

(REGULATORY LANGUAGE)

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

§163. Harvest of Herring.

. . . (No change to subsection 163(a))

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

(1) Submit the completed application as specified in Section 705, Title 14, CCR, to the address listed on the application. Applications shall include the fee, as specified in section 8550.5 of the Fish and Game Code.

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

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

(3) Permit Renewal. Applications for renewal of all herring permits shall be received by the department, or if mailed, postmarked, on or before the first Friday of October each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2.

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

(c) Permits.

(1) Permits to take herring for ~~ree~~ commercial purposes will be issued by the department beginning November 15. Permits will be sent by first class mail to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay.

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 160. No new “DH” permits shall be issued until the maximum number of permits is less than 80. The permittee shall be responsible for all crew members acting under his or her direction or

control to assure compliance with all ~~Fish and Game commission~~ regulations as provided in this section, or in the Fish and Game Code, relating to herring.

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

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

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

(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall be held.

(E) Preferential status will not be given for participation on vessels with permits specified in 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. The applicant for a permit shall submit the fees and the completed application, as specified in Section 705, Title 14, CCR, to the address listed on the application. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 1,000 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at the department's License and Revenue Branch, Sacramento. 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 March 31, excepting days during that period when the San Francisco Bay and Tomales Bay limited entry Pacific herring gill net permit fisheries are open. Herring taken under the authority of subsections (c)(2) may not be sold for roe purposes.~~

~~(3) Ocean Waters. No permits shall be issued. 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 of the house and visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.

(e) Monitoring of Herring.

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

(2) Gill net permittees shall notify the department's ~~San Francisco Bay Area Santa Rosa~~ Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.

(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time

terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.

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

(5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. ~~5/02~~ 5/13)), which is incorporated by reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

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

(f) Methods of Take.

(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and ~~Game~~ Wildlife districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees, 51 minutes, 43 seconds N, 122 degrees, 27 minutes, 28 seconds W), to the easternmost point of the Sausalito ferry dock (37 degrees, 51 minutes, 30 seconds N, 122 degrees, 28 minutes, 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees, 12 minutes, 53 seconds N, 122 degrees, 57 minutes, 11 seconds W) to the opposite shore (38 degrees, 12 minutes, 44 seconds N, 122 degrees, 57 minutes, 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h)(6) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 47 minutes, 07 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41 degrees, 39 minutes, 31 seconds N, 124 degrees, 08 minutes, 43 seconds W).

(2) ~~The use of round haul nets to take herring 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 three nautical miles, of any single gill net being fished.

(B) In Tomales Bay, the length of the meshes of any gill net used or possessed in the ~~ree~~-fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the ~~ree~~-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 ~~ree~~-fishery shall not be less than 2 or greater than 2 1/2 inches, except that six permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets of another size approved by the department. ~~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 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 not exceed~~ 350 tons per season.

~~(A) 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 ~~2,854~~ [quota to be set between zero (0) and 10 percent of the preceding year's spawning biomass estimate] tons ~~(gill net permittees plus fresh fish allocation)~~ for the ~~2012-2013~~ 2013-2014 season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): ~~2,834 tons (2,854 tons minus fresh fish allocation)~~. Tonnage shall be allocated to each fishing group (odd and even) in

proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season. Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon, ~~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 ~~8:00 a.m.~~ 5:00 p.m. on ~~Wednesday, January 2 1, 2013,~~ until noon on ~~Friday, March 15, 2013.~~ If the opening date falls on a Friday or Saturday, fishing shall commence on the first Sunday following January 1 at 5:00 p.m. If the closing date of the fishery falls on a Saturday or Sunday, fishing shall close on the Friday immediately preceding March 15 at noon.

(A) In San Francisco Bay, gill net permittees with odd numbered permits shall be permitted to fish first in odd numbered years beginning January 1 (or as specified in subsection (h)(3) of these regulations), Sunday through Friday and then alternating weeks with even numbered permits until the close of the season. only on the following dates: January 2-4, January 13-18, January 27-31, February 1, February 10-15, February 24-28, March 1, and March 10-15.

(B) In San Francisco Bay, gill net permittees with even numbered permits shall be permitted to fish first in even numbered years beginning January 1 (or as specified in subsection (h)(3) of these regulations), Sunday through Friday and then alternating weeks with odd numbered permits until the close of the season. only on the following dates: January 6-11, January 20-25, February 3-8, February 17-22, and March 3-8.

(C) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from ~~8:00 a.m.~~ 5:00 p.m. on ~~Wednesday, January 2, 2013,~~ 1 until noon on ~~Friday, March 15, 2013.~~

(4) In Tomales Bay, the season shall be from noon on ~~Wednesday, December 26, 2012,~~ until noon on ~~Friday, February 22, 2013.~~

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

(6) Ocean Waters: All fishing for herring in ocean waters will be prohibited (except as specified in subsection (f)(1) of these regulations). An incidental allowance of no more than 10 percent herring by weight of any load composed primarily of other coastal pelagic fish species or market squid may be landed.

(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(A), the alternate group of permittees on notification

by the department may commence fishing operations until such group has reached the successive established termination date or quota.

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

(j) Herring Buyer's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for ~~roe~~ commercial purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the filing fee specified in Section 705, Title 14, CCR (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for ~~roe~~ commercial purposes may be issued subject to the following regulations:

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

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

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load, except when the landing is for the fresh fish market. 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~~ Santa Rosa Marine Region office within twenty-four (24) hours of the truck's departure from the buyer's premises.
- (5) In San Francisco Bay, herring may not be unloaded between the hours of 10:00 p.m. and 6:00 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.
- (6) Every permittee shall comply with all applicable sections of the Fish and Game Code.
- (7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.
- (8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.

Note: Authority cited: Sections 1050, 5510, 8550, 8552.1, 8553 and 8555, Fish and Game Code. Reference: Sections 713, 1050, 7852.2, 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.