also a critical food source for many predatory fish, marine mammals, and seabirds. Since the late 1990s, the number of active herring fishermen and the harvest volumes have declined substantially largely driven by declines in market demand and resource abundance. The goal of the Herring FMP is to formalize a management strategy that is responsive to environmental and socioeconomic changes and establishes a decision-making process that preserves the sustainability of the fishery while considering the entire ecosystem. The proposed regulatory actions are intended to further those goals effectively with the little to no interruption to the herring fishery and associated businesses.

Subsection (a)(6)(E) establishes a small Processing (Drawing) Fee for participating in a Department drawing for available new permits. The calculation of the proposed fee is shown below.

<b>Item Fee Calculation &amp; Cost Recovery Sheet for</b>			
<b>Herring Permit Drawing Application</b>			
Number of expected items sold per year:	122		
<b>Start up Costs</b>			
Cost Description	Hours	Rate	Total
<b>ALDS IT support: Item setup/ configuration /reporting</b>			
Information Technology Specialist I	4	\$ 68.00	\$ 272.00
Program review or Item Setup and configuration (AGPA)	4	\$ 52.32	\$ 209.28
<b>Total Startup Costs</b>			<b>\$ 481.28</b>
<b>Amortized over 5 years:</b>			<b>\$ 96.26</b>
<b>Ongoing Costs</b>			
Cost Description	Hours	Rate	Total
<b>ALDS IT support: Item Review</b>			
Information Technology Specialist I	1	\$ 68.00	\$ 68.00
Program Staff Item review (AGPA)	2	\$ 50.96	\$ 101.92
<b>Ongoing Costs Total</b>			<b>\$ 169.92</b>
<b>Amortized startup costs (from Above)</b>			<b>\$ 96.26</b>
<b>Overhead</b>	24%		<b>\$ 64.73</b>
<b>Item Total Annual Startup and Ongoing Costs</b>			<b>\$ 330.91</b>
<b>Item Startup and ongoing cost per transaction</b>			<b>\$ 2.71</b>
<b>Item Fee Calculation</b>			
Item Startup and ongoing cost per transaction			\$ 2.71
ALDS System costs Per transaction			\$ 0.78
LRB Operations costs Per transaction			\$ 0.89
<b>Item Fee</b>			<b>\$ 4.38</b>
<b>Item Fee (rounded to nearest .25) per FGC Section 713</b>			<b>\$ 4.50</b>
<b>License Buyer Surcharge</b>	3%		<b>\$ 0.14</b>
<b>Total for Customer:</b>			<b>\$ 4.64</b>

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:  
None. Business activity is spurred more by herring and herring roe prices that are set on the international market and not directly impacted by California regulations and quotas.
- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:  
None. Business activity is spurred more by herring and herring roe prices that are set on the international market and not directly impacted by California regulations and quotas.
- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:  
None. Business activity is spurred more by herring and herring roe prices that are set on the international market and not directly impacted by California regulations and quotas.
- (d) Benefits of the Regulation to the Health and Welfare of California Residents: None.
- (e) Benefits of the Regulation to Worker Safety: None.

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

The proposed regulatory action is expected to benefit the environment by supporting a more sustainable herring fishery that will benefit individuals, businesses, and other species dependent upon healthy herring resources.

(g) Other Benefits of the Regulation:

The proposed changes to the regulations support the Marine Life Management Act (MLMA) [MLMA, Statutes 1999 Chapter 483], which declares that "conservation and management programs prevent overfishing, rebuild depressed stocks, ensure conservation, facilitate long term protection and, where feasible, restore marine fishery habitats".

## Informative Digest/Policy Statement Overview

The purpose of these proposed amendments to regulations is the implementation of the *California Pacific Herring Fishery Management Plan* (Herring FMP). This Fishery Management Plan (FMP) has been produced pursuant to the Marine Life Management Act (MLMA). The amendments are further necessary to improve management of the existing commercial and recreational Pacific Herring fisheries and to support the orderly use of this natural resource.

Regulations pertaining to California's herring fisheries are currently in multiple sections of Title 14 of the California Code of Regulations (CCR). Section 163 regulates the commercial harvest of herring. Section 163.1 regulates the transfer of herring permits. Section 163.5 stipulates penalties and Section 164 regulates the harvesting of herring eggs. The recreational fishery is not regulated.

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 (Fish and Game Code (FGC) Section 7050(b)). To achieve this goal, the MLMA of 1999 (FGC sections 7050-7090) contemplates the use of FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078) to guide fishery management. FGC subsection 7071(b) also provides authority for the Commission to adopt regulations that implement an FMP or plan amendment.

In accordance with these provisions, the Department has developed a Draft Herring FMP to ensure the long-term sustainability of the resource and the fisheries that rely on it. The Herring FMP includes a proposed overhaul of the limited entry permit system, a Harvest Control Rule (HCR) for the San Francisco Bay fishery, a tiered management framework for setting quotas in all areas, collaborative research protocols, and a proposed daily bag limit for the recreational fishery. Along with the Herring FMP, the Department has also prepared proposed implementing regulations that create new recreational restrictions and deletes or amends existing commercial requirements.

The proposed regulations are divided into four parts: 1) new recreational fishing regulations, 2) regulations to implement the Herring FMP, 3) amendments and additions to the commercial fishing regulations, and 4) provision of forms and fees. The following is a summary of the proposed changes to Title 14, CCR:

1. Add new recreational herring regulations to Section 28.62, Title 14, CCR, and amend existing regulations in sections 27.60 and 28.60, Title 14, CCR. The proposed regulations will:
  - Establish a bag limit within the range of zero to ten (0-10) gallons, which is approximately 0 to 100 pounds, or 0-520 fish. The Department is recommending a daily bag limit of five (5) gallons.
  - Remove "Pacific Herring" from the list of species with no recreational bag limit.
  - Clarify the species (Pacific Herring) in the existing bag limit on recreational take of herring eggs on kelp.
2. Add Article 6 of Chapter 5.5 of Subdivision 1 of Title 14, CCR; California Pacific Herring Fishery Management Plan, and add new Sections 55.00, 55.01, and 55.02. The proposed new sections will:
  - Describe the purpose and scope of the Herring FMP;
  - Provide relevant definitions used in the Herring FMP;
  - Describe the management process and HCR.

3. Delete and redraft all existing commercial regulatory language and associated subsections in sections 163, 163.1, 163.5, and 164 Title 14, CCR.
  - The new language in Section 163 includes all regulations related to permits (both herring and herring eggs on kelp (HEOK)), including permit transfers and revocation conditions.
    - A continued requirement that herring or HEOK taken in excess of the quota be released to the Department using the Release of Property Form FG-MR 674.
  - The new language in Section 163.1 describes methods of commercial take for herring, and
  - Section 163.5 provides regulations for the Herring Buyer's Permit.
  - Section 164 is amended regarding the landing of HEOK, with a new requirement that anyone receiving HEOK must have a Herring Buyer's Permit.
    - The royalty fee of \$500 per ton of herring eggs on kelp will no longer be required.
    - The Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (DFW 143 HR (REV. 06/04/15)), will be repealed and no longer required.
    - Authorized Agent form MRD 164 is repealed, however, agents may be designated on form 1406 Herring Eggs on Kelp Application.
  
4. Amend Section 705 Commercial Fishing Applications, Permits, Tags, and Fees. Because of the adoption of the Herring FMP, and the adoption of the amendments to the herring fishery regulations as described herein, it is necessary to amend the forms, provide fees to recover reasonable Department costs, and to make the forms consistent with current regulations. The following forms, to be Incorporated by Reference, are attached to the Regulatory Text:
  - DFW 327 (New 4/11/19) 2019-2020 HERRING BUYER'S PERMIT APPLICATION
  - FG-329 Herring Fresh Fish Market Permit is deleted
  - DFW 1406 (New 4/11/19) HERRING-EGGS-ON-KELP PERMIT APPLICATION
  - DFW 1322-2 (New 4/11/19) SEASON REQUEST FOR CHANGES TO HERRING PERMITS: BOAT TRANSFER & SIMULTANEOUS FISHING
  - DFW 1377 (New 4/11/19) COMMERCIAL HERRING PERMIT WORKSHEET
    - A new drawing fee of \$4.50 for Applications for New Herring Permits

These proposed regulations were drafted to achieve the sustainability and social policy objectives enumerated in FGC sections 7050, 7055, and 7056. The amended sections would not conflict with any existing Title 14 regulations. In accordance with FGC Section 7071(b), the implementing regulations of this Herring FMP will render the following sections of the FGC inoperative once they are adopted: FGC sections 8389, 8550, 8550.5, 8552, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8556, 8557, 8558, 8558.1, 8558.2, 8558.3, and 8559.

### Benefit of the 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. To achieve this goal, the MLMA contemplates the use of FMPs developed by the Department and adopted by the Commission to guide fishery management. The Commission may adopt regulations that implement the FMP.

### Consistency with State Regulations

The Commission and Department have conducted a review of the California Code of Regulations and determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the statutory authority to amend regulations pertaining to the herring fishery.

## Proposed Regulatory Language

Subsection (b) of Section 27.60, Title 14, CCR, is amended to read:

### § 27.60. Limit.

. . . [ *No change to subsection (a) ]*

(b) There is no limit on the following species: anchovy, grunion, jacksmelt, topsmelt, Pacific butterfish (pompano), queenfish, sanddabs, skipjack, jack mackerel, Pacific mackerel, Pacific staghorn sculpin, round herring, ~~Pacific herring~~, Pacific sardine, petrale sole and starry flounder.

