

STAFF SUMMARY FOR APRIL 15-16, 2020

10. PACIFIC HERRING EGGS ON KELP REGULATIONS**Today's Item**Information Action

Consider authorizing publication of notice of intent to amend commercial Pacific herring eggs on kelp (HEOK) regulations that implement the California Pacific Herring Fishery Management Plan (Herring FMP).

Summary of Previous/Future Actions

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| • FGC adoption of Herring FMP and implementing regulations | Oct 9-10, 2019; Valley Center |
| • MRC discussion of amendments to Herring FMP implementing regulations | Nov 5, 2019; MRC, Sacramento |
| • Today's notice hearing | Apr 15-16, 2020; Teleconference |
| • Discussion/adoption hearing | Jun 24-25, 2020; Santa Ana |

Background

At its Oct 10, 2019 meeting, FGC adopted the Herring FMP and implementing regulations, including changes to Title 14, sections 163 and 164. Under those regulations, Pacific herring and HEOK may be taken for commercial purposes under a revocable permit, subject to FGC regulation. Current regulations specify the number of permits that may be held by an individual, fishing areas, seasons, gear restrictions, and notification requirements for the HEOK fishery.

At the adoption hearing for the Herring FMP and implementing regulations in Oct 2019, comments from the HEOK representative of the DFW Director's Herring Advisory Committee highlighted potential concerns associated with new regulations proposed for the HEOK fishery. While the regulations package was adopted at the meeting, FGC and DFW committed to reviewing the Herring FMP implementing regulations based on the expressed concerns (see exhibits 2 and 3 for more detail). Proposed regulatory amendments to address the concerns were presented and discussed at the Nov 5, 2019 MRC meeting with participation by the HEOK representative. Establishing individual permit allocations from the total HEOK quota was among the changes initially considered at that meeting; however, upon careful consideration and analysis of this potential change subsequent to the MRC meeting, DFW does not recommend that this change be adopted. Instead, this change is presented as an alternative to the proposed regulatory action, and is evaluated as such in the draft initial statement of reasons (ISOR; Exhibit 2).

DFW is proposing to amend permittee on-board requirements; clarify the definition of processing related to "rinsing"; and amend gear marking requirements, noise reduction measures, marine mammal deterrent device allowances, and weekend landings requirements. No changes are proposed to the Herring FMP itself, and no other changes are proposed to the Herring FMP implementing regulations adopted by FGC in Oct 2019.

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Proposed Regulations

As detailed in Exhibit 2, proposed regulatory changes are:

- Modify requirement for a permittee or authorized agent to be '*aboard any vessel*' engaged in fishing HEOK to require they be '*immediately present during*' harvesting, processing or transporting HEOK.
- Update the definition of HEOK fishing to include "the period during which kelp is suspended in anticipation of harvesting."
- Add "rinsing" to the definition of processing.
- Modify light marking requirements to only apply while lines are fishing, exclusive of suspending and harvesting kelp.
- Clarify buoy marking requirement to include vessel registration number listed on the HEOK permit.
- Remove requirements for noise reduction measures that only apply to gill net gear.
- Revise marine mammal deterrent provisions to remove "marine mammal deterrent devices" from the remaining provisions that allow for reasonable action by HEOK permittees to protect marketable product.
- Reinstate weekend landings of HEOK product.
- Make additional editorial changes and update authority and reference citations.

Significant Public Comments

At the Oct 2019 adaption hearing for implementing regulations, the HEOK representative expressed concerns and proposed solutions related to HEOK regulations. The comments were included in Appendix S of the Herring FMP and are considered in this proposed rulemaking; specific comments can be located on pages S-18 to S-20 of Appendix S (Exhibit 3).

Recommendation

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

Committee: Authorize publication of a notice as recommended by DFW.

DFW: Authorize publication of a notice as proposed in the draft ISOR (Exhibit 2) and, following adoption of any changes, request that the Office of Administrative Law make the regulation effective on or before Oct 1, 2020 (Exhibit 1).

Exhibits

1. [DFW memo transmitting ISOR](#), received Apr 6, 2020
2. [Draft ISOR](#)
3. [Appendix S: Public Comments Received, Responses, and Changes to the Draft California Pacific Herring Fishery Management Plan](#), Nov 2019
4. [Draft economic and fiscal impact statement](#) (Std. 399)
5. [DFW presentation](#)

STAFF SUMMARY FOR APRIL 15-16, 2020

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend sections 163 and 164, relating to California Pacific Herring Fishery Management Plan implementing regulations that affect the commercial herring eggs on kelp fishery.

Memorandum

Date: March 27, 2020

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

From: Charlton H. Bonham
Director

Subject: **Agenda item for April 15-16, 2020, Fish and Game Commission Meeting Re: Request for Notice Authorization Re: Amendments to the Commercial Pacific Herring Eggs on Kelp 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 sections 163 and 164, Title 14, California Code of Regulations (CCR) for the Pacific Herring Fishery Management Plan implementing regulations concerning the commercial Pacific Herring Eggs on Kelp (HEOK) fishery. The attached Initial Statement of Reasons for Regulatory Action is provided in support of establishing the proposed regulations. The proposed amendments will cover permittee on board requirements, rinsing in the definition of processing, gear marking requirements, noise reduction measures, marine mammal deterrent devices, and weekend landings requirements.

Authorization of this request to publish notice will allow for discussion and possible adoption at the June 24-25, 2020 Commission meeting. The Department requests an effective date of October 1, 2020 for these regulations.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager at (805) 568-1246. The public notice for this rulemaking should identify Environmental Scientist, Thomas Greiner, as the Department's point of contact for this rulemaking. His contact information is (707) 576-2876 or Tom.Greiner@wildlife.ca.gov.

Attachment: Initial Statement of Reasons for Regulatory Action

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March 27, 2020
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State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

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

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

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: April 15

Location: Teleconference

(b) Discussion/Adoption Hearing

Date: June 24

Location: Santa Ana, CA

III. Description of Regulatory Action

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

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

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

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

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

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

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

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

Proposed Changes

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

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

Necessity and Rationale

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

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

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

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

Proposed Changes

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

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

Necessity and Rationale

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

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

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

Proposed Changes

The existing regulations state that “Processing” is the act of separating or removing kelp blades (with Herring eggs attached) from the stipe of harvested HEOK, trimming the product, brining, grading the product, and loading the processed blades into bins or totes. This proposed regulatory action would include ‘rinsing’ in the definition of Processing in subsection 164(a)(3).

Necessity and Rationale

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

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

Proposed Changes

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

Necessity and Rationale

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

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

Proposed Changes

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

Necessity and Rationale

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

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

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

Proposed Changes

Remove “when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the Department. Noise reduction measures include but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore” from subsection 164(f).

Necessity and Rationale

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

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

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

Proposed Changes

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

Necessity and Rationale

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

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

Proposed Changes

In existing regulations, subsection 164(h)(4) states “HEOK shall not be landed/off- loaded between the hours of 10:00 p.m. and 6:00 a.m. on weekdays, or from 10:00 p.m. Friday to 6:00 a.m. Monday”. This proposed regulatory action would remove language prohibiting weekend landings in subsection 164(h)(4).

Necessity and Rationale

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

- **Other Amendments for Clarity.**

Proposed Changes and Rationale

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

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

(b) Goals and Benefits of the Regulation

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

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

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

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

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

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

(d) Specific Technology or Equipment Required by Regulatory Change

None.

(e) Identification of Reports or Documents Supporting Regulation Change

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

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

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

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

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

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

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

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

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

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

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

(b) No Change Alternative

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

V. Mitigation Measures Required by Regulatory Action

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

VI. Impact of Regulatory Action

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

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

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

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

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

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

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

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

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

VII. Economic Impact Assessment

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

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

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

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

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

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

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

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

(e) Benefits of the Regulation to Worker Safety

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

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

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

Informative Digest/Policy Statement Overview

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

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

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

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

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

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

Benefits of the Proposed Regulations

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

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

Consistency and Compatibility with Existing Regulations

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

Proposed Regulatory Language

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

§ 163. Pacific Herring Permits.

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

(c) Permit Renewal.

(1) Each herring and HEOK permit is required to be renewed annually pursuant to Fish and Game Code § 7858 and shall only be valid for that season.

(2) An applicant is eligible to renew a herring permit of the same classification if they meet all of the following requirements:

(A) Hold a current California commercial fishing license.

(B) Have held a valid, unrevoked herring permit in the immediately preceding permit year (April 1-March 31).

(C) Have submitted a Release of Property form FG MR 674 (Rev. 5/13), which is incorporated by reference herein, and payment for all herring landed in excess of the established quota as specified in subsection 163.1(j) or subsection 164(h) of these regulations, and all fees from prior seasons.

(3) Applicants for renewal will be issued the same class of permit they held during the previous season, unless they hold two Temporary permits. Applicants who hold two Temporary permits will be issued a San Francisco Bay Herring permit.

