

State of California  
Fish and Game Commission  
Initial Statement of Reasons for Regulatory Action

Amend Sections 165, and 165.5, and Appendix A, and Add Section 705.1  
Title 14, California Code of Regulations (CCR)

Re: Commercial Harvesting of Kelp and Other Aquatic Plants; Lease of Kelp Beds for Exclusive  
Harvest of *Macrocystis* and *Nereocystis*;  
Commercial Kelp Harvesting and Drying Application, Monthly Harvest Reports

I. Date of Initial Statement of Reasons: November 10, 2021

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 15-16, 2021

Location: Webinar/Teleconference

(b) Discussion and Adoption Hearing

Date: February 16-17, 2022

Location: Sacramento, CA

III. Description of Regulatory Action

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

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

**BACKGROUND**

Bull kelp (*Nereocystis luetkeana*) is an important ecosystem engineer. In California, bull kelp ranges from the Oregon border to Point Conception (Santa Barbara County), though it is most abundant north of San Francisco. This foundational nearshore species forms the physical structure of productive and biodiverse habitats that provide a variety of ecological functions and ecosystem services and supports numerous fish and invertebrate recreational and commercial fisheries, cultural and ceremonial traditions, and tourism.

Bull kelp is an annual species, meaning that individuals live a single year and reproduce within that time, although some individuals may live into a second year. All of bull kelp blades with reproductive material are located at the top of the kelp, the point nearest to the water's surface. Current commercial kelp harvest regulations allow harvesters to cut attached kelp up to four feet below the surface of the water, whereas harvesters taking kelp for human consumption may harvest the entire individual. These factors in combination make bull kelp populations vulnerable to overharvest, as all forms of harvest can result in less available reproductive material. Reduced availability of reproductive material has the potential to reduce all or part of the reproductive potential of an individual's relatively short life and affect the population of future generations of bull kelp.

Kelp populations have been measured quarterly since 1984 by the Santa Barbara Coastal

Long Term Ecological Research (SBC LTER) program using Landsat satellite imagery (SBC LTER 2021). The dataset currently does not differentiate between giant kelp (*Macrocystis pyrifera*) and bull kelp; however, northern California kelp populations are predominately bull kelp. Populations of bull kelp on the north coast exhibited natural interannual spatial and temporal variability between 1984 and 2013 (Figure 1).

Starting in 2014, changing oceanographic and ecological conditions caused bull kelp in Mendocino and Sonoma counties to decline dramatically outside of the range of normal variability. These conditions include elevated sea surface temperature and poor nutrient availability caused by an ocean warming event followed by a strong El Niño event (collectively referred to as the Northeast Pacific Marine Heatwave), and dramatic increases in purple sea urchins (*Strongylocentrotus purpuratus*), in part due to the loss of predatory sunflower stars (*Pycnopodia helianthoides*) from sea star wasting syndrome beginning in 2013 (McPherson et al. 2021). Maximum annual bull kelp canopy area has remained below the historical average (1984-2013) from 2014 through the fourth quarter of 2020. Data from 2014 through the fourth quarter of 2020 represents a 92% decline in area compared to the mean annual canopy maximum for 1984 to 2013, see Figure 2. Data for 2021 are not yet available.

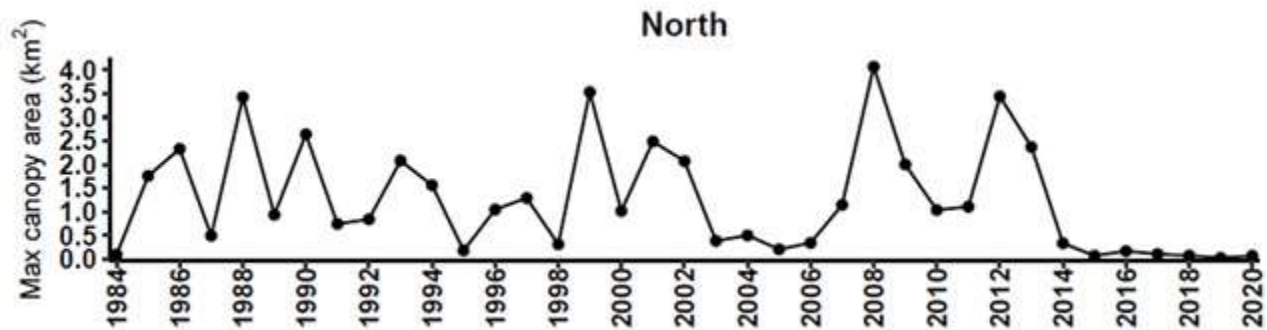


Figure 1. Annual north coast kelp canopy area maximum (measured quarterly) in square kilometers estimated from Landsat satellites (SBC LTER 2021). Area was computed from administrative kelp beds, spatially distinct areas with specified management categories. North coast is defined as the California/Oregon border to San Francisco Bay. Data is updated through the last quarter of 2020.

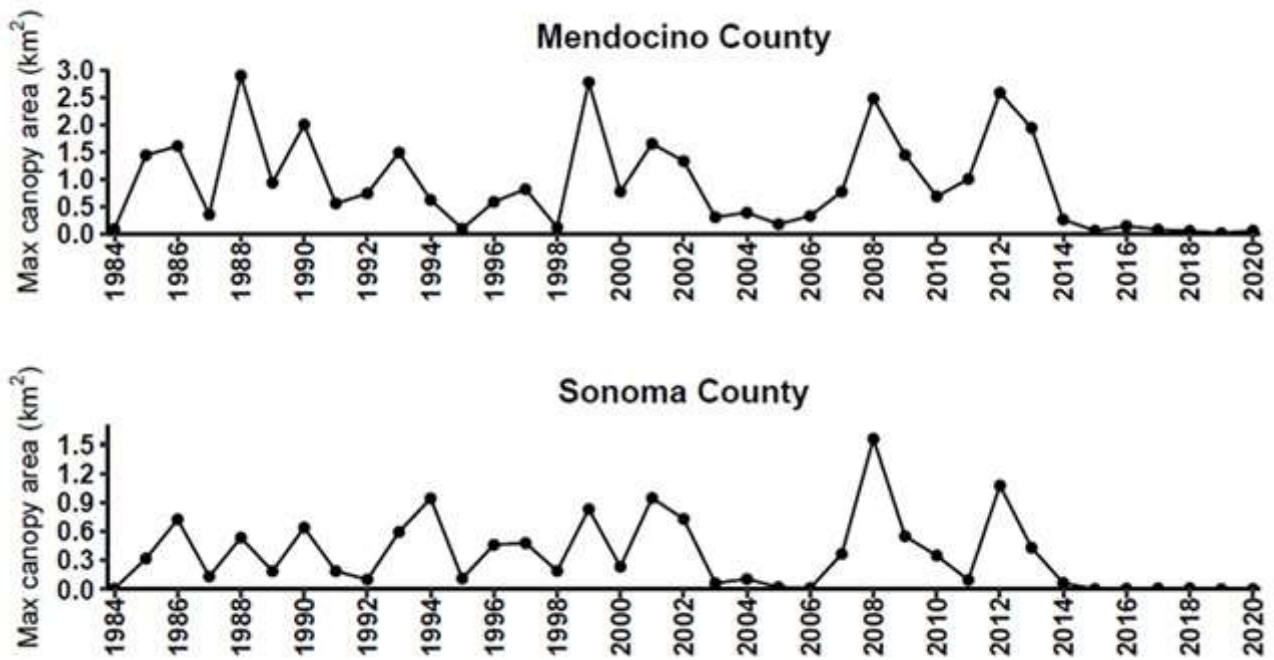


Figure 2. Annual Mendocino and Sonoma counties' kelp canopy area maximum (measured quarterly) in square kilometers estimated from Landsat satellites (SBC LTER 2021). Area was computed from administrative kelp beds. Data is updated through the last quarter of 2020.

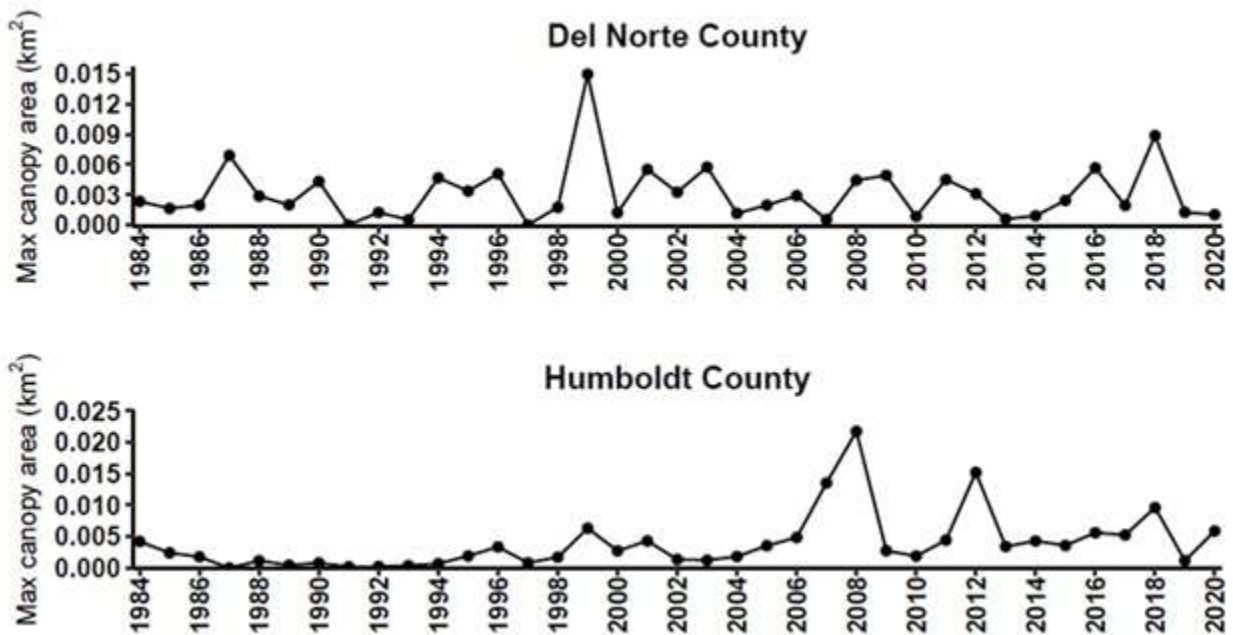


Figure 3. Annual Del Norte and Humboldt counties' kelp canopy area maximum (measured quarterly) in square kilometers estimated from Landsat satellites (SBC LTER 2021). Area was computed from administrative kelp beds. Data is updated through the last quarter of 2020.

Given the depressed size of the north coast bull kelp population, the fact that all harvest methods have the potential to result in less available reproductive material, and the lack of

scientific data to inform managers whether commercial harvest does or does not have an impact on the current kelp population, a precautionary approach to management of the resource is warranted. The California Department of Fish and Wildlife (Department) is proposing temporary regulations to restrict harvest of bull kelp on the north coast and to allow more detailed tracking of bull kelp harvest. In addition, the Department is proposing regulations to improve harvest reporting tools and specificity of language to enhance clarity and enforceability of regulations statewide.

## **CURRENT REGULATIONS**

The current regulations in Section 165 provide the general licensing provisions and harvest royalty fee requirements for the commercial harvest of kelp and other aquatic plants. The section also establishes harvest reporting requirements, establishes geographical limitations on giant and bull kelp harvesting, establishes harvesting method limitations on giant kelp, bull kelp, agar-bearing marine plants, and edible seaweed and prohibits the disturbance of certain aquatic plants.

Although Section 165 provides regulations for kelp and other aquatic plants overall, it also contains subsections which provide more nuanced regulations depending on the species harvested and/or use of the harvest. Current subsections which pertain to the more substantive proposed amendments include:

- Subsection (b) specifies monthly harvest record keeping and reporting requirements, and further specifies monthly reporting by administrative kelp bed and if applicable, marine protected area, for giant and bull kelp harvested under subsection (c). Current harvest reporting requirements do not require differentiation between giant and bull kelp; all reported harvest is combined. Current kelp harvest reporting does not require locations or numbers of harvesters.
- Subsection (c) pertains to general harvest of giant kelp and bull kelp and includes information on the bull kelp harvest seasonal closure within non-leased administrative kelp beds, which lie partially or completely within the Monterey Bay National Marine Sanctuary boundaries. Currently there is not a harvest limit in beds available for harvest, except limitations which pertain to marine protected areas established under subsection 632(b).
- Subsection (d) provides regulations which pertain to agar-bearing marine plants, and provides details on the Kelp Drying Permit which harvesters are required to obtain before they reduce the moisture content or dry agar-bearing plants. Furthermore, this subsection details the Kelp Drying Permit process, including issuance of the permits, permit costs, and review and the duration of the permit. The subsection also includes information on monthly harvest reporting, which includes the location of take by fishing block number. Current harvest reporting does not require reporting of specific locations or numbers of harvesters. Current regulations require a Kelp Drying Permit when drying harvested agar-bearing marine plants.
- Subsection (e) specifies regulations regarding harvest of marine plants for human consumption. These regulations allow limited harvest of bull kelp for human

consumption, including take in closed administrative kelp beds. Subsection (e) also specifies that license holders harvesting bull kelp for human consumption cannot exceed an annual limit of two tons (4,000 lbs.) wet weight per license. Current edible seaweed harvest regulations do not require reporting of specific locations or numbers of harvesters. There is not currently a harvesting report form required by regulation for reporting harvest of edible seaweed and agar-bearing marine plants, though the Department has prepared such a form and provided it to harvesters for their use.