. . . [ *No change to subsection (c) ]*

Note: Authority cited: Sections 200, ~~202~~, 205, 265, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 205, ~~210, 255, 7071, and 7120~~, and 8587.1, Fish and Game Code.

## Proposed Regulatory Language

Section 28.60, Title 14, CCR, is amended to read:

### **§ 28.60. Pacific Herring Eggs.**

Limit: Twenty-five pounds (including plants) wet weight of Pacific Herring eggs may be taken per day for recreational purposes.

Note: Authority cited: Sections 200, ~~202~~, 205, ~~210~~, ~~219~~, 255, 265 and 275, ~~and 220~~, Fish and Game Code. Reference: Sections ~~200-202~~, ~~203.1~~, ~~205-210~~ and ~~215-222~~, 205, 219, 255, 265 and 270, Fish and Game

## Proposed Regulatory Language

Section 28.62 was repealed in 1988, the remaining text in Title 14 is hereby deleted:

### ~~§ 28.62. Herring. [Repealed]~~

~~Note: Authority cited: Sections 200, 202, 205, 210, 219 and 220, Fish and Game Code. Reference: Sections 200-202, 203.1, 205-210 and 215-222, Fish and Game Code.~~

Section 28.62, Title 14, CCR, is added to read:

### **§ 28.62. Pacific Herring Bag Limit.**

Limit: [ Zero–Ten (0 - 10) ] gallons of Pacific Herring may be taken per day for recreational purposes.

Note: Authority cited: Sections 200, 205, 219, 255, 265 and 275, Fish and Game Code.  
Reference: Sections 200, 205, 219, 255, 265 and 270, Fish and Game Code

## **Proposed Regulatory Language**

Article 6 of Chapter 5.5, Title 14, California Code of Regulations, is added to read:

### **Article 6. California Pacific Herring Fishery Management Plan**

Section 55.00, Title 14, CCR, is added to read:

#### **§ 55.00 Purpose and Scope**

(a) This Article implements the California Pacific Herring Fishery Management Plan (Herring FMP) as adopted and amended by the Fish and Game Commission (commission), consistent with the requirements of Part 1.7, Conservation and Management of Marine Living Resources, commencing with Section 7050 of the Fish and Game Code, as further set forth in the Marine Life Management Act of 1999. These regulations, in combination with other applicable provisions of the Fish and Game Code and Title 14, CCR, govern management and regulation of the herring resources and fisheries.

(b) Regulations implementing the Herring FMP specific to the recreational take of herring are found in sections 28.60 and 28.62; regulations specific to the commercial take of herring are found in sections 163, 163.1, 163.5 and 164.

(c) Pursuant to Fish and Game Code Section 7071(b), Article 15, Sections 8389, 8550, 8550.5, 8552, 8552.2, 8552.3, 8552.4 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8556, 8557, 8558, 8558.1, 8558.2, 8558.3 and 8559, Fish and Game Code, are made inoperative.

Note: Authority cited: 7071 and 7078, Fish and Game Code. Reference: Part 1.7 and Article 15, Fish and Game Code.

## Proposed Regulatory Language

Section 55.01, Title 14, , is added to read:

### **§ 55.01 Definitions**

(a) "Herring" means Pacific Herring, *Clupea pallasii*.

(b) "Herring FMP" means the *California Pacific Herring Fishery Management Plan* as adopted by the Fish and Game Commission on October 10, 2019.

(c) "Herring Management Strategy" means 'Chapter 7 Management Strategy for California Herring' of the Herring FMP, as adopted by the commission.

(d) "Quota" means a specified numerical maximum catch (in weight) for each fishing season and sector, the attainment (or expected attainment) of which may cause closure of the fishery.

(e) "Catch" means the total weight of herring reported on commercial landing receipts in a fishing season.

Note: Authority cited: 7071 and 7078, Fish and Game Code. Reference: 7071, 7075 and 7082, Fish and Game Code.

## Proposed Regulatory Language

Section 55.02, Title 14, CCR, is added to read:

### **§ 55.02 Management Strategy**

(a) The California Pacific Herring Fishery Management Plan adopted by the commission on October 10, 2019, is incorporated by reference herein and has the effect of regulation in Title 14, CCR.

(b) The Herring Management Strategy will conform to the goals, objectives, criteria, procedures, and guidelines of Chapter 7 of the Herring FMP, and other applicable state and federal laws and regulations.

(c) Annual monitoring and assessment of the herring fishery will be conducted as directed by the Herring Management Strategy, Chapter 7 of the Herring FMP.

(d) The director shall have the authority to set the annual quotas for all areas and fishery sectors, including herring and herring eggs on kelp commercial sectors, using the approach identified in the Herring Management Strategy, Chapter 7 of the Herring FMP.

(e) Other conservation and management measures may be developed, considered, and implemented to achieve management plan goals and objectives at the discretion of the commission.

Note: Authority cited: Sections 7071 and 7078, Fish and Game Code. Reference: 7050, 7055, 7056, 7070, 7071 and 7075, Fish and Game Code.

## 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.

## REGULATORY TEXT

Subsections (a) and (b) of Section 705, Title 14, CCR, are **amended** to read:

### § 705. Commercial Fishing Applications, Permits, Tags and Fees.

<i>(a) Application</i>	<i>Permit Fees (US\$)</i>	<i>Processing Fees (US\$)</i>
<i>. . . [ No changes to subsections (a)(1) through (2) ]</i>		
(3) <del>2013-2014</del> <u>2019-2020</u> Herring Buyer's Permit <del>FG 327 (Rev 6/13)</del> <u>Application DFW 327 (New 4/11/19)</u> , incorporated by reference herein.	4,020.75 <u>1,122.00</u>	
(4) <del>2013-2014</del> Herring-Eggs-on-Kelp Permit Application <del>FG 1406 (Rev 6/13)</del> <u>DFW 1406 (New 4/11/19)</u> , incorporated by reference herein.		
<u>(A) Herring-Eggs-On Kelp Permit (Resident)</u>	<u>401.50</u>	
<u>(B) Herring-Eggs-On-Kelp Permit (Non-resident)</u>	<u>1,494.00</u>	
(5) <i>[ subsection reserved ]</i> <del>-2013-2014</del> Herring Fresh Fish Market Permit Application <del>FG 329 (Rev. 7/13)</del> , incorporated by reference herein.	40.75	
(6) <del>2013-2014</del> Commercial Herring Permit Worksheet <del>FG 1377 (Rev. 7/13)</del> <u>DFW 1377 (New 4/11/19)</u> , incorporated by reference herein.		
<u>(A) San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Herring Permit (Resident)</u>	<u>401.50</u>	
<u>(B) San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City Herring Permit (Non-resident)</u>	<u>1,494.00</u>	
<u>(C) Temporary Permit – Renewal Only (Resident)</u>	<u>401.50</u>	
<u>(D) Temporary Permit – Renewal Only (Non-resident)</u>	<u>1,494.00</u>	
<u>(E) Drawing Fee for Applications for New Herring Permits</u>		<u>\$4.50</u>

. . . [ <i>No changes to subsections (a)(7) through (8) ]</i>		
(b) <i>Transfer, Upgrade, or Change of Ownership</i>	<i>Fees (US\$)</i>	
. . . [ <i>No changes to subsections (b)(1) through (10) ]</i>		
(11) 2013-2014 Season Request for Changes to Herring Permits <del>FG 1322-2 (Rev. 6/13)</del> , <u>DFW 1322-2 (New 4/11/19)</u> , incorporated by reference herein.		
(A) <del>Temporary Substitute</del> <u>Permit Transfer</u>	\$ <del>50.00</del>	<u>1,000.00</u>
(B) Boat Transfer	50.00	
(C) Simultaneous Fishing	No fee	

. . . [ *No change to subsection (c) ]*

(d) Pursuant to the provisions of Section 699, Title 14, the department shall annually adjust the fees of all licenses, stamps, permits, tags, or other entitlements required by regulations set forth in this section.

Note: Authority cited: Sections 713 and 1050, Fish and Game Code. Reference: Sections 713 and 1050, Fish and Game Code.

**STAFF SUMMARY FOR JUN 12-13, 2019****26. PACIFIC HERRING REGULATIONS****Today's Item**Information Action 

Consider authorizing publication of notice of intent to adopt new and amend existing regulations that implement the *California Pacific Herring Fishery Management Plan* (Herring FMP).

**Summary of Previous/Future Actions**

- |                                 |                                  |
|---------------------------------|----------------------------------|
| • <b>MRC vetting</b>            | <b>Jul 21, 2016–Mar 20, 2019</b> |
| • <b>Today's notice hearing</b> | <b>Jun 12-13, 2019; Redding</b>  |
| • Discussion hearing            | Oct 9-10, 2019; San Diego        |
| • Adoption hearing              | Dec 11-12, 2019; Sacramento      |

**Background**

A draft Herring FMP is being received by FGC (See Agenda Item 25, this meeting), which initiates the process for consideration and adoption. Regulations that would implement the Herring FMP, once adopted, are proposed for concurrent review and adoption; this includes revisions to current recreational and commercial Pacific herring regulations (sections 27.60, 28.60, 163, 163.1, 163.5, 164 and 705) and proposed new regulatory sections (Section 28.62; and Article 6, sections 55.00, 55.01 and 55.02).

