

- (1) Lawanna Chapman of K-C Fish Company, in a letter dated August 17, 2005, stated (a) support for quota Option 2 for the San Francisco Bay roe herring fishery, (b) support of all regulatory amendments proposed for the Tomales Bay roe herring fishery, and (c) support of the proposed reduction of permit transfer fees from \$5000 to \$1000 per permit in San Francisco Bay.

Response:

(a-c) Comment noted.
- (2) Dennis Deaver, herring fisherman, in oral comment at the August 18, 2005 Commission meeting, stated (a) support for the two inch mesh proposal and opposed the reduced quota (Option 2). Mr. Deaver recommended (b) a sunset clause for the reduced quota, or status review in a few years.

Response:

(a) Comment noted.

(b) A sunset clause to address the reduced quota, or a status review, is essentially already incorporated in the current procedure for setting the annual quota. Harvest percentages for determining the commercial herring quota in San Francisco Bay are re-visited each year and are modified based on additional biological data collected each season, such as oceanic conditions, growth rates of herring, strength of individual year-classes, and predicted size of incoming year-classes (*i.e.*, recruitment). The Department's goal in conservative management of the herring fishery is to base harvest percentages on additional data, not simply the previous season's percentage; thus any future proposed harvest percentage will reflect additional data.
- (3) Eddie Genovese, herring permittee, in oral comment on August 19, and September 30, 2005 stated (a) support for reduction in the minimum mesh size for San Francisco Bay to two inches, but (b) expressed concern that a lower than ten percent harvest percentage would remain indefinitely in San Francisco Bay (Option 2).

Response:

(a) Comment noted.

(b) Comment noted. See response (2)(b) above.
- (4) Doug Karlberg, herring fisherman, in a letter dated August 15, 2005, stated (a) that his proposals to the Director's Herring Advisory Committee (DHAC) were not heard at the April 5, 2005 meeting due to Department failure, (b) that Department staff did not like the proposals and withheld them, (c) lack of confidence in Department staff and the independent herring stock assessment and peer review conducted during the summer of 2003, (d) lack of Department efforts to increase the number of older age fish in the herring population, (e) the cause of overfishing, (f) disagreement with the proposed fishing quota (Option 1), (g) the Department spends too much money on herring fishery management and enforcement, (h) that he does not agree with the model used in herring fishery management, (i) that the Department hire biologists demonstrating competence in accurately measuring herring spawn and/or consult with Canadian biologists to verify data collection, (j) that acoustical measuring devices should be place on board fishing vessels, (k) that a standardized format be developed and raw data be published, (l) that review and auditing of Department data should be done when the population

level is low, (m) the benefits of cooperative fisheries management, and (n) that the quota be set at 3000 tons.

Response:

- (a) The DHAC is comprised of industry members who are appointed and serve at the pleasure of the Director. The proposals referred to by Mr. Karlberg were submitted by a DHAC member to the DHAC for consideration at the April 5, 2005 meeting. The submitted proposals were received via e-mail on April 4, 2005 and added to the DHAC meeting agenda. Given the length of the agenda for the April meeting and given the timeframe for the meeting, DHAC members, not Department staff, prioritized what was to be covered at that meeting. Copies of the proposals were provided to each of the DHAC members at the meeting but they were not discussed. The proposals were not considered as proposals for regulatory change at this time, and therefore were not addressed through the regulatory process.
- (b) Please see response (a) above.
- (c) This comment refers to the independent herring stock assessment and survey method peer review that was conducted by California Sea Grant in the summer of 2003 and is described in Section 3.2.3 of the 2005 Draft Supplemental Environment Document (DSED) for Pacific herring Commercial Fishing Regulations. The peer review findings can be found in Appendix B of the 2005 DSED. The Department considers the peer review process to be rigorous and the findings valid. The Department agrees that the findings that the herring population has been reduced to 20 percent of the unfished level are cause for concern. The Department does not agree that this is proof of failure of fisheries management. Fisheries management is not an exact science. The ability of the Department to recognize that the conflicting data available reflected a possibly depressed population, and the subsequent consultation with other Department biologists, biologists from outside agencies and institutions, and the request for an independent peer review of the data, are all signs of proactive, adaptive management of a population that was showing signs of decline.
- (d) The Department has provided the Commission options of fishery closure and/or conservative harvest percentages, at or less than ten percent, since the peer review in an effort to alleviate fishing mortality and possibly promote an increase in the number of older fish in the population. The Department has also utilized the spawn survey biomass estimate as the primary basis for setting the fishery quota, per the peer review recommendations. However, despite any conservative measures, two years may not be enough time to realize any efforts made to rebuild the population.
- (e) The Department concurs; the setting of quotas at too high a level will lead to diminished fish stocks.
- (f) This comment refers to the proposed fishing quota, Option 1, in San Francisco Bay. Proposed fishing quotas are based on a harvest percentage of the biomass estimate of the preceding season. The Department has typically recommended a harvest percentage of 10 to 15 percent. The proposed quota of 5,890 tons represents approximately 10 percent of the 58,934-ton biomass estimate and is at the

conservative end of the above range. Please see Appendix 3 of the 1998 Final Environmental Document (FED) (www.dfg.ca.gov/mrd/herring/ceqa) for more information on the harvest percentage range.