The existing regulations in Section 165.5 define procedures for leasing administrative kelp beds for the exclusive right to harvest giant or bull kelp. In addition, the regulation spatially describes the existing 87 administrative kelp beds under the following management categories:

- open: beds which are available to harvest by all commercial kelp harvesters;
- closed: all commercial kelp harvest is prohibited;
- leasable: available for harvest by all commercial kelp harvesters until an exclusive lease is granted by the California Fish and Game Commission (Commission), then only available for harvest by the lessee; and
- lease only: commercial kelp harvest is prohibited unless an exclusive lease is granted by the Commission.

The designations were designed for optimal harvest, while ensuring sustainable management of the resource and the species that depend upon kelp. Administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties are currently designated as lease only beds wherein only harvest by lease holders is allowed; however, under current practices limited harvest for human consumption is allowed within the limits specified in subsection 165(e).

## **OVERVIEW OF PROPOSED REGULATORY CHANGES**

Extensive public outreach was conducted by the Department to inform the development of the proposed regulations, including, but not limited to, Tribal consultations, an online survey sent to all commercial kelp and marine algae harvesters to gain an understanding of business operations and harvest methods, hosting public and commercial harvester outreach meetings which included over 70 participants in both meetings combined, partnering with the Pew Charitable Trusts to facilitate a scientific forum regarding kelp science and conditions south of Point Montara (San Mateo County), focused discussions with an ad hoc Bull Kelp Working Group (BKWG) comprised of a small group of stakeholders representing various key constituencies, and 13 updates and discussions at the Commission, Marine Resources Committee, and Tribal Committee meetings since 2019 [see Section (f) Public Discussion of Proposed Regulations Prior to Notice Publication]. Information on the BKWG is available in the meeting materials for the Commission's July 21, 2021 Marine Resources Committee meeting at [www.fgc.ca.gov/meetings/2021](http://www.fgc.ca.gov/meetings/2021).

The proposed regulations for Del Norte, Humboldt, Mendocino, and Sonoma counties [subsections 165(c)(9)(A), (c)(9)(B) and (c)(9)(C) and subsection 165.5(c)] would have a sunset date of three to five years, as determined by the Commission. The timeframe will potentially allow the Kelp Restoration and Management Plan (KRMP) to be drafted and adopted. These interim management measures are intended to protect the resource while allowing for the Department, Tribes, industry, and interested stakeholders to collaboratively

work towards developing a comprehensive management framework for giant and bull kelp. The KRMP is expected to result in modifications to the regulations governing the fishery, and as such, a future rulemaking would be proposed to implement the KRMP.

The following summarize the Department-proposed options for Commission consideration:

Subsection 165(c)(9)(A):

Subsection 165(c)(9)(A) Option 1: Bull kelp harvest closure in Sonoma and Mendocino counties regardless of intended use of harvested kelp.

Subsection 165(c)(9)(A) Option 2: Annual overall bull kelp harvest quota from 1 pound to 2,000 pounds (1 ton) wet weight for Sonoma and Mendocino counties, combined, between January 1 – December 31. Harvest is limited for human consumption only.

Subsection 165(c)(9)(B): The proposed regulations include an annual overall bull kelp harvest not to exceed an annual quota of 4 tons (8,000 lbs.) wet weight for Del Norte and Humboldt counties combined.

To allow the Department to monitor the harvest and avoid exceeding the annual harvest quota, in addition to the currently required monthly harvest reports, subsection (c)(9)(C) lists options for weekly reporting via email of bull kelp harvest.

Subsection 165(c)(9)(C) Option 1: *If subsection (c)(9)(A) Option 1 is adopted by the Commission, weekly reporting of bull kelp harvest for Del Norte and Humboldt counties.*

Subsection 165(c)(9)(C) Option 2: *If subsection (c)(9)(A) Option 2 is adopted by the Commission, weekly reporting of bull kelp harvest in Del Norte, Humboldt, Mendocino, and Sonoma counties.*

Subsection 165.5(c) specifies an option for the Commission decision:

Option: Temporarily closes the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties.

As an alternative to the temporary closure, the Department is also proposing an option for a temporary hiatus on accepting lease applications for the lease only administrative kelp beds. The hiatus would be an administrative action and as such, would not be written into regulation. The Department recommends that the temporary hiatus also have a sunset date of three to five years, to be determined by the Commission.

In addition to temporary regulations regarding bull kelp, amendments are proposed which would apply to all commercial marine algae harvesters, regardless of species harvested. These proposed amendments will not have a sunset date. There are three amendments proposed for the Kelp Harvesting License Application form (DFW 658).

1. The first is providing a Kelp Drying Permit option on the application form and renaming the application "Kelp Harvesting License and Drying Application". A Kelp Drying Permit application form does not currently exist. Adding this option to the Kelp Harvesting License and Drying Application form will provide compliance with subdivision 6653.5(b)

of the Fish and Game Code and will not cause an undue burden of cost or time for the harvesters or the Department.

2. The second amendment will incorporate the Kelp Harvesting License and Drying Application and fee in proposed subsection 705.1(a), which will allow the Commission to annually update the Kelp Harvesting License and Drying Application and fee without necessitating regulatory amendments to Section 165.
3. Finally, non-substantive updates to DFW 658 will provide standard language used on more recent forms.

The Kelp Harvester's Monthly Report forms FG 113 (January 1, 1997) and FG 114 (Rev. 1/07) are proposed to be combined into one form, DFW 113 (REV. 11/01/21) and updated to require separate harvest reporting of giant and bull kelp. Currently, harvesters combine reporting of all giant and bull kelp take on the forms. This new requirement will improve management by allowing the Department to have an accurate record of commercial bull kelp harvest independent of giant kelp. Additional updates include:

1. Non-substantive updates are proposed to improve harvest reporting tools by making the forms easier to understand and complete.
2. FG 113 (January 1, 1997) and FG 114 (Rev. 1/07) will be removed from Appendix A, and the proposed DFW 113 (REV. 11/01/21) will be incorporated by reference in subsection 705.1(b)(1).

The proposed regulations introduce a Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report as form DFW 113A (New 11/01/21). This form will be incorporated by reference in subsection 705.1(b)(3).

Both the proposed Commercial Kelp Harvester's Monthly Report and the proposed Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Report will incorporate new reporting requirements to

1. specify the number of individuals harvesting during the month, and
2. include the spatial latitude and longitude coordinates of the central location of bull kelp harvest.

These requirements will assist the Department in evaluating harvest effort and determining bull kelp populations targeted for harvest.

A Release of Property form DFW 1108 will be introduced and incorporated by reference into subsection 705.1(c). The Release of Property form is necessary to ensure that any inadvertent excess bull kelp harvested in counties with annual quotas is not wasted.

In addition, non-substantive edits including restructuring, are proposed throughout the regulatory text to improve specificity of the language and correct typographical errors with the goal to ensure clarity and enforceability of the regulations.

## PROPOSED REGULATORY CHANGES

### Section 165

The proposed amendments will add “commercial” in the regulation title, revise subsections (a) - (f), and add new subsections (g) and (h). Non-substantive revisions to improve clarity and enforceability of the regulations are proposed throughout the regulation.

**Subsection (a):** Subsection (a) provides the general license provisions. Further information is proposed to include reference to the marine aquaria collector’s permit. This amendment will clarify the distinction between the commercial harvest described in Section 165 and marine aquaria collector’s permit described in Section 8597 of the Fish and Game Code.

**Subsection (a)(1):** Subsection (a)(1) currently incorporates the Kelp Harvesting License Application by reference and provides information on the availability of laws, regulations and maps depicting administrative kelp beds.

Proposed amendments to subsection (a)(1) add language specifying that any person harvesting kelp or other aquatic plants for commercial purposes shall have a valid license for that purpose, and have the license on their person or in their immediate possession when engaged in carrying out the activity authorized. This amendment incorporates various requirements specified in the Fish and Game Code and provides law enforcement a citing section if harvest occurs without a permit or by a harvester without the permit on their person or in their immediate possession.

Additional proposed revisions to subsection (a)(1) move the provision describing how to obtain a list of laws and regulations, including maps depicting administrative kelp beds, to subsection (a)(1)(C).

Subsection (a)(1) is further modified by separation into new subsections.

**Subsection (a)(1)(A):** Proposed subsection (a)(1)(A) provides information on the term of a Kelp Harvesting License. This information is provided to make harvesters aware of the need to apply for permits each calendar year they intend to harvest kelp and other aquatic plants.

**Subsection (a)(1)(B):** Proposed subsection (a)(1)(B) restates the requirement in Fish and Game Code Section 6635.5 for a drying permit for persons reducing the moisture content of agar-bearing marine plants and directs applicants for a drying permit to mark the appropriate box on the renamed form “Kelp Harvesting License and Drying Application.” Additionally, the Kelp Drying Permit, specified in current subsection (d)(2), is proposed to be renamed “Drying Permit” in this subsection. The Kelp Drying Permit is proposed to be incorporated as an option on the Kelp Harvesting License and Drying Application.

Current Fish and Game Code Section 6635.5 and Title 14 subsection 165(d)(2) require a Kelp Drying Permit to dry agar-bearing marine plants; however, a Kelp Drying Permit application does not exist. In addition, harvest of marine algae for agar extraction has not occurred in the state for many years. The addition of subsection (a)(1)(B) provides a means of statutory compliance, while removing “Kelp” from the Drying Permit name accurately reflects the language of Fish and Game Code Section 6635.5. Furthermore, Section 6635.5 of Fish and Game Code does not stipulate the Drying Permit must be a separate, stand alone permit.



Including the option to select a Drying Permit on the Kelp Harvesting License and Drying Application will reduce harvester time associated with a separate Kelp Drying Permit application, and does not cause undue burden on the Department.

**Subsection (a)(1)(C):** Proposed subsection (a)(1)(C) provides that the license application, informational maps of administrative kelp beds and fishing blocks, and monthly harvest report forms as moved from current subsection (a)(1) will continue to be available upon request to the Department's Los Alamitos office. The Los Alamitos physical address is proposed to be removed and replaced with a phone number. Most harvesters do not reside within driving distance of the Los Alamitos office and typically request the license application by phone. In addition, the Los Alamitos office will be relocating and its physical address will no longer be valid. Text from current subsection (a)(1) regarding the list of laws and regulations is not included in proposed subsection (a)(1)(C). This list is simply another means of obtaining the regulations that are printed in Title 14. Harvesters will be able to obtain the same information by reviewing the regulations themselves. Informational maps depicting the administrative kelp beds will still be available on the Department webpage. The latitude and longitude coordinates of all administrative kelp beds are described in Section 165.5.

[No change to subsection (a)(2)]

**Subsection (a)(3):** This subsection details where to submit Kelp Harvesting License and Drying Applications and application fees. The proposed amendment will add language that allows for an option for licenses to be purchased online upon the Department's establishment of an online submission system. This amendment is informational only as Section 700.5 already allows for online applications; however, a submission system has not yet been developed for the Kelp Harvesting License and Drying Application.

**Subsection (a)(4):** This subsection describes the conditions of all the licenses issued under Section 165. The proposed amendment will replace a reference to "commission regulations" with "these regulations" to simplify the regulatory language.

[No change to subsection (b) subsection title]

**Subsection (b)(1):** Current subsection (b)(1) is proposed to be moved to subsection (b)(2)(D). Proposed subsection (b)(1) provides a definition of kelp and clarifies that for purposes of these regulations, the term marine aquatic plants includes marine algae. The inclusion of marine algae in the definition is more biologically accurate and better describes the species being harvested under these regulations.

**Subsection (b)(2):** Current subsection (b)(2) specifies requirements for harvest records. Proposed subsection (b)(2) incorporates the language in current subsection (b)(2)(A) that those licensed pursuant to Fish and Game Code Section 6650 shall keep a harvest record.

**Subsection (b)(2)(A):** Current subsection (b)(2)(A) is incorporated into subsection (b)(2). Proposed subsection (b)(2)(A) is incorporates the requirement that the harvest record include the category of plants harvested in current subsection (b)(2)(A)1. with further modifications in the replacing "plants harvested" with "harvest" for language simplicity.

**Subsection (b)(2)(A)1. – (b)(2)(A)3.:** Current subsections (b)(2)(A)1.- (b)(2)(A)3. describing harvest record information required are proposed to be moved into proposed new subsections (b)(2)(A), (B), and (D).

**Subsection (b)(2)(B):** Current subsection (b)(2)(B) specifying that the harvest records shall be open for inspection is proposed to be moved to subsection (b)(2)(E). Proposed subsection (b)(2)(B) specifies the requirement that the harvest record include the wet weight of harvest currently in subsection (b)(2)(A)2. The language is updated for simplicity replacing “harvested kelp or other aquatic plants’ with “harvest.”