(4) Number of permits issued.

(A) San Francisco Bay herring permits, Tomales Bay herring permits, Humboldt Bay herring permits, and Crescent City herring permits: No more than one permit will be issued to each applicant.

(B) HEOK permits: No more than one permit will be issued to each applicant.

(5) Herring permit renewals:

(A) Herring permits are renewed by submitting the completed form Commercial Herring Permit Worksheet DFW 1377 with the specified fee, as set forth in subsection 705(a) of these regulations.

(B) Permittees must designate a currently registered vessel on the form DFW 1377 ~~(NEW 10/30/19)~~. Up to two Temporary permits or one permit of any other classification of herring permit may be assigned to a single vessel. Two Temporary permits held by different permittees may be jointly fished on a single vessel upon submission of the completed form Season Request for Changes to Herring Permits DFW 1322-2 ~~(NEW 4/11/19)~~ specified in subsection 705(b) to the department. No permit shall be valid for more than one vessel at a time.

(C) A change in a permit's vessel designation may be authorized by the department upon application by the permittee using form DFW 1322-2 ~~(NEW 4/11/19)~~, and payment of the fee, as specified in subsection 705(b) of these regulations. The fee for any approved boat transfer pursuant to this paragraph must be submitted with the form DFW 1322-2 ~~(NEW 4/11/19)~~ to the department's License and Revenue Branch, Sacramento. Any permittee denied a boat transfer pursuant to this paragraph may submit an appeal in writing to the commission within 60 days of such denial to show cause why his or her request should not be denied. The written appeal shall specifically identify the legal and factual grounds for challenging the department's action. The commission shall forward to the department a copy of all materials received from the applicant. The Department shall respond in writing within 60 days of receipt of materials.

(6) HEOK permit renewals:

(A) HEOK permits are renewed by submitting the form Herring-Eggs-on-Kelp Permit Application DFW 1406 ~~(NEW 10/30/19)~~ with the specified fee, as set forth in subsection 705(a) of these regulations.

(B) The permittee shall receive written approval from the department before using a vessel for

harvesting, processing or transporting HEOK. The permittee shall list the name and department registration number issued pursuant to Section 7881 of the Fish and Game Code of any vessel that will be used for harvesting, processing or transporting HEOK under the authority of the permit on the form DFW 1406 ~~(NEW 10/30/19)~~.

(C) Each HEOK permittee may designate two authorized agents to operate under his or her permit on the application form DFW 1406 ~~(NEW 10/30/19)~~. A copy of the current California commercial fishing license for each authorized agent shall be submitted with form DFW 1406. Any person designated as an authorized agent shall act as an authorized agent only after the permittee has received written approval from the department.

(D) An authorized agent:

1. May serve in the place of the permittee for all fishery activities requiring the presence or action of the permittee, including the signing of electronic fish tickets and/or dock tickets;
2. May serve as an authorized agent on up to two permits.

(E) A permittee may replace an authorized agent by submitting a new application form DFW 1406 ~~(NEW 10/30/19)~~ as specified in subsection 705(a), to the department's License and Revenue Branch, Sacramento.

(7) For the 2020 license year, applications for renewal of herring permits must be received by the department or, if mailed, postmarked no later than May 31, 2020. Beginning in 2021, applications for renewal of herring permits must be received by the department or, if mailed, postmarked no later than April 30 of each year.

(8) Late fees and late fee deadlines are specified in Section 7852.2 of the Fish and Game Code.

(9) Any person denied a permit under this section may submit an appeal in writing to the commission to show cause why his/her permit request should not be denied. The written appeal shall specifically identify the legal and factual grounds for challenging the department's action. Such request must be received by the commission within 60 days of the department's denial. The commission shall forward to the department a copy of all materials received from the applicant. The Department shall respond in writing within 60 days of receipt of materials and shall further process all appeals pursuant to the procedure outlined in 14 CCR 671.1(c)(7)(C)-(I).

(d) Applications for New Permits.

(1) Herring Permits

(A) No new San Francisco Bay herring permits shall be issued until the number of San Francisco Bay herring permits held is less than 30.

(B) No new Tomales Bay herring permits shall be issued until the number of Tomales Bay herring permits held is less than 15.

(C) No new Humboldt Bay herring permits shall be issued until the number of Humboldt Bay herring permits held is less than four (4).

(D) No new Crescent City herring permits shall be issued until the number of Crescent City herring permits held is less than three (3).

(2) HEOK permits

(A) No new HEOK permits shall be issued until the number of HEOK permits held is less than ten (10).

(3) Applications for new herring and HEOK permits shall be made available each year on April 15 through the department's Automated License Data System at department license sales offices, the department's Internet Sales site and at retail License Agents authorized to sell commercial fishing licenses.

(4) Application Requirements

(A) Applicants shall apply by May 31 of each year.

(B) Applicants shall pay the appropriate nonrefundable Drawing Fee as specified in Section 705(a).

(C) Applicants shall possess a Commercial Fishing License valid at the time of application.

- (D) Applicants for new HEOK permits shall not currently possess an HEOK permit.
- (E) Applicants for new herring permits shall not currently possess a herring permit and must specify the area for the permit they are requesting.
- (F) Applicants shall not submit more than one HEOK drawing application for the same license year.
- (G) Applicants shall not submit more than one herring drawing application for the same license year.
- (H) Each applicant who applies shall receive a "drawing receipt" printed from the terminal or downloaded from the Internet. The receipt shall contain the customer's name and permanent identification number, and proof of entry into drawing.

(5) Permit Random Selection Process.

(A) Random selection using computer generated random numbers will be used to determine which applicants will be awarded permits and which applicants will be alternates. Successful applicants and a list of alternates shall be determined within 20 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.

(B) Successful applicants will be notified as soon as practical.

(C) Successful herring permit applicants shall submit the completed form Commercial Herring Permit Worksheet DFW 1377 (~~NEW 10/30/19~~) with the specified fee, as set forth in subsection 705(a) of these regulations by July 15.

(D) Successful HEOK Permit applicants shall submit the completed Herring-Eggs-On-Kelp Permit Application DFW 1406 (~~NEW 10/30/19~~) with the specified fee, as set forth in Section 705(a), per the instructions on the Application by July 15.

(E) Should permits still be available after that June 30, the alternate list shall be used to award any available permits.

(e) Conditions of the Permit.

(1) Herring may be taken for commercial purposes only in those areas and by those methods specified in Section 163.1 (for herring) or 164 (for HEOK) under a revocable permit issued by the department to an individual for use on a specified fishing vessel.

(2) Herring permits:

(A) A permittee may have any licensed commercial fisherman serve in his or her place on the designated vessel and engage in fishing, provided the permit is aboard the vessel named on the permit(s) at all times during herring fishing operations.

(3) HEOK permits:

(A) A department-issued copy of the permit shall be aboard each vessel engaged in fishing, harvesting, processing, or transporting HEOK under the authority of the permit.

(B) The permittee or his/her authorized agent shall be ~~aboard any vessel that is~~ immediately present during harvesting, processing, ~~or~~ and transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).

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

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

Proposed Regulatory Language

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

§ 164. Harvest of Herring Eggs on Kelp.

(a) Definitions. Herring Eggs on Kelp (HEOK) may only be taken by harvesting giant kelp (*Macrocystis* spp.), with spawn (i.e., eggs) attached, which has been artificially suspended using the following two (2) methods: rafts and/or lines, a technique commonly known as the “open pound” method. ~~Unless the context requires otherwise~~ For the purposes of the HEOK fishery only, the following definitions shall apply to the HEOK fishery:

(1) “Fishing” means:___

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

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

(C) harvesting.

(2) “Harvesting” means the act of removing HEOK from the water for the purposes of processing for sale and/or transport to market.

(3) “Processing” means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested HEOK, trimming the product, rinsing, brining, grading the product, and loading the processed blades into bins or totes.

(4) A raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet.

(5) A line is defined as a piece of line of no more than 1,200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks).

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

(d) Gear Requirements.

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

(A) Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards.

(B) Each raft shall be further identified with the fishing vessel number the HEOK permit has been assigned to in Roman alphabet letters and Arabic numerals at least 14 inches high and 2 inches wide, painted on a white background and permanently affixed to the raft.

(C) Kelp lines shall have floats or cork over the entire length of line.

(D) If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

(E) Lines shall be marked at the beginning and the end while fishing, excluding suspending kelp and harvesting, with a light that may be seen for at least a distance of 100 yards.

(F) Each line shall be further identified at each end with a contrasting-colored buoy displaying above its waterline, in legible Roman alphabet letters and Arabic numerals at least 2 inches high, ~~the official number of the vessel from which such net is being fished~~ the department registration number of the designated fishing vessel listed on the HEOK permit.