The purposes of the proposed implementing regulations are to:

- implement the Herring FMP, produced pursuant to the Marine Life Management Act;
- improve management of the existing commercial fisheries; and
- support the sustainable and orderly use of this natural resource.

The proposed regulations will cover three areas (see Exhibit 2 for full details):

1. Establish new regulations. Add a new Article 6 in Chapter 5.5 and new sections 55.00, 55.01, and 55 that:
  - describe the purpose and scope of the Herring FMP;
  - provide relevant definitions used in the Herring FMP; and
  - describe management processes and strategy.
2. Amend existing recreational herring fishery regulations.
  - Establish a maximum recreational daily take limit (bag)
    - I. Options are provided for a bag limit within the range of zero to ten (0-10) gallons, according to the Herring FMP.
    - II. FGC will need to select one option.
    - III. DFW's recommendation is five gallons, equivalent to about 260 fish or 50 pounds.

**STAFF SUMMARY FOR JUN 12-13, 2019**

3. Amend existing commercial herring fishery regulations.
  - Revise the current permitting and platoon system.
  - Adopt forms and fees consistent with the new herring regulations.

The Herring FMP fulfills FGC's obligation to comply with the California Environmental Quality Act in considering and adopting an FMP and associated implementing regulations.

**Significant Public Comments (NA)****Recommendation**

**FGC staff:** Authorize publication of notice as recommended by DFW.

**Committee:** MRC recommends that FGC amend the Herring FMP implementing regulations as recommended by DFW.

**DFW:** Authorize publication of notice.

**Exhibits**

1. DFW memo transmitting initial statement of reasons (ISOR), received May 24, 2019
2. Draft ISOR
3. Draft economic and fiscal impact statement (Std. 399)
4. DFW presentation

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission authorizes publication of a notice of its intent to amend Section 27.60, et al., related to California Pacific Herring Fishery Management Plan implementing regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**[SAM Section 6601-6616](#)

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME <b>Fish and Game Commission</b>	CONTACT PERSON <b>Margaret Duncan, Economist</b>	EMAIL ADDRESS <b>@wildlife.ca.gov</b>	TELEPHONE NUMBER <b>916-653-4676</b>
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 <b>AmendSections163...,164,705,26.5,28.5, Add 28.62,55.0..., Title14 CCR, Harvest of Herring and Herring Eggs</b>			NOTICE FILE NUMBER <b>Z</b>

**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |   |
|---|---|
| <input type="checkbox"/> a. Impacts business and/or employees   | <input type="checkbox"/> e. Imposes reporting requirements              |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input checked="" type="checkbox"/> g. Impacts individuals              |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input type="checkbox"/> h. None of the above (Explain below):          |

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.  
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The Fish and Game Commission (FGC) estimates that the economic impact of this regulation (which includes the fiscal impact) is:  
(Agency/Department)

- Below \$10 million  
 Between \$10 and \$25 million  
 Between \$25 and \$50 million  
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 75 approx.

Describe the types of businesses (Include nonprofits): Commercial Herring permit holders (75) & recreational herring anglers (unknown #)

Enter the number or percentage of total businesses impacted that are small businesses: 100%

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: The Pacific Herring (Herring) fishery business stimulus is largely influenced by foreign market demand for Herring and roe.

5. Indicate the geographic extent of impacts:  Statewide  
 Local or regional (List areas): San Francisco, Tomales, Humboldt, Crescent City Bays

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: commercial fishing and fish handling jobs

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?  YES  NO

If YES, explain briefly: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**[SAM Section 6601-6616](#)

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)****B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_
- a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
- b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
- c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_
- d. Describe other economic costs that may occur: No new fees, compliances costs, or reporting requirements.
- 
2. If multiple industries are impacted, enter the share of total costs for each industry: Commercial Fishing 69%, Petroleum 10%, Real Estate 7%, Professional Service 8%, Food/Beverage 2%, Wholesale Trade 4% with multipliers for direct, indirect, and induced impacts.
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs?  YES  NO  
If YES, enter the annual dollar cost per housing unit: \$ \_\_\_\_\_  
Number of units: \_\_\_\_\_
5. Are there comparable Federal regulations?  YES  NO  
Explain the need for State regulation given the existence or absence of Federal regulations: Legislature mandates resource mgt. with FGC authority  
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ N/A

**C. ESTIMATED BENEFITS** *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Benefits will accrue to fishermen, processors, and the State's economy in the form of a healthy environment, and maintaining a sustainable herring population, which is quantified each year.
2. Are the benefits the result of:  specific statutory requirements, or  goals developed by the agency based on broad statutory authority?  
Explain: CA legislature mandates sustainable resource mgt. & provides the FGC authority to implement regulations toward that end.
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: None.  
Managing the herring fishery by establishing quotas, based on best available science, balances environmental and biological safeguards with the potential impacts to ongoing business enterprises.

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**[SAM Section 6601-6616](#)

STD. 399 (REV. 12/2013)

**ECONOMIC IMPACT STATEMENT (CONTINUED)**

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ 550 - 650 K Cost: \$ 0-10 K

Alternative 1: Benefit: \$ 5 K Cost: \$ 10 K

Alternative 2: Benefit: \$ non-monetary Cost: \$ 550 - 650 K

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

The future benefits of resource health are difficult to predict given other biological and environmental factors beyond the Agency's control; such systemic benefits are difficult to monetize.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

 YES NO

Explain: \_\_\_\_\_

\_\_\_\_\_

**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.*

***California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?  YES  NO

***If YES, complete E2. and E3  
If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

*(Attach additional pages for other alternatives)*

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: Total Cost \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

 YES NO

*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: \_\_\_\_\_

The incentive for innovation in products, materials or processes: \_\_\_\_\_

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT**

**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

a. Funding provided in \_\_\_\_\_

Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

b. Funding will be requested in the Governor's Budget Act of \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)  
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ \_\_\_\_\_

*Check reason(s) this regulation is not reimbursable and provide the appropriate information:*

a. Implements the Federal mandate contained in \_\_\_\_\_

b. Implements the court mandate set forth by the \_\_\_\_\_ Court.

Case of: \_\_\_\_\_ vs. \_\_\_\_\_

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_

Date of Election: \_\_\_\_\_

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: \_\_\_\_\_  
\_\_\_\_\_

e. Will be fully financed from the fees, revenue, etc. from: \_\_\_\_\_

Authorized by Section: \_\_\_\_\_ of the \_\_\_\_\_ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

3. Annual Savings. (approximate)

\$ \_\_\_\_\_

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain \_\_\_\_\_  
\_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

**FISCAL IMPACT STATEMENT (CONTINUED)****B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.* 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

*It is anticipated that State agencies will:* a. Absorb these additional costs within their existing budgets and resources. b. Increase the currently authorized budget level for the \_\_\_\_\_ Fiscal Year 2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

 3. No fiscal impact exists. This regulation does not affect any State agency or program. 4. Other. Explain \_\_\_\_\_**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.* 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

 2. Savings in the current State Fiscal Year. (Approximate)

\$ \_\_\_\_\_

 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program. 4. Other. Explain \_\_\_\_\_

FISCAL OFFICER SIGNATURE

Original signature on file 5/3/19

DATE

*The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

AGENCY SECRETARY

Original signature on file 7/3/19

DATE

*Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



**From:** FGC  
**Sent:** Thursday, August 8, 2019 7:29 AM  
**To:** Wetz, Andrew@Wildlife  
**Subject:** FW: Herring FMP

**From:** Kirk Lombard  
**Sent:** Wednesday, July 24, 2019 9:19 PM  
**To:** FGC <FGC@fgc.ca.gov>  
**Subject:** Herring FMP

To whom it may concern,

Hi, Kirk Lombard here. I have no idea who is reading this but I wanted to send my thoughts on the proposed changes to the recreational herring fishery. I consider myself a stakeholder in herring because:

1. I am one of the few local fishmongers who actually sells herring to the public (except for last year when the gill netters didn't fish and the herring buyers never showed up).
2. I have blogged, promoted, made youtube videos and written extensively on herring (see *The Sea Forager's Guide* below) over the years.
3. I am an avid sport harvester of herring and have spent a good deal of time trying to get people to understand how awesome they are as a local, healthy, sustainable seafood resource.

In looking at the wording of the proposed bag limit on herring I'm concerned that in trying to establish limits, (which, by the way, I support), the FGC might go too far. A zero to one bucket limit on herring is, in my estimation, an over reaction. As one who has spent a good deal of time thinking about, writing about, eating, and fishing for herring, I am hoping that the commission will please consider my thoughts on the matter.

1. The sport fishery for herring is almost exclusively (but not entirely) a shore-based fishery. As such, there are only on average 10-12 days per season when herring can be caught by shore based net throwers.

2. When the herring are spawning most people content themselves with a few buckets. The problem is the few bad apples out there who feel compelled to fill up the backs of pick up trucks and multiple garbage cans. It seems counter productive to cut the sport bag limit to a bucket or less because of the greed of a few unsportsmanlike fishers.