- (g) This comment refers to the amount of money that the Department spends on the herring research and management project. The Department is in the process of reviewing ways to reduce the amount of money and time spent on this fishery as a result of a loss of biological staff and the status of the state budget.
 - (h) The Department does not currently utilize a model, per se, to set the quota. The quota is simply based on a harvest percentage of the biomass estimate. Please see Section 2.3.1.1 of the 2005 Final Supplemental Environmental Document (FSED) for Pacific herring Commercial Fishing Regulations and Appendix 3 of the 1998 FED (www.dfg.ca.gov/mrd/herring/ceqa).
 - (i) The spawn surveys conducted by the Department are based on data collected in the field, not on theory. Collection of data for the San Francisco Bay spawn survey has been completed by Department biologists who have, collectively, over 25 years experience in the collection of herring spawn deposition data. In addition, the stock assessment and review of survey methodology peer review panel included a biologist from Canada with considerable expertise in herring spawn deposition data collection. The Canadian biologist has worked with Department herring biologists and is aware of their expertise and knowledge. Coordination with other herring biologists on the west coast has been a practice of the Department for many years.
 - (j) The Department appreciates this recommendation and will forward it to the DHAC and to the Commission for consideration.
 - (k) The Department has developed a standardized format for collecting and analyzing spawn deposition data. It is not the Department's policy to publish raw data, and many other state and federal agencies share the same policy. However, this data is available for review in the Department's Marine Region office in Belmont. In addition, the three biologists on the Peer Review panel did provide an independent review of the Department's data collection, and management strategies.
 - (l) The Department welcomes further opportunity for peer review of data.
 - (m) The Department agrees that the best fisheries management is realized when scientific and field knowledge of fishermen is combined to provide for the best management of the resource. The Department also acknowledges that its responsibility in managing the herring resource includes managing for conservation as well as consumption.
 - (n) Comment noted.
- (5) Ernie Koepf, herring permittee, in oral comment on August 19, 2005 stated support for the proposed quota Option 2 for San Francisco Bay.
Response:
Comment noted.
- (6) Sam Liberati, herring permittee, in a letter dated August 10, 2005 and in oral comment on August 19, 2005 requested the following be considered by the

Commission: (a) allow an individual to own a single permit for each of the different herring gillnet platoons in San Francisco Bay, (b) eliminate the point system for qualifying for a herring permit, and (c) allow a herring permit to be passed from a parent to a child, or between husband and wife. Mr. Liberati also stated (d) support of a change in the minimum mesh size to 2 inches in San Francisco Bay, and that (e) he would prefer a larger quota than that recommended in the proposed quota Option 2 for San Francisco Bay.

Response:

(a-c) Comment noted. These comments are considered under a separate rulemaking, Section 163.1 Title 14, CCR.

(d-e) Comment noted.

- (7) Andy Stock, herring permittee, in a letter dated September 24, 2005 stated support for quota Option 1 for San Francisco Bay.

Response:

Comment noted.

- (8) Kate Wing, representing Natural Resources Defense Council (NRDC), in a letter dated September 26, 2005, expressed concern with the proposal to reduce the mesh size to two inches in the 2005-06 San Francisco herring fishery when data from the Department show that the overall stock biomass has been at low levels for the past seven seasons and that older fish make up an increasingly small proportion of the catch.

Response:

The Department concurs with the concern regarding the status of the San Francisco Bay herring population. In an effort to offset the potential increase in the catch of younger fish, the Department recommended setting the quota at less than 10 percent of the 2004-05 spawning biomass estimate if the Commission adopted regulations to lower the mesh size (Option 2). The Department will continue to monitor the population through collection and analysis of catch data.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: No alternatives were identified.

- (b) No Change Alternative:
A no change alternative would provide a quota for the 2005-06 fishing season of 3,440 tons.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

X. 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:

No adverse economic impacts. The proposed action for the 2005-06 season will have no adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed 2005-06 regulations would benefit California's commercial herring fishermen and herring processing plants, all of which are small businesses as defined under Government Code Section 11342.610. Depending on the option selected by the Fish and Game Commission (Commission), direct benefits would accrue to the San Francisco Bay herring fishery in the form of increased catches, revenues, and related economic activity. Harvest quotas for San Francisco Bay herring fishermen would be increased from 3,440 tons to 5,890 tons (Option 1), or from 3,440 to 4,502 tons (Option 2).

Option 1 includes a proposed quota of 5,890 tons for San Francisco Bay in 2005-06, and represents potential increases in ex-vessel revenues of as much as \$2,080,296 in the San Francisco Bay herring fishery, which consists of approximately 388 herring fishermen. This increased revenue projection is based on average price data from the 2004-05 season, assuming that the entire San Francisco quota is harvested in each year ($\$4,994,078_{2005-06} - \$2,913,782_{2004-05} = \$2,080,296$, or \$2,120,144 when adjusted for inflation and presented in year 2005 dollars). Additionally, an in-season increase in the Tomales Bay quota, from 400 to 500 tons, is proposed should spawning escapement reach or exceed 4,000 tons before February 15, 2006. The 2005-06 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2004-05. Thus the total ex-vessel revenue potential from all herring quotas, for all 417 herring fishermen, could be as much as \$5,499,339 under the proposed 2005-06 regulation. Using a

statewide output multiplier and projected ex-vessel revenues of \$5,499,339, the economic contribution of the 2005-06 herring fishery could be as much as \$11,060,821 in year 2005 dollars. (This is derived by multiplying the projected ex-vessel revenues by a statewide demand output multiplier of 2.0113; e.g. $2.0113 \times \$5,499,339 = \$11,060,821$).

Option 2 has a proposed quota of 4,502 tons for San Francisco Bay in 2005-06, and represents potential increases in ex-vessel revenues of as much as \$901,678 in the herring fishery of 388 fishermen. This increased revenue projection is based on average price data from the 2004-05 season, assuming that the entire San Francisco quota is harvested in each year ($\$3,815,460_{2005-06} - \$2,913,782_{2004-05} = \$901,678$, or \$918,950 when adjusted for inflation and presented in year 2005 dollars). As in the above option, an in-season increase in the Tomales Bay quota, from 400 to 500 tons, is proposed should spawning escapement reach or exceed 4,000 tons before February 15, 2006. The 2005-06 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2004-05. Thus the total ex-vessel revenue potential from all herring quotas, for all 417 herring fishermen, could be as much as \$4,298,145 (in year 2005 dollars) under the proposed Option 2. Using a statewide output multiplier and projected ex-vessel revenues of \$4,298,145 the economic contribution of the 2005-06 herring fishery could be as much as \$8,644,858 in year 2005 dollars. (This is calculated by taking the projected ex-vessel revenues and multiplying by a statewide demand output multiplier of 2.0113; e.g. $2.0113 \times \$4,298,145 = \$8,644,858$).