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

(f) Noise. All permittees, authorized agents, vessel operators, crew, or employees shall recognize city

~~ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.~~

~~(g) Marine Mammals. The use of explosives, and /or seal bombs, or marine mammal deterrent devices in the HEOK sector is prohibited.~~

~~(h) Landing Requirements~~

~~(1) For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of HEOK. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of HEOK.~~

~~(2) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.~~

~~(3) Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore.~~

~~(4) HEOK shall not be landed/off-loaded between the hours of 10:00 p.m. and 6:00 a.m. ~~on weekdays, or from 10:00 p.m. Friday to 6:00 a.m. Monday.~~~~

~~(5) Any HEOK taken for commercial purposes shall only be delivered to a person having a Herring Buyer's Permit pursuant to subsection 163.5(a) of these regulations.~~

~~(6) All HEOK landed in excess of any quota established in accordance with Section 55.02(d) of these regulations shall be forfeited to the department by the signing of a Release of Property form MR-FG-674 (REV. 5/13), as set forth in subsection 163(c). Such excess of HEOK shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.~~

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

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

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

The Draft California Pacific Herring Fishery Management Plan (Draft Herring FMP) was received by the California Fish and Game Commission (Commission) at their June 2019 meeting. This appendix presents summaries of public comments received by the Commission on the Draft Herring FMP during the public comment period, and California Department of Fish and Wildlife (Department) responses indicating how public comments were addressed (Table S-1). This appendix also summarizes all changes to the Draft Herring FMP (Table S-2), which includes corrections to minor errors, as well as changes made in response to public comments received.

The Final Draft Herring FMP was received by the Commission for adoption at its October 2019 meeting; additional changes as adopted by the Commission in response to public comments, and corrections to minor errors, are included in this appendix and summarized in Table S-3.

Table S-1. Summary of public comments received on the Draft Herring FMP and Implementing Regulations, and Department responses.

Committer Number	Committer Name, Organization If Applicable, Comment Format, and Date	Herring FMP Section or New Title 14, CCR (Implementing Regulations) Section Referenced	Comment Summary	Response
1	<p>Edward Zeng Recreational Participant Email dated 6/18/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>1-a. The Herring FMP proposes a daily limit of 100 lb. For reasons stated in email (missing spawn windows, health of Herring consumption, low gear requirement for recreational Herring take, low overall recreational catches), Mr. Zeng requests that the daily bag limit be raised to a minimum of 300 lbs.</p>	<p>There are not adequate data available to assess the magnitude of recreational Herring catches, so it is unknown if overall recreational Herring catches are low. The daily limit of 10 gallons was chosen to allow for a satisfying recreational experience for individuals while ensuring that total Herring harvest remains sustainable.</p>
2	<p>Hua Bai Recreational Participant Email dated 6/18/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>2-a. Although a recreational limit is useful to prevent excess take, it is not practical to require recreational participants to have a scale that can weigh 100 lbs., as this requires purchase of extra equipment. An easier rule could be a big cooler full of Herring. Cooler can be sized so it is around 100lb to 200lb. This limit is easy to implement by all parties.</p>	<p>The daily bag limit of ten gallons is equivalent to two 5-gallon buckets, which are commonly owned pieces of equipment that allow participants and enforcement to assess compliance without having to weigh the Herring.</p>
3	<p>Charlie Zhao Recreational Participant Email dated 6/22/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>3-a. Because recreational take depends on targeting an ongoing spawning event, this type of fishing is typically a once-per-year opportunity. Mr. Zhao typically tries to take an entire year's worth of fish in a single trip (roughly equal to two 27-gal containers from Costco, for one-gallon zip lock bag consumption weekly for family all year). Even if people are commercializing recreational catch illegally, it does not affect ability of other recreational fishers to catch what they need. Mr. Zhao believes Herring are abundant, and that the commercial fishery takes much more, and has greater impact on population, than</p>	<p>The ten-gallon bag limit presented in implementing regulations is in line with the Department's goal of maintaining a satisfying recreational experience for participants. Recreational fishing limits are not intended to supply participants with a weekly food source throughout the year.</p>

			recreational take. There should not be a limit on rec take, and if there must be one, it should be set in volume for ease of measurement in field. Proposes 50 gallons as a reasonable limit if we must have one.	
3	Charlie Zhao (Continued)	FMP Section 7.8.7; Title 14, CCR §28.62	3-b. Setting a recreational limit on Herring disproportionately affects minorities because of much higher consumption of Herring among certain minority groups. As health care becomes more and more expensive and drags on the economy, Herring consumption should be encouraged instead of limited.	The Department is responsible for protecting the long-term sustainability of the Herring resource, to the extent possible, and to ensure that all of California's recreational participants can benefit from this resource for many years to come.
4	Alastair Bland Recreational Participant Email dated 7/4/2019	FMP Section 7.8.7; Title 14, CCR §28.62	4-a. Concerned about proposal to limit recreational participants to two 5-gallon buckets or less per day. Four 5-gallon bucket (~150 lb) would be more reasonable than two buckets. A four-bucket limit would eliminate gross overtake, would remove incentive to illegally sell recreationally caught fish, would allow recreational participants to catch all that's needed for a year (share w/ family and friends) during a single spawn event. The Herring FMP's claim that recreational stakeholders expressed interest in 2-bucket limit misconstrues context of statement at 2018 Public Outreach meeting w/ stakeholders in Sausalito. Mr. Bland finds it personally offensive that commercial participants have called for tight limits on recreational catch, given that commercial fishery takes a far greater amount of Herring and sells for non-consumptive use, than recreational participants, who mostly eat their catch.	This limit allows recreational participants to take up to ten gallons (approximately 100 pounds or 520 fish) per person. Families that would like to retain a greater number of fish are able to have more people participate in fishing. All comments at the 2018 Sausalito meeting were recorded in order to accurately capture stakeholder feedback.
4	Alastair Bland Second email dated 7/5/2019	FMP Section 7.8.7; Title 14, CCR §28.62	4-b. Second comment letter further stressing that the Herring FMP's assertion that feedback from recreational sector informed proposed limit is essentially an overstatement.	Stakeholder feedback is an important part of the Herring FMP development process. All comments at the 2018 Sausalito meeting were recorded in order to accurately capture stakeholder feedback. Stakeholder support for the Department's proposed limit was expressed at this meeting and in follow up correspondence, in addition to some feedback that the limit should be higher.

5	<p>John Vogel Recreational Participant Email dated 7/23/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>5-a. The proposed limit for recreational Herring harvest is too low. Recreational Herring is a unique fishery with opportunity to catch only once or twice a year. He understands the need to prevent over harvest, but is not aware of a significant number of recreational participants harvesting huge quantities for illicit commercialization or waste. Wants a five 5-gallon bucket as a limit.</p>	<p>The limit for recreational take allows participants to take up to ten gallons (approximately 100 pounds, or 520 fish) per person. Families that would like to maximize the amount of fish they take legally may choose to have more family members participate in fishing. While the Department understands that, due to the pulse nature of spawning events, there may be limited fishing opportunities in a season, this limit is designed to balance providing a satisfying recreational experience with the needs of the resource.</p>
6	<p>Bradley S. Cain Recreational Participant Email dated 7/24/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>6-a. Displeased with 1 bucket limit for recreational take of Herring. 4 or 5-bucket limit is more reasonable. Spawning is unpredictable in nature and it is difficult for rec fishers to get to an active spawning event. Sometimes miss spawns entirely. When a decent spawn event can be effectively targeted, currently take enough to stock freezer for entire year's use (consumption and bait). One bucket would not allow this as it wouldn't last a year. Additionally, 1 bucket limit is overly restrictive given volume of commercial catch annually. Rec fishers do not impact fishery, unlike commercial. Please reconsider and adopt a limit of no less than 4 buckets per day.</p>	<p>The limit for the recreational Herring fishery is not designed to supply participants with a year-long supply of either bait or daily food. The goal of this limit is to sustainably manage the resource, which can experience intense recreational fishing pressure during nearshore spawning events, while allowing fishers a satisfying recreational experience. The proposed limit takes into consideration the needs of the Pacific Herring resource as well as that of both the commercial and recreational sectors.</p>
7	<p>Kirk Lombard Recreational Participant, Blogger and Author, Fishmonger Email dated 7/24/2019</p>	<p>FMP Section 7.8.7; Title 14, CCR §28.62</p>	<p>7-a. The proposed recreational limit range goes too far. Supports limits in general. A zero-bucket limit is an overreaction. Makes six points about recreational take of Herring, including limited number of days they are accessible from shore, and that most people only take a few buckets during spawns (problem of over harvest stems from a few bad apples). Mr. Lombard contrasts recreational take with commercial gillnet take (recreationally-caught fish are eaten locally, gillnet catch is exported) emphasizing local benefit of recreational take and poor quality of gillnet-acquired fish for eating. He points out high utilization by Asian Americans and high level of complaint from non-Asian Americans</p>	<p>While the Department understands that Herring are only available during a few nearshore spawning events, those events can experience intensive recreational pressure, with hundreds of participants targeting Herring. The limit is designed to allow participants a satisfying recreational experience while limiting the impacts of harvest on the schools that spawn in these nearshore areas.</p>