3. As much as I support the gill net fishery there are some things that should be taken into account when comparing recreational and commercial. For one thing, the sport harvest of herring directly benefits the local populace. Local people fish for, catch, share and eat herring. As much as I would like it to be otherwise, 99.9 percent of the fish caught commercially are shipped to Japan for roe. Other than the few herring buyers (who are generally not local), and the ever decreasing number of commercial herring fishermen, what local people are really benefitting by this amazing resource? How many Bay Area residents even know that Pacific Herring exist? Comparatively few. Why would they know about herring when the fish are shipped overseas and rarely appear in local seafood markets? The quality of gillnetted (read: choked, beaten, stepped on, not-iced, sucked and crushed) herring is infamously poor. Much as I hate to say it, commercially caught herring are not a marquee seafood item. Throw netted herring by contrast are not pulverized and are carried away immediately for processing--my point here is that the public only has a chance to eat a high quality, nutritious fish if they catch them themselves. And again, typically, for the entire Bay Area (from Point Richmond to San Mateo Bridge there are really only 8-12 days where herring are even reachable per year).

4. There can be no denying that sport herring are mostly caught and enjoyed by people of various Asian ethnicities. Anecdotally, I have noticed that most of the people who seem outraged by what they see as over use of the resource are non-Asians and commercial fishermen. I would hope that the commission would take this into account. And please also take into account the evident importance of this fishery as both a source of nutrition and recreation for the Asian and Asian-American communities in San Francisco.

5. To a non herring fisherman one bucket (38 pounds) seems like a lot. But it really is not. This year I had bad luck and a busy schedule and only got one bucket. Those fish lasted about 3 months. Normally I catch 4 buckets and they last all year. Herring freeze well and can be pickled, fried, grilled, eaten on a stick, filleted, turned into fish stock, etc etc. The roe is also quite excellent (as the Japanese kazunoko fans can attest).

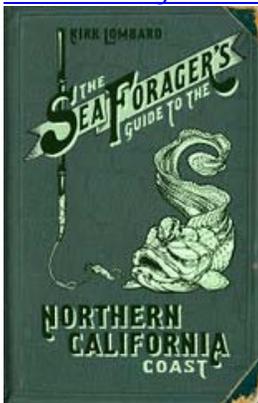
6. Herring are one of the few fish species caught in SF Bay that can be eaten without concern by kids, "women in their child bearing years" and everyone else. The internet abounds with information about the sustainability and positive nutritional benefits of eating small, low on the food chain species. By limiting sport herring to a bucket or less you would be limiting the number of locally available, sustainable, nutritious and culturally significant fish to a fairly large swathe of Bay Area seafood consumers. Especially considering that the few gill netted fish that arrive in the market, are of such low quality.

It is my hope that the conversation of sport limits on herring starts at 2 five gallon buckets. Personally I think it should be 3-4. But two would at least be a reasonable embarkation point. One bucket or less will leave everyone disappointed except the people with a grudge against sport harvest, or a grudge against the people who engage in it.

Thanks for hearing me out.

Kirk Lombard

[The Sea Forager's Guide](#) - August, 2016, Heyday



[Website](#) \* [Coastal Update](#) \* [twitter](#)

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Wednesday, August 7, 2019 6:21 AM  
**To:** FGC  
**Subject:** Herring Limits

Hi,  
I am a Native San Franciscan, and long time fisherman. The Herring run has been a part of my most enjoyed winter time activities for decades, and is one that I share with friends and family. While I am not in the habit of routinely taking multiple trashcans full, it is not outside of reason for me to fill up 5 to 10 5 gallon buckets.

The Herring I take turns into food mostly, with a large portion of it getting pickled or cured. A small amount gets used for bait, and the rest gets BBQ'd broiled or fried. It is a wonderfully tasty fish (anyone who says otherwise has not given it a proper chance) and with the sporadic spawning locations, the short nature of the spawns, and the relatively low number of recreational fishermen at the spawns (every year its more or less the same 30 to 50 people) it seems like the 2 bucket limit is entirely unfounded, and something that has spawned from two desires:  
the first is reasonable, which is an attempt to monitor how much recreational fishermen are taking,  
the second is outrageous, and seems to be that a few vocal individuals have a racist agenda and can not comprehend how anyone could use all the herring they are taking. How many times have I seen my acquaintance Kirk Lumbard of Sea Forager making racist comments about people of color at herring spawns, only to see him turn around and do exactly what he is complaining about!

Sorry for the late input, i will understand if this does not make it to public comment. Thank you for all the hard work you do at CDFW.

p.s. - if this does get read at a public hearing, please keep me anonymous.

--

[REDACTED]

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**From:** b c [REDACTED]  
**Sent:** Wednesday, July 24, 2019 9:54 AM  
**To:** FGC  
**Subject:** Recreational Herring regulations

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

I'm writing to express my displeasure with the proposed 1 bucket limit for the recreational catch of herring. I believe this is too stringent and that a 4 or 5 bucket limit is more reasonable.

Due to the nature of the fishery and the unpredictable spawning patterns it is difficult for recreational fishermen and women to get to an active spawning event. Most are over by the time I even hear about it or has moved on to another location that may or may not be accessible or that I may not have time to follow due to work or family obligations. Some years I've missed out entirely.

Most years, though I get to at least one decent event that allows me to catch enough to stock my freezer for the coming year. I use the herring I take as both table fare and as bait for larger gamefish. One bucket from one event wouldn't last me anywhere close to a year.

Additionally, a 1 bucket limit is overly restrictive on the recreational fisherman in light of the tons that the commercial fleet is allowed to take every year. Our impact is not that great and I've seen no scientific data indicating that the recreational take is impacting the fishery in any meaningful way. In light of this, please reconsider and adopted a limit of no less than 4 buckets per person per day.

Thank you for your consideration.

Bradley S. Cain

Dear Commissioners,

I am writing in regards to the upcoming changes to the recreational herring fishery, specifically the daily bag limit. I am urging you to consider a daily limit of four buckets.

An avid fisherman, I started fishing for herring about eight years ago, and every year I look forward to the annual spawns. When we hear of a spawning event, we drop everything and go to the scene. If we're lucky, the spawn will still be active and we will fill two to four buckets each and call it a day. We take the fish home, freeze them in bags and eat them for months. I had herring for breakfast yesterday. It's a true local and abundant food supply.

Herring fishing is difficult to time correctly. Often we will arrive at a spawn only to find out there was never a spawn at all or that it has already ended and the fish have moved away from shore. It's likely that we will only make it to one big spawning event in a season, and whatever the daily limit is will effectively be an annual limit.

I understand that some fishermen take a lot of herring, hundreds upon hundreds of pounds, sometimes filling trash cans and carting them back to their trucks. I've seen this and I don't care for it. But reducing the daily bag limit to just one bucket per person seems like a harsh overreaction. Granting a four-bucket limit would eliminate this problem while still allowing others to take home a reasonable amount of fish for the year.

This is a fish that people should be eating more of and the only way to get it is by catching it; the commercial herring fleet catches many times more herring than the recreational fishers and most of it does not get consumed by people, an atrocious waste of a resource.

Please consider a daily limit of four buckets.

Thanks very much.

Sincerely,

Andrew Bland

A handwritten signature in black ink, appearing to read 'Andrew Bland', with a stylized, cursive flourish at the end.

[REDACTED]

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**From:** John Vogel [REDACTED]  
**Sent:** Tuesday, July 23, 2019 9:47 AM  
**To:** FGC  
**Subject:** recreational herring limit

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Hello,

I'm writing to express my concern that the proposed limit for recreational herring harvest is too low. This is a unique fishery where many people only have the opportunity to catch fish only once or twice a year. I understand the desire to prevent over harvesting, but I am not aware that there are a significant number of recreational fisherman who are harvesting huge quantities of herring for illicit commercial trade or waste. Thus, I feel that a limit of 5 5 gallon buckets would be reasonable and easily enforced. While I don't think that the vast majority of fisherman would not harvest this amount, it would give those who consume herring the opportunity to harvest enough for their needs.

Sincerely,

John Vogel

## Memorandum

Date: October 1, 2019

Original signed copy on file  
Received on October 1, 2019

To: Melissa Miller-Henson  
Executive Director  
Fish and Game Commission

From: Charlton H. Bonham  
Director

Subject: **Update and recommendations for possible adoption of the proposed rulemaking implementing the Pacific Herring Fishery Management Plan (Agenda item for the October 2019 Fish and Game Commission meeting)**

The Department of Fish and Wildlife (Department) has prepared this memorandum to summarize and provide responses to public comments received on the proposed addition of Section 28.62, Title 14, California Code of Regulations (CCR), and to describe necessary corrections to the proposed amendments to Sections 163.1 and 164, Title 14, CCR.

The Department has summarized and prepared responses to public comments received by the Fish and Game Commission on the proposed rulemaking. Several of these comments pertain to the Pacific Herring recreational bag limit and are addressed by the Department in Attachment 1. As explained in Attachment 1, the Department does not believe these comments warrant changes to the proposed rulemaking for Pacific Herring.