**Subsection (b)(2)(C):** Proposed new subsection (b)(2)(C) requires the harvest record to include the month, day, and year of harvest. This information will assist with enforcement and allow the Department to determine specific timeframe of harvest if any questions arise.

**Subsection (b)(2)(D):** Proposed new subsection (b)(2)(D) specifies the requirement that the harvest record include the name and address to whom the harvest is sold to, unless utilized by harvester themselves, as described in current subsection (b)(2)(A)3. Furthermore, to simplify the language, the term “plants” is replaced by “harvest.”

**Subsection (b)(2)(E):** Proposed new subsection (b)(2)(E) states the harvesting record shall be available for Department inspection; currently this requirement is provided in subsection (b)(2)(B).

**Subsection (b)(3):** Current subsection (b)(3) describes the kelp harvesters landing records to be made in triplicate using the Kelp Harvester’s Monthly Report forms FG 113 (January 1, 1997) and FG 114 (Rev. 1/07). Proposed revisions to the subsection change reference from “landing records” to “monthly harvest reports” to more accurately reflect standard terminology. In addition, the proposed regulations specify that “monthly harvest reports” refer to both DFW 113 and DFW 113A unless otherwise described in the rest of the subsection. Using one term to describe both forms simplifies the regulatory language.

**Subsections (b)(3)(A) through (b)(3)(A)2.:** Current subsections (b)(3)(A) through (b)(3)(A)5. specify the information required to be included on landing records, referenced as the Kelp Harvester’s Monthly Report. The information in current subsections (b)(3)(A)2. through (b)(3)(A)5. are proposed to be repealed since the required information is listed on the Commercial Kelp Harvester’s Monthly Report form incorporated by reference in proposed Section 705.1. Proposed subsection (b)(3)(A)1. requires reporting the harvest by the species scientific or common name. Species scientific or common name is required in the currently used Edible Seaweed Monthly report. This information is important for the Department to track species harvested in order to manage the fishery. Current subsection (b)(3)(A)1. is moved to proposed subsection (b)(3)(A)2. and, to simplify the language, the term “plants” is replaced by “harvest” and the cross reference to units is replaced with “pounds or tons (1 ton = 2000 lbs).”

**Subsection (b)(3)(B):** Current subsection (b)(3)(B) specifies information on landing records, including: requiring a duplicate copy of the landing record to be retained by the harvester; providing regulations pertaining to harvest in marine protected areas with harvest control rules; providing the address to submit the landing record; and specifying that landing records are to

be submitted with a specified timeframe whether or not harvest occurs. These requirements are proposed to be moved to subsections (b)(3)(F), (b)(3)(G), and (b)(3)(H). Proposed subsection (b)(3)(B) clarifies that the Commercial Kelp Harvester's Monthly Report form is to be used to report harvest of giant and bull kelp not for human consumption. Under current subsection (b)(3), records of landing are required to be reported on this form. The amendment will provide clarity by deleting extraneous terminology. In addition, the proposed regulatory language reflects that the Kelp Harvester's Monthly Report forms FG 113 (January 1, 1997) and FG 114 (Rev. 1/07) are replaced with one form, Commercial Kelp Harvester's Monthly Report form DFW 113, which is incorporated by reference in proposed new Section 705.1.

**Subsection (b)(3)(C):** Current subsection (b)(3)(C) describing the consequences if landing records and royalty fees are not submitted within the required timeframe, or if monthly harvest reports are not retained for the prescribed time period, is proposed to be moved to subsection (b)(3)(I). Proposed subsection (b)(3)(C) introduces the form to report harvest of agar-bearing algae and marine plants harvested for human consumption, the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report form DFW 113A which is incorporated by reference in proposed new Section 705.1.

**Subsection (b)(3)(D):** Current subsection (b)(1) describing the weighing of harvest is proposed to be moved to new subsection (b)(3)(D) and is amended to clarify that the weighing requirement applies to all harvest. The requirement to "determine the weight" is clarified to require that harvester "determine and record the weight." The new subsection also clarifies that if a receipt of harvest weight is obtained from a certified or licensed weighmaster, that the harvester shall maintain the receipt with the "Monthly Harvest Report" instead of the "landing record."

**Subsection (b)(3)(E):** The second part of the first sentence of current subsection (b)(3)(B) requires that landing records shall be available for inspection by the Department for one year. This subsection is proposed to be moved to new subsection (b)(3)(E) and amended to replace the term "landing record" with "Monthly Harvest Report" consistent with proposed subsection (b)(3).

**Subsection (b)(3)(F):** The first part of the first sentence of current subsection (b)(3)(B) describes the requirement that a duplicate copy of the landing record must be retained by the harvester for one year. This provision is proposed to be moved to subsection (b)(3)(F) and amended to replace the term "landing record" with "Monthly Harvest Report" consistent with proposed subsection (b)(3). In addition, the proposed language clarifies that the duplicate copy be a paper copy since upon establishment of an online submission system, monthly harvest reports may be submitted electronically. A paper copy is required to be retained for one year in addition to the electronic submission so that the Department can review the hard copy if there are any questions about, issues with, or errors in the electronic record.

**Subsection (b)(3)(G):** The second sentence of current subsection (b)(3)(B) requires a kelp harvester who harvests kelp from a marine protected area to maintain a copy of the landing record on board the vessel for all harvesting conducted during the harvest control period. This sentence is proposed to be moved to subsection (b)(3)(G) and amended to replace the term "landing record" with "Monthly Harvest Report" consistent with proposed subsection (b)(3).

**Subsection (b)(3)(H):** The third through fifth sentences of current subsection (b)(3)(B) specify the landing record submission requirements. These sentences are proposed to be moved to subsection (b)(3)(H) and amended. The Department’s Accounting Services Branch recently moved and the address listed in the regulation is proposed to be updated to reflect the current address. The term “landing record” is proposed to be replaced with “Monthly Harvest Report” consistent with proposed subsection (b)(3). The requirement to submit a duplicate copy of the landing record is proposed to be deleted as the Department no longer requires duplicate copies. In addition, the proposed regulation adds the option for future electronic submission of monthly harvest reports upon the Department’s establishment of an online submission system. All of the proposed changes, with the exception of electronic submission of monthly harvest reports, are non-substantive and condense language from other sections of the existing regulations. The ability for future electronic reporting is a desire expressed by commercial harvesters and the Department.

**Subsection (b)(3)(I):** Current subsection (b)(3)(C) describes the consequences if landing records and royalty fees are not submitted within the required timeframe or if landing records are not retained for the prescribed time period. This subsection is proposed to be moved to subsection (b)(3)(I) and amended. The term “landing record” is proposed to be replaced with “Monthly Harvest Report” consistent with proposed subsection (b)(3).

**Subsection (b)(4):** Current subsection (b)(4) specifying prohibitions on cutting or disturbing eel grass (*Zostera*) and surf grass (*Phyllospadix*) (actions constituting “take” pursuant to Fish and Game Code Section 86) is proposed to include a restriction on possession. Including mention of possession is necessary for enforcement purposes given the need to connect the possession of such marine grasses to their source. Eelgrass and surf grass provide a vital role in the providing nursery and foraging areas for many species.

**Subsection (b)(5):** Current subsection (b)(5) specifying harvest restrictions in state marine reserves, state marine parks, and state marine conservation areas is proposed to include species references consistent with proposed subsection (b)(1).

**Subsection (b)(6):** Current subsection (b)(6) prohibiting waste of kelp or other aquatic plants is proposed to include species references consistent with proposed subsection (b)(1).

**Subsection (b)(7):** Proposed subsection (b)(7) is added to clarify language in current subsections 165(e), 165(e)(4) and 165.5(j)(4) that specifies that kelp, edible marine aquatic plants, and edible seaweed harvest is not allowed in Tomales Bay and San Francisco Bay. In addition, an amendment is proposed to clarify the species consistent with proposed subsection (b)(1).

**Subsection (b)(8):** Proposed subsection (b)(8) is added to highlight language in current subsections 165.5(j)(3) and (j)(4) and proposed subsection 165(e) that bull kelp may not be harvested in closed or lease only administrative kelp beds unless harvest is for human consumption, and that bull kelp may be harvested for other uses by the lease holder in lease only beds if a lease is granted by the Commission. This language is consistent with current allowed practices.

**Subsection (b)(9):** Proposed subsection (b)(9) clarifies existing language in Section 165.5 that only lease holders may harvest giant and bull kelp from their leased administrative kelp bed(s) per stipulations of their lease agreement.

**Subsection (c):** Subsection (c) is proposed to be amended to remove the scientific names for giant and bull kelp as they are specified in proposed subsection (b)(2)(B).

[No changes to subsections (c)(1) through (3)]

**Subsection (c)(4):** Subsection (c)(4) is proposed to be amended for clarity by adding “San Mateo County” to further describe Point Montara and to define hand harvesting to include using manually operated handheld tools.

[No change to subsection (c)(5)]

**Subsection (c)(6):** Current subsections (c)(6) through (c)(6)(C) concerning information on Commission approval of a kelp harvest plan for the mechanical harvest of giant kelp are proposed to be moved to subsections (c)(7) through (c)(8)(K). Proposed subsection (c)(6) specifies the Kelp Harvester Monthly report requirement and states that the report is for uses other than human consumption. The requirement to complete the form in triplicate, specified in current subsection (b)(3), is amended in proposed subsection (c)(6) to require the form to be completed in duplicate as the Department no longer needs two copies.

**Subsection (c)(6)(A):** Current subsections (c)(6) through (c)(6)(C) concerning information on Commission approval of a kelp harvest plan for the mechanical harvest of giant kelp are proposed to be moved to subsections (c)(7) through (c)(8)(K). Current subsection (c)(7) concerning royalty fees is proposed to be moved to subsection (c)(6)(A) and amended for clarity by adding the word “fee” after “royalty” and adding “administrative kelp” prior to the word “bed.”

**Subsection (c)(6)(B):** Current subsections (c)(6) through (c)(6)(C) concerning information on Commission approval of a kelp harvest plan for the mechanical harvest of giant kelp are proposed to be moved to subsections (c)(7) through (c)(8)(K). Proposed subsection (c)(6)(B) refers to maintenance and submission requirements for the Kelp Harvester’s Monthly Report and submission requirements of the royalty fee as specified in subsection (b)(3).

**Subsection (c)(7):** Current subsection (c)(7) concerning the kelp harvest royalty fee for non-leased beds is proposed to be moved to subsection (c)(6)(A). Current subsection (c)(6) requiring prior Commission approval of a kelp harvest plan for the mechanical harvest of giant kelp is proposed to be moved to subsection (c)(7) and amended to add a heading of “Mechanical Harvest of Kelp” for clarity and ease of use of the regulation.

**Subsections (c)(8) through (c)(8)(K):** Current subsections (c)(6)(B), (c)(6)(B)1., (c)(6)(B)2., (c)(6)(A) through (c)(6)(A)3., (c)(6)(B)3. through (c)(6)(B)9., and (c)(6)(C) specifying the information needed in a kelp harvest plan are proposed to be moved to new subsections (c)(8), (c)(8)(A), (c)(8)(B), (c)(8)(C) through (c)(8)(C)3., (c)(8)(D), (c)(8)(E), (c)(8)(F), (c)(8)(G), (c)(8)(H), (c)(8)(I), (c)(8)(J) and (c)(8)(K), respectively. Current subsection (c)(6)(A) is proposed to be amended for clarity in subsection (c)(8)(C) by adding “If a mechanical harvester will be used,” and changing “a” to “the”; current subsection (c)(6)(B) is proposed to be amended in

subsection (c)(8) by deletion of the word “also”; the cross reference to subsection 165.5(k) in current subsection (c)(6)(B)1, is updated to reflect the proposed renumbering of section 165.5; minor grammatical changes are proposed in the other subsections.

**Subsection (c)(9):** Proposed subsection (c)(9) specifies new temporary restrictions and weekly reporting requirements for bull kelp. The temporary measures will be in effect for a time period between three and five years, to be determined by the Commission, upon effective date of these proposed regulations. Upon sunset, the proposed subsection will be repealed, unless a later enacted amendment deletes or extends the date. Due to the unprecedented loss of bull kelp on the north coast, the Department is proposing temporary harvest restrictions to protect and maintain the remaining bull kelp beds. A three- to five-year timeframe will allow the Department and its partners to develop, and the Commission to potentially adopt a comprehensive, statewide Kelp Restoration and Management Plan (KRMP) to manage giant and bull kelp. The KRMP is expected to result in modifications to the regulations governing the fishery and as such, a future rulemaking would be proposed to implement the KRMP.

**Subsection (c)(9)(A):** Proposed subsection (c)(9)(A) specifies new regulations for Sonoma and Mendocino counties and provides two options for the Commission consideration:

**Option 1:** *Option 1 will close bull kelp harvest in Mendocino and Sonoma counties regardless of use.*

**Option 2:** *Option 2 allows for limited take of bull kelp with an annual overall bull kelp harvest quota in Mendocino and Sonoma counties for the combined counties between January 1 – December 31. Harvest would be limited for use as human consumption only. Within Option 2, the Commission may select a quota within the range of 1 lb. to 2,000 lbs. (1 ton) wet weight.*

Limitations on harvest are necessary to protect the remaining bull kelp resource in Sonoma and Mendocino counties. These two options are provided at the Commission’s request to allow for additional discussion during the public comment period, based on feedback received at earlier Marine Resources Committee meetings, Commission meetings, and other prior discussions with stakeholders.