			and commercial fishermen. Mr. Lombard suggests that one bucket only seems like a large quantity to individuals who do not fish for Herring, since a single bucket only lasts 3 months, and emphasizes the healthy aspects of eating low-on-the-food chain species caught locally.	
7	Kirk Lombard (Continued)	FMP Section 7.8.7; Title 14, CCR §28.62	7-b. Prefers for the lower end of recreational Herring limit range be two 5-gallon buckets, if not 3-4.	At the FMP adoption meeting on October 10, 2019, the Fish and Game Commission selected a ten-gallon recreational bag limit from the 0-10 gallon range provided by the Department. Additionally, language in the FMP referring to a specific bag limit range has been removed.
8	Russell Johnston Marine Science Institute, UC Santa Barbara Email dated 7/25/2019	FMP General	8-a. General support for adoption pending specific listed changes.	The Department appreciates support for the Herring FMP and has responded to comments received as appropriate.
8	Russell Johnston (Continued)	FMP Appendices	8-b. Provide all appendices as part of FMP and organize so as to be readily navigated by the public.	Appropriate page numbering has been applied and all appendices are included in in the Final Herring FMP. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
8	Russell Johnston (Continued)	FMP Section 2.13.2.3, Appendix D	8-c. Include Humboldt Bay spawn areas in maps of spawn areas depicted in Chapter 2 and Appendix D.	Habitat maps for management areas where no commercial activity occurs at the time of Herring FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft Herring FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been be included in the Final Herring FMP. Section 2.13.2.3 has been edited to refer the reader to Appendix D for Humboldt Bay spawn areas.
8	Russell Johnston	FMP	8-d. Present all FMP goals equally, including compliance with forage species policy and incorporation of ecosystem indicators.	The primary management goals outlined in the Herring FMP are those described in the MLMA, which provides the legal framework for fisheries

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

	<p>Committee; Irene Gutierrez, NRDC; Greg Helms, Ocean Conservancy; Andrea Treece, Earthjustice; Paul Shively, Pew Charitable Trusts</p> <p>Letter dated 7/25/2019 (NGO Letter)</p>		<p>comments on its contents prior to final adoption of the FMP.</p>	<p>quota adjustment beyond those indicated in Chapter 7 (Figure 7-3) and Appendix R (Figure R-3) will require an amendment.</p>
10	<p>NGO Letter (Continued)</p>	<p>FMP Section 7.5.3</p>	<p>10-b. We request the FMP include clear, objective criteria for determining whether a Tier 2 stock is overfished and clarify what the rebuilding provisions are for overfished Tier 2 stocks. The MLMA requires that FMPs must specify criteria for identifying when a stock is overfished, include measures to end or prevent overfishing, and provide a mechanism for rebuilding in the shortest time period possible (FGC §7086). While the draft FMP identifies criteria for determining whether the San Francisco Bay stock is overfished as well as rebuilding provisions (Section 7.8.1), it does not contain criteria for determining whether any of the stocks outside San Francisco Bay stocks would be considered overfished when they are in Tier 2. It also does not specify how the San Francisco Bay stock would be considered overfished if it is moved to Tier 2 status in the future. The FMP does not provide objective criteria for what constitutes “very poor spawning behavior” or “an SSB too small to support fishing.” For example, this could be remedied by clarifying how “low” or “very poor spawning behavior” is determined in the Rapid Spawn</p>	<p>Section 7.5.3 has been amended in the Final Herring FMP to include specific criteria for determining when a given management area's spawning stock biomass is considered overfished or otherwise depressed under Tier 2. If the stocks drop below these respective limits, the quotas will be set to zero to promote stock rebuilding. This brings the management plan into compliance with the MLMA, which states that FMPs must specify overfishing limits and rebuilding plans.</p>

			Assessments for Tier 2 stocks and stating in the FMP that this is the criteria for overfished.	
10	NGO Letter (Continued)	FMP Appendices	10-c. The number and size of the Appendices substantially increase the size of the overall FMP document, which as presented, will complicate navigation of the FMP by the public. While each Appendix provides important information and is referenced in the body of the FMP, we suggest the Appendices be available as separate documents from the main body of the FMP, and that each Appendix contain consistent page numbering and formatting to improve navigation of the FMP.	Appropriate page numbering has been applied to all appendices in the Final Herring FMP. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
10	NGO Letter (Continued)	FMP General	10-d. Throughout the document, the term "quota" is used when referring to the annual catch limit. The term quota is problematic because in other contexts "quota" may refer to a minimum quantity or goal, rather than a maximum limit. To maintain consistency and clarity for the public, we request the FMP not use the term "quota" and instead use the term "catch limit."	The term "quota" is frequently used interchangeably with "catch limit" in fisheries management. In addition, the Marine Life Management Act uses the term "quota" rather than "catch limit" in specifying the types of conservation and management measures that should be described in an FMP (Section 7802(c)). Furthermore, the term quota has been used historically in documents related to management of California's Pacific Herring fishery. For consistency with these documents, the Final FMP retains use of the word "quota".
10	NGO Letter (Continued)	FMP Section 2.13.2.2, Appendix D	10-e. In Section 2.13.2.3 (p. 2-26), the Department's maps of Herring spawning areal extent and most-used spawning areas for Humboldt Bay should be included, in the manner San Francisco Bay's maps appear in that section. Also, these updated maps should be put into the Habitat section (pg. 319).	Habitat maps for management areas where no commercial activity occurs at the time of FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been included in the Final FMP. Section 2.13.2.3 has been edited to refer the reader to Appendix D for Humboldt Bay spawn areas.
10	NGO Letter (Continued)	FMP Section 7.7.2	10-f. The Executive Summary (p. ii) and Section 7.7.2 state that complying with the Commission's Forage Species policy is a secondary goal. This prioritization undercuts the	The primary management goals as outlined in the Herring FMP are those described in the MLMA, which is the overarching legal framework for fisheries management in

			Commission's forage policy and implies that other goals are more important. We request that the FMP present all goals equally, including compliance with the Forage Species policy and incorporating ecosystem considerations into Herring management.	California. For this reason, these goals are given primacy in the Herring FMP. However, the Commission's forage species policy played an important role in the development of FMP objectives, as described in the Herring FMP.
10	NGO Letter (Continued)	FMP Executive Summary, Section 7.6.3	10-g. The Executive Summary (p. iv) indicates that the multi-indicator predictive model is adopted by the FMP. However, Section 7.6.3 makes clear that the spawn deposition surveys are the default for estimating San Francisco Bay SSB until the predictive model has 3 or more years of successful predictive power. The Executive Summary should be clarified consistent with this description in Section 7.6.3.	The Herring FMP adopts the multi-indicator predictive model as an option for estimating Spawning Stock Biomass in the San Francisco Bay management area. The Final Herring FMP Section 7.6.3 has been edited to clarify the requirements for use of the multi-indicator predictive model. Spawn deposition surveys remain the default method for determining Spawning Stock Biomass, and the Executive Summary has been edited to clarify this.
10	NGO Letter (Continued)	FMP Section 7.7.1, Figure 7-2; Appendix F	10-h. The FMP should clarify that Figure 7-2 represents the default harvest control rule, which is subject to ecosystem adjustments as indicated by the decision tree. Currently, Appendix F and Figure 7-2 are misleading because they do not reference potential adjustments to catch limits based on ecosystem considerations, therefore implying that these represent the final catch limit.	Chapter 7 has been modified so that the caption for Figure 7-2 clarifies that the black line indicates the unadjusted quota for the season. Section 7.7 describes how the quota may be adjusted for ecosystem considerations.
10	NGO Letter (Continued)	FMP Executive Summary	10-i. Given California's leading role in addressing the climate crisis, the Executive Summary should emphasize and highlight the several areas where climate change is addressed in the FMP, specifically the use of climate indicators in the predictive model, the use of management strategy evaluation to ensure the harvest control rule is robust to future climate change scenarios, and the use of climate indicators as ecosystem considerations.	Adaptive management frameworks based on the best available science and including multiple indicators, such as the framework presented in the Herring FMP, are key tools for promoting climate change resilience in fisheries management, and this is emphasized throughout the document. The Executive Summary has been updated in the Final Herring FMP to better reflect this.
10	NGO Letter (Continued)	FMP Acknowledgements	10-j. Finally, we request that the Acknowledgments section recognize all cash funding sources for the FMP, specifically the	The Gordon and Betty Moore Foundation has been added to the Acknowledgements in the Final Herring FMP.