The Department is proposing a “no change” alternative in the Initial Statement of Reasons (ISOR) for subsection 163.1(d) and subsection 164(d)(1). Subsection 163.1(d) is corrected based on feedback received by the Department from commercial industry members and is proposed to retain the former language of the replaced regulations. The correction to 164(d)(1) fixes an inadvertent error in the proposed regulatory text and also reflects no change to the former language of the replaced regulations, as described in the ISOR. The Commission is given the option to select between the noticed alternative or the no change alternative identified below:

No change alternative 1 (Select either noticed alternative or no change alternative):

***[Noticed alternative from 163.1(d)]***

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

***[No change alternative – original text moved from 163(f)(2)(A)]***

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

No change alternative 2 (Select either noticed alternative or no change alternative):

***[Noticed alternative]***

*(1) Not more than two (2) rafts; or two (2) lines; or one (1) raft and one (1) line may be used per permit.*

***[No change alternative – original text moved from 164(j)(1)]***

*(1) Not more than two (2) rafts and/or two (2) lines may be used per permit.*

The Department recommends incorporating these two No Change Alternatives and adopting the proposed rulemaking for implementing the Pacific Herring Fishery Management Plan.

If you have any questions or need additional information regarding this item, please contact Department Environmental Scientist Andrew Weltz, at (707) 576-2896 or [Andrew.Weltz@wildlife.ca.gov](mailto:Andrew.Weltz@wildlife.ca.gov).

Enclosures:  
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ec: Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@wildlife.ca.gov](mailto:Stafford.Lehr@wildlife.ca.gov)

Craig Shuman, D. Env., Regional Manager  
Marine Region  
[Craig.Shuman@wildlife.ca.gov](mailto:Craig.Shuman@wildlife.ca.gov)

David Bess, Chief  
Law Enforcement Division  
[David.Bess@wildlife.ca.gov](mailto:David.Bess@wildlife.ca.gov)

Elizabeth Pope, Acting Marine Advisor  
Fish and Game Commission  
[Elizabeth.Pope@fgc.ca.gov](mailto:Elizabeth.Pope@fgc.ca.gov)

Kirsten Ramey, Env. Program Manager  
Marine Region  
[Kirsten.Ramey@wildlife.ca.gov](mailto:Kirsten.Ramey@wildlife.ca.gov)

Melissa Miller-Henson, Executive Director  
Fish and Game Commission  
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Adam Frimodig, Senior Env. Scientist  
Marine Region  
[Adam.Frimodig@wildlife.ca.gov](mailto:Adam.Frimodig@wildlife.ca.gov)

Andrew Weltz, Environmental Scientist  
Marine Region  
[Andrew.Weltz@wildlife.ca.gov](mailto:Andrew.Weltz@wildlife.ca.gov)

Michelle Selmon, Env. Program Manager  
Regulations Unit  
[Michelle.Selmon@wildlife.ca.gov](mailto:Michelle.Selmon@wildlife.ca.gov)

Mike Randall, Analyst  
Regulations Unit  
[Mike.Randall@wildlife.ca.gov](mailto:Mike.Randall@wildlife.ca.gov)

## Attachment 1

### Responses to Public Comment on the Herring FMP Rulemaking

Responses to comments received during the period of June 13 to September 11, 2019				
Commenter Number	Commenter Name, Organization If Applicable	Draft Herring FMP Section or Proposed Title 14, CCR Section Referenced	Comment Summary	Response
1	<b>Edward Zeng</b> Recreational Participant Email dated 6/18/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>1-a.</b> The Herring FMP proposes a daily limit of 100 lb. For reasons stated in email (missing spawn windows, health of Herring consumption, low gear requirement for recreational Herring take, low overall recreational catches), Mr. Zeng requests that the daily bag limit be raised to a minimum of 300 lbs.	There are not adequate data available to assess the magnitude of recreational Herring catches, so it is unknown if overall recreational Herring catches are low. The proposed daily limit of 100 lb was chosen to allow for a satisfying recreational experience for individuals while ensuring that total Herring harvest remains sustainable.
2	<b>Hua Bai</b> Recreational Participant Email dated 6/18/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>2-a.</b> Although a recreational limit is useful to prevent excess take, it is not practical to require recreational participants to have a scale that can weigh 100 lbs., as this requires purchase of extra equipment. An easier rule could be a big cooler full of Herring. Cooler can be sized so it is around 100lb to 200lb. This limit is easy to implement by all parties.	The proposed 100 lb upper limit of the range presented in the Herring FMP is expressed as equivalent to the volume of two 5-gallon buckets. These buckets are commonly owned pieces of equipment that allow participants and enforcement to assess compliance without having to weigh the Herring.
3	<b>Charlie Zhao</b> Recreational Participant Email dated 6/22/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>3-a.</b> Because recreational take depends on targeting an ongoing spawning event, this type of fishing is typically a once-per-year opportunity. Mr. Zhao typically tries to take an entire year's worth of fish in a single trip (roughly equal to two 27-gal containers from Costco, for one-gallon zip lock bag consumption daily for family all year). Even if people are commercializing recreational catch illegally, it does not affect ability of other recreational fishers to catch what they need. Mr. Zhao believes Herring are abundant, and that the commercial fishery takes much more, and has greater impact on population, than recreational take. There should not be a limit on rec take, and if there must be one, it should be set in volume for ease of measurement in field. Proposes 50 gallons as a reasonable limit if we must have one.	The proposed range of possession limits presented in the Herring FMP specifies both weight and volume of fish for ease of use by both participants and enforcement. This proposed limit is in line with the Department's goal of maintaining a satisfying recreational experience for participants. Recreational fishing limits are not intended to supply participants with a daily food source throughout the year.

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3	<b>Charlie Zhao</b> (Continued)	FMP Section 7.8.7; Title 14, CCR §28.62	<b>3-b.</b> Setting a recreational limit on Herring disproportionately affects minorities because of much higher consumption of Herring among certain minority groups. As health care becomes more and more expensive and drags on the economy, Herring consumption should be encouraged instead of limited.	The Department is responsible for protecting the long-term sustainability of the Herring resource, to the extent possible, and to ensure that all of California's recreational participants can benefit from this resource for many years to come.
4	<b>Alastair Bland</b> Recreational Participant Email dated 7/4/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>4-a.</b> Concerned about proposal to limit recreational participants to two 5-gallon buckets or less per day. Four 5-gallon bucket (~150 lb) would be more reasonable than two buckets. A four-bucket limit would eliminate gross overtake, would remove incentive to illegally sell recreationally caught fish, would allow recreational participants to catch all that's needed for a year (share w/ family and friends) during a single spawn event. The Herring FMP's claim that recreational stakeholders expressed interest in 2-bucket limit misconstrues context of statement at 2018 Public Outreach meeting w/ stakeholders in Sausalito. Mr. Bland finds it personally offensive that commercial participants have called for tight limits on recreational catch, given that commercial fishery takes a far greater amount of Herring and sells for non-consumptive use, than recreational participants, who mostly eat their catch.	The proposed limit allows recreational participants to take up to 100 pounds (approximately 520 fish) per person per day. Families that would like to retain a greater number of fish are able to have more people participate in fishing. All comments at the 2018 Sausalito meeting were recorded in order to accurately capture stakeholder feedback.
4	<b>Alastair Bland</b> Second email dated 7/5/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>4-b.</b> Second comment letter further stressing that the Herring FMP's assertion that feedback from recreational sector informed proposed limit is essentially an overstatement.	Stakeholder feedback is an important part of the Herring FMP development process. All comments at the 2018 Sausalito meeting were recorded in order to accurately capture stakeholder feedback. Stakeholder support for the Department's proposed limit was expressed at this meeting and in follow up correspondence, in addition to some feedback that that the limit should be higher.
5	<b>John Vogel</b> Recreational Participant Email dated 7/23/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>5-a.</b> The proposed limit for recreational Herring harvest is too low. Recreational Herring is a unique fishery with opportunity to catch only once or twice a year. He understands the need to prevent over harvest, but is not aware of a significant number of recreational participants harvesting huge quantities	The proposed upper limit for recreational take would allow participants to take up to 100 pounds (approximately 520 fish) per person. Families that would like to maximize the amount of fish they take legally may choose to have more family members participate in fishing. While the Department

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			for illicit commercialization or waste. Wants a five 5-gallon buckets as a limit.	understands that, due to the pulse nature of spawning events, there may be limited fishing opportunities in a season, this limit is designed to balance providing a satisfying recreational experience with the needs of the resource.
6	<b>Bradley S. Cain</b> Recreational Fisherman Email dated 7/24/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>6-a.</b> Displeased with 1 bucket limit for recreational take of Herring. 4 or 5-bucket limit is more reasonable. Spawning is unpredictable in nature and it is difficult for rec fishers to get to an active spawning event. Sometimes miss spawns entirely. When a decent spawn event can be effectively targeted, currently take enough to stock freezer for entire year's use (consumption and bait). One bucket would not allow this as it wouldn't last a year. Additionally, 1 bucket limit is overly restrictive given volume of commercial catch annually. Rec fishers do not impact fishery, unlike commercial. Please reconsider and adopt a limit of no less than 4 buckets per day.	The proposed limit for the recreational Herring fishery is not designed to supply participants with a year-long supply of either bait or daily food. The goal of this limit is to sustainably manage the resource, which can experience intense recreational fishing pressure during nearshore spawning events, while allowing fishers a satisfying recreational experience. The proposed limit takes into consideration the needs of the Pacific Herring resource as well as that of both the commercial and recreational sectors.
7	<b>Kirk Lombard</b> Recreational Participant, Blogger and Author, Fishmonger Email dated 7/24/2019	FMP Section 7.8.7; Title 14, CCR §28.62	<b>7-a.</b> The proposed recreational limit range goes too far. Supports limits in general. A zero-bucket limit is an overreaction. Makes six points about recreational take of Herring, including limited number of days they are accessible from shore, and that most people only take a few buckets during spawns (problem of over harvest stems from a few bad apples). Mr. Lombard contrasts recreational take with commercial gillnet take (recreationally-caught fish are eaten locally, gillnet catch is exported) emphasizing local benefit of recreational take and poor quality of gillnet-acquired fish for eating. He points out high utilization by Asian Americans and high level of complaint from non-Asian Americans and commercial fishermen. Mr. Lombard suggests that one bucket only seems like a large quantity to individuals who do not fish for Herring, since a single bucket only lasts 3 months, and emphasizes the healthy aspects of eating low-on-the-food chain species caught locally.	While the Department understands that Herring are only available during a few nearshore spawning events, those events can experience intensive recreational pressure, with hundreds of participants targeting Herring. The proposed limit is designed to allow participants a satisfying recreational experience while limiting the impacts of harvest on the schools that spawn in these nearshore areas.