**Subsections (c)(9)(A)1. through (c)(9)(A)3.:** In the event the Commission adopts subsection (c)(9)(A) Option 2, proposed subsections (c)(9)(A)1. through (c)(9)(A)3. specify that the Department may temporarily close the harvest in order to obtain an accurate tally of the harvest; the potential for individual harvester allotments to ensure the quota is not exceeded; the process by which the Department will notify the public and harvesters of the attainment of the quota; and the harvesters’ responsibility to monitor the Department’s website. These subsections are necessary to ensure an orderly fishery and that the quota will not be exceeded.

**Subsection (c)(9)(A)4.:** In the event the Commission adopts subsection (c)(9)(A) Option 2, proposed subsection (c)(9)(A)4. specifies that all harvest in excess of any established quota shall be disposed of or used in a manner determined by the Department by forfeiting the excess harvest to the Department by signing a Release of Property form DFW 1108. This regulation is necessary to ensure that any inadvertent excess harvest is discouraged to prevent waste, and is consistent with subsection (b)(6).

**Subsection (c)(9)(B):** In combination with proposed subsection (c)(9)(A), with the intent to protect and maintain the remaining bull kelp beds on the north coast, new subsection (c)(9)(B) is proposed to allow bull kelp harvest for human consumption not to exceed the temporary annual overall fishery quota of four tons (8,000 lbs.) wet weight for Del Norte and Humboldt counties combined. This temporary quota will not affect the current per-license limit specified in subsection (e)(2).

**Subsections (c)(9)(B)1. through (c)(9)(B)3.:** Proposed subsections (c)(9)(B)1. through (c)(9)(B)3. specify that the Department may temporarily close the harvest in order to obtain an accurate tally of the harvest; the potential for individual harvester allotments to ensure the quota is not exceeded; the process by which the Department will notify the public and harvesters of the attainment of the quota; and the harvesters' responsibility to monitor the Department's website. These subsections are necessary to ensure an orderly fishery and that the quota will not be exceeded.

**Subsection (c)(9)(B)4.:** Proposed subsection (c)(9)(B)4. specifies that all harvest in excess of any established quota shall be disposed of or used in a manner determined by the Department by forfeiting the excess harvest to the Department by signing a Release of Property form DFW 1108. This regulation is necessary to ensure that any inadvertent excess harvest is discouraged to prevent waste, and is consistent with subsection (b)(6).

**Subsections (c)(9)(C) through (c)(9)(C)3.:** New subsections (c)(9)(C) through (c)(9)(C)3. are proposed to specify temporary mandatory harvest reporting of bull kelp harvest, and two options are proposed that tie into the Commission's consideration for options for subsection 165(c)(9)(A). These subsections will allow the Department to manage the annual fishery quota and inform harvesters of potential closures to ensure the annual quota is not exceeded.

Proposed subsection (c)(9)(C)1. will add a weekly harvest reporting by email component for bull kelp harvest in counties with an annual harvest quota. Submitting the reports via email is necessary for the Department to receive the information quickly and accurately and to take appropriate action to avoid harvest in excess of the quota.

**Option 1:** *If subsection (c)(9)(A) Option 1 is adopted by the Commission, subsection (c)(9)(C)1. will include Humboldt and Del Norte counties as areas which require weekly reporting.*

**Option 2:** *If subsection (c)(9)(A) Option 2 is adopted by the Commission, subsection (c)(9)(C)1. will include Del Norte, Humboldt, Mendocino, and Sonoma counties as areas which require weekly reporting.*

Proposed subsection (c)(9)(C)2. specifies that weekly harvest reports must be submitted by 5:00 PM on Monday for the preceding Sunday through Saturday. In addition, to remove undue burden on the harvester, the proposed regulation provides a means for the harvester to provide notice if bull kelp harvest will not be harvested within a specified time frame or no longer occur for the remainder of the license year and therefore weekly reporting would no longer be required. Submitting the reports on a weekly basis is necessary for the Department to receive the information in sufficient time to take appropriate action to avoid harvest in excess of the quota.

Proposed subsection (c)(9)(C)3. provides details which must be included in the weekly harvest reporting, including the business name, business contact name, harvester license number, amount of harvest in pounds by county in which harvest occurred, and the time period of harvest to include the month, specific calendar days of harvest, and year. Business name, business contact name and harvester license number will allow the Department to link the harvest taken to the business and provide an opportunity to contact the business if needed. The amount of harvest in pounds by county and time period will allow the Department to monitor the harvest by county level to avoid exceeding the quota.

[No changes to subsections (d) through (d)(1)(A)]

**Subsection (d)(1)(B):** Subsection (d)(1)(B) prohibits harvesting abalone or having abalone harvesting equipment in possession while harvesting agar-bearing plants. The subsection is proposed to be amended to remove the restriction of possessing abalone harvesting equipment, as any tool can be utilized to take abalone, and therefore the current language does not result in no take of abalone. Instead, this subsection is proposed to be amended to prohibit take and possession of abalone to allow for enforcement by the Law Enforcement Division.

**Subsection (d)(1)(C):** Subsection (d)(1)(C) specifies the marking requirements for boats from which agar-bearing plant harvesters are operating. “License numbers of the harvesters” is proposed to be amended to “The harvester’s license number” for clarity and simplicity. In addition, the proposed regulations specify the subsection pertains to harvesting agar-bearing plants and provides an alternate marking requirement that the harvester’s license number may be displayed in no smaller than 6-inch black letters on a white background for boats less than 12 feet long. The alternate marking requirement will accommodate boats on which displaying 10-inch numbers is infeasible. In addition, the proposed amendments include the harvester’s license number must be kept in a manner which ensures that the harvester’s license number is not obstructed from view.

[No changes to subsection (d)(1)(D)]

**Subsection (d)(1)(E):** Current subsection (d)(2)(E) concerning the weighing of agar-bearing marine plants is proposed to be moved to subsection (d)(1)(E) and amended. The regulatory language is proposed to be amended to replace “Weighing of Kelp” with “Weighing of Agar-bearing Marine Plants” for consistency with language in Fish and Game Code Section 6653.5. Furthermore, the reference to subsection “(b)(1)” is proposed to be updated to “(b)(3)(D)” to reflect the reorganization of this section.

**Subsection (d)(2):** Current subsection (d)(2) containing information on Kelp Drying Permits is proposed to be moved to subsection (a)(1)(B). Proposed subsection (d)(2) specifies the requirement of the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Report when harvesting agar-bearing plants. The general requirement to complete landing records in triplicate, specified in current subsection (b)(3), is not necessary because the Department no longer needs two copies. As such, the proposed regulation requires that the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Report be completed in duplicate.



**Subsection (d)(2)(A):** Current subsection (d)(2)(A) providing the location of permit issuance is proposed to be incorporated into subsection (a)(1)(B).

**Subsection (d)(2)(B):** Current subsection (d)(2)(B) describing the Kelp Drying permit cost is proposed to be repealed. The proposed regulation will repeal the fee as the Kelp Drying Permit, renamed Drying Permit, will be incorporated as an option into the Kelp Harvesting License and Drying application (form DFW 658) in subsection (a)(1)(B).

**Subsection (d)(2)(C):** Current subsection (d)(2)(C) describing a permit review process, is proposed to be repealed. The permit process is modified to be part of the Kelp Harvesting License and Drying application in proposed subsection (a)(1)(B).

**Subsection (d)(2)(D):** Current subsection (d)(2)(D) states the Kelp Drying Permit is valid for one year from date of issuance. This subsection is proposed to be repealed. Drying permits are proposed to be modified to apply the time frame of the annual Kelp Harvesting License and Drying Application detailed in proposed subsection (a)(1)(A).

**Subsection (d)(2)(E):** Current subsection (d)(2)(E), specifying the requirements for weighing of agar-bearing marine plants is proposed to be moved to subsection (d)(1)(E).

**Subsections (d)(2)(F) through (d)(2)(F)4.:** Subsections (d)(2)(F) through (d)(2)(F)4. specify the requirements of persons taking delivery of agar-bearing algae for drying. These subsections are proposed to be repealed. The proposed amendment recognizes the industry has changed over time; agar-bearing marine plant drying facilities have not existed in California for many years.

**Subsections (d)(2)(G) through (d)(2)(G)3.:** Subsections (d)(2)(G) through (d)(2)(G)3. specify requirements of kelp drying permittees to provide landing receipts for agar-bearing marine plants to harvesters. These subsections are proposed to be repealed. These subsections are no longer needed as the Drying Permit is proposed to be incorporated as an option into the Kelp Harvesting License and Drying Application (form DFW 658), and requirements for monthly harvest reporting are specified in other subsections.

**Subsection (d)(2)(H):** Subsection (d)(2)(H) prescribes kelp drying permittee requirements to provide landing receipts to harvesters, retain copies of landing receipts, and to deliver harvest reports and royalty fees to the Department; and specifies grounds for revocation of Kelp Drying Permits. Portions of this subsection related to landing receipts are proposed to be repealed. Landing receipt information is no longer necessary as Drying Permit facilities no longer exist. Harvest reporting, royalty fees, and grounds for revocation of permits due to non-submittal of harvest reports and royalty fees are incorporated into proposed subsections (d)(2) through (d)(4).

**Subsection (d)(3):** The portion of current subsection (d)(2)(H), specifying the harvest royalty fee for agar-bearing marine plants is proposed to be moved to subsection (d)(3) and amended. The proposed amendment provides a heading for the subsection and clarifies that the royalty fee is in addition to the license fee.

**Subsection (d)(4):** Proposed subsection (d)(4) refers to the Commercial Edible Seaweed/ Agarweed Aquatic Plant Harvester’s Monthly Report maintenance and submission requirements and submission requirements of the royalty fee as specified in subsection (b)(3).

[No changes to subsections (e) through (e)(1)(B)]

**Subsection (e)(1)(C):** Subsection (e)(1)(C) prohibits harvesting abalone, or having abalone harvesting equipment in possession while harvesting edible seaweed. The subsection is proposed to remove the restriction of possessing abalone harvesting equipment, as any tool can be utilized to take abalone, and therefore the current language does not result in no take of abalone. Instead, this subsection is proposed to be amended to prohibit possession in addition to take of abalone is necessary for enforcement by the Law Enforcement Division.

[No changes to subsection (e)(1)(D)]

**Subsection (e)(1)(E):** Proposed subsection (e)(1)(E) refers to existing regulations concerning allowable harvest methods and prohibitions for giant kelp and bull kelp harvest in state waters. The proposed regulations clarify current regulations.

**Subsection (e)(2):** The introductory title of “Harvest of Bull Kelp for Human Consumption” is retained in subsection (e)(2). The second and third sentences of this subsection are proposed to be moved to subsection (e)(2)(A).

**Subsection (e)(2)(A):** The second and third sentences of current subsection (e)(2) providing the restrictions for harvest of bull kelp for human consumption are proposed to be moved to subsection (e)(2)(A) and amended. The proposed amendment clarifies the allowance for limited take for human consumption in closed or lease only beds which are not leased, and removes the reference to subsection 165(c)(5)(A) which was previously repealed. Subsections 165(c)(5)(A) and 165(e)(2) were added in rulemaking file 96-0320-06R, effective March 26, 1996. Subsection (c)(5)(A) specified "The following beds may not be harvested at any time" and included beds 303, 304, 305, 306 and 307. In rulemaking file 01-0914-07S, effective November 24, 2001, subsection (c)(5)(A) was renumbered as subsection (c)(5) and beds 10, 15, 22, 24, 203, 206, 224, 225, 226, 301, 302, 310 and 311 were added to the list of closed beds. However, the reference to subsection (c)(5)(A) in subsection (e)(2) was not updated. In rulemaking file 2013-1205-01S, effective April 1, 2014, subsection (c)(5) was repealed; closed beds were designated instead in Section 165.5. However, again the reference to subsection (c)(5)(A) in subsection (e)(2) was not updated. The proposed amendment allows for limited take for human consumption in closed or lease only beds which are not leased. This expands the allowance to include lease only beds 308, 309, and 312 consistent with current use practices.

**Subsection (e)(2)(B):** Proposed subsection (e)(2)(B) provides a reference to the temporary harvest restrictions and harvest reporting in proposed subsections (c)(9)(A) - (C).

**Subsection (e)(3):** Subsection (e)(3), stipulating weighing procedures for edible marine plants, is proposed to be amended to update the reference to subsection “(b)(1)” to “(b)(3)(D)” to reflect the reorganization of this section. Landing receipt language is proposed to be repealed as these requirements are specified in proposed subsections (b)(3)(F), (b)(3)(G) and (b)(3)(H).