			Gordon and Betty Moore Foundation and the National Fish and Wildlife Foundation.	
10	NGO Letter (Continued)	FMP General	10-k. For the [several stated] reasons, we support the adoption of the FMP. We request the Commission incorporate the above recommendations on the Draft Herring FMP into the final version and urge the Commission to adopt the Final Herring FMP at its October meeting, as scheduled.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.
11	Anna Weinstein Audubon California Herring FMP Steering Committee +3,258 Individual Signatories Letter dated 7/31/2019	FMP General	11-a. [Signatories and Audubon] support the adoption of the Fishery Management Plan (FMP) for Pacific Herring at your meeting in October 2019, pending specific changes listed.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.
11	Anna Weinstein +3,258 Individual Signatories (Continued)	FMP Appendices	11-b. All the Appendices should be provided as part of the FMP and organized so they can be readily navigated by the public.	All appendices, including Appendix R (see response to Comment 9-a), are now available for the public to review, and include appropriate page numbering. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
11	Anna Weinstein +3,258 Individual Signatories (Continued)	FMP Section 2.13.2.3, Appendix D	11-c. The Department's maps of Herring spawning area extent and most-used spawning areas for Humboldt Bay should be included in the FMP.	Habitat maps for management areas where no commercial activity occurs at the time of Herring FMP development are presented in Appendix D. However, the Humboldt Bay map in the Draft Herring FMP Appendix D did not include spawn areas. Detailed maps of recent observed spawning locations are available for Humboldt Bay and have been included in the Final FMP. Section 2.13.2.3 has been edited

				to refer the reader to Appendix D for Humboldt Bay spawn areas.
11	Anna Weinstein +3,258 Individual Signatories (Continued)	FMP Executive Summary	11-d. In the Executive Summary and throughout the FMP, present all FMP goals equally, including compliance with the forage species policy and incorporating ecosystem considerations into Herring management.	The primary management goals as outlined in the FMP are those described in the MLMA, which is the overarching legal framework for fisheries management in California. For this reason, these goals are given primacy in the Herring FMP. However, the Commission's forage species policy played an important role in the development of the FMP objectives, as described in the FMP.
11	Anna Weinstein Oral comment w/ Nick S. (Commenter 8) at FGC meeting 8/8/2019	FMP General	11-e. General support. Commend and thank involved parties, including FGC. FMP is groundbreaking.	Support for the Herring FMP is appreciated.
11	Anna Weinstein Oral comment w/ Nick S. (Continued)	FMP General	11-f. Audubon has provided comment and non-substantive requests to ensure transparency and MLMA compliance (formatting fixes, better assembled appendices on website, tier 2 fishery criteria).	Comments received have been responded to here and in the Final FMP as appropriate.
11	Anna Weinstein Oral comment at FGC meeting 10/10/2019	FMP	11-g. Supports action to adopt Herring FMP and regs. Climate-ready framework that protects a very important food source for a variety of predators. Also supports properly sized commercial fleet and allows a generous yet sustainable catch. Really proud of this plan, learned a lot from this process. Grateful for our environmental colleagues. Barnes wisdom helped move us forward early on. Thanked a number of individuals. Also support pursuing a lessons learned that we think could help inform other FMPs.	Support for the Herring FMP is appreciated. The Herring FMP was the result of a great deal of work by many different stakeholders, and the Department hopes to continue future collaborations to benefit the resource.

12	Nils Warnock Audubon Canyon Ranch (ACR) Letter dated 7/31/2019	FMP Section 7.8.2.2	12-a. ACR agrees with the Commission's recommendation to reduce the maximum number of permits allowed for Tomales Bay (from 35 to 15 via attrition), but further recommends that no new permits be issued for Tomales Bay (instead of beginning to issue once number of Tomales permits drops below 15). Rather, Tomales Bay would be best left as a protected area for Herring. Cites linked importance of Herring to seabirds, lack of commercial interest in Tomales Bay Fishery, and proximity to SF bay fishery as reasons.	The FMP specifies a management approach for Pacific Herring in Tomales Bay that is compatible with both conservation and fishing goals. Should there be renewed commercial interest in Herring fishing in Tomales Bay, the quota will be set at a small fraction of historical quotas to ensure that the Tomales Bay Herring stock can serve as food for predators as well as support a small commercial fishery, as described in Chapter 7.
12	Nils Warnock (Continued)	FMP Section 7.8.7; Title 14, CCR §28.62	12-b. ACR endorses FMP's recommendation of a recreational bag limit range of 0-100 lbs, equivalent to up to ten gallons, or two 5-gallon buckets of Herring, each containing 260 fish.	Support for the recreational bag limit in the Herring regulations is appreciated.
12	Nils Warnock (Continued)	FMP Chapter 7 - Tomales Bay Spawning Biomass Surveys	12-c. As current monitoring data are critical for helping managers steward resources, especially during these times of rapid climate change, ACR encourages the Commission to recommend renewed Herring monitoring in Tomales Bay.	The Herring FMP identifies management areas with active commercial fisheries as the highest priority for monitoring. As described in Chapter 7, an appropriate level of monitoring will resume in Tomales Bay should commercial fishing activity resume there.
12	Nils Warnock (Continued)	FMP General	12-d. With some suggested modifications, Herring FMP will provide strong guidance for the long-term sustainable mgmt. of Pacific Herring in California, including Tomales Bay.	Support for the Herring FMP is appreciated. Comments received have been responded to here and in the Final FMP as appropriate.
13	Pam Young Golden Gate Audubon Society Letter dated 7/31/2019	FMP General	13-a. General support for the Herring FMP, including use of the best available science to support sustainable management.	Support for the Herring FMP is appreciated.
14	Morgan Patton, West Marin Environmental Action	FMP Section 7.8.7; Title 14, CCR §28.62	14-a. Consistent with past comments and Audubon Canyon Ranch's comments, EAC supports the Herring FMP's daily bag limit two 5-gallon buckets of Pacific Herring	Support for the recreational bag limit in the Herring regulations is appreciated.

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

				understanding of California's Pacific Herring stocks.
14	Morgan Patton, Ashley Eagle Gibbs EAC Second letter Dated 9/26/2019	FMP Chapter 7,	14-d. Reiterates comments from 8/1/2019 letter, specifically 1) support for the recreational limit, 2) support of overall management goals, which the recommendation that Tomales Bay be closed to commercial take, and 3) commercial take in Tomales Bay should not be allowed until certain research and monitoring is conducted.	See responses above to comments 14-a , 14-b , and 14-c .
14	Morgan Patton, Ashley Eagle Gibbs (Second letter Continued)	Title 14 CCR §28.60	14-e. Recommends that the recreational take of Herring roe be prohibited in Tomales Bay due to sensitive nature of the ecosystem there. Specifically, waterbird populations in Tomales Bay are in decline, Tomales Bay serves as important marine mammal habitat, and eelgrass in Tomales Bay is important to herring. Furthermore, eelgrass is likely to be mistaken for kelp and taken along with the recreational take of roe, even though this is prohibited.	The daily limit of 25 lb wet weight, including roe and vegetation, is meant to allow for a satisfying recreational experience for individuals while ensuring that total Herring harvest remains sustainable. The Department recognizes the importance of eelgrass and other sensitive habitat types in Tomales Bay, and the prohibition on take of eelgrass is meant to prevent impacts to this important species during recreational fishing activity.
15	Julie Thayer, Ph.D. Farallon Institute Letter dated 7/31/2019 in attachment to Email dated 8/1/2019	FMP Chapters 3, 7; Appendices E, F	15-a. Work conducted by the Farallon institute as a contractor on FMP development was not accurately represented in the draft FMP. Includes specific description of issues with information presented in Ch 3, Ch 7, and Appendix E, and F. Inaccurate representation of this work led to erroneous conclusions by Peer Review of FMP science. Requests that actual contractor work be presented in the appendices.	The Farallon Institute was subcontracted to assist the Project Management Team with developing scientific advice for the management of Pacific Herring. This work produced a number of valuable contributions to the field of ecosystem-based fishery management, and the parts that were used in the development of the FMP's management framework were provided to the Peer Review, are reproduced in Appendices E and F. However, there were other components of the work produced that were evaluated by the Project Management Team, the Department, and the Steering Committee that were deemed to be not suitable for use in the management framework at this time. The Peer