Changes in the minimum mesh size for herring gill nets would increase fishermen's harvest of the relatively abundant younger (year 2 and year 3) fish. Since the proposed regulations offer a range of 2" to 2 1/4" mesh size, which encompasses the earlier mesh size nets, the proposed regulations do not require fishermen to replace their older nets. For herring fishermen who chose to purchase the new smaller mesh size nets, the cost for a new net is estimated to be around \$1,208 (excluding shipping and handling charges).

- (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:

None.

- (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. There are no new fees or reporting requirements stipulated under the proposed regulations. The new fishing gear specifications do not impose a financial burden on fishermen since the proposed mesh size is a range that includes gears used in prior years.

- (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:
None.
- (h) Effect on Housing Costs:
None.

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT REVIEW

The originally proposed regulatory language for the proposed quota Option 2 for San Francisco Bay did not include the change in regulatory language specifying the length as measured over ten meshes (Subsection 163 (f)(2)(B)). This error has been corrected in the attached regulations. This change does not change the original implications of the proposed option or necessitate a change to the Informative Digest.

Following the receipt of public comment and discussion of the regulations, the Commission voted to adopt quota Option 2 for San Francisco Bay, a quota of 4,502 tons and change in the minimum mesh size to 2 inches.

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish fishing quotas, specify net measurement methods, modify mesh size in San Francisco Bay, establish season dates and times that fishing operations are allowed, and require reimbursement of Department costs if fishing occurs on the weekend in Tomales Bay.

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

- The proposed regulations would establish fishing quotas by area for the 2005-06 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. Two options are provided for the San Francisco Bay quota. San Francisco Bay Quota Option 1 would set the quota at 5,890 tons which represents 10 percent of the 2004-05 spawning biomass estimate. If the Commission were to adopt this quota, this would result in a 10.4-ton individual quota for a "CH" gill net permittee and a 3.0-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. The Department recommends selecting Option 1 if the minimum mesh size remains at 2 1/8 inches. San Francisco Bay Quota Option 2 would set the quota at 4,502 tons which represents 7.6 percent of the 2004-05 spawning biomass estimate. If the Commission were to adopt this quota, this would result in a 7.9-ton individual quota for a "CH" gill net permittee and a 2.3-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery. The Department recommends selecting Option 2 if the minimum mesh size were changed to 2 inches. An initial 400-ton fishing quota (eleven percent of the 2004-05 estimated spawning biomass of 3,686 tons) is proposed for Tomales Bay with provisions to increase the quota in-season if escapement goals are achieved by February 15, 2005.

- The proposed regulations would change the minimum mesh size in the San Francisco Bay gill net fishery from 2 1/8 to 2 inches.
- The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2005-06 season only, shall be no less than 2 inches or greater than 2 1/2 inches. This proposal is a continuation of regulations originally approved for the 2000-01 season to evaluate the effect of reduced mesh size on the length and age composition of herring caught in 2 inch mesh gill nets in Tomales Bay.
- The proposed regulations would allow weekend fishing in Tomales Bay. The Department proposes that should the Commission decide to allow weekend fishing in Tomales Bay, the Department shall be able to submit a detailed invoice to the appropriate party, or parties, for any increase in the cost of operations. The proposed amendment would allow weekend fishing in Tomales Bay.
- The proposed regulations would specify that the length of a gill net used in San Francisco and Tomales Bay shall be measured along the cork line.
- The proposed regulations would set the dates of the roe herring fisheries in San Francisco Bay from 5 p.m. on Sunday, December 11, 2005 until 6:00 a.m. on Friday, December 23, 2005 and re-open at 5 p.m. on Monday, December 26, 2005 until 6:00 a.m. on Friday, December 30, 2005 ("DH" gill net platoon only). Recommended dates for the odd and even platoons are from 5:00 p.m. on Monday January 2, 2006 until noon on Friday, March 17, 2006.
- The proposed regulations would set the dates of the roe herring fisheries in Tomales Bay from 5:00 p.m. on Sunday, December 25, 2005 until noon on Friday, December 30, 2005, and from 5:00 p.m. on Sunday, January 1, 2006 to noon on Friday, February 24, 2006.
- The proposed regulations would correct the Herring Eggs on Kelp Permit Application number in subsection 164 (h)(1) to coincide with the 2005-06 season application.

REGULATORY LANGUAGE

Section 163, Title 14, CCR is amended to read:

§163. Harvest of Herring.

Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon written request by the permittee, accompanied by a copy of the current commercial boat registration of the new vessel. The fee for any approved transfer or substitution of a permit pursuant to paragraph one shall be \$50 for any request received by the department after the issuance date of November 15. The \$50 transfer fee must be received in the department's San Francisco Bay Area Marine Region office no later than five working days after written approval of any boat transfer or permittee substitution. Any permittee denied a transfer pursuant to paragraph one of this section may request a hearing before the commission to show cause why his request should not be denied. Permittees shall have their permit in their possession (including the attachment of any changes approved by the department after the permit is issued) and shall be aboard the vessel named on their permit at all times during herring fishing operations, except that the department may authorize a permittee to have a crew member temporarily serve in his or her place aboard the vessel during a season. Requests for temporary permittee substitution must be submitted in writing by the permittee, accompanied by a copy of the temporary substitute's current California commercial fishing license. Two permits may be jointly fished on a single vessel upon approval of a written request by both permittees to the department. A permittee may simultaneously fish his or her own permit and a permit temporarily transferred to him or her on a single vessel within the same fishing group. A permittee serving as a temporary substitute on a permit while simultaneously fishing his or her own permit on a single vessel in the same fishing group shall incur the same penalties on his/her permit for all violations as those incurred against the permit for which he/she is serving as temporary substitute as prescribed in these regulations and in Section 163.5, Title 14, CCR. A person may not serve as a temporary substitute on more than one permit simultaneously on a single vessel in the same fishing group. Any request received by the department from November 1 to November 15 to transfer boats or substitute a permit or to simultaneously fish two permits on a single vessel shall be processed for approval by the department after the issuance date of November 15.

