

STAFF SUMMARY FOR AUGUST 7-8, 2019

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

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

Summary of Previous/Future Actions

- | | |
|-----------------------------|----------------------------------|
| • MRC vetting | Jul 21, 2016–Mar 20, 2019 |
| • Notice hearing | Jun 12-13, 2019; Redding |
| • Discussion hearing | Aug 7-8, 2019; Sacramento |
| • Adoption hearing | Oct 9-10, 2019; Valley Center |

Background

The draft Herring FMP (see Agenda Item 20, this meeting) initiates the process for concurrent consideration and adoption of regulations that would 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). Notice was authorized in Jun 2019, with adoption scheduled for Oct 2019. See the Jun 2019 FGC meeting staff summary (Exhibit 3) for detailed background.

Significant Public Comments

A recreational fisherman reiterates previous comments that the proposed daily recreational bag limit is harsh and unreasonable, with a limit of one 5-gallon bucket being overly restrictive for the recreational fisherman in light of the tons that the commercial fleet is allowed to take every year. He states there is no scientific data indicating that recreational take is impacting the fishery, and that Pacific herring is a unique fishery where many people have the opportunity to catch this fish only one or two days in the season as a freezable family food source. He requests that FGC consider and adopt a limit of no less than four 5-gallon buckets per person, per day (Exhibit.4).

Recommendation (N/A)**Exhibits**

1. [DFW memo transmitting initial statement of reasons \(ISOR\)](#), received May 24, 2019
2. [ISOR](#)
3. [Staff summary for Agenda Item 26, Jun 12-13, 2019 FGC meeting](#) (for background only)
4. [Email from Bradley S. Cain](#), received Jul 24, 2019

Motion/Direction (N/A)

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.

Attachments

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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.
- (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.

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

(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.

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

- | | |
|---------------------------------|----------------------------------|
| • MRC vetting | Jul 21, 2016–Mar 20, 2019 |
| • Today's notice hearing | Jun 12-13, 2019; Redding |
| • 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.

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

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