				Review committee requested to see, and were provided, additional components from the Farallon Institute's work that were not used in the Herring FMP during the review process. As such, the review committee's final recommendation does take into account these additional components as well.
15	Julie Thayer, Ph.D. (Continued)	FMP Chapter 7, Section 7.6.3	15-b. Chapter 7 incorrectly states that the predictive model needs to be tested before use, though it has already been validated against 27 years of SF Bay biomass.	The Herring FMP adopts the multi-indicator predicted model as an option for estimating Spawning Stock Biomass in the San Francisco Bay management area. The Final Herring FMP Section 7.6.3 has been edited to clarify the requirements for use of the multi-indicator predictive model. Specifically, the model's use depends on availability of required data and its continued predictive skill.
15	Julie Thayer, Ph.D. (Continued)	FMP Appendix E	15-c. Appendix E summarizes a draft report of the SSB forecasting model submitted by Farallon Institute early in the FMP development process, instead of the final publication of this work which included key revisions to the original draft	The information summarized in appendices E and F includes the portions of the work produced by the Farallon Institute under subcontract by the Project Management Team that were included in the Herring FMP. The final publication referred to (Sydeman and others, 2018) does not include the multi-indicator predictive model adopted by the Herring FMP. However, this publication is referenced in the FMP, including in Appendix E, as appropriate.
15	Julie Thayer, Ph.D. (Continued)	FMP Chapter 9, Appendix R	15-d. Considerations for future research and management should include the importance of making ecosystem-based catch adjustments more meaningful. Re-instate appendix R, allow wider discretion on quota adjustment bounds in HCR framework.	Appendix R was drafted, but omitted from the May-dated Draft FMP in error (see response to Comment 9-a). It has been included in the Final FMP and contains information on the development of the Harvest Control Rule framework, as well as guidance for amending the Decision Tree as the field of ecosystem-based fishery management develops. Any increase in the bounds on ecosystem-based quota adjustment beyond those indicated in Chapter 7 (Figure 7-3) and Appendix R (Figure R-3) will require FMP amendment.

15	Julie Thayer, Ph.D. (Continued)	FMP Sections 2.4, 5.6, Chapter 8	15-e. Importance of temporal variability in spawning should be explicitly stated in the FMP (w/ specific recommendations for Sections 2.4, 5.6, and Chapter 8).	The observed temporal variability in Herring spawning is stated a number of times throughout the Herring FMP. In particular, Section 2.4 and Figure 2-4 describe the available information on this variability. Section 8.6 also flags changes in observed spawning habitat over time as a key uncertainty and avenue for future research.
15	Julie Thayer, Ph.D. (Continued)	FMP Appendices	15-f. The FMP is prohibitively large and difficult to navigate due to myriad of appendices, both current and historical information. Suggest final document only include immediately-relevant supplemental material such as formulas and decision trees, w/ clear page numbering. Historical info should be separated into distinct files that can be downloaded separately, and are also clearly referenced.	California's Herring fishery is complex, with a long history of management. The FMP serves as a central repository for all of the available information on Pacific Herring and its management in California. Pending adoption, for ease of download, the FMP body and appendices will be made available separately.
16	Jennifer Fearing Fearless Advocacy Oral comment at FGC meeting 8/8/2019	FMP General	16-a. Strong support for adoption in October. The FMP is a tremendous step forward for Ecosystem-Based Management. Appreciate CDFW incorporating Appendix R	Support for the Herring FMP is appreciated. Appendix R was drafted but was omitted in error (see response to Comment 9-a). It has been included in an updated draft of the FMP and is available for review.
16	Jennifer Fearing (Continued)	FMP Section 7.5.3	16-b. As per NGO Letter (see Commenter 9), recommendations to strengthen MLMA compliance w/out altering timeline for adoption, request Fish and Game Commission direct CDFW to address those recommendations prior to adoption.	Section 7.5.3 has been amended in the Final Herring FMP to include criteria for determining when a given management area's spawning stock biomass is considered overfished or otherwise depressed under Tier 2. If the stocks drops below these limits, the quotas will be set to zero to promote stock rebuilding. This brings the management plan into compliance with the MLMA, which states that FMPs must specify overfishing limits and rebuilding plans.

17	<p>Geoff Shester Oceana FMP Steering Committee +3,091 California Residents Letter dated 9/24/2019</p>	FMP and Regulations General	<p>17-a. General support for Herring FMP and associated implementing regulations. Discussion of importance of Herring's ecosystem role, stresses importance of precautionary management for Herring. Commends Fish and Game Commission and Department of Fish and Wildlife for precautionary management, describes FMP in historic terms due to ecosystem adjustments. Points out that adoption of FMP and implementing regulations will advance implementation of Commission's forage species policy and ensure responsible fishery management moving forward. Requests that Commissioners please protect Herring and adopt the FMP.</p>	The Department appreciates support for the FMP and the description of its various benefits to Herring and the California Current Ecosystem, as well as the future of responsible fishery management in California.
17	<p>Geoff Shester Oral Comment at FGC Meeting 10/10/2019</p>	FMP	<p>17-b. Adoption is long-time coming, asking FGC to adopt as is without any further changes. Long road, including starting with forage species policy in 2012, then sat down with industry and Audubon to see what this could look like, raised money, and helped reviewed content along the entire way. Support CDFW, have brought all sides together for a very controversial issue where both sides were fighting adamantly for their views, compromised and think this does result in a number of positive aspects (including ecosystem based quota adjustments and tiered mgt.), been a valuable experience and ask Commission to adopt. Moving forward would be good to have a lessons learned, but think we have something we can all be proud of.</p>	Support for the Herring FMP is appreciated. The FMP had valuable input from a variety of interested parties and the financial support from contributors was essential to its completion.
17	<p>Geoff Shester (continued)</p>	Implementing Regulations	<p>17-d Ask FGC to adopt implementing regs package for FMP.</p>	Support for adoption of the implementing regulations package is appreciated.
17	<p>Geoff Shester (continued)</p>	Implementing Regulations	<p>17-e Support CDFW's proposal to do a follow up package for HEOK comments.</p>	The Department has committed to working to resolve some of the concerns with the proposed HEOK regulations, including meeting the HEOK representative at a Marine Resources Committee meeting on November 5, 2019 and the possibility of a follow up rulemaking

				package in 2020 to address the remaining HEOK issues.
17	Geoff Shester (continued)	Implementing Regulations	17-f Hoped the regs would apply this season, but learned they will not go into effect until next season. Latest biomass estimate presented at the DHAC was ~ 8k tons which is well below the threshold and if the FMP was implemented it would be considered a depleted state.	The spawning stock biomass estimate of 8,030 is one of the lowest on record, however existing regulations establish a 750 ton gillnet quota during the 2019-20 season. This quota allows for a gillnet-sector target harvest rate (this year's quota as a percentage of last year's biomass) of 9.3%, which the Department considers to be precautionary.
17	Geoff Shester (continued)	Implementing Regulations	17-g Consider the current stock of the population for the rec bag limit considerations. Do support rec bag limit.	The Fish and Game Commission selected a ten-gallon recreational bag limit from the 0-10 gallon range provided by the Department.
18	Dan Yoakum Commercial Participant Letter dated 9/24/2019 Attached to Email dated 10/02/2019	FMP and Regulations General	18-a. The Department did not adequately incorporate recommendations from the HEOK sector into the FMP's rulemaking package. As a result, proposed regs create potential for violations when trying to conduct normal HEOK operations. Several specific issues are identified as (comments 18-b through 18-h), and Mr. Yoakum requests that the Department work with him to resolve these issues.	Department staff engaged with Mr. Yoakum, in his capacity as the HEOK-sector representative, by way of multiple, formal, in-person meetings, as well as numerous phone calls, regarding the proposed regulations. The Department has committed to working with Mr. Yoakum to resolve some of the concerns with the proposed HEOK regulations mentioned in his letter, including meeting at a Marine Resources Committee meeting on November 5, 2019 and the possibility of a follow-up rulemaking in 2020 to address the remaining HEOK issues. Regarding specific issues identified by Mr. Yoakum with this regulatory package, see responses to comments 18-b through 18-h below.
18	Dan Yoakum (continued)	FMP Section 7.8.1.1, Title 14 CCR §55.02(d)	18-b. Doing away with permit quotas will result in increased competition, reduced cooperation, inferior quality product, and will be inconsistent with HEOK regulations in Canada, Alaska, and Washington.	Proposed regulations in §55.02(d) state that the Director of the Department shall set quotas for all sectors according to Chapter 7 of the FMP. Under the FMP, HEOK permits are separate from Herring gillnet permits. Section 7.8.1.1 of the FMP's Chapter 7 describes HEOK quota as being set to a product weight equivalent to approximately 1% of the total quantity of eggs produced by the most recent SSB. The permit quotas under regulation prior to the FMP were

				<p>derived from a system that subtracts HEOK quota from the total gillnet quota, despite the HEOK sector not taking any adult fish. The rationale for setting HEOK quotas at 1% of the most recent SSB's egg deposition is addressed in Appendix N of the Herring FMP.</p> <p>Department staff will work with Mr. Yoakum to incorporate allocation of the HEOK quota to individual permittees in a follow-up rulemaking in 2020 (see response to comment 18-a).</p>
18	Dan Yoakum (continued)	Title 14 CCR §164(h)(4)	18-c. Prohibiting weekend landings will negatively affect the quality of product, and effectively reduce fishable time by 1/3, since HEOK must be harvested and landed immediately after spawn on the kelp, and participants cannot control when fish spawn.	As described in the Necessity and Rationale for this regulatory change, the intent of this requirement was to 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, require staff to be able to track landings in near-real time, and it is difficult for Department staff to track landings at night and/or during the weekend. However, in light of points made by Mr. Yoakum's comment, the Department will work to address this issue in a follow-up rulemaking in 2020 (see response to comment 18-a).
18	Dan Yoakum (continued)	Title 14 CCR §164(a)(3)	18-d. The definition of "processing" omits washing/rinsing, which needs to be included.	The Department will address this issue in a follow-up rulemaking in 2020 (see response to comment 18-a).
18	Dan Yoakum (continued)	Title 14 CCR §164(g)	18-e. Proposed regulations prohibit marine mammal deterrent devices during HEOK fishing in San Francisco Bay.	The HEOK sector is a high-visibility fishery in San Francisco Bay. Department program staff worked closely with Law Enforcement Division staff on this requirement, and it was made clear to Mr. Yoakum that he would not be allowed to harass seals and/or sea lions in San Francisco Bay. An experimental fishery permit is an available option to HEOK participants who would like to develop seal-exclusion gear that does not harass marine mammals.