(a) Qualifications of Permittee. To obtain a permit to take herring a person shall:

(1) Be a currently licensed California commercial fisherman. When a permit is held in partnership (pursuant to the provisions of Section 8552.6 of the Fish and Game Code), both partners must be currently licensed California commercial fishermen.

(2) Have been a permittee during the previous herring season.
(3) Qualify for an odd- or even-numbered permit as specified in subsection (c)(1)(B).

(4) Qualify for a "DH" gill net permit as specified in subsection (c)(1)(C).

(5) Have submitted lists of crewmembers assisting in fishing operations as specified in subsections (e)(2) of these regulations, release of property forms and payment for all herring landed in excess of an established individual permit quota as specified in subsection (e)(5) of these regulations, and all fees from prior seasons.

(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his or her permit should not be denied. Applicants disqualified under subsections (c)(1)(B) or (c)(1)(C) will be granted a hearing if the number of points claimed would have placed them in the point category from which new permits will be issued.

(b) Permit Applications. Each applicant for a herring permit shall:

(1) Completely fill out and submit the required department application form (available at the department's San Francisco Bay Area Marine Region or Eureka office). No person shall submit more than one application per season.

Applications shall include the filing fee, as specified in section 8550.5 of the Fish and Game Code, and copies of the current California certificate of boat registration and commercial fishing license of the applicant.

(2) Permittees will be issued permits for the same area and gear type they held during the previous season. In San Francisco Bay, round haul permittees who transferred gear type to gill net were designated as CH-(600-642)-SF permittees. For every conversion of gear type to gill net by a round haul permittee, the amount of herring allocated to each round haul permittee was transferred from the round haul quota to the gill net quota. For each round haul permit converted prior to October 6, 1995, fishing with gill net gear is authorized in two of the following fishing periods: odd-numbered permits, even-numbered permits, or December herring ("DH") permits. The permitholder of a converted round haul ("CH") permit is permanently assigned to the two fishing groups ("DH", odd-, or even-numbered permit) he or she designated. For every conversion of gear type to gill net by a round haul permittee after October 6, 1995 but before October 2, 1998, the permit is permanently in the two fishing groups ("DH", odd-, or even-numbered permit) assigned by the department. All remaining round haul permits as of October 3, 1998 were converted to gill net permits and assigned to a single gill net group.

Upon transfer, the department assigned each converted "CH" permit to a single gill net group ("DH", odd numbered, or even-numbered permit) as designated by the permitholder. A round haul herring permit, held in partnership prior to November 3, 1994 and subsequently converted to a "CH" permit prior to October 2, 1998, is not subject to assignment to a single gill net group upon transfer to one of the partners.

(3) Submit the required application form for Humboldt, Tomales or San Francisco bays, or Crescent City in time for it to be received at the department's San Francisco Bay Area Marine Region office, prior to 5:00 p.m. on the first

Friday of October. Any application received or postmarked after the above deadline will not be eligible for consideration for the current California herring season.

(4) Subsections (a)(2) and (b) do not apply to permits issued for taking herring in ocean waters or to fresh fish market permits.

(c) Permits.

(1) Permits to take herring for roe purposes will be issued by the department beginning November 15. Permits will be sent by certified mail, return receipt requested, to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay.

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 232. No new "DH" permits shall be issued until the maximum number of permits is less than 116. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all Fish and Game regulations as provided in this section, or in the Fish and Game Code, relating to herring.

(A) The total number of gill net permits issued to individuals not qualifying under subsection (a)(2) shall be the difference in number of permittees meeting such qualifications and the total number of gill net permits authorized by the commission in subsection (c)(1).

(B) Individuals not qualifying under subsection (a)(2) will be eligible to apply for any available odd- or even-numbered gill net permits provided they are a currently licensed California commercial fisherman.

(C) Individuals not qualifying and receiving permits under subsections (a)(2) or (c)(1)(B) will be eligible to apply for any available "DH" gill net permits provided they are a currently licensed California commercial fisherman.

(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall be held. Preferential status in the lottery will be given under the following conditions:

1. One point (maximum of ten) for each year an applicant has held a valid California commercial fishing license in the previous twelve years (prior to the current license year). A point shall be granted only if the applicant's name appears on the department's master file of commercial licensees or if the applicant presents a valid commercial fishing license or verifiable receipt for the year claimed.

2. Five points for one year of service as a paid crewmember in the herring fishery, three points for a second year of service as a paid crewmember, and two points for a third year as a paid crewmember, beginning with the 1978-79 herring fishing season, not to exceed a maximum of 10 points.

3. Preference points awarded for participation in the herring fishery shall only be granted if the applicant's name has been filed with the department pursuant to subsection (e)(2) of these regulations, and is supported by

documentation demonstrating proof of payment for service on a crew in the California herring roe fishery as specified in section 8559 of the Fish and Game Code.

4. Permits will be issued predicated on the total number of points accrued by an applicant, beginning with those applicants who accrue the maximum number of points and working in descending order from this maximum. A drawing will be held to allocate the remaining permits when the permits available are exceeded by the number of applicants in a particular point category.

(E) Preferential status points will not be given for participation on vessels with permits specified in subsections (c)(2) and (c)(3) of this section.

(2) Fresh Fish Market. Ten permits will be issued to take herring for the fresh fish market in San Francisco Bay and five in Tomales Bay. See subsection 699(b) of these regulations for the fee for this permit. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 500 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at the department's San Francisco Bay Area Marine Region office. In the event there are more applicants than the specified number of available fresh fish permits, a lottery will be held to determine the permittees. Applicants may apply for only one bay. Fresh fish market permits shall be in force from November 2 through November 15 and April 1 through October 31.

