

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

**REGULAR**

(See instructions on reverse)

For use by Secretary of State only

17

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2015-0811-09</b>	REGULATORY ACTION NUMBER <b>2015-1023-028</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
		2015 OCT 23 A 11: 01 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Fish and Game Commission			AGENCY FILE NUMBER (if any)

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

NOV 30 2015

3:49 PM

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER <b>2015, 34-2</b>	PUBLICATION DATE <b>8/21/2015</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Commercial Herring Fishery	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 163 and 164
TITLE(S) 14	REPEAL

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>December 1, 2015</b>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Sheri Tiemann	TELEPHONE NUMBER (916) 654-9872	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Sheri.Tiemann@fgc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/23/15
TYPED NAME AND TITLE OF SIGNATORY Sonke Mastrup, Executive Director	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

NOV 30 2015

Office of Administrative Law

## REGULATORY LANGUAGE

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

### § 163. Harvest of Herring.

... [No changes to subsections (a) through (f)]

(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 not exceed 350 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~2,500~~ 834 tons for the ~~2014-2015~~ per season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): 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.

... [No changes to subsections (h) through (j)]

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.

## REGULATORY LANGUAGE

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

### §164. Harvesting of Herring Eggs.

*[No changes to subsections (a) through (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. 2/14), (DFW 143 HR (REV. 06/04/15), which is incorporated by reference herein (available at the department's License and Revenue Branch, Sacramento), with payment due to the department's License and Revenue Branch, Sacramento 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) Submit the completed application as specified in Section 705, Title 14, CCR, to the address listed on the application 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).

(2) Permit Renewal. Applications for renewal of all Herring-Eggs-on-Kelp permits shall be received by the department, or if mailed, postmarked, on or before August 1 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.

(3) Have submitted all fees from prior seasons.

*... [No changes to subsection (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 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 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~~ 1.0 percent of the quota.

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations shall have a current Fish and 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 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.

... [No changes to subsections (k) through (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, 8550, 8550.5, 8552.1, 8552.2, 8552.3, 8552.4, 8552.5, 8552.6, 8552.7, 8552.8, 8553, 8554, 8555 and 8556, Fish and Game Code.



DEPARTMENT OF FISH AND WILDLIFE  
**HERRING EGGS ON KELP MONTHLY LANDINGS AND ROYALTY REPORT**  
 DFW 143 HR (REV. 06/04/15) Previously FG 143 HR

This report is required in accordance with the provisions established in Title 14, Section 164, California Code of Regulations, and Fish and Game Code, Section 8389. **(PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM)**

FIRST NAME	M.I.	LAST NAME	GO ID#
MAILING ADDRESS			DAY TELEPHONE (OPTIONAL)
CITY	STATE	ZIP CODE	E-MAIL ADDRESS (OPTIONAL)

SECTION I		
REPORTING MONTH:	YEAR:	PERMIT#

SECTION II	
Check if "NO" herring eggs were harvested during the month: <input type="checkbox"/>	
(Note: This report <b>MUST</b> be returned to Department of Fish and Wildlife whether herrings eggs were harvested or not)	

SECTION III			
	Pounds Harvested During Month	Royalty Rate Per lb.	Amount
LINE 1. Performance Deposit Credit (50% due with Herring-Eggs-On-Kelp Permit Application)	N/A	N/A	\$
LINE 2. Credit Balance on file with Department as of _____ [DEC: The amount in this column is the total of LINES 1 AND 2. JAN-MARCH: Amount brought forward from LINE 4 (credit balance).]	N/A	N/A	\$
LINE 3. Pounds Harvested, "Royalty" due:		\$ .25	\$
LINE 4. Ending Balance. Money remains in your royalty account if the balance is "negative".			\$

**NOTE:**

The Department will provide each permittee with their beginning balance of "Herring Eggs-on-Kelp" royalty monies on account as of December 1 of the current season. The "Ending Balance" (LINE 4) is to be carried forward to LINE 2, "Credit Balance on file with Department", on your next month's Royalty Report. The Department will then be able to reduce your existing credit balance in a systematic method. Please use ( ) for "negative" balances. A negative balance indicates the amount of money remaining in your account.