*Current subsection (e)(4) is proposed to be split into subsections (b)(7), (e)(4) and (e)(5).*

**Subsection (e)(4):** The part of current subsection (e)(4), specifying the timeline to provide landing receipts to the Department, is proposed to be amended to replace “landing receipts” with “Monthly Harvest Reports” consistent with proposed subsection (b)(3), and to specify that they shall be prepared and completed as specified in subsection (b)(3). Reference to the royalty fee is proposed to move to its own subsection, (e)(5). The part of current subsection (e)(4) concerning a prohibition of harvest from San Francisco and Tomales Bays is proposed to be revised for clarity and moved to subsection (b)(7).

**Subsection (e)(5):** The part of current subsection (e)(4), concerning the royalty fee for edible seaweed, is proposed to be moved to new subsection (e)(5) and amended to clarify that the royalty fee is in addition to the license fee.

**Subsection (e)(6):** Proposed subsection (e)(6) refers to the monthly harvest report maintenance and submission requirements and submission requirements of the royalty fee as specified in subsection (b)(3).

[No changes to subsection (f) - (f)(1)]

**Subsection (g):** Proposed subsection (g) provides information referring to the California Department of Public Health as the regulatory agency for food manufactured and processed food for human consumption. This reference is necessary to ensure harvesters are aware of other agency’s regulations.

## **Section 165.5**

**Subsection (a):** Subsection (a), describing the general authority for leasing of kelp beds, is proposed to be amended to update a reference to subsection “(j)” to “(k)” consistent with the proposed renumbering of this section.

**Subsection (b):** Subsection (b) specifies how to obtain a current list of kelp beds available for leasing and where to submit applications for kelp bed leases. The Commission office has recently relocated and the address listed in the regulation is proposed to be updated to replace the outdated physical address with the Commission’s mailing address.

**Subsection (b)(1):** Current subsection (b)(1), specifying the minimum deposit for kelp bed leases, is proposed to be renumbered as subsection (b)(2). Current subsection (b)(2)(B)1, requiring that the kelp lease application include a description of requested kelp beds, is proposed to be moved to subsection (b)(1) and amended to update a reference to subsection “(j)” to “(k)” consistent with the proposed renumbering of this section.

**Subsection (b)(2):** Current subsection (b)(2), requiring a kelp harvest plan be included in lease applications, is proposed to be moved to subsection (b)(5). Current subsection (b)(1), specifying the minimum deposit for kelp bed leases, is proposed to be renumbered as subsection (b)(2) and amended to clarify that the deposit shall be made payable to the Department and submitted with the lease application to the Commission at the address provided in subsection (b).

**Subsections (b)(2)(A)1. – (b)(2)(A)3. and (b)(2)(B)1. – (b)(2)(B)9.:** Current subsections (b)(2)(A)1. – (b)(2)(A)3. and (b)(2)(B)1. – (b)(2)(B)9. specify information required in kelp harvest plans for kelp bed leases. These subsections are proposed to be repealed since the same specifications are provided in proposed subsections 165(c)(8)(A) – (c)(8)(J) [current subsections 165(c)(6)(A) through (c)(6)(B)9.]. The proposed change removes redundancy in the regulation.

**Subsection (b)(3):** Current subsection (b)(3), requiring a copy of the business license be included in lease applications, is proposed to be renumbered as subsection (b)(4). Proposed new subsection (b)(3) provides clarifying information that kelp bed lease applications must include the bid amount and refers to the bidding process.

**Subsection (b)(4):** Current subsection (b)(4), requiring that kelp lease applications provide the lessees financial capabilities to carry out the proposed harvest plan, is proposed to be repealed. Financial capabilities are not a requirement per Fish and Game Code, and the Department does not currently use this information when reviewing kelp bed lease applications. Current subsection (b)(3), requiring a copy of the business license be included in lease applications, is proposed to be renumbered as subsection (b)(4) and is otherwise unchanged.

**Subsection (b)(5):** Current subsection (b)(5), specifying the process for leasing kelp beds in the 301-312 series, a kelp biomass survey requirement, and limitations of harvest based on the survey, is proposed to be renumbered as subsection (b)(6). Current subsection (b)(2), requiring a kelp harvest plan be included in lease applications, is proposed to be moved to subsection (b)(5) and amended to clarify that Commission approval is required and to provide a reference to kelp harvesting plan requirements.

**Subsection (b)(6):** Current subsection (b)(5), specifying the process for leasing kelp beds in the 301-312 series, a kelp biomass survey requirement, and limitations of harvest based on the survey, is proposed to be renumbered as subsection (b)(6) and is otherwise unchanged.

**Subsection (c):** Current subsections (c) through (c)(3), specifying the kelp lease application review process, are proposed to be renumbered as subsections (d) through (d)(3). Proposed subsection (c) specifies an option for the Commission decision:

Option: Temporarily closes the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties, for a period of three to five years after the effective date of this regulation. The duration of the closure period will be determined by the Commission.

The Department also proposed an option for a temporary hiatus on accepting lease applications for the lease only administrative kelp beds. The hiatus would be an administrative action and as such, would not be written into regulation. The Department recommends that the temporary hiatus also have a sunset date of three to five years, to be determined by the Commission. As with other proposed regulations pertaining to northern California, the intent of the regulation is to protect and maintain the remaining bull kelp beds. This timeframe will allow potential development and adoption of the KRMP.

**Subsection (d):** Current subsection (d), providing information on notifications that new kelp bed leases are being considered, is proposed to be renumbered as subsection (e). Current subsections (c) through (c)(3), specifying the kelp lease application review process, are proposed to be renumbered as subsections (d) through (d)(3). An extra comma in current subsection (c) is removed in proposed subsection (d); the other subsections are otherwise unchanged.

**Subsection (e):** Current subsection (e), regarding notifications if a lease is terminated, is proposed to be renumbered as subsection (f). Current subsection (d), providing information on notifications that new kelp bed leases are being considered, is proposed to be renumbered as subsection (e) and is otherwise unchanged.

**Subsection (f):** Current subsection (f), specifying the maximum term for leases to be awarded, is proposed to be renumbered as subsection (g). Current subsection (e), regarding notifications if a lease is terminated, is proposed to be renumbered as subsection (f) and is otherwise unchanged.

**Subsection (g):** Current subsection (g), specifying the minimum royalty rate for lease beds, nonrefundable advance payment calculation for leased beds and advance payment processes, and royalty for kelp harvested in excess of the advance deposit, is proposed to be renumbered as subsection (h). Current subsection (f), specifying the maximum term for leases to be awarded, is proposed to be renumbered as subsection (g) and is otherwise unchanged.

**Subsection (h):** Current subsection (h), specifying the lease renewal process, is proposed to be renumbered as subsection (i). Current subsection (g), specifying the minimum royalty rate for lease beds, nonrefundable advance payment calculation for leased beds and advance payment processes, and royalty for kelp harvested in excess of the advance deposit, is proposed to be renumbered as subsection (h) and amended to update the reference to the basic royalty rate from “subsection 165(c)(7)” to “subsection 165(d)(6)(A)” consistent with the reorganization of Section 165.

**Subsection (i):** Current subsection (i), providing details on notifying the Commission of interest to continue the lease process and the timeframe for the new lease, is proposed to be renumbered as subsection (j). Current subsection (h), specifying the lease renewal process, is proposed to be renumbered as subsection (i) and is otherwise unchanged.

**Subsection (j):** Current subsection (j), providing administrative kelp bed descriptions, is proposed to be renumbered as subsection (k). Current subsection (i), providing details on notifying the Commission of interest to continue the lease process and the timeframe for the new lease, is proposed to be renumbered as subsection (j) and amended to update references to other subsections consistent with the reorganization of this section.

**Subsection (k):** Current subsection (j), providing administrative kelp bed descriptions, is proposed to be renumbered as subsection (k) and amended and reorganized as follows:

Throughout the regulation, the terms “kelp bed” and “bed” are replaced with the term “administrative kelp bed” to accurately reflect the distinct management areas which may encompass more than one kelp bed.

The grand total square miles of kelp for all beds, currently listed at the end of subsection (j), is moved into the opening paragraph of proposed subsection (k).

The total square miles for each geographical area, currently listed at the ends of subsections (j)(1), (j)(2), (j)(3) and (j)(4), are moved to the headings of proposed subsections (k)(1), (k)(2), (k)(3) and (k)(4).

All administrative kelp beds are provided their own subsection. For example, new subsection (k)(1)(A) provides the description for administrative kelp bed 1, (k)(1)(B) contains the description of administrative kelp bed 2, etc. This non-substantive change provides ease of regulation review and provides a direct means to refer to kelp bed descriptions in lease documents.

**Subsection (k)(2)(I):** Proposed subsection (k)(2)(I) corrects the second coordinate in the description of administrative kelp bed 109. This coordinate was listed correctly in the regulatory language submitted with rulemaking file 2013-1205.01S; however, a typographical error was introduced when the regulation was transcribed into Title 14.

**Subsection (k)(3)(S):** Proposed subsection (k)(3)(S) description of administrative kelp bed 220 is amended by adding a period that is missing in the current coordinate description.

**Proposed subsections (k)(4)(I), (k)(4)(J), and (k)(4)(M):** Descriptions of administrative kelp beds 308, 309 and 312 are proposed to be amended by adding a reference to the temporary restrictions specified in proposed subsection 165.5(c).

## **Section 705.1**

The Department proposes to add new Section 705.1, to be titled Commercial Kelp Harvesting Drying Application, Monthly Harvest Reports. The Kelp Harvesting License and Drying Application is proposed to be incorporated by reference and license fee is proposed to be specified in subsection 705.1(a)(1).

The 2015 Kelp Harvesting License Application (DFW 658 Rev. 08/14) is currently incorporated by reference in subsection 165(a)(1). The license fee is specified in Fish and Game Code Section 6651 as \$100 but it has been adjusted annually pursuant to Fish and Game Code Section 713.

The Kelp Harvester's Monthly Reports forms FG 113 (January 1, 1997), and FG 114 (Rev. 1/07) are proposed to be removed from Appendix A, combined into one form, Commercial Kelp Harvesters Monthly Report, form DFW 113 (REV. 11/01/21) and incorporated by reference into new subsection 705.1(b)(1).

The proposed Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report form DFW 113A (11/01/21) is proposed to be incorporated by reference into subsection 705.1(b)(2).

The proposed Release of Property from DFW 1108 (11/01/21) is proposed to be incorporated by reference into subsection 705.1(c)(1).

Sections of Title 14 that require annual updates, such as fees that change annually and application forms that become the annual license once approved, have in the past been

consolidated by Department or Commission actions in sections beginning with 700 so that they can be updated in a single rulemaking without the need to open disparate sections of Title 14. Separate revisions for each disparate section within Title 14 would be unnecessarily cumbersome. Placement of the Kelp Harvesting License and Drying Application and fee into Section 705.1 will allow for annual revisions to the fee and form simultaneously with other annual updates, without necessitating regulation changes to Section 165. Incorporating the Kelp Harvester's Monthly Report and Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report into the same section will similarly allow regular updates with ease. These forms are a source of management data for the Department, and information needs may change as the status of the resource does. In addition, co-locating the report forms, and the Release of Property form, with the application will make it easier for permittees to find and use the appropriate current version of the forms.

All forms are proposed to be incorporated by reference as their length would make them cumbersome to print in full in Title 14.

## **Appendix A**

Kelp Harvester's Monthly Reports forms FG 113 (January 1, 1997), and FG 114 (Rev. 1/07) are proposed to be removed from Appendix A, combined into one form DFW 113 (REV. 11/01/21) and incorporated by reference in subsection 705.1(b)(1). This will consolidate the Kelp Harvester's Monthly Report with other forms and fees that require regular updates for ease of annual revision.

### **Form DFW 658 changes**

A kelp harvesting license is required for the commercial take of kelp and other marine algae. In addition, subdivision 6653(b) of the Fish and Game Code requires commercial harvesters drying agar-bearing plants to obtain a Drying Permit and the drying permit application process is described in current subsection 165(d)(2); however, a Kelp Drying Permit application does not exist. The Kelp Harvesting License Application (DFW 658) is proposed for a complete strike and replacement due to several updates. These updates include:

1. The application will include an option for a Drying Permit, and will be renamed the Kelp Harvesting License and Drying Application to streamline the processing of the Kelp Harvesting License and Drying Application.
2. Due to the inclusion of the Drying Permit into the Kelp Harvesting License and Drying Permit Application, the Department is proposing to repeal the fee for the Drying Permit as this inclusion will not result in an increase of Department staff time to process the Drying Permit. The amendment will allow for compliance with subdivision 6653.5(b) of the Fish and Game Code and will not cause an undue burden of time or cost for the harvesters or the Department.
3. Additionally, DFW 658 will be updated to specify the current license year and fee (which includes an Automated License Data System (ALDS) surcharge of \$4.83 on top of the base fee of \$161.00 that is listed in Section 705.1), and to include standard language used on other license applications. A field for the harvester's license number is proposed to be added to allow for linking the application with harvester license number.

Text identifying the harvester's email address as "voluntary" is proposed to be removed and be made mandatory to allow the Department to relay information electronically to the commercial harvesters. The "sex" field is proposed to be revised to a "gender" field and a nonbinary option is proposed to be added to meet the requirement in Senate Bill Number 179. The boat name field is clarified that it is only necessary if a boat is used, and specifies to write "kayak" if a kayak is used since kayaks typically do not have names. Text regarding the Kelp Harvesting Regulation Packet is proposed to be repealed, because the package is planned to be retired and no longer distributed, as it duplicates information which can already be found in regulations.