18	Dan Yoakum (continued)	Title 14 CCR § 164(d)(1)(E) and (F)	18-f. Gear requirements for the allowable length of corklines and their marking requirements ignore that lines must be broken down into smaller segments in order to be operated.	Department program staff worked with Law Enforcement Division to develop this requirement, the intent of which is that any line engaged in fishing be 1,200 feet in length or less and adequately marked at each end.
18	Dan Yoakum (continued)	Title 14 CCR § 164(f)	18-g. The noise rule in 164(f) is unnecessary, as the HEOK sector is quiet by nature. Including this rule leaves HEOK participants open to harassment.	This requirement has always applied to all Herring permittees in § 163 (including HEOK) prior to FMP-implementing regulations. Under FMP-implementing regulations, harvest of HEOK is addressed in § 164, including noise reduction requirements.
18	Dan Yoakum (continued)	Title 14 CCR § 163(e)(3)(B)	18-h. The requirement that the HEOK permittee be aboard any vessel engaged in harvesting, processing, or transporting herring eggs is not workable, as kelp is not hung aboard the vessel. Dan recommends that the requirement be changed to 'in the vicinity' of the vessel, so that permittees may be allowed to work from, for example, their raft(s).	Department program staff worked with Law Enforcement Division to develop this requirement, the intent of which is that the permittee be present during harvest, processing, or transporting of HEOK product. Language such as "in the vicinity" is vague, and could potentially be interpreted in such a way that no permittee need be present during these operations, which is not sufficient from an enforcement standpoint. However, the Department will clarify this requirement in a follow-up rulemaking in 2020 (see response to comment 18-a).
18	Dan Yoakum Oral comment at FGC meeting 10/10/2019	FMP and Regulations General	18-i. There are many problems with the regs and the HEOK fishery that came about because CDFW took recommendations but did not reach out to review them, just kept pushing it off and never talked about the changes they made.	See responses above to comment 18-a . The Department has committed to working with Mr. Yoakum to resolve some of the concerns with the proposed HEOK regulations mentioned in this letter, including meeting at a Marine Resources Committee meeting on November 5, 2019 and the possibility of a follow up rulemaking in 2020 to address the remaining HEOK issues.
18	Dan Yoakum (continued)	FMP and Regulations (Reiterated)	18-j. Reiterated comments from 9/24/2019 letter, specifically 1) maintain individual quotas. 2) Continue to allow weekend landings. And 3) to fish HEOK, you have to be able to get off the vessel while fishing HEOK.	See responses above to comment 18-b , 18-c , and 18-h .

<p>19</p>	<p>Neha Ram Student Scripps Institute of Oceanography Oral comment at FGC meeting 10/10/2019</p>	<p>Herring FMP</p>	<p>19-a. Support for Herring FMP along with some concerns. 1) pushing not only for more research on climate change effects, but also concrete mitigation measures using scientific information produced, 2) whale entanglement – collaboration, 3) mitigation measures to protect marine mammals, birds and large fish.</p>	<p>Support for the Herring FMP is appreciated, and the Department welcomes the opportunity to collaborate with stakeholders and researchers to increase our collective understanding of California's Pacific Herring stocks. Due to the small mesh size of the gillnets used and the nearshore fishing locations, whale entanglement is not likely in this fishery. Close tending of nets reduces the chance of entangling other marine mammals, birds and large fish.</p>
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Table S-2. Summary of minor corrections and changes to the Draft Herring FMP.

Document Section	Page Number	Correction
Title page	NA	<p style="text-align: center;">Draft California Pacific Herring Fishery Management Plan</p> <p style="text-align: center;">Draft</p> <p style="text-align: center;">August 08, 2019 <u>October 25, 2019</u></p>
Executive Summary	ii	<p>The overarching goal of this FMP is to ensure the long-term sustainable management of the Herring resource consistent with the requirements of the Marine Life Management Act (MLMA) and the Commission's forage species policy. In particular, it seeks to:</p> <p>(...)</p> <ul style="list-style-type: none"> • <u>describe the effects of climate change on California's Herring stocks, and identify environmental and ecosystem indicators that can inform effective management,</u>
Executive Summary	iv	<p>The currently used method is available as a backup should data be unavailable or should environmental changes compromise the predictive power of the model. The FMP adopts this multi-indicator predictive model as an option for estimating the coming year's SSB in the San Francisco Bay management area, contingent upon availability of necessary input data and continued predictive power by the model. Spawn deposition surveys remain the default method for determining SSB.</p>
Acknowledgements	xxii	<p>Finally, the <u>Gordon and Betty Moore Foundation and the National Fish and Wildlife Foundation</u> provided the necessary funding to support the Project Management Team, composed of Dr. Sarah Valencia, Huff McGonigal, and David Crabbe.</p>
2.8, Figure 2-5 caption	2-10	<p>Figure 2-5. Observed age distribution of the research catch in San Francisco Bay, Percent at age, by number, of ripe fish for the San Francisco Bay spawning stock biomass. Based on age composition of the research catch (excluding age-1 fish), 1982-83 through 2017-18 seasons. Note that no sampling was conducted in final age composition was not determined for the 1990-91 and 2002-03 seasons.</p>

2.8	2-10	...the North Pacific Marine Heatwave (Chapter Section 3.2).
2.13.2.3	2-26	Herring spawning occurs in both North and South Bays, although North Bay typically receives the majority of spawning activity. Spawning has occurred every year in North Bay since the fishery began during the 1973-74 season. <u>Maximum spawning extents observed during the 2014-15 through 2017-18 seasons are presented in Appendix D.</u>
4.2, Figure 4-2 caption	4-3	California Herring landings by area in short tons between 1973 and 2017 in San Francisco Bay (blue), Tomales Bay (yellow), Humboldt Bay (gray), and Crescent City Harbor (black). <u>The commercial fishery was closed for the 2009-10 season. Note that this figure does not include landings from the ocean waters fishery (Monterey Bay).</u>
4.7.2	4-16	In 2014, the SFBHRA <u>San Francisco Herring Association</u> , a group of commercial Herring fishermen, filed a lawsuit against Pacific Gas and Electric (PG&E) for contamination of the San Francisco Bay waterfront.
4.7.3, Table 4-2 caption	4-18	2017 <u>Commercial landings and ex-vessel value for the five most valuable fisheries each in the San Francisco, Tomales, Eureka, and Crescent City ports in 2017.</u>
5.6.1, Table 5-2 caption	5-12	Table 5-2. California Herring fishery season dates <u>prior to the implementation of this FMP.</u>
5.6.2.2	5-13	Currently, Herring offloading only takes place at Pier 45 on the San Francisco waterfront. Remove sentence as unnecessary and potentially inaccurate in the future. Section is titled "Nighttime Restrictions on Unloading", and content functions just fine without this sentence.
6.2.1	6-12	Spawn surveys in Tomales and Humboldt Bays were discontinued after 2006-07 due to staffing and resource constraints. Due to low Herring roe prices and lack of processing facilities, <u>at the time of FMP development, no commercial fishing has occurred...</u>
7.4	7-6	The Tier 1 quota for Crescent City Harbor is set at ± 11 <u>11</u> tons (±10 <u>10</u> metric tons), which is 50% of the average historical <u>landings</u> and a 60% <u>63%</u> decrease from the quota prior to the adoption of this FMP.
7.5.3	7-8	Conversely, under a Tier 2 monitoring protocol, the quota shall be reduced to zero <u>as a rebuilding provision</u> in years where either the employed Rapid Spawn Assessment indicates poor spawning behavior, or spawn deposition survey-derived SSB estimates indicate an SSB too small to support fishing <u>that is overfished or otherwise depressed.</u> <u>For San Francisco Bay, the stock is considered overfished or otherwise depressed at SSB estimates below the 15,000-ton cutoff established by the HCR (see Section 7.7.1).</u>