<b>CERTIFICATION:</b> I certify that all statements on this report are made in good faith, and all figures are to the best of my knowledge a true and correct report of herring eggs harvested.	
SIGNATURE X	DATE: (month/day/year)



DEPARTMENT OF FISH AND WILDLIFE  
**HERRING EGGS ON KELP MONTHLY LANDINGS AND ROYALTY REPORT**  
DFW 143 HR (REV. 06/04/15) Previously FG 143 HR

## INSTRUCTIONS

### GENERAL INFORMATION:

As of December 1, 1999 ALL permittees had a credit balance on account with the Department. Permittees are required to report their landings by month and either reduce their royalty balance by the amount due or remit the amount indicated on LINE 4 of the report.

If the balance on LINE 4 of the report is "positive" (no brackets), please submit check or money order in the amount indicated. The check should be made payable to "Department of Fish and Wildlife". DO NOT SEND CASH. Send the report and attached remittance to the address indicated below:

California Department of Fish and Wildlife  
License and Revenue Branch  
1740 N. Market Blvd.  
Sacramento, CA 95834

This report must be submitted on a monthly basis, no later than 60 days after close of the month in which the herring eggs were harvested (Section 164(g)(1), Title 14 of the CCR). Failure to submit the report and remittance, if applicable, could result in legal and/or, administrative action against your company.

If you have any questions regarding this report, please contact Department's License and Revenue Branch at (916) 928-5822, or e-mail [LRB@wildlife.ca.gov](mailto:LRB@wildlife.ca.gov).

### INSTRUCTIONS ON PREPARING THE REPORT:

**SECTION I:** Fill in the month and year for which the report is submitted and permit number.

**SECTION II:** Check if you did not harvest/receive any herring eggs on kelp during the month.

#### **SECTION III:**

**LINE 1.** This is the amount remaining of the current season's performance deposit (50% of quota) submitted with the Herring-Eggs-On-Kelp Permit Application on or before the first Friday of October each year. At the beginning of the season, this amount will be added to any credit balance from LINE 2.

**LINE 2.** The Department will fill in this line on your report. The amount in this column is the total of LINES 1 and 2. Each subsequent month, YOU are required to fill in the "month" and the "Amount" columns. The ending balance (LINE 4) of each previous month's report should be inserted in the "Amount" column (LINE 2). As a note, if your credit balance was depleted at the end of the previous month, the amount inserted on this line should be zero (0).

**LINE 3.** Report the "Pounds harvested during the month". Multiply the pounds by \$.25 per pound and fill in the "Amount" column. Note: If herring eggs were harvested during the month, the "Amount" column will NEVER indicate a negative amount.

**LINE 4.** Subtract LINE 3 "Amount" column from LINE 2 "Amount" column.

EXAMPLE: If you have a (\$1,000) balance indicated on LINE 2 under the column "Amount" and you harvested 1,000 pounds of roe on kelp during the month, you would:

Record 1,000 pounds on LINE 3 under the column identified as "Pounds harvested during the month". Then multiply 1,000 pounds by \$.25. The result should be \$250. Indicate \$250 on LINE 3 under the column identified as "Amount". Subtract LINE 3 "Amount" column from LINE 2 "Amount" column. The result on LINE 4 should be a seven hundred and fifty dollar credit. Credit amounts are to be bracketed (\$750). This (\$750) credit will be recorded on LINE 2 of your next month's report.



California Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE

**DEPARTMENT OF FISH AND WILDLIFE HERRING-EGGS-ON-KELP  
MONTHLY LANDINGS AND ROYALTY REPORT**

This report is required in accordance with the provisions established in Title 14, Section 164, California Code of Regulations, and Fish and Game Code, Section 8389. **(PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM)**

FIRST NAME	M.I.	LAST NAME	GO ID#
MAILING ADDRESS			DAY TELEPHONE (VOLUNTARY)
CITY	STATE	ZIP CODE	E-MAIL ADDRESS (VOLUNTARY)

**SECTION I:**

REPORTING MONTH:	YEAR:	PERMIT#
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**SECTION II:**

Check if "NO" herring eggs were harvested during the month:

(Note: This report **MUST** be returned to Department of Fish and Wildlife whether herring eggs were harvested or not)