4. The "Notice" section on the second page of form DFW 658 has been modified. The sentence "Other personal information submitted on this application may be released for law enforcement purposes, pursuant to court order, or for official natural resources management purposes" was changed to "Pursuant to FGC Section 391, CDFW may exchange or release to appropriate federal, state, or local agency or agencies in other states, for purposes of law enforcement, any information collected or maintained by CDFW." This change was necessary to provide an authority for the nature of sharing of information on harvester applicants.
5. The "Payment Policy" section on the second page of form DFW 658 has been modified. The fields for payment type, credit card information, including expiration date and security code, have been removed from the instructions due to payment security concerns. The Department uses a separate credit card authorization form for credit card payments. As DFW 658 is mailed to the Marine Region, the payment for the application would continue to occur separately via Department licensing processes. The sentence "Make checks payable to "California Department of Fish and Wildlife" has been added to make it clear to applicants how any checks should be filled out.

### **Form DFW 113 changes**

The Kelp Harvester's Monthly Report currently consists of two forms FG 113 (January 1, 1997) and FG 114 (Rev. 1/07). Proposed amendments to the Kelp Harvester's Monthly Report form include combining the two forms into one form DFW 113 (REV. 11/01/21), resulting in a complete strike and replacement. The proposed form would add the requirement to report the number of individuals harvesting for the business during the report period, and require separate harvest reporting of giant and bull kelp. Additionally, the proposed amendments will require central latitude and longitude coordinates of bull kelp harvest. If multiple locations of harvest are visited, the harvester will provide the central coordinates for each location. Furthermore, the proposed amendments will stipulate the use of Decimal Degrees format with five decimal places and the World Geodetic System of 1984 (WGS84) coordinate system/datum.

Currently, harvesters combine all giant and bull kelp harvest and do not report bull kelp take by latitude/longitude coordinates. The new requirements will simplify the form by combining into one double-sided report, assist the Department in determining harvest effort, improve management of kelp by providing the Department an accurate record of commercial giant and bull kelp harvest, allow the Department to determine more precise location of targeted bull kelp populations than administrative kelp beds or fishing block numbers. In addition, non-



substantive updates to the report are proposed, including reorganization to improve harvest report clarity:

1. The form name is changed to “Commercial Kelp Harvester’s Monthly Report,” and the report header is updated to include the new form number and revision date. References to Fish and Game Code and CCR, Title 14, are simplified and moved to the back of the report.
2. The purpose of the report has been moved to the bottom (back of the report) to consolidate it with the instructions, so that all information about the form into one area for ease of reference.
3. The report instructions are moved from right side of FG 113 to the bottom (back of the report) with the following modifications:
  - i. “INSTRUCTIONS READ CAREFULLY” is replaced with “General Instructions.”
  - ii. Current instruction “A” referencing the detail sheet is repealed as FG 114 will be incorporated into new form DFW 113. Subsequent instructions will be renumbered to reflect the repeal.
  - iii. The requirement of submitting reports each month regardless of whether harvest occurred detailed in current instruction “B” is amended to provide direction that additional reports may be submitted if needed and to require that the number of pages submitted be entered on the form.
  - iv. Current instruction “C”, indicating to whom to make checks payable is updated to “California Dept. Of Fish and Wildlife.” to reflect the Department’s name change effective January 1, 2013, pursuant to Assembly Bill 2402.
  - v. Current instruction “D” is revised to require that the report be prepared in duplicate instead of triplicate and the requirement to submit a copy of the report to the Department is repealed as the Department no longer requires a copy of the harvest report. Language from current instruction “E” that directs the harvester to retain a copy of the report for their records is incorporated into this instruction item and the Department’s name and address are updated consistent with the Department’s 2013 name change and the Accounting Services Branch’s recent move.
  - vi. A new instruction item “D” is proposed to provide contact information for harvest report questions. This addition will provide the license holder with a readily accessible contact if needed.
4. Reformat placement of the license holder information, harvest report period section to include the following amendments:
  - i. Add “Business name” field as most harvesters operate under a business.
  - ii. Replace “Name” field with “Business Contact Name” field to distinguish between business and business contact.

- iii. Remove “Address” field as this information can be found on the Kelp Harvesting License and Drying Application.
  - iv. Add a field “Check if no harvest occurred” to simplify the report for harvesters who currently have to write on the report if harvest did not occur.
  - v. Add a field to report the number of report pages submitted to assist the Department to determine if it has received all pages of the report.
5. Reformat harvest reporting section for ease of log input and include the following amendments:
- i. Add a separate column for reporting harvest within marine protected areas. Currently, a reference to reporting take in marine protected areas is described in form FG 114. Including a column in the report will provide greater awareness to this reporting requirement per subsection 165(b)(3)(G).
  - ii. Separate total tons of harvest reporting by open/leasable beds and leased beds. Combining FG 113 and FG 114 into one report required reformatting harvest reporting. In addition, leased beds may have different royalty fees than open or leasable beds. Separating the sections in the report will allow for combining the reports into one.
6. Remove harvest reporting instructions at bottom of FG 113 and incorporate into other sections of the form:
- i. Current instruction “(1) \$1.71 per wet ton, open beds.” is incorporated into the revised harvest reporting section.
  - ii. Current instructions “(2)” leased beds contract rate and “(3)” lease royalty calculations are moved to “Log Instructions” on the second page of the form.
7. Simplify language that certifies the report upon signature.
8. Replace “Signed” with “Signature.”
9. Add “Log Instructions” to bottom of the second side of the form:
- i. Rephrase the leased bed reporting instructions at the top of current form FG 114 and move to “Log Instructions.”
  - ii. Rephrase marine protected area reporting language from current form FG 114 and place under “Log Instructions.”

### **Proposed Form DFW 113A**

The Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Report DFW 113A (11/01/21) form is introduced in this regulation amendment. Although not previously described in regulation, elements of this form can be found in current subsections 165(d)(1)(F), (G) and (H), and (e)(3) and (4). Requiring the use of a specific form to report harvest will provide a uniform way to report the required information and help to ensure all required information is reported. The overall purpose of the Commercial Edible Seaweed/Agarweed

Aquatic Plant Harvester's Monthly Report is to allow the Department to track harvest and harvest location to manage the fishery and to provide the framework to show calculations of the royalty fees due based on the wet weight of harvest:

1. Harvester information, specifically "Business Name", "Business Contact Name", and Harvester's License Number." Most harvesters operate under a business, requiring a business name field on the form will enable the Department to link harvest with individual businesses; provide a business contact to facilitate communication with the licensees; and assist with collection of harvest royalty fees.
2. Month and year of harvest, "Report Period" "Month" and Year" fields are necessary to allow the Department to detect trends in harvest seasonally and over time.
3. "Number of individuals harvesting during this report" field is necessary to assist the Department in determining harvest effort.
4. A "Check if no harvest occurred" option field is necessary to simplify the requirement of reporting harvest regardless of whether harvest occurred.
5. A field for the number of pages submitted is necessary to assist the Department in determining if it has received all copies of the report.
6. Harvest reporting section will provide a way to submit details of harvest that the Department needs to manage the fishery and a framework to show royalty fees calculations based on weight of harvest:
  - i. "Fishing block" and "Nearest prominent landmark" fields will provide the Department with a general location of harvest to allow the Department to track general location of harvest effort.
  - ii. "Latitude/longitude<sup>1</sup> [of the central harvest location] for bull kelp harvest only" field will provide a more precise location of harvest for this annual species which is a concern due to its decline in Mendocino and Sonoma counties.
  - iii. "Species – common or scientific name" field will allow the Department to keep track of the targeted species for harvest to assist with managing the fishery.
  - iv. "Total lbs. or tons agarweed or edible seaweed harvested" field will provide the Department a means to determine how much per species of algae are taken to assist with managing the fishery and consistent with current section (b)(3)(A)1.
  - v. "Rate per lb. or ton agarweed or edible seaweed," "Net amount due," and "Total due" fields will facilitate harvest royalty calculations to determine royalties due to the Department for harvest and consistent with current section (b)(3)(A)4.
7. The royalty rate per wet ton and by pound for agarweed/agar-bearing marine plants "2\$17.00 per wet ton (2,000 lbs.) or \$0.0085 per lb. of agarweed/agar-bearing marine plants." This provides the harvesters the agarweed/agar-bearing marine plants royalty fee specified in subsection 165(d)(3) in both wet tons and wet pounds to simplify the calculation of required royalties for the harvesters.

8. The royalty rate for edible seaweed per wet ton and by pound “<sup>3</sup>\$24.00 per wet ton (2,000 lbs.) or \$0.012 per lb. of edible seaweed.” This provides the harvesters the edible seaweed royalty fee specified in subsection 165(e)(5) in both wet tons and wet pounds to simplify the calculation of required royalties for the harvesters.
9. A statement that the report is certified accurate once signed, with a space for the harvester to provide their signature, title and date the report was completed. This information provides the Department a specific contact for the report if any questions arise.
10. A reference to relevant sections of the Fish and Game Code and CCR, Title 1 and a statement that the personal information is being collected for the purpose of reporting the weight of kelp harvested. The Commission and Department’s privacy policies require that a purpose is given for collecting personal information when it is collected.
11. Instructions on how to complete the report including:
  - i. “A. Report must be completed each month regardless of whether harvest occurred (indicate no harvest). Include additional harvest reports as needed and specify the number of pages submitted.” This instruction clearly reflects that a monthly harvest report must be submitted regardless of whether harvest occurs pursuant to subsection 165(b)(3)(H). The instructions also specify that additional pages of harvest reports can be added if harvest exceeds the number of allotted lines on the report and directs the harvester to provide the Department the number of pages included in the report if additional pages are added to assist the Department in determining if it has received all copies of the report.
  - ii. “B.” Make checks payable to California Dept. of Fish and Wildlife” specifies royalty payments be payable to the Department.
  - iii. “C. instructions to prepare the report in duplicate, retain a copy of the report for their files, and to submit the report to the Department, simplify and restate subsection 165(b)(3)(F) and 165(b)(3)(H).
  - iv. “D.” An instruction item is proposed to provide email contact information for harvest report questions. This will provide the license holder with a readily accessible contact if needed.

### **Proposed Form DFW 1108**

The Release of Property form DFW 1108 (NEW 11/01/21) form is introduced in this regulation amendment. The purpose of the Release of Property form is to ensure that any inadvertent excess bull kelp harvested in counties with an annual harvest quota is not wasted, and instead is donated to a non-profit institution or, if applicable proceeds of the sale of the property to the Fish and Game Preservation Fund:

1. A field for “Property” allows the business to describe the property they are releasing to the Department.

2. The certification notice provides the requirements of the release of property and provides language that the property is released the property to the Department once signed. A field for the business contact's signature and date of signing is provided.
3. An address field for the business is provided.
4. Fields for the signature of the Department representative receiving the released property and date signed is incorporated into the form.
5. A "Department Use Only" section contains information related to the non-profit institution to whom the released property is provided and contains:
  - i. A field for the name of the receiving institution.
  - ii. The receiving institution address fill in field.
  - iii. A phone number field for the receiving institution.
  - iv. Fields for the signature of the person who received the property and date received.
  - v. Fields for the Department representative signature who delivered the property and date delivered.
6. Instructions on where to send the Release of Liability form original and copies to make it clear to the business on mailing of the forms.
7. A statement of the purpose of the form, in accordance with the Department and Commission's privacy policies, which require that a purpose be given for collecting any personal information when it is collected.

(b) Goals and Benefits of the Regulation

Under the Marine Life Management Act (MLMA), it is the policy of the state to ensure the conservation, sustainable use, and restoration of California's living marine resources for the benefit of all citizens of the state (Fish and Game Code Section 7050). Furthermore, Fish and Game Code defines a fishery as one or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics (Fish and Game Code Section 94). Kelp can therefore be considered a fishery and is subject to the policy of the state that programs for the conservation and management of the marine fishery resources of California shall be established and administered to prevent overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection, and, where feasible, restoration of marine fishery habitats, and to achieve the sustainable use of the state's fishery resources [subdivision 7055(b) of the Fish and Game Code] and that fisheries are conducted sustainably so that long-term health of the resources is not sacrificed in favor of short-term benefits [subdivision 7056(a) of the Fish and Game Code].

To meet the goals of these policies, the Department has determined that a precautionary approach is warranted to protect and maintain the remaining bull kelp along the northern California coast.

The changes to the bull kelp regulations are proposed with the goal to protect and maintain the

remaining bull kelp beds along the north coast that have declined by 92% in canopy area compared to the mean annual maximum canopy area for 1984 to 2013.

The temporary nature of the proposed bull kelp regulations provides an interim management measure to protect the resource while allowing for the Department, Tribes, industry, and interested stakeholders to collaboratively work towards developing a comprehensive management framework for kelp.

The proposed regulations will provide benefits to the sustainable management of kelp resources and will provide regulatory clarity and enforceability.

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

**Section 165**

Authority cited: Sections 6653 and 6653.5, Fish and Game Code.