		For Tomales Bay and Humboldt Bay, the stock is considered overfished or otherwise depressed at stock sizes that are less than 20% of the long-term average biomass (including historical and contemporary SSB estimates) for each respective management area. For Crescent City Harbor, the stock is considered overfished or otherwise depressed at SSB estimates less than 66 tons, which is approximately three times the average historical catch in that management area.
7.6.2.1	7-10	All necessary data are <u>may be</u> available by the end of September each year, and prior to the beginning of the fishing season, which begins in December.
7.6.3	7-12	While the predictive model provides a promising avenue for incorporating additional indicators into Herring management, as well as for improving predictive accuracy, the model needs to be tested before it is used to set quotas. To do this, the model must have three consecutive years where a) all of the data required are available, and b) demonstrate that over those three years it has greater predictive skill than the spawn deposition survey alone. At that point the model's use depends on availability of required data and the model's continued predictive skill (see Section 7.6.2.1, Appendix E). When these two requirements are met, the Department may decide to use the predictive model in yearly quota setting.
7.7.1, Figure 7-2 caption	7-13	HCR Harvest Control Rule describing the relationship between estimated SSB and <u>unadjusted</u> quota for subsequent season of the San Francisco Bay Herring commercial fishery.
7.7.2.3	7-21	Should one or more of the criteria in the decision tree recommend that the Department consider reducing the quota, a 300-ton (272 metric ton) reduction in the harvest should be applied <u>the target harvest rate may be reduced by up to 1%</u> (Figure 7-3).
7.7.2.3	7-22	Conversely, if an increase is warranted, a 300-ton increase to the quota should be applied <u>the target harvest rate may be increased by up to 1%</u> (Figure 7-3).
9.2	9-4	Additionally, as the science evolves, the Department may adjust the magnitude of changes to the quota recommended by the decision tree up to the limits defined in Appendix R <u>Section 7.7.2.3</u> , provided the supporting science is clearly documented (see Appendix R).
All appendices	<i>multiple</i>	<i>Insert incomplete and/or missing page numbers into all pages of all appendices</i>

Appendix D, Figure D3 and caption	D-3	<i>Include recent ('14-'15 thru '17-'18 seasons) spawn areas in Humboldt Bay map; Figure D3. Eelgrass and other habitat types in Humboldt Bay (from Schlosser and Eicher, 2012) and Herring spawn coverage.</i>
Appendix D, Figure D6	D-6	<i>Include Noyo Harbor eelgrass map; update figure numbers in appendix.</i>
Appendix E	E-7	<i>Based on these criteria, the model that provided the best prediction for the current year SSB included three factors: SSB_{yr-1}, YOY_{yr-3} and $SST_{(Jul-Sep)_{yr-1}}$ (Table E-3 and Figure E-3). Notably, current Department fishing quotas are based on SSB_{yr-1}. The three-factor models, including the current model used by the Department out-performed simpler one- and two-factor models by a large margin (improved $r^2 = 0.64-0.67$ compared to 0.31 to 0.58; improved model fit AIC = 188 to 190 compared to 193 to 204, and reduced predictive error of 63% to 64.6% compared to 77% to 119%) (Sydeman and others, 2018; Table E-3). The three-factor model that provided the best prediction for the current year SSB included: SSB_{yr-1}, YOY_{yr-3} and $SST_{(Jul-Sep)_{yr-1}}$. Notably, current Department fishing quotas are based on SSB_{yr-1}.</i>
Appendix R	<i>multiple</i>	<i>Included Appendix R in response to public comment (see Table S-1).</i>
Appendix S	<i>multiple</i>	<i>Add Appendix S, including summary of public comments received and responses (Table S-1), and summary of changes to the FMP (Tables S-2 and S-3).</i>
Chapter 11. Works Cited	11-10	<i><u>Merkel & Associates. 2016. Noyo River and Harbor Maintenance Dredging Pre-dredge Eelgrass Survey Results Transmittal. Prepared for U.S. Army Corps of Engineers San Francisco District, September 2016.</u></i>
All	<i>multiple</i>	<i>Various corrections to capitalization, spacing, spelling, punctuation, font, nomenclature, and formatting.</i>

Table S-3. Summary of minor corrections and changes to the Final Draft Herring FMP as adopted.

Document Section	Page Number	Correction
Executive Summary	vi	<p><i>Recreational Regulations</i> – Prior to this FMP, there was no limit for the recreational take of Herring. To address this, the FMP recommends a range between 0 and 100 pounds, which is equivalent to up to 10 gallons (or two 5-gallon buckets), as establishing a <u>daily bag limit through regulation. This</u> The established bag limit is <u>should be easily enforceable and provides for a satisfying and sustainable</u> recreational experience while deterring illegal commercialization of the fishery.</p>
7.8.7	7-28	<p>This FMP establishes that a daily bag limit for recreational fishing <u>be adopted through regulation. This</u> The FMP recommends a range between 0 and 100 lb (45 kg) daily bag limit be established at which is equivalent to up to ten gallons, or two 5-gallon buckets of Herring, each containing approximately 260 Herring. Based on input from stakeholders this is considered to be an appropriate amount to provide a reasonable and sustainable amount of recreational harvest for participants. This <u>The</u> possession limit is also <u>should also be</u> designed to be clear and easily enforceable. <u>For reference, two 5-gallon buckets of Herring are equivalent to 100 lb of herring, or, approximately 260 Herring per bucket.</u> Currently, there are no estimates of the recreational catch available, but this <u>a</u> possession limit will provide Department staff with a means of estimating recreational take via counting the number of recreational anglers observed during each spawning event.</p>
10.5.1	10-11	Deleted Section 10.5.1.
10.5.2	10-11	Renumbered Section 10.5.2 as Section 10.5.1.

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

STD. 399 (REV. 12/2013)

DRAFT DOCUMENT**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON Margaret Duncan margaret.duncan	EMAIL ADDRESS @wildlife.ca.gov	TELEPHONE NUMBER 916 653-4674
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Amend Sections 163 and 164 Title 14, CCR, Re: Herring Eggs on Kelp Amendment			NOTICE FILE NUMBER Z

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

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

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

[No new costs or impact on harvest; amend for clarification of regulation text.](#)

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

2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

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

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

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

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

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

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

Describe the types of jobs or occupations impacted: _____

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

If YES, explain briefly: _____

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

STD. 399 (REV. 12/2013)

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

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
- a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- d. Describe other economic costs that may occur: _____
- _____
2. If multiple industries are impacted, enter the share of total costs for each industry: _____
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____
4. Will this regulation directly impact housing costs? YES NO
- If YES, enter the annual dollar cost per housing unit: \$ _____
- Number of units: _____
5. Are there comparable Federal regulations? YES NO
- Explain the need for State regulation given the existence or absence of Federal regulations: _____
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

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

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____
- _____
2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
- Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____
- _____
- _____

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

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____
- _____
- _____

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

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

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

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

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

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

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

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

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

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

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

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

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

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

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

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

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

YES NO

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

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

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

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

STD. 399 (REV. 12/2013)

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

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

\$ _____

- a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

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

\$ _____

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

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

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

Date of Election: _____

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

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

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

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

3. Annual Savings. (approximate)

\$ _____

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

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

6. Other. Explain _____

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

STD. 399 (REV. 12/2013)

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

\$ _____

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

\$ _____

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

\$ _____

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

\$ _____

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

FISCAL OFFICER SIGNATURE

DATE



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

AGENCY SECRETARY

DATE



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

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE





Herring Eggs on Kelp (HEOK) Regulations

16 April 2020

Presented to:

Fish and Game Commission

Presented by:

Thomas Greiner

**Environmental Scientist
Marine Region**



Overview

- Pacific Herring Fishery Management Plan Cleanup Package for HEOK Fishery Regulations
 - Title 14, Sections 163 and 164





Proposed Amendments

- Replace permittee 'on board vessel' with 'immediately present during' during suspension of kelp and breakdown of lines – §163(e)(3)(B)
- Include time of suspension in definition of fishing – §164(a) and §164(a)(1)
- Include 'rinsing' in definition of processing – §164(a)(3)





Proposed Amendments (continued)

- Clarifying corkline marking requirements – §164(d)(1)(E)
- Modify noise rule language – §164(f)
- Allow some marine mammal deterrent devices – §164(g)
- Allow weekend landings – §164(h)(4)





Timeline and Next Steps

- April 2020
 - Notice Initial Statement of Reason for Regulatory Action
- June 2020
 - Discussion / Adoption hearing
- October 1, 2020
 - Requested Effective Date



CDFW photo

Thank You

Thomas Greiner

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Please contact the Fish and Game

Commission: fgc@fgc.ca.gov

to provide comments