

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

**§164. Harvesting of Herring Eggs.**

**. . . (No change to subsections 164 (a) and (b))**

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

**. . . (No change to subsections 164(d), (e), and (f))**

(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. ~~5/04~~ 5/13), which is incorporated by reference herein (available at the department's ~~San Francisco Bay Area Marine Region office~~ License and Revenue Branch, Sacramento), with payment due to the department's ~~San Francisco Bay Area Marine Region~~ License and Revenue Branch, Sacramento office for each month of the season, within 60 days after the close of the month for which it is due.

**. . . (No change to subsections 164(h) and (i))**

(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 ~~4200~~ 1,200 feet in overall length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks). Kelp lines shall have floats or cork over the entire length of line. Each end of the line must be attached to a permanent structure. Kelp lines suspended from a permanent structure (e.g., pier or dock) shall not be placed as to hinder navigation. If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

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

(2) Not more than ~~ten~~ 10 sets of test kelp may be used per permit. Test kelp is defined as one stipe with blades, attached to a length of line for the purpose of testing for spawning activity. A set is defined as one length of line with test kelp attached. Each set must be attached to a permanent structure (e.g., pier, dock) and marked with the herring eggs on kelp permit number, in Roman alphabet letters and Arabic numerals at least 3 inches high, at a point above the waterline. No herring eggs on kelp shall be retained from test kelp sets for testing purposes that have not been weighed and recorded, pursuant to subsection 164(k).

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

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations. Each herring eggs on kelp permittee is allocated a quota equal to approximately 0.79 percent of the remaining quota. ~~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 3.1 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 5.0 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 Wildlife commercial boat registration and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(6) The permittee shall notify the department's License and Revenue Branch, Sacramento in writing with the name and department registration number issued pursuant to Section 7881 of the Fish and Game Code of any vessel that will be used for harvesting, processing or transporting herring eggs under the authority of the permit. The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting herring eggs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial

number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.

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

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

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

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

**. . . (No change to subsection 164(l))**

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

**. . . (No change to subsection 164(n))**

Note: Authority cited: Sections 1050, 5510, 8389, 8552.1, 8553 and 8555, Fish and Game Code. Reference: Sections 713, 1050, 7850, 7850.5, 7852.2, 7881, 8043, 8053, ~~8389 and, 8550, 8550.5, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8552.9, 8553, 8554, 8555, and 8556~~, Fish and Game Code.