(3) Ocean Waters. Permits to take herring in ocean waters will be issued by the department at its offices in Monterey, the San Francisco Bay area and Eureka. See subsection 699(b) of these regulations for the fee for this permit.

Herring taken under the authority of subsections (c)(2) and (c)(3) may not be sold for roe purposes.

(d) Vessel Identification. The master of any boat engaged in taking herring under these regulations shall at all times while operating such boat, identify it by displaying on an exposed part of the superstructure, amidship, on each side and on top of the house visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.

(e) Monitoring of Herring.

(1) Herring taken for roe purposes may only be delivered to a person licensed pursuant to subsection (j) of these regulations.

(2) Within four weeks of the date an individual quota is reached, or within four weeks of the end of the season, the permittee shall submit to the department's San Francisco Bay Area Marine Region office a list of crewmembers assisting in fishing operations during the current herring season. The list shall include the full name and California commercial fishing license number of each crewmember. Gill net permittees shall notify the department's San Francisco Bay Area Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.

(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on

VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.

(4) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another, or from one gear type to another except that, non-motorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats. In San Francisco Bay a permittee and his/her gear must stay together when delivering fish to market. Except as specified in subsection (e)(6) of these regulations, all fish taken by gill nets shall be retained and landed. Gill net permit vessels may not be used to assist in herring fishing operations during their off-week.

(5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(6) Sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.

(f) Methods of Take.

(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Game districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W), to the easternmost point of the Sausalito ferry dock (37 degrees 51 minutes 30 seconds N, 122 degrees 28 minutes 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees 12 minutes 53 seconds N, 122 degrees 57 minutes 11 seconds W) to the opposite shore (38 degrees 12 minutes 44 seconds N, 122 degrees 57 minutes 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h)(6) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 47 minutes, 07 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41

degrees, 39 minutes, 31 seconds N, 124 degrees 08 minutes 43 seconds W).

(2) The use of round haul nets to take herring for roe purposes is prohibited. The use of round haul nets to take herring is prohibited except in ocean waters (as defined in subsection (f)(1) of these regulations).

(A) No permittee shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net, as measured at the cork line, in San Francisco and Tomales bays. Said gill nets shall not exceed 120 meshes in depth. In Humboldt Bay and Crescent City Harbor, no permittee shall possess or fish in combination more than 150 fathoms of gill net. Fresh fish permittees shall not possess or fish more than 65 fathoms (1 shackle).

Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one-half of the weight must be anchor. Gill nets shall be tended at all times in San Francisco Bay. Tended means the registered gill net permittee shall be in the immediate proximity, not exceeding one nautical mile, of any gill net being fished.

(B) In Tomales Bay, for the ~~2004-05~~2005-06 season only, the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. The use of mesh size of no less than 2 inches or greater than 2 1/2 inches is designated for evaluation purposes by the department and shall revert to a mesh size of no less than 2 1/8 inches or greater than 2 1/2 inches following the ~~2004-05~~2005-06 season, unless otherwise designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than ~~2-1/8~~ 2 or greater than 2 1/2 inches, except that six permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets of another size approved by the department, ~~with mesh less than 2 1/8 inches~~. The meshes of any gill net used or possessed by fresh fish permittees shall not be greater than 2 inches.

Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically under one-pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales Bay, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches. In San Francisco Bay, the length of any series of 10 consecutive meshes as determined by the above specification shall

not be less than $24\frac{1}{4}$ 20 inches or greater than 25 inches.

(C) No net shall be set or operated to a point of land above lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier. In the Crescent City area and Humboldt Bay gill nets may be set or operated within 300 feet of any pier.

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn from the tip of Peninsula Point (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W) to the tip of Elephant Rock (southwest of Pt. Tiburon at 37 degrees 52 minutes 19 seconds N, 122 degrees 27 minutes 03 seconds W). Also, no gill nets shall be set or operated from November 15 through February 15 inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green 4s at 37 degrees, 44 minutes, 23 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y"A" buoy, flashing yellow 4s at 37 degrees, 44 minutes, 46 seconds N, 122 degrees, 19 minutes, 25 seconds W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1" buoy, flashing green 4s at the entrance to Alameda Carrier Channel, 37 degrees, 46 minutes, 38 seconds N, 122 degrees, 20 minutes, 27 seconds W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, flashing green 2.5s at 37 degrees, 48 minutes, 15 seconds N, 122 degrees, 21 minutes, 23 seconds W) and then in a direct line southwesterly to the point of beginning. (Tower C of the Oakland Bay Bridge, at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W).

(E) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area, including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(F) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the herring permit number in contrasting 4-inch black letters.

(G) The use of explosives, seal bombs, or marine mammal deterrent

devices in the herring fishery is prohibited inside the waters of San Francisco Bay during the herring season.

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

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall be as follows:

(A) In Tomales Bay waters a fishing quota, not to exceed 400 tons, shall be permitted for the ~~2004-05~~2005-06 season. However, if spawning escapement, as determined by the department, reaches or exceeds 4,000 tons prior to February 15, the quota shall be increased as follows: 1) if spawning escapement is more than 4,000 tons, the total take of herring shall not exceed 500 tons for the season.

(B) The total take of herring for the fresh fish market shall not exceed 10 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~3,440~~4,502 tons for the ~~2004-05~~2005-06 season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): ~~2,180~~4,153 tons. Tonnage shall be allocated to each fishing group ("DH", odd, and even) in proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season. Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon, unless provided for pursuant to subsection (g)(4)(B) of these regulations.

(B) The total take of herring for the fresh fish market shall not exceed 20 tons per season, except that 10 tons total may be transferred, in proportion determined by the department, to gillnet permittee(s) participating in research sponsored by the department pursuant to subsection (g)(4)(A) of these regulations.

(5) Ocean Waters: Herring may not be taken for roe purposes.