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6	<b>Kirk Lombard</b> (Continued)	FMP Section 7.8.7; Title 14, CCR §28.62	<b>7-b.</b> Prefers for the lower end of recreational Herring limit range be two 5-gallon buckets, if not 3-4.	The 0-lb lower limit to the Herring FMP's recommended range allows for closure of the recreational fishery without an amendment should conditions in the future require such a closure.
8	<b>Russell Johnston</b> Marine Science Institute, UC Santa Barbara Email dated 7/25/2019	FMP General	<b>8-a.</b> General support for adoption pending specific listed changes.	The Department appreciates support for the Herring FMP. It has responded to comments received as appropriate.
8	<b>Russell Johnston</b> (Continued)	FMP Appendices	<b>8-b.</b> Provide all appendices as part of FMP and organize so as to be readily navigated by the public.	Appropriate page numbering has been applied and all appendices are included in in the Final Herring FMP. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
8	<b>Russell Johnston</b> (Continued)	FMP Section 2.13.2.3, Appendix D	<b>8-c.</b> Include Humboldt Bay spawn areas in maps of spawn areas depicted in Chapter 2 and Appendix D.	Habitat maps for management areas where no commercial activity occurs at the time of Herring FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft Herring FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been be included in the Final Herring FMP. Section 2.13.2.3 has been edited to refer the reader to Appendix D for Humboldt Bay spawn areas.
8	<b>Russell Johnston</b> (Continued)	FMP Executive Summary, General	<b>8-d.</b> Present all FMP goals equally, including compliance with forage species policy and incorporation of ecosystem indicators.	The primary management goals outlined in the Herring FMP are those described in the MLMA, which provides the legal framework for fisheries management in California. For this reason, these goals are given primacy in the Herring FMP. However, the Commission's forage species policy also played an important role in the development of the FMP objectives, as described in the Herring FMP.

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<p><b>9</b></p>	<p><b>Nick Sohrakoff</b> Commercial Participant, Director's Herring Advisory Committee President, FMP Steering Committee Member Email dated 7/29/2019</p>	<p>FMP Section 4.7.2</p>	<p><b>9-a.</b> The SFBHRA (San Francisco Bay Herring Research Association) did not file a lawsuit. The lawsuit in referenced was filed by the SFHA (San Francisco Herring Association). Please correct the draft changing SFBHRA to SFHA to reflect the proper entity that filed the lawsuit.</p>	<p>This error has been corrected in the Final Herring FMP.</p>
<p><b>9</b></p>	<p><b>Nick Sohrakoff</b> Oral Comment w/ Anna W. (Commenter 10) at FGC Meeting 8/8/2019</p>	<p>FMP General</p>	<p><b>9-b.</b> General expression of support – DHAC supported FMP 12 years ago, SC was a successful collaborative effort, would like to fund a genetic study with Audubon for stocks in CA and southern Oregon.</p>	<p>The Herring FMP was the result of a great deal of work by many different stakeholders, and the Department hopes to continue future collaborations to benefit the resource.</p>
<p><b>10</b></p>	<p><b>Geoff Shester,</b> Oceana and FMP Steering Committee; <b>Anna Weinstein,</b> Audubon California and FMP Steering Committee; <b>Irene Gutierrez,</b> NRDC; <b>Greg Helms,</b> Ocean Conservancy;</p>	<p>FMP Appendices</p>	<p><b>10-a.</b> Appendix R is currently missing from the FMP due to an error. Based on an agreement by the Steering Committee, this Appendix was intended to describe an increased range of catch limit adjustments resulting from ecosystem considerations that the Department may use as scientific information improves, without an FMP amendment. We request that Appendix R be included in the FMP and that the public be afforded the opportunity to review and provide comments on its contents prior to final adoption of the FMP.</p>	<p>Appendix R was drafted, but omitted from the Draft Herring FMP in error. Appendix R was included in an updated Draft FMP that was made available for public viewing and comment, and is included in the Final Herring FMP. Appendix R contains information on the development of the Harvest Control Rule framework, as well as guidance for amending the decision tree as the field of ecosystem-based fishery management develops. Any increase in the bounds on ecosystem-based quota adjustment beyond those indicated in Chapter 7 (Figure 7-3) and Appendix R (Figure R-3) will require an amendment.</p>

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	<p><b>Andrea Treece,</b> Earthjustice; <b>Paul Shively,</b> Pew Charitable Trusts</p> <p>Letter dated 7/25/2019</p> <p><b>(NGO Letter)</b></p>			
10	<p><b>NGO Letter</b> (Continued)</p>	<p>FMP Section 7.5.3</p>	<p><b>10-b.</b> We request the FMP include clear, objective criteria for determining whether a Tier 2 stock is overfished and clarify what the rebuilding provisions are for overfished Tier 2 stocks. The MLMA requires that FMPs must specify criteria for identifying when a stock is overfished, include measures to end or prevent overfishing, and provide a mechanism for rebuilding in the shortest time period possible (FGC §7086). While the draft FMP identifies criteria for determining whether the San Francisco Bay stock is overfished as well as rebuilding provisions (Section 7.8.1), it does not contain criteria for determining whether any of the stocks outside San Francisco Bay stocks would be considered overfished when they are in Tier 2. It also does not specify how the San Francisco Bay stock would be considered overfished if it is moved to Tier 2 status in the future. The FMP does not provide objective criteria for what constitutes “very poor spawning behavior” or “an SSB too small to support fishing.” For example, this could be remedied by clarifying how “low” or “very poor spawning behavior” is determined in the Rapid Spawn Assessments for Tier 2 stocks and stating in the FMP that this is the criteria for overfished.</p>	<p>Section 7.5.3 has been amended in the Final Herring FMP to include specific criteria for determining when a given management area’s spawning stock biomass is considered overfished or otherwise depressed under Tier 2. If the stocks drop below these respective limits, the quotas will be set to zero to promote stock rebuilding. This brings the management plan into compliance with the MLMA, which states that FMPs must specify overfishing limits and rebuilding plans.</p>
10	<p><b>NGO Letter</b> (Continued)</p>	<p>FMP Appendices</p>	<p><b>10-c.</b> The number and size of the Appendices substantially increase the size of the overall FMP document, which as presented, will complicate navigation of the FMP by the public. While each Appendix provides important information and is referenced in the body of the FMP, we suggest the Appendices be available as separate documents from the main body of the FMP, and that each</p>	<p>Appropriate page numbering has been applied to all appendices in the Final Herring FMP. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.</p>

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			Appendix contain consistent page numbering and formatting to improve navigation of the FMP.	
10	NGO Letter (Continued)	FMP General	<b>10-d.</b> Throughout the document, the term “quota” is used when referring to the annual catch limit. The term quota is problematic because in other contexts “quota” may refer to a minimum quantity or goal, rather than a maximum limit. To maintain consistency and clarity for the public, we request the FMP not use the term “quota” and instead use the term “catch limit.”	The term “quota” is frequently used interchangeably with “catch limit” in fisheries management. In addition, the Marine Life Management Act uses the term “quota” rather than “catch limit” in specifying the types of conservation and management measures that should be described in an FMP (Section 7802(c)). Furthermore, the term quota has been used historically in documents related to management of California’s Pacific Herring fishery. For consistency with these documents, the Final FMP retains use of the word “quota”.
10	NGO Letter (Continued)	FMP Section 2.13.2.2, Appendix D	<b>10-e.</b> In Section 2.13.2.3 (p. 2-26), the Department’s maps of Herring spawning areal extent and most-used spawning areas for Humboldt Bay should be included, in the manner San Francisco Bay’s maps appear in that section. Also, these updated maps should be put into the Habitat section (pg. 319).	Habitat maps for management areas where no commercial activity occurs at the time of FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been included in the Final FMP. Section 2.13.2.3 has been edited to refer the reader to Appendix D for Humboldt Bay spawn areas.
10	NGO Letter (Continued)	FMP Section 7.7.2	<b>10-f.</b> The Executive Summary (p. ii) and Section 7.7.2 state that complying with the Commission’s Forage Species policy is a secondary goal. This prioritization undercuts the Commission’s forage policy and implies that other goals are more important. We request that the FMP present all goals equally, including compliance with the Forage Species policy and incorporating ecosystem considerations into Herring management.	The primary management goals as outlined in the Herring FMP are those described in the MLMA, which is the overarching legal framework for fisheries management in California. For this reason, these goals are given primacy in the Herring FMP. However, the Commission’s forage species policy played an important role in the development of FMP objectives, as described in the Herring FMP.
10	NGO Letter (Continued)	FMP Executive Summary, Section 7.6.3	<b>10-g.</b> The Executive Summary (p. iv) indicates that the multi-indicator predictive model is adopted by the FMP. However, Section 7.6.3 makes clear that the spawn deposition surveys are the default for estimating San Francisco Bay SSB until the predictive model has 3 or more years of successful predictive power. The Executive Summary should be clarified consistent with this description in Section 7.6.3.	The Herring FMP adopts the multi-indicator predictive model as an option for estimating Spawning Stock Biomass in the San Francisco Bay management area. The Final Herring FMP Section 7.6.3 has been edited to clarify the requirements for use of the multi-indicator predictive model. Spawn deposition surveys remain the default method for determining Spawning Stock Biomass, and the Executive Summary has been edited to clarify this.