Reference: Sections 51, 6650, 6651, 6652, 6653, 6653.5, 6654, 6656 and 6680, Fish and Game Code.

**Section 165.5**

Authority cited: Sections 6653, 6700 and 6701, Fish and Game Code.

Reference: Sections 6653, 6700, 6701, 6701.5, 6702, 6703, 6704, 6705, 6706 and 6707, Fish and Game Code.

**Section 705.1**

Authority cited: Sections 713, 1050, 6651, 6653, and 6653.5 Fish and Game Code.

Reference: Sections 713, 1050, 6650, 6651, 6652, 6653, and 6653.5, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

The requirement to provide the central latitude and longitude locations of bull kelp harvest will necessitate the harvester have GPS capability; however, no specific equipment for such capability is prescribed.

The requirement to provide specific harvest locations will improve the Department's ability to determine bull kelp populations targeted for harvest on a finer scale than that which is historically reported as fishing block number and the harvester determined nearest prominent landmark.

(e) Identification of Reports or Documents Supporting Regulation Change

McPherson, M.L., Finger, D.J., Houskeeper, H.F., Bell, T.W., Carr, M.H., Rogers-Bennett, L., Kudela, R.M., 2021. Large-scale shift in the structure of a kelp forest ecosystem co-occurs with an epizootic and marine heatwave. *Communications Biology* 4(1): 1-9.

<https://www.nature.com/articles/s42003-021-01827-6>

(f) Identification of Reports or Documents Providing Background Information

SBC LTER (Bell, T., Cavanaugh, K., Siegel, D.). 2021. Landsat satellite imagery of kelp canopy area measured quarterly from 1984 through 2020 by the SBC LTER: Time series of quarterly NetCDF files of kelp biomass in the canopy from Landsat 5, 7, and 8, since 1984 (ongoing) ver 13. Environmental Data Initiative.  
<https://portal.edirepository.org/nis/mapbrowse?packageid=knb-lter-sbc.74.13>. Accessed 2021-05-18.

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

The Department notified licensed commercial kelp and edible seaweed harvesters by letter of the Department's three-phase approach to review the regulations in 2013. Since 2013 the Department has regularly updated the Commission and its Marine Resources Committee, and Tribal Committee. Additionally, the Department in collaboration with the Commission has conducted informal and formal government to government consultations with the tribes that requested consultation. The following is a summary of the outreach conducted by the Department since 2019:

**2019**

February, Tribal Committee meeting, Sacramento, CA

June, Tribal Committee meeting, Redding, CA

July, Marine Resources Committee meeting, San Clemente, CA

October, Tribal Committee meeting, Valley Center, CA

November, Marine Resources Committee meeting, Sacramento, CA

**2020**

January, Tribal Committee meeting, Los Alamitos, CA

March, Marine Resources Committee meeting, Santa Rosa, CA and teleconference

March, Notification of upcoming regulatory changes letters mailed to federally recognized Tribes

May, Stakeholder outreach meeting, teleconference

June, Stakeholder outreach meeting, teleconference

August, Partnership with Pew Charitable Trust - Scientific Forum on Kelp Science and Conditions South of Point Montara, San Mateo County (participants by invitation only), teleconference

August, Tribal Committee, teleconference

November, Marine Resources Committee meeting, teleconference

November, Tribal Committee meeting, teleconference

December, Bull Kelp Working Group, (participants by invitation only), teleconference

## 2021

March, Bull Kelp Working Group, (participants by invitation only), teleconference

March, Marine Resources Committee meeting, teleconference

April, Tribal Committee meeting, teleconference

April, Bull Kelp Working Group, (participants by invitation only), teleconference

June, Bull Kelp Working Group, (participants by invitation only), teleconference

July, Marine Resources Committee meeting, teleconference

August, Tribal Committee meeting, teleconference

August, Commission Meeting, teleconference

September, Notification of upcoming regulatory changes letters mailed to federally recognized Tribes

### IV. Description of Reasonable Alternatives to Regulatory Action

#### (a) Alternatives to Regulation Change

During the review process the Department received recommendations for bull kelp which were rejected as they were considered not equally effective as the regulations the Department has proposed.

1. Do not limit the availability of lease only administrative kelp beds, as the Commission can deny lease requests if kelp has declined or if the harvest proposal is not sustainable.

This proposal was rejected. Leaving the beds available for lease would mislead and confuse the public as they would expect those beds are available for lease, when in fact the applications would be denied during the Commission review process. This would cause undue workload for the applicant, Department, and Commission staff.

2. Change the status of all closed administrative kelp beds north of Point Montara to open. Conduct annual aerial bull kelp surveys in September and use the data to limit bull kelp harvest to 15% of the total biomass in the administrative kelp bed for the upcoming harvest season. Employ a limited entry fishery or pre-apply for harvest in administrative kelp beds if needed.

Administrative kelp beds which are designated as “closed” are so designated due to the low historical availability of kelp which makes these populations vulnerable to overharvest. The proposal is not equally effective as the protection measures proposed by the Department.

3. Do not accept new lease applications or harvest plans for bull kelp for one year.



The Department rejects this recommendation as it is not equally effective as the protective measures proposed by the Department. The KRMP will not be developed within one year.

4. Limit edible seaweed harvest to 15% of biomass. The current annual harvest limit of two tons wet weight per license is too small to make a measurable impact to overall bull kelp populations in bust years, unless clear-cut methods are employed.

Bull kelp harvest methods currently allow harvesting to a maximum of four feet below the water surface at the time of harvest for harvesters operating under the “kelp” regulations and taking the entire individual under the “edible seaweed” regulations. Using the current allowed harvest methods could essentially “clear-cut” an area. Under current regulations, the lease holder of a lease only administrative kelp bed, who is required to conduct annual biomass surveys prior to harvest, may only harvest up to 15% of the bull kelp biomass revealed by the survey. To date there are no existing biomass estimates for bull kelp from which to base a limit for non-lease holders. The Department rejects this recommendation as it is not possible to quantify available biomass throughout the bull kelp range at this time. In addition, the recommendation is not equally effective in protecting bull kelp as the Department's proposal.

5. Increase the annual license limit of two tons for human consumption to five or 10 tons.

The Department rejects this recommendation as increasing harvest is counter to the protection measures proposed by the Department.

6. Limit harvest in Del Norte County to existing harvesters with landings in the last three years under a harvest cap equal to current take.

The Department has proposed limiting take in Del Norte and Humboldt counties combined to allow for harvest at the current harvest levels. Harvest records did not show harvest effort shift to Del Norte and Humboldt counties when other bull kelp populations decreased. Therefore, the Department rejects the proposal to limit take to existing harvesters as harvest records indicate this is not needed.

7. Make license applications available online.

The Department is pursuing online license sales and has proposed regulations which will allow for this in the future.

8. Employ online harvest reporting instead of paper reporting.

The Department is also interested in online harvest reporting, however, current capacity to develop the online system is limited. Regardless, the Department is in communications with the appropriate staff and is making progress on establishing an online reporting system when staff capacity and system functionality allows. In addition, the Department has proposed regulations which will allow for future online harvest reporting.

9. Consider a limited entry fishery and transferable licenses.

The Department is recommending an annual harvest limit in Del Norte and Humboldt counties combined and is recommending either an annual harvest limit or a harvest closure in Mendocino and Sonoma counties combined. Establishing a limited entry fishery and transferable licenses are outside the scope of this regulation proposal and are not being considered.

10. Allow bull kelp harvest in Mendocino and Sonoma counties to continue for one year to current license holders only.

The Department rejects this recommendation as it is not equally effective as the protective measures proposed by the Department. The KRMP will not be developed within one year.

11. Make no changes, current bull kelp harvest methods employed by edible seaweed harvesters are sufficient.

Current allowable bull kelp harvest methods include harvesting to a maximum of four feet below the water surface at the time of harvest for harvesters operating under the “kelp” regulations and those harvesting bull kelp under the “edible seaweed” regulations may take the entire individual. While the Department recognizes that many harvesters of edible seaweed do not take the entire individual, any take will reduce the capacity of the individual kelp to produce spores as the reproductive material is on the blades. Additionally, there are no limits on the number of licenses sold and harvesters taking bull kelp for human consumption may take up to two tons wet weight annually per license holder. The Department rejects this proposal as it is not sufficient to protect the resource.

12. Enact an emergency closure on commercial bull kelp harvest statewide for at least 10 years.

The Department rejects this recommendation; the KRMP is anticipated to be developed and potentially adopted within five years that will include a comprehensive, statewide management framework for the sustainability of giant and bull kelp resource and fishery.

#### (b) No Change Alternative

A no change alternative would leave existing regulations in place:

- Despite the loss of bull kelp, temporary precautionary measures to limit bull kelp harvest would not be implemented and harvest of bull kelp for human consumption would be allowed to continue. As an annual species with its reproductive material located on the blades at the water’s surface, all forms of harvest can result in less reproductive material, which, could lead to an even smaller population in the next generation. Also of concern is the lack of scientific data to inform managers whether commercial harvest does or does not have an impact on the current kelp population.
- The lease only administrative kelp beds would not be temporarily closed and would continue to be available for lease, regardless of bull kelp decline. Leaving the beds available for lease would also contradict the proposed bull kelp harvest closures, or harvest limits in Mendocino and Sonoma counties, and the proposed harvest limits in

Del Norte and Humboldt counties. Additionally, maintaining the lease only status or not imposing a temporary hiatus on accepting new lease applications would mislead and confuse the public into the belief that the beds are available for lease when lease applications may result in denial by the Commission due to the loss of bull kelp. This would also cause undue workload for the Department and Commission staff as well as the applicant.

- The Drying Permit application process would not be simplified.
- Harvester's Monthly Reports
  - The Kelp Harvester's Monthly Reports forms FG 113 (January 1, 1997) and FG 114 (Rev. 1/07) do not include separate harvest reporting by giant and bull kelp. The Department would continue to not be able to monitor the amount of bull kelp harvested, in administrative kelp beds which currently have no limits for bull kelp take for uses other than edible seaweed.
  - The Kelp Harvester's Monthly Report and Edible Seaweed/Agarweed Plant Harvester's Monthly Report would not include reporting of the number of individuals harvesting under the license. Current Kelp Harvester's licenses for businesses allow more than one individual to harvest for the business, however, the Department does not know how many individuals are harvesting on a monthly basis, hindering the Department's ability to determine harvest effort and to make informed management decisions. In addition, this information can potentially be reconsidered when the Department and Commission undertake the license fees and royalty rates regulation review.
  - Bull kelp harvest under the Kelp Harvester's Monthly Report would continue to be reported by administrative kelp beds and harvest reported in the Edible Seaweed/Agarweed Plant Harvester's Monthly Report would continue to be reported by fishing blocks and nearest prominent landmark (with the prominent landmark as determined by harvester), instead of more concise reporting of take by the central latitude and longitude coordinates of harvest location. Reporting bull kelp harvest by the central latitude and longitude coordinates will allow the Department to determine a more precise location of kelp beds targeted for harvest in order to inform management decisions.
  - An Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report is currently available for use; however, its use is not required by current regulation. If a standardized form is not prescribed, harvesters could continue to provide the information in any manner they so choose, risking the omission of critical information necessary to manage the resource and fishery.
  - The Kelp Harvester's and Edible Seaweed/Agarweed Monthly Reports would not be revised in a manner that will increase the harvesters understanding of the forms and enforceability of the regulations.
- Currently, sections 165 and 165.5 lack specificity, contain inaccurate references to repealed subsections, and have language which is unclear (for example, harvest

closures in San Francisco Bay and Tomales Bay). Commercial harvesters have also expressed concerns that the current regulations are confusing. The proposed revisions to sections 165 and 165.5 will remove the inaccurate references and clarify the language to enhance enforceability of the regulations.

(c) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

See alternatives described in IV(a).

V. Mitigation Measures Required by Regulatory Action

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

VI. Impact of Regulatory Action

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states.

The Department reviewed reported bull kelp harvest from all edible seaweed harvesters in Mendocino and Sonoma counties as well as Del Norte and Humboldt counties for all years on record. Within a seven-year time frame prior to the 2014 bull kelp decline (2007-2013), bull kelp represented about 11% (14,084 out of 131,384 pounds) of total edible seaweed take in Mendocino and Sonoma counties combined for nine permittees. For the seven years following the decline (2014-2020), bull kelp harvest represented about 3% (4,441 out of 129,437 pounds) of the total edible seaweed harvested for the six permittees who harvested during that time frame.

In Del Norte and Humboldt counties combined, bull kelp represented 12% (6,191 out of 49,758 pounds) of total edible seaweed take for three permittees between 2007-2013. In contrast, bull kelp take was 34% (23,522 out of 68,709 pounds) of the total edible seaweed harvested by two permittees from 2014 – 2020 in the same two counties. Considering bull kelp harvest in Del Norte and Humboldt counties was greater proportionally, and canopy area did not decline dramatically compared to Mendocino and Sonoma counties during that timeframe, the Department determined capping harvest in Del Norte and Humboldt counties would maintain current use and harvest post 2014. Commercial harvesters in Mendocino and Sonoma counties have indicated they would not shift harvest to Del Norte and Humboldt counties.