**SECTION III:**

	Pounds Harvested During Month	Royalty Rate Per lb.	Amount
LINE 1. Performance Deposit Credit (50% due with Herring-Eggs-On-Kelp Permit Application)	N/A	N/A	\$
LINE 2. Credit Balance on file with Department as of _____ [DEC: The amount in this column is the total of LINES 1 AND 2. JAN-MARCH: Amount brought forward from LINE 4 (credit balance).]	N/A	N/A	\$
LINE 3. Pounds Harvested, "Royalty" due:		\$ .25	\$
LINE 4. Ending Balance. Money remains on your royalty account if the balance is "negative".			\$

**NOTE:**

The Department will provide each permittee with their beginning balance of "Herring Eggs-on-Kelp" royalty monies on account as of December 1 of the current season. The "Ending Balance" (LINE 4) is to be carried forward to LINE 2, "Credit Balance on file with Department", on your next month's Royalty Report. The Department will then be able to reduce your existing credit balance in a systematic method. Please use ( ) for "negative" balances. A negative balance indicates the amount of money remaining in your account.

**CERTIFICATION:** I certify that all statements on this report are made in good faith, and all figures are to the best of my knowledge a true and correct report of herring eggs harvested.

SIGNATURE: X	DATE: (month/day/year)
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## INSTRUCTIONS FOR COMPLETING HERRING-EGGS-ON-KELP MONTHLY LANDINGS AND ROYALTY REPORT

### GENERAL INFORMATION:

As of December 31, 1999 ALL permittees had a credit balance on account with the Department. Permittees are required to report their landings by month and either reduce their royalty balance by the amount due or remit the amount indicated on LINE 4 of the report.

If the balance on LINE 4 of the report is "positive" (no brackets), please submit check or money order in the amount indicated. The check should be made payable to "Department of Fish and Wildlife". DO NOT SEND CASH. Send the report and attached remittance to the address indicated below:

California Department of Fish and Wildlife  
License and Revenue Branch  
1740 N. Market Blvd.  
Sacramento, CA 95834

This report must be submitted on a monthly basis, no later than 60 days after close of the month in which the herring eggs were harvested (Section 164(g)(1), Title 14 of the CCR). Failure to submit the report and remittance, if applicable, could result in legal and/or, administrative action against your company.

If you have any questions regarding this report, please contact Department's License and Revenue Branch at (916) 928-5822, or e-mail [LRB@wildlife.ca.gov](mailto:LRB@wildlife.ca.gov).

### INSTRUCTIONS ON PREPARING THE REPORT:

**SECTION I:** Fill in the month and year for which the report is submitted and permit number.

**SECTION II:** Check if you did not harvest/receive any herring eggs on kelp during the month.

**SECTION III: LINE 1.** This is the amount remaining of the current season's performance deposit (50% of quota) submitted with the Herring-Eggs-On-Kelp Permit Application on August 1<sup>st</sup> each year. At the beginning of the season, this amount will be added to any credit balance from LINE 2.

**LINE 2.** The Department will fill in this line on your report. The amount in this column is the total of LINES 1 and 2. Each subsequent month, YOU are required to fill in the "month" and the "Amount" columns. The ending balance (LINE 4) of each previous month's report should be inserted in the "Amount" column (LINE 2). As a note, if your credit balance was depleted at the end of the previous month, the amount inserted on this line should be zero (0).

**LINE 3.** Report the "Pounds harvested during the month". Multiply the pounds by \$.25 per pound and fill in the "Amount" column. Note: If herring eggs were harvested during the month, the "Amount" column will NEVER indicate a negative amount.

**LINE 4.** Subtract LINE 3 "Amount" column from LINE 2 "Amount" column.

**EXAMPLE:** If you have a (\$1,000) balance indicated on LINE 2 under the column "Amount" and you harvested 1,000 pounds of roe on kelp during the month, you would:

Record 1,000 pounds on LINE 3 under the column identified as "Pounds Harvested During the Month". Then multiply 1,000 pounds by \$.25. The result should be \$250. Indicate \$250 on LINE 3 under the column identified as "Amount". Subtract LINE 3 "Amount" column from LINE 2 "Amount" column. The result on LINE 4 should be a seven hundred and fifty dollar credit. Credit amounts are to be bracketed (\$750). This (\$750) credit will be recorded on LINE 2 of your next month's report.