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season shall be from ~~5 p.m. on December 5 until noon on December 23, 2004, and from 5:00 p.m. on January 2 until noon on March 11, 2005~~ 5 p.m. on Sunday, December 11, 2005 until 6 a.m. on Friday, December 23, 2005, from 5 p.m. on Monday, December 26, 2005 until 6 a.m. on Friday, December 30, 2005 and from 5 p.m. on Monday, January 2, 2006 to noon on Friday, March 17, 2006.

(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to the "even" fishing group shall be permitted to fish only on the following dates: ~~January 2-7, January 16-21, February 6-11, February 20-25, March 6-11, January 8-13, January 22-27, February 5-10, February 19-24, March 5-10.~~

(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to the "odd" fishing group shall be permitted to fish only on the following dates: ~~January 9-14, January 23-28, February 13-18, February 27-March 4, January 2-6, January 15-20, January 29-February 3, February 12-17, February 26-March 3, March 12-17.~~

(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to the "DH" fishing group shall be permitted to fish only on the following dates: ~~December 5-10, December 12-17, December 19-23, December 11-16, December 18-23, December 26-30.~~ In the event permittees described under subsections (h)(3)(A) and (h)(3)(B) both reach their quotas pursuant to subsection (g)(4)(A), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.

(D) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from ~~noon on December 5 until noon on December 23, and from 5:00 p.m. on January 2 until noon on March 11~~ 5 p.m. on Sunday, December 11, 2005 until 6 a.m. on Friday, December 23, 2005, from 5 p.m. on Monday, December 26, 2005 until 6 a.m. on Friday, December 30, 2005 and from 5 p.m. on Monday, January 2, 2006 to noon on Friday, March 17, 2006.

(4) In Tomales Bay, the season shall be from ~~5:00 p.m. on December 26 until noon on December 31, and from 5:00 p.m. on January 2 until noon on February 25.~~ 5:00 p.m. on Sunday, December 25, 2005 until noon Friday, February 24, 2006.

(5) Herring fishing in ~~Tomales Bay~~ and San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night. Herring fishing is allowed in Tomales Bay from noon Friday through 5:00 p.m. Sunday night if the department is reimbursed for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the service. Party shall remit payment to the department within 30 days of the postmark date of the

department's invoice.

(6) Ocean Waters: The season shall be from April 1 to October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November 30.

(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.

(i) Any permit issued pursuant to this section may be suspended or revoked at any time by the commission for cause after notice and opportunity to be heard, or without a hearing upon conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his/her herring fishing privileges should be restored. A person whose herring permit has been revoked by the commission shall not participate in any herring fishery during the following season. A person whose herring permit has been suspended for the entire season by the commission shall not participate in any herring fishery during the season the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the commission shall not participate in any herring fishery during the period that the permit is suspended. If a herring permit that had a temporary substitute is suspended by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season during the period that the permit is suspended. If a herring permit that had a temporary substitute is revoked by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season. If a herring permittee is convicted of a violation, or if the permit is suspended or revoked, due to the actions of a temporary substitute who is simultaneously fishing his or her own permit on a single vessel in the same fishing group, the person who was acting as the temporary substitute will receive the same penalty against his/her own permit as received by the permittee, pursuant to these regulations and Section 163.5, Title 14, CCR. For Category II violations prescribed in Section 163.5(f) against a permit due to the actions of a temporary substitute while simultaneously fishing his/her own permit, equal points or penalties shall be assigned to the permit owned by the temporary substitute.

(j) Herring Buyer's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for roe purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the \$750 filing fee (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable,

nontransferable permit to buy herring for roe purposes may be issued subject to the following regulations:

(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights.

The serial number and predetermined tare weight shall be permanently marked in letters, and numerals at least 3 inches high on each side of vehicle container or pallet.

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load. No herring shall be taken for testing purposes from a load that has not first been weighed and recorded.

(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weighmaster or his/her deputy prior to commencing unloading operations of another vessel.

(B) The weighmaster or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his/her complete signature. The weighmaster shall list on the landing receipt the number of fish in, and the weight of, each roe test for the landing reported on the receipt.

(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.

(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.

(3) Prior to weighing herring, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.

(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.

(A) The tally sheets shall be composed of four columns:

1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.

2. The gross weight;

3. The tare weight of the bin or containers; and

4. The net weight of fish. Net weight will include the weight of the herring taken for testing purposes.

(B) The work or weight tally sheets shall be retained by the permittee for one year, and must be available at all times for inspection by the department.

(C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be placed in the U.S. Postal system to the department's San Francisco Bay Area Marine Region office within twenty-four (24) hours of the truck's departure from the buyer's premises.

(5) In San Francisco Bay, herring may not be unloaded between the hours

of 10 p.m. and 6 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.

(6) Every permittee shall comply with all applicable sections of the Fish and Game Code.

(7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.

(8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.

NOTE

Authority cited: Sections 1050, 5510, 8550, 8553 and 8555, Fish and Game Code. Reference: Sections 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.

Section 164, Title 14, CCR is amended to read:

§164. Harvesting of Herring Eggs.

(a) Herring eggs may be taken for commercial purposes only under a revocable, nontransferable permit issued by the department. A department-issued copy of the permit shall be aboard each vessel harvesting, processing or transporting herring eggs under the authority of the permit. The permittee or his/her authorized agent shall be aboard any vessel that is harvesting, processing or transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).

(b) Herring eggs may be harvested only from the waters of San Francisco Bay. The harvest season is December 1 to March 31.

(c) For purposes of this section, San Francisco Bay is defined as the waters of Fish and Game districts 11, 12, 13 and that part of district 2 known as Richardson Bay.

(d) No more than 11 permits may be issued under the provisions of these regulations. No new permits shall be issued until the maximum number of permits is less than 10. The commission will review and determine annually whether further action, other than permit attrition, is deemed necessary to achieve a reduction to 10 permits.