Commercial harvest of wild marine algae is not allowed in nearby states of Oregon and Washington. Therefore, the industry is not competing with nearby markets for harvested kelp.

Finally, all other proposed regulatory amendments, including the requirement of a GPS unit to

report the central latitude and longitude coordinates of bull kelp harvest, will have no impact on California businesses, including their ability to compete with businesses in other states.

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

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission does not anticipate any benefits to health and welfare of California residents or worker safety.

The Commission anticipates benefits to the state's environment in the sustainable management of this resource. As a foundational species forming the physical structure of kelp forest habitats, bull kelp supports fisheries, cultural and ceremonial traditions, and tourism.

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

The proposed weekly reporting requirement for bull kelp harvest from the current monthly requirement would introduce additional time that is estimated to be about \$243.88 annually per harvester, or \$2,438 for the 10 active harvesters (see Table 2. Bull Kelp Harvester Weekly Reporting Costs in the STD 399 Addendum). Additionally, if the harvester does not already have GPS capability, the business would need to incur the costs (up to approximately \$200 one-time cost) of obtaining GPS capability to provide the central latitude and longitude locations of bull kelp harvest.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

Weekly reporting and the reporting of harvest coordinates will require some increase in work effort for staff within the Department totaling approximately \$8,333, or \$4,268 if a closure is chosen for Mendocino and Sonoma counties. In addition, if the bull kelp harvest closure option is chosen for Mendocino and Sonoma counties, then royalty fee revenue is anticipated to decline by an estimated \$8.88. The royalty fee per wet pound is  $\$0.012 \times 740 \text{ lbs.}$  (2014-2020 Mendocino and Sonoma) average harvest = \$8.88. (See STD 399 and addendum for calculations).

Management of bull kelp harvest quota and reporting of harvest coordinates will result in new duties for the Department. Management tasks in counties with a harvest quota will include: weekly compiling and tracking of harvest and posting status updates on the Department webpage, comparison of weekly to monthly reporting and communications with license holders as needed if discrepancies occur in the reports, determining status of harvest toward the quota as needed, drafting and emailing notices to license holders prior to implementation of restrictions triggered by the quota, posting notice of temporary closure or closures on the Department webpage, and ensuring any harvest in excess of any established quota is forfeited to the Department through a Release of Property form. Reporting of bull kelp harvest coordinates will require the Department to modify the current harvest database and enter

coordinates into the harvest database, and verify coordinates reported by harvesters to determine county of harvest.

(e) Nondiscretionary Costs/Savings to Local Agencies

None

(f) Programs Mandated on Local Agencies or School Districts

None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(h) Effect on Housing Costs

None

## VII. Economic Impact Assessment

The proposed temporary harvest limits for bull kelp in Mendocino and Sonoma counties combined (1 to 2,000 lbs. per year); and for Humboldt and Del Norte counties combined (8,000 lbs. per year) are within recent annual harvest range from 2014 – 2020, thus the average revenue per harvester is anticipated to be within recent historic levels. A closure of bull kelp harvest (0 lb. limit) for Mendocino and Sonoma counties could result in a decline in revenue for the industry. However, harvest of bull kelp in Mendocino and Sonoma counties combined has declined by approximately seven percent between 2014-2020, suggesting that the decline in the bull kelp population has already potentially caused an economic decrease.

The proposed weekly reporting requirement in addition to the current monthly requirement would introduce additional time that is estimated to be \$243.88 annually per harvester (see Table 2. Bull Kelp Harvester Weekly Reporting Costs in the STD 399 Addendum). If GPS capability is not already possessed, the proposed increase in specificity of location for bull kelp harvest beyond fishing block to geographical coordinates (latitude/longitude of central harvest location) may require the acquisition of a GPS location device (approximately \$200 one-time cost).

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

The Commission anticipates no impacts on the creation or elimination of jobs within the state because the proposed action will not spur the need for more or less labor.

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

The Commission anticipates no impacts on the creation of new businesses or the elimination of existing businesses within the state. The proposed changes are not expected to spur new business creation or the elimination of businesses. The proposed harvest limit in Del Norte and Humboldt counties is within historic take. In Mendocino and Sonoma counties, harvesters have already reduced their take due to the decline in the bull kelp resource (see Section VI. (a)

above). The Commission may choose a reduction in the harvest limit for Mendocino and Sonoma counties over a temporary closure. The proposed regulation presents a range of 1 to 2,000 pounds for Commission consideration. Harvest of other marine plants is still authorized in Del Norte, Humboldt, Mendocino and Sonoma counties.

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

The Commission anticipates no impacts on the expansion of businesses currently doing business within the state because the harvest limit is not being increased.

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

The Commission anticipates no direct benefits to the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The Commission anticipates no impacts on the worker safety because the proposed action does not have any bearing on working conditions.

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

The Commission anticipates benefits to the State's environment by contributing to the conservation of kelp forest ecosystem benefits.

## Informative Digest/Policy Statement Overview

Bull kelp (*Nereocystis luetkeana*) is a species of marine algae which forms the foundational physical structure of diverse marine habitats that provide a variety of ecosystem services and support numerous fisheries, cultural and ceremonial traditions, and diving and fishing tourism. Bull kelp is an annual species, meaning the individuals live and reproduce within a lifetime of one year, although some individuals may live into a second year. The reproductive material of a bull kelp individual is located on its blades, near the surface of the water.

Historically, bull kelp populations on the north coast have exhibited natural interannual spatial and temporal variability. However, beginning in 2014, bull kelp populations in Mendocino and Sonoma counties declined dramatically outside of the range of normal variability due to elevated sea surface temperature, poor nutrient availability and drastic increases in purple sea urchin (*Strongylocentrotus purpuratus*) populations. Maximum annual bull kelp canopy area has remained below the 1984-2013 average from 2014 through the fourth quarter of 2020.

Current uses for harvested bull kelp are for human consumption and to feed aquacultured abalone. Existing commercial harvest regulations allow those harvesting for human consumption to take the entire individual, and harvesters taking kelp for other purposes are allowed to cut up to four feet below the surface of the water. Because bull kelp reproductive material is on the part of the individual nearest to the surface, all harvest methods result in less available reproductive material. This has the potential to affect the number of future generations of bull kelp.

Due to the dramatic reduction in the north coast bull kelp population and the lack of scientific data to explain whether commercial harvest does or does not have an impact on the current kelp population, the California Department of Fish and Wildlife (Department) has determined that a precautionary management approach is warranted and is recommending amendments to harvest regulations in the interest of maintaining the bull kelp population that remains. The Department recommends temporarily amending commercial harvest regulations to limit bull kelp take on the north coast. These harvest limits would sunset in three to five years, as determined by the Commission, to allow for the drafting and potential adoption of a comprehensive, statewide Kelp Restoration and Management Plan (KRMP).

Additionally, the Department recommends regulations which apply to all commercial marine algae harvesters regardless of the species harvested, to update harvest logs, improve enforceability, and overhaul existing regulatory language to make corrections and better describe specific harvesting requirements. These regulations will not have a sunset date.

### **Current commercial harvest regulations**

California Code of Regulations (CCR), Title 14, Section 165 outlines the licensing and harvesting provisions for the commercial harvest of kelp and other aquatic plants. Relevant to this rulemaking, Section 165 includes the Kelp Harvesting License and associated fee, harvest royalty fee requirements, requirements for harvest reporting, geographical limitations for giant and bull kelp harvest, and prohibitions on the disturbance of certain aquatic plants.

Current regulations in CCR, Title 14, Section 165.5 define the procedures to lease administrative kelp beds for the exclusive right to harvest kelp. Section 165.5 also spatially describes the 87



administrative kelp beds under the following management categories: open, closed, leasable, and lease only. The designations were designed for optimal harvest while ensuring sustainable management of the resource and the species that depend upon kelp.

### **Proposed temporary commercial harvest regulations**

The Department is recommending temporary prohibitions or limits to kelp harvest in four north coast counties: Sonoma, Mendocino, Humboldt, and Del Norte. The interim management measures are intended to protect the bull kelp resource while allowing for the Department, Tribes, industry, and interested stakeholders to collaboratively work towards developing the KRMP, a comprehensive management framework for giant and bull kelp.

The proposed regulations for Del Norte, Humboldt, Mendocino, and Sonoma counties would have a sunset date of three to five years, as determined by the Commission. The following summarize the Department-proposed options for Commission consideration:

Subsection 165(c)(9)(A):

Subsection 165(c)(9)(A) Option 1: Bull kelp harvest closure in Sonoma and Mendocino counties regardless of intended use of harvested kelp.

Subsection 165(c)(9)(A) Option 2: Annual overall bull kelp harvest quota from 1 pound to 2,000 pounds (1 ton) wet weight for Sonoma and Mendocino counties, combined, between January 1 – December 31. Harvest is limited for human consumption only.

Subsection 165(c)(9)(B): The proposed regulations include an annual overall bull kelp harvest not to exceed an annual quota of 4 tons (8,000 lbs.) wet weight for Del Norte and Humboldt counties combined.

To allow the Department to monitor the harvest and avoid exceeding the annual harvest quota, in addition to the currently required monthly harvest reports, subsection (c)(9)(C) lists options for weekly reporting via email of bull kelp harvest.

Subsection 165(c)(9)(C) Option 1: *If subsection (c)(9)(A) Option 1 is adopted by the Commission, weekly reporting of bull kelp harvest for Del Norte and Humboldt counties.*

Subsection 165(c)(9)(C) Option 2: *If subsection (c)(9)(A) Option 2 is adopted by the Commission, weekly reporting of bull kelp harvest in Del Norte, Humboldt, Mendocino, and Sonoma counties.*

Subsection 165.5(c) specifies an option for the Commission decision:

Option: Temporarily closes the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties.

As an alternative to the temporary closure, the Department is also proposing an option for a temporary hiatus on accepting lease applications for the lease only administrative kelp beds. The hiatus would be an administrative action and as such, would not be written into regulation. The Department recommends that the temporary hiatus also have a sunset date of three to five years, to be determined by the Commission.

## **Additional proposed commercial harvest regulations**

Additional amendments are proposed that apply to all commercial algae harvesters and will not have a sunset date. Non-substantive and structural changes are proposed throughout sections 165 and 165.5 to improve specificity of language and correct typographical errors. Additional substantive proposed amendments include:

Modifications to the Kelp Harvesting Application form (DFW 658). The application form will be modified to include a Drying Permit option to comply with subdivision 6653.5(b) of the Fish and Game Code and renamed the Kelp Harvesting License and Drying Application. Further edits to DFW 658 will include standard language used on other licenses.

The Kelp Harvester's Monthly Report will be consolidated from two separate forms, FG 113 (January 1, 1997), and FG 114 (Rev. 1/07), into a single double-sided form Commercial Kelp Harvester's Monthly Report DFW 113 (REV. 11/01/21). The new form will add reporting requirements including the number of individuals harvesting, separate weights for bull and giant kelp harvest, the central latitude/longitude coordinates of bull kelp harvest locations, and listing the business name and individual harvester name to distinguish between the business and business contact. In addition, the new form will have Department contact information so that harvesters can reach readily available Department personnel with harvest report questions. Additional minor editorial changes are being made to remove redundancy, update Department information, and ensure consistency with regulatory text.

The regulation amendment will introduce the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report as form DFW 113A (11/01/21). This will provide a uniform way to report information already stipulated in current regulations, as well as new information similar to that required in the new version of DFW 113 (REV. 11/01/21) including the central latitude/longitude coordinates of bull kelp harvest locations.

The Release of Property form DFW 1108 (11/01/21) is introduced in this regulation amendment. The Release of Property form ensures that any inadvertent excess bull kelp harvested in the counties with annual quotas is not wasted.

Finally, Title 14 Section 705.1 is proposed to be added. This section will incorporate by reference the Commercial Kelp Harvesting License and Drying Application, the Commercial Kelp Harvesters Monthly Report DFW 113 (REV. 11/01/21), the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (11/01/21) and the Release of Property form DFW 1108 (11/01/21). The current Commercial Kelp Harvester License fee, which was established in Fish Game Code Section 6651 and is annually updated pursuant to Section 713 of the Fish and Game Code, will be listed in this section.

## **Benefits of the proposed regulations**

The goal of the regulation change is to protect and maintain the remaining bull kelp along the north coast to the maximum extent possible, and to support ongoing restoration efforts to improve the resource in future years. This will benefit the State of California by ensuring the continuance of the ecosystem services, fisheries, cultural and ceremonial traditions, and diving and fishing tourism supported by bull kelp. In addition, the sunset date will provide time to draft and potentially adopt the KRMP that will provide a comprehensive management framework for giant and bull kelp.

Additional benefits of the proposed regulations include providing Drying Permit compliance with Fish and Game Code, providing harvesters with better defined and more precise reporting tools, and improving the Department's ability to manage this resource.

### **Evaluation of incompatibility with existing regulations**

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the commercial take of kelp and other marine algae, lease of kelp beds for exclusive harvest of *Macrocystis* and *Nereocystis*, Kelp Harvester's license, and monthly harvest reports. Furthermore, the proposed addition to refer harvesters for human consumption to the California Department of Public Health will ensure harvesters are aware of the regulatory agency for food manufactured and processed food for human consumption.