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10	NGO Letter (Continued)	FMP Section 7.7.1, Figure 7-2; Appendix F	<b>10-h.</b> The FMP should clarify that Figure 7-2 represents the default harvest control rule, which is subject to ecosystem adjustments as indicated by the decision tree. Currently, Appendix F and Figure 7-2 are misleading because they do not reference potential adjustments to catch limits based on ecosystem considerations, therefore implying that these represent the final catch limit.	Chapter 7 has been modified so that the caption for Figure 7-2 clarifies that the black line indicates the unadjusted quota for the season. Section 7.7 describes how the quota may be adjusted for ecosystem considerations.
10	NGO Letter (Continued)	FMP Executive Summary	<b>10-i.</b> Given California's leading role in addressing the climate crisis, the Executive Summary should emphasize and highlight the several areas where climate change is addressed in the FMP, specifically the use of climate indicators in the predictive model, the use of management strategy evaluation to ensure the harvest control rule is robust to future climate change scenarios, and the use of climate indicators as ecosystem considerations.	Adaptive management frameworks based on the best available science and including multiple indicators, such as the framework presented in the Herring FMP, are key tools for promoting climate change resilience in fisheries management, and this is emphasized throughout the document. The Executive Summary has been updated in the Final Herring FMP to better reflect this.
10	NGO Letter (Continued)	FMP Acknowledgements	<b>10-j.</b> Finally, we request that the Acknowledgments section recognize all cash funding sources for the FMP, specifically the Gordon and Betty Moore Foundation and the National Fish and Wildlife Foundation.	The Gordon and Betty Moore Foundation has been added to the Acknowledgements in the Final Herring FMP.
10	NGO Letter (Continued)	FMP General	<b>10-k.</b> For the [several stated] reasons, we support the adoption of the FMP. We request the Commission incorporate the above recommendations on the Draft Herring FMP into the final version and urge the Commission to adopt the Final Herring FMP at its October meeting, as scheduled.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.
11	Anna Weinstein Audubon California Herring FMP Steering Committee	FMP General	<b>11-a.</b> [Signatories and Audubon] support the adoption of the Fishery Management Plan (FMP) for Pacific Herring at your meeting in October 2019, pending specific changes listed.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.

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	<p><b>+3,258 Individual Signatories</b> Letter dated 7/31/2019</p>			
11	<p><b>Anna Weinstein +3,258 Individual Signatories</b> (Continued)</p>	<p>FMP Appendices</p>	<p><b>11-b.</b> All the Appendices are provided as part of the FMP and organized so they can be readily navigated by the public.</p>	<p>All appendices, including Appendix R (see response to Comment <b>9-a</b>), are now available for the public to review, and include appropriate page numbering. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.</p>
11	<p><b>Anna Weinstein +3,258 Individual Signatories</b> (Continued)</p>	<p>FMP Section 2.13.2.3, Appendix D</p>	<p><b>11-c.</b> The Department's maps of Herring spawning areal extent and most-used spawning areas for Humboldt Bay should be included in the FMP.</p>	<p>Habitat maps for management areas where no commercial activity occurs at the time of Herring FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft Herring FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been included in the Final FMP. Section 2.13.2.3 has been edited to refer the reader to Appendix D for Humboldt Bay spawn areas.</p>
11	<p><b>Anna Weinstein +3,258 Individual Signatories</b> (Continued)</p>	<p>FMP Executive Summary</p>	<p><b>11-d.</b> In the Executive Summary and throughout the FMP, present all FMP goals equally, including compliance with the forage species policy and incorporating ecosystem considerations into Herring management.</p>	<p>The primary management goals as outlined in the FMP are those described in the MLMA, which is the overarching legal framework for fisheries management in California. For this reason, these goals are given primacy in the Herring FMP. However, the Commission's forage species policy played an important role in the development of the FMP objectives, as described in the FMP.</p>
11	<p><b>Anna Weinstein</b> Oral comment w/ Nick S. (Commenter 8) at FGC meeting 8/8/2019</p>	<p>FMP General</p>	<p><b>11-e.</b> General support. Commend and thank involved parties, including FGC. FMP is groundbreaking.</p>	<p>Support for the Herring FMP is appreciated.</p>

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11	<b>Anna Weinstein</b> Oral comment w/ Nick S. (Continued)	FMP General	<b>11-f.</b> Audubon has provided comment and non-substantive requests to ensure transparency and MLMA compliance (formatting fixes, better assembled appendices on website, tier 2 fishery criteria).	Comments received have been responded to here and in the Final FMP as appropriate.
12	<b>Nils Warnock</b> Audubon Canyon Ranch (ACR) Letter dated 7/31/2019	FMP Section 7.8.2.2	<b>12-a.</b> ACR agrees with the Commission's recommendation to reduce the maximum number of permits allowed for Tomales Bay (from 35 to 15 via attrition), but further recommends that no new permits be issued for Tomales Bay (instead of beginning to issue once number of Tomales permits drops below 15). Rather, Tomales Bay would be best left as a protected area for Herring. Cites linked importance of Herring to seabirds, lack of commercial interest in Tomales Bay Fishery, and proximity to SF bay fishery as reasons.	The FMP specifies a management approach for Pacific Herring in Tomales Bay that is compatible with both conservation and fishing goals. Should there be renewed commercial interest in Herring fishing in Tomales Bay, the quota will be set at a small fraction of historical quotas to ensure that the Tomales Bay Herring stock can serve as food for predators as well as support a small commercial fishery, as described in Chapter 7.
12	<b>Nils Warnock</b> (Continued)	FMP Section 7.8.7	<b>12-b.</b> ACR endorses FMP's recommendation of a recreational bag limit range of 0-100 lbs, equivalent to up to ten gallons, or two 5-gallon buckets of Herring, each containing 260 fish.	Support for the Herring FMP's recreational bag limit is appreciated.
12	<b>Nils Warnock</b> (Continued)	FMP Chapter 7 - Tomales Bay Spawning Biomass Surveys	<b>12-c.</b> As current monitoring data are critical for helping managers steward resources, especially during these times of rapid climate change, ACR encourages the Commission to recommend renewed Herring monitoring in Tomales Bay.	The Herring FMP identifies management areas with active commercial fisheries as the highest priority for monitoring. As described in Chapter 7, an appropriate level of monitoring will resume in Tomales Bay should commercial fishing activity resume there.
12	<b>Nils Warnock</b> (Continued)	FMP General	<b>12-d.</b> With some suggested modifications, Herring FMP will provide strong guidance for the long-term sustainable mgmt. of Pacific Herring in California, including Tomales Bay.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.
13	<b>Pam Young</b> Golden Gate Audubon Society Letter dated 7/31/2019	FMP General	<b>13-a.</b> General support for the Herring FMP, including use of the best available science to support sustainable management.	Support for the Herring FMP is appreciated.

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Responses to Public Comment on the Herring FMP Rulemaking

<p>14</p>	<p><b>Morgan Patton</b>, West Marin Environmental Action Committee (EAC); <b>Ashley Eagle-Gibbs</b>, EAC  Letter dated 8/1/2019</p>	<p>FMP Section 7.8.7</p>	<p><b>14-a.</b> Consistent with past comments and Audubon Canyon Ranch’s comments, EAC supports the Herring FMP’s daily bag limit two 5-gallon buckets of Pacific Herring</p>	<p>Support for the Herring FMP’s recreational bag limit is appreciated.</p>
<p>14</p>	<p><b>Morgan Patton</b>, <b>Ashley Eagle Gibbs</b>  (Continued)</p>	<p>FMP Chapter 7, General</p>	<p><b>14-b.</b> While supportive of the overall management strategy in Chapter 7 of the Herring FMP, recommend full closure of commercial fishery in Tomales Bay, due to a number of factors. These include low Herring numbers, environmental considerations, lack of interest, high operating costs, and poor market conditions. No recent research (other than observations) has been conducted to indicate adequate biomass for the Tomales Bay fishery operation. Recommend CDFW (or other qualified and independent researchers) conduct renewed monitoring of Herring populations in Tomales Bay in order to compare against outdated information that is now 13 years old [limited monitoring conducted during 2006-07 season] to better understand the population dynamics</p>	<p>Support for the Herring FMP’s management strategy is appreciated. The Herring FMP specifies a management approach for Pacific Herring in Tomales Bay that is compatible with both conservation and fishing goals. As described in Chapter 7, a precautionary quota is available, and an appropriate level of monitoring shall occur should commercial interest in the Tomales Bay stock resume.</p>
<p>14</p>	<p><b>Morgan Patton</b>, <b>Ashley Eagle Gibbs</b>  (Continued)</p>	<p>FMP Chapter 7, General</p>	<p><b>14-c.</b> The Tomales Bay Herring fishery should only be open after a comprehensive and scientifically based assessment and analysis is made of the Herring stocks, current and future spawning estimates, biomass, etc. led by Department of Fish and Wildlife staff and/or other trained and independent researchers, with the involvement of multiple stakeholders. EAC requests that these opportunities are truly collaborative and include stakeholders representative of multiple interests including local West Marin fisherman, individuals</p>	<p>Should there be renewed commercial interest in Herring fishing in Tomales Bay, the Herring FMP specifies that the quota will be set at precautionary harvest rate to ensure that the Tomales Bay Herring stock can fulfill its ecological role as forage for predators as well as support a small fishery. This harvest rate can only be increased with additional monitoring demonstrating the population can support additional harvest, including determination of the Spawning Stock Biomass. The Department welcomes the opportunity to collaborate with</p>