(e) Fishing, Harvesting, and Processing Defined. Unless the context requires otherwise, the following definitions shall apply to the herring eggs on kelp (HEOK) fishery:

(1) "Fishing" means the act of suspending giant kelp (*Macrocystis pyrifera*) for the purposes of taking herring eggs, and/or the subsequent act of removing

herring eggs on kelp from the water for the purposes of transport or harvest. Any person engaged in fishing shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(2) "Harvesting" means the act of removing herring eggs on kelp from the water for the purposes of processing for sale and/or transport to market. Any person engaged in harvesting shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(3) "Processing" means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested herring eggs on kelp, and loading the processed blades into bins or totes. Any person engaged in, or employed for the specific purpose of, processing herring eggs on kelp shall fall under the category of nonapplicability in regard to possession of a commercial fishing license pursuant to Section 7850.5 of the Fish and Game Code. Pursuant to Section 7850.5 of the Fish and Game Code, a person engaged in processing (permittees and authorized agents excepted) may stand aboard a herring eggs on kelp vessel while at a dock or landing, but any not be transported aboard the vessel. A person engaged in processing (permittees and authorized agents excepted) may not stand on the herring eggs on kelp raft, nor physically participate in the removal of herring eggs on kelp from the water.

(f) Permits. Permits shall be issued in two categories:

(1) Prior permittee. Permits shall be issued to all prior permittees. A prior permittee is defined as a person who has:

(A) met the requirements under subsection (g) of these regulations, and

(B) renewed their herring eggs on kelp permit for the immediately preceding herring eggs on kelp season, and

(C) submitted all fees from prior seasons.

(2) New permittee. A new permittee is defined as any applicant who held a herring permit issued pursuant to Section 163 of these regulations during the preceding herring season, but does not qualify as a prior permittee as defined above. The total number of permits available to new permittees shall be the difference between the 10 permit limit and the number of permits issued to individuals qualifying as prior permittees. In the event that the number of eligible applicants qualifying for new permits exceeds the number of available permits, a lottery shall be held.

(g) Permit conditions: Every person operating under a permit to harvest herring eggs shall:

(1) Forfeit his or her herring fishing privileges authorized pursuant to Section 163 of these regulations during the same season.

(2) In addition to any license fees required by the Fish and Game Code, pay a royalty of \$500 per ton of herring eggs on kelp taken. (The royalty fee shall include the landing tax imposed pursuant to Article 7.5, (commencing with Section 8040) Chapter 1, Part 3, Division 6, of the Fish and Game Code, and the royalty fee required for the harvesting of kelp pursuant to Section 165, Title 14 CCR).

(3) Submit a Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (FG 143 HR (Rev. 5/01), which is incorporated by reference herein (available at

the department's San Francisco Bay Area Marine Region office), with payment due to the department's San Francisco Bay Area Marine Region office for each month of the season, within 60 days after the close of the month for which it is due.

(h) Permit applications. Each applicant for a herring eggs on kelp permit shall:

(1) Completely fill out and submit the required department Herring-Eggs-on-Kelp Permit Application (FG 1406 ~~(8/03)~~(10/04)) which is incorporated by reference herein (available at the department's San Francisco Bay Area Marine Region office), for the season to which the application applies. No person shall submit more than one application per season. Applications shall include a performance deposit as specified in subsection (i), and shall be delivered to the department's San Francisco Bay Area Marine Region office or postmarked no later than 5 p.m. on August 1 of each year.

(2) Applications postmarked or presented after August 1 and before September 1 will result in a monetary penalty of \$200 plus \$50 for each state working day, or portion thereof, that the application is late, for a period of 30 days. Applications postmarked or presented after August 31 will not be eligible for renewal.

(3) Have submitted all fees from prior seasons.

(i) Each application shall include a performance deposit equal to 50% of the royalty price for the permit (i.e., allotment). The deposit shall be credited to the amount payable by the successful applicants and shall not be refundable. The performance deposit shall be returned to an applicant who does not qualify for a permit.

(j) Method of Take. Herring eggs may only be taken by harvesting giant kelp (*Macrocystis* sp.), with spawn (i.e., eggs) attached, which has been artificially suspended using the following two methods: rafts and/or lines, a technique commonly known as the "open pond" method. For the purpose of this Section, a raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet. Rafts used by a licensed herring eggs on kelp permittee, prior to the 1995-96 season, are exempt from these size specifications. Such rafts may not be modified to exceed 2,500 square feet total surface area. Any new raft built after the 1995-96 herring eggs on kelp season must meet the specified dimensions. A line is defined as a piece of line of no more than 1200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks). Kelp lines shall have floats or cork over the entire length of line. Each end of the line must be attached to a permanent structure. Kelp lines suspended from a permanent structure (e.g., pier or dock) shall not be placed as to hinder navigation. If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

(1) Not more than two rafts and/or two lines may be used per permit. Two permits may be simultaneously fished on the same raft if each line on the raft is clearly identified with the permit number of the owner. Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards. Each raft shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to the raft. Lines shall be marked at the beginning and the end with a light that may be seen for at least a distance of 100 yards. Each line shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background, permanently affixed to the line.

(2) Not more than ten sets of test kelp may be used per permit. Test kelp is defined as one stipe with blades, attached to a length of line for the purpose of testing for spawning activity. A set is defined as one length of line with test kelp attached. Each set must be attached to a permanent structure (e.g., pier, dock) and marked with the herring eggs on kelp permit number, in Roman alphabet letters and Arabic numerals at least 3 inches high, at a point above the waterline. No herring eggs on kelp shall be retained from test kelp sets for testing purposes that have not been weighed and recorded, pursuant to subsection 164(k).

(3) Rafts and/or lines may not be placed in any waters or areas otherwise closed or restricted to the use of herring gill nets operating pursuant to Section 163 of these regulations, except where written approval is granted by the owners or controlling agency (e.g., Navy, Coast Guard). Rafts and/or lines may be placed in Belvedere Cove or Richardson Bay, only if permittees tie their rafts and/or lines to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), and obtain prior written approval. Buoys are not permanent structures.