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Responses to Public Comment on the Herring FMP Rulemaking

			from non-extractive industries, and environmental organizations.	stakeholders to increase our collective understanding of California's Pacific Herring stocks.
15	<p><b>Julie Thayer, Ph.D.</b> Farallon Institute Letter dated 7/31/2019 in attachment to Email dated 8/1/2019</p>	FMP Chapters 3, 7; Appendices E, F	<p><b>15-a.</b> Work conducted by the Farallon institute as a contractor on FMP development was not accurately represented in the draft FMP. Includes specific description of issues with information presented in Ch 3, Ch 7, and Appendix E, and F. Inaccurate representation of this work led to erroneous conclusions by Peer Review of FMP science. Requests that actual contractor work be presented in the appendices.</p>	<p>The Farallon Institute was subcontracted to assist the Project Management Team with developing scientific advice for the management of Pacific Herring. This work produced a number of valuable contributions to the field of ecosystem-based fishery management, and the parts that were used in the development of the FMP's management framework were provided to the Peer Review, are reproduced in Appendices E and F. However, there were other components of the work produced that were evaluated by the Project Management Team, the Department, and the Steering Committee that were deemed to be not suitable for use in the management framework at this time. The Peer Review committee requested to see, and were provided, additional components from the Farallon Institute's work that were not used in the Herring FMP during the review process. As such, the review committee's final recommendation does take into account these additional components as well.</p>
15	<p><b>Julie Thayer, Ph.D.</b> (Continued)</p>	FMP Chapter 7, Section 7.6.3	<p><b>15-b.</b> Chapter 7 incorrectly states that the predictive model needs to be tested before use, though it has already been validated against 27 years of SF Bay biomass.</p>	<p>The Herring FMP adopts the multi-indicator predicted model as an option for estimating Spawning Stock Biomass in the San Francisco Bay management area. The Final Herring FMP Section 7.6.3 has been edited to clarify the requirements for use of the multi-indicator predictive model. Specifically, the model's use depends on availability of required data and its continued predictive skill.</p>
15	<p><b>Julie Thayer, Ph.D.</b> (Continued)</p>	FMP Appendix E	<p><b>15-c.</b> Appendix E summarizes a draft report of the SSB forecasting model submitted by Farallon Institute early in the FMP development process, instead of the final publication of this work which included key revisions to the original draft</p>	<p>The information summarized in appendices E and F includes the portions of the work produced by the Farallon Institute under subcontract by the Project Management Team that were included in the Herring FMP. The final publication referred to (Sydeman and others, 2018) does not include the multi-indicator predictive model adopted by the Herring FMP.</p>

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### Responses to Public Comment on the Herring FMP Rulemaking

				However, this publication is referenced in the FMP, including in Appendix E, as appropriate.
15	<b>Julie Thayer, Ph.D.</b> (Continued)	FMP Chapter 9, Appendix R	<b>15-d.</b> Considerations for future research and management should include the importance of making ecosystem-based catch adjustments more meaningful. Re-instate appendix R, allow wider discretion on quota adjustment bounds in HCR framework.	Appendix R was drafted, but omitted from the May-dated Draft FMP in error (see response to Comment <b>9-a</b> ). It has been included in the Final FMP and contains information on the development of the Harvest Control Rule framework, as well as guidance for amending the Decision Tree as the field of ecosystem-based fishery management develops. Any increase in the bounds on ecosystem-based quota adjustment beyond those indicated in Chapter 7 (Figure 7-3) and Appendix R (Figure R-3) will require FMP amendment.
15	<b>Julie Thayer, Ph.D.</b> (Continued)	FMP Sections 2.4, 5.6, Chapter 8	<b>15-e.</b> Importance of temporal variability in spawning should be explicitly stated in the FMP (w/ specific recommendations for Sections 2.4, 5.6, and Chapter 8).	The observed temporal variability in Herring spawning is stated a number of times throughout the Herring FMP. In particular, Section 2.4 and Figure 2-4 describe the available information on this variability. Section 8.6 also flags changes in observed spawning habitat over time as a key uncertainty and avenue for future research.
15	<b>Julie Thayer, Ph.D.</b> (Continued)	FMP Appendices	<b>15-f.</b> The FMP is prohibitively large and difficult to navigate due to myriad of appendices, both current and historical information. Suggest final document only include immediately-relevant supplemental material such as formulas and decision trees, w/ clear page numbering. Historical info should be separated into distinct files that can be downloaded separately, and are also clearly referenced.	California's Herring fishery is complex, with a long history of management. The FMP serves as a central repository for all of the available information on Pacific Herring and its management in California. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
16	<b>Jennifer Fearing</b> Fearless Advocacy Oral comment at FGC meeting 8/8/2019	FMP General	<b>16-a.</b> Strong support for adoption in October. The FMP is a tremendous step forward for Ecosystem-Based Management. Appreciate CDFW incorporating appendix R	Support for the Herring FMP is appreciated. Appendix R was drafted but was omitted in error (see response to Comment <b>9-a</b> ). It has been included in an updated draft of the FMP and is available for review.

## Attachment 1

### Responses to Public Comment on the Herring FMP Rulemaking

<b>16</b>	<b>Jennifer Fearing</b> (Continued)	FMP Section 7.5.3	<b>16-b.</b> As per NGO Letter (see Commenter 9), recommendations to strengthen MLMA compliance w/out altering timeline for adoption, request Fish and Game Commission direct CDFW to address those recommendations prior to adoption.	Section 7.5.3 has been amended in the Final Herring FMP to include criteria for determining when a given management area's spawning stock biomass is considered overfished or otherwise depressed under Tier 2. If the stocks drops below these limits, the quotas will be set to zero to promote stock rebuilding. This brings the management plan into compliance with the MLMA, which states that FMPs must specify overfishing limits and rebuilding plans.
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# Proposed Regulations to Implement the Pacific Herring Fishery Management Plan

## Adoption Hearing

Fish and Game Commission Meeting  
Valley Center, CA  
October 10, 2019



Dr. Craig Shuman  
Marine Regional Manager  
California Department of Fish and Wildlife



# Review of Timeline

- June 2019
  - Notice ISOR for Regulatory Action
- August 2019
  - Discussion hearing
- October 2019
  - Adoption hearing



CDFW photo



# Overview of Proposed Regs.

- Implement Herring FMP
- Establish a recreational bag limit
- Regulate commercial fishery under the Herring FMP





# Recreational Regulations

## Proposed Recreational Bag Limit

- Proposed range (0 -100 lbs) established by the Herring FMP
- Dept. recommendation is in the middle of the range
- Sustainable management, balanced with a satisfying sport experience



CDFW photo

# Thank you

**For more information please contact:  
Andrew Weltz  
Environmental Scientist  
Marine Region, Department of fish and Wildlife  
[Andrew.Weltz@wildlife.ca.gov](mailto:Andrew.Weltz@wildlife.ca.gov)**



**Notice of Exemption****Appendix E**

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: N/A

**From:** (Public Agency): California Fish and Game Commission  
1416 Ninth Street, Suite 1320  
Sacramento, CA 95614

(Address)

Project Title: California Pacific Herring Fishery Management Plan Implementing Regulations

Project Applicant: N/A

Project Location - Specific:

**San Francisco Bay, Tomales Bay, Humboldt Bay, and Crescent City**

Project Location - City: San Francisco, Tomales, Humboldt, and Crescent City Project Location - County: Napa County, Marin County, Humboldt County and Del Norte County

Description of Nature, Purpose and Beneficiaries of Project:

**Adoption of the herring fishery management plan implementing regulations.**

Name of Public Agency Approving Project: California Department of Fish and Wildlife

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: \_\_\_\_\_
- Statutory Exemptions. State code number: Fish and Game Code s. 7078(e)

Reasons why project is exempt:

**The Fish and Game Commission adopted the Herring FMP on October 9th prior to approving this project. The regulations that constitute this project are regulations implementing that FMP and thus explicitly fit within the referenced statute.**

Lead Agency

Contact Person: Melissa Miller-Henson Area Code/Telephone/Extension: (916) 653-4899

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by Lead Agency  Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_