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations.

The total amount of herring eggs on kelp that may be harvested by an individual possessing a gill net permit issued pursuant to Section 163 of these regulations shall be ~~4.7~~2.3 tons per season. The total amount of herring eggs on kelp that may be harvested by an individual possessing a "CH" permit issued pursuant to Section 163 of these regulations shall be ~~6.0~~7.9 tons per season.

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations shall have a current Fish and Game commercial boat registration and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(6) The permittee shall notify the department's San Francisco Bay Area

Marine Region office in writing with the name and registration number of any vessel that will be used for harvesting, processing or transporting herring eggs under the authority of the permit. The permittee shall provide a copy of the current California certificate of boat registration with the permittee's written notification. The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting herring eggs.

(7) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit within a 4-hour period prior to the suspension of kelp on a raft and/or lines and supply the following information:

(A) Where the kelp suspension will take place; and

(B) Where the permittee plans to fish the rafts and/or lines; and

(C) A local fax number or mailing address where confirmation of kelp suspension notification can be sent.

(k) Harvesting, Landing and Processing Requirements. Every person who harvests, receives, processes or wholesales herring eggs shall comply with the following requirements.

(1) Obtain all appropriate commercial fish business licenses and permits required by Fish and Game Code sections 8030-8038.

(2) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit a minimum of 12 hours prior to harvesting herring eggs on kelp on a weekday and supply the following information: description and point of departure of the vessel used; the exact location of each raft and/or line and estimated time of beginning of each operation; and if harvesting occurs, the point of landing and time of landing or off-loading of the herring eggs on kelp harvested. If any of this information changes after notification is given, the permittee shall again notify the department at the telephone number designated on the herring eggs on kelp permit.

(3) Herring eggs on kelp may be harvested any time on weekdays, but shall not be off-loaded between the hours of 10:00 p.m. and 6:00 a.m.

(4) Herring eggs on kelp may be harvested on Saturdays and Sundays at any time if the permittee reimburses the department for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the services. Permittee shall remit payment to the department within 30 days of the postmark date of the department's invoice. Permittee shall notify the department at the phone number designated on the herring eggs on kelp permit, during normal business hours (between 8:00 a.m. and 5:00 p.m., Mondays through Friday) prior to harvesting herring eggs on kelp on Saturday or Sunday, and shall supply the following information:

(A) Description and point of departure of the vessel used.

(B) The exact location of each raft and estimated time of the beginning of the harvesting operation, the estimated time of off-loading of the harvested product, and the point of off-loading.

(C) A local telephone number of the permittee for the immediate confirmation or clarification of the information required in subsection 164(k)(4).

(5) Permittee shall have a certified scale aboard the vessel at all times if any brining is conducted aboard that vessel. This scale shall be used to determine the total weight of herring eggs on kelp prior to brining. For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of herring eggs on kelp. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of herring eggs on kelp.

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

(7) Prior to weighing herring eggs on kelp, each receiver of herring eggs on kelp shall have a scale currently certified and sealed by the County Division of Weights and Measures.

(8) Weight tally sheets and a landing receipt shall be immediately completed upon the landing and weighing of any single permittee's boat load of harvested herring eggs on kelp (hereinafter "load").

(A) The landing receipt for each herring eggs on kelp permittee shall be completed and signed by the permittee prior to commencing unloading operations of another permittee's load.

(B) The landing receipt for each load shall include all information required by Fish and Game Code Section 8043. Tally sheets shall indicate the serial number, the tare weight of the bin or tote, the net weight of the product (eggs on kelp), excluding the salt and brine and the gross weight of each bin or tote. Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore. The weight tally sheet shall be retained by the permittee for one year and shall be available at all times for inspection by the department. All herring eggs on kelp landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein). Such excess of herring eggs on kelp shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(9) There shall be no landing or off-loading of herring eggs on kelp from a permittee's vessel, from 10:00 p.m. Friday to 6:00 a.m. Monday, unless brining is conducted at a shore-based facility. If brining occurs on-shore, the permittee shall notify the department's designated contact 12 hours prior to the shipping or removal of the bins or totes from the premises.

(l) These regulations and all sections of the Fish and Game Code pertaining thereto shall be set forth in all permits. Permits shall be issued upon the conditions contained in the application and signed by the applicant that he has read, understands, and agrees to be bound by all terms of the permit.

(m) A permit may be suspended by the Department of Fish and Game for

breach or violation of the terms of the permit by the permittee, or any other person(s) operating under the terms of the permit. Any such suspension may be appealed to the Fish and Game Commission pursuant to section 746 of these regulations.

(n) Authorized agents. Each herring eggs on kelp permittee may designate two authorized agents to operate under his or her permit. To designate an authorized agent, the permittee shall submit to the department's San Francisco Bay Area Marine Region office a completed, signed Authorized Agent Form (MRD 164 (8/97)) which is incorporated by reference herein. A permittee may replace an authorized agent by submitting a new Authorized Agent Form to the department's San Francisco Bay Area Marine Region office. A copy of the current California commercial fishing license for each authorized agent shall be submitted with each Authorized Agent Form. A person designated on the Authorized Agent Form shall act as an authorized agent only after the permittee has received written approval from the department. An authorized agent:

- (1) May serve in the place of the permittee for all fishery activities requiring the presence or action of the permittee, including the signing of landing receipts;
- (2) Shall possess a current California commercial fishing license;
- (3) Shall not be another herring eggs on kelp permittee unless the other permittee has stopped fishing his or her permit for the season;
- (4) Who does not hold a herring eggs on kelp permit, may act as an authorized agent for more than one herring eggs on kelp permittee.

NOTE

Authority cited: Sections 5510, 8389, 8553 and 8555, Fish and Game Code. Reference: Sections 7850, 7850.5, 8043, 8053, 8389 and 8550-8556, Fish and Game Code.