

Description of Specific Edits to the Regulatory Text and Forms

Subsection 165(a)(1)(B): “incorporated by reference in Section 705.1” is added. This amendment informs the public where to find the Kelp Harvesting License and Drying Application (DFW 658).

Subsection 165(a)(1)(C): Text is added that states administrative kelp beds are defined in Section 165.5 and fishing block maps are incorporated by reference in 705.1. This amendment informs the public where to find the legal description of administrative kelp beds and maps of fishing blocks.

Subsection 165(b)(1): “the” is added and a comma is added. These amendments are made to correct grammar and punctuation.

Subsection 165(b)(3)(B): “; see Section 705.1.” is replaced with “incorporated by reference in Section 705.1.” This amendment informs the public where to find the Commercial Kelp Harvester’s Monthly Report form DFW 113.

Subsection 165(b)(3)(C): “; see Section 705.1.” is replaced with “incorporated by reference in Section 705.1.” This amendment informs the public where to find the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Report form DFW 113A.

Subsection 165(b)(8): “of these regulations” is deleted. This amendment deletes unnecessary regulatory language.

Subsection 165(c)(6): “; see subsection (b)(2) and Section 705.1.” is replaced with “incorporated by reference in Section 705.1.” This amendment informs the public where to find the Commercial Kelp Harvester’s Monthly Report form DFW 113.

Subsection 165(c)(9): The Commission adopted a three-year sunset date so “[date will be three to five years from the effective date of this regulation amendment]” is replaced with “[OAL will insert date three years after effective date of these regulations]”. This amendment is necessary to inform the public of the option adopted by the Commission and directs the Office of Administrative Law to insert the exact date into the regulatory text before filing the regulations with the Secretary of State. “, unless a later enacted amendment deletes or extends that date” is removed. This amendment deletes unnecessary informational language. This language is unnecessary as the Fish and Game Commission may consider regulation amendments at any time through the regulatory process.

Subsection 165(c)(9)(A): Informational text that describes Option 1 and Option 2 is deleted. This text was informational only and is not a part of the regulatory language. The Commission adopted Option 1; therefore, regulatory text for originally proposed Option 2 is deleted. These amendments are necessary to inform the public of the option adopted by the Commission.

Subsection 165(c)(9)(B)1.: “If the fishery is reopened permittees may be limited to equally allotted amounts to preclude exceeding the quota, as may be announced.” is replaced with “If the annual overall fishery quota has not been met, the fishery will reopen and commercial kelp harvester license holders shall be limited to allotted harvest amounts to preclude exceeding the annual overall fishery quota and the annual license quota specified in subsection 165(e)(2)(A).” These changes are necessary to define when the fishery will reopen or not reopen and to clarify that neither the annual overall fishery quota nor the annual license quota may be exceeded. Changing “permittees” to “commercial kelp harvester license holders” is necessary for consistency with other subsections in Section 165. “as may be announced” is replaced with revised text added in new subsection 165(c)(9)(B)1.b.

Subsection 165(c)(9)(B)1.a. is added to describe the mathematical formula to calculate the fishery allotments if the fishery is temporarily closed and reopened: ‘Allotted harvest amounts will be calculated as the difference between the annual overall fishery quota and bull kelp harvest from Humboldt and Del Norte counties reported in the monthly harvest reports required pursuant to subsection 165(b)(3) and the weekly harvest reports required pursuant to subsection 165(c)(9)(C), divided by the number of licensed harvesters who indicated “Bull Kelp (Human Consumption)” on their Kelp Harvesting License and Drying Application (DFW 658) and those who have not indicated “Bull Kelp (Human Consumption)” on their Kelp Harvesting License and Drying Application (DFW 658) but have reported take of bull kelp in Del Norte and/or Humboldt counties on their Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Reports (DFW113A) in one or more months during the current annual fishery quota period.’

Subsection 165(c)(9)(B)1.b. is added to clarify which harvesters will be allotted amounts; to specify that a harvester shall not be allotted an amount that would result in exceeding their annual license quota specified in subsection 165(e)(2)(A); and to clarify Department notification to harvesters affected by the allotment: ‘Licensed harvesters who indicated “Bull Kelp (Human Consumption)” on their Kelp Harvesting License and Drying Application (DFW 658) and licensed harvesters who did not indicate “Bull Kelp (Human Consumption)” on their Kelp Harvesting License and Drying Application (DFW 658) but have reported take of bull kelp in Del Norte and/or Humboldt counties on their Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Reports (DFW 113A) in one or more months during the current annual fishery quota period shall be allotted the amount calculated in subsection 165(c)(9)(B)1.a. If the allotment exceeds the amount remaining in a licensed harvester’s annual license quota specified in subsection 165(e)(2)(A), the licensed harvester’s allotment shall be decreased to the amount remaining in the licensed harvester’s annual license quota and the amount of the allotment in excess of the licensed harvester’s annual license quota shall be divided equally between the remaining licensed harvester(s) who have not exceeded their annual license quota specified in subsection 165(e)(2)(A). Prior to reopening the fishery, the department shall notify licensed harvesters via email of their allotted amount.’

Subsection 165(c)(9)(B)2.: “Kelp Harvester License” is replaced with “kelp harvester license” to correct a capitalization error. “restrictions triggered by the quota” is replaced with “a temporary closure pursuant to subsection 165(c)(9)(B)1., allotments pursuant to subsections 165(c)(9)(B)1. through 165(c)(9)(B)1.b., or an annual closure triggered by the annual overall fishery quota”. This amendment is necessary to define the restrictions that will be announced prior to implementation. In addition, in the parenthetical note at the end of the subsection, “progress toward the quota” is replaced with “progress toward the annual overall fishery quota”. This amendment is necessary to clarify the quota to which the Department status report pertains.

Subsection 165(c)(9)(B)3.: “departments” is replaced with “department’s”. This amendment is necessary to correct a spelling error. In addition, “as official notice” is changed to “official notice” to remove an extra word.

Subsection 165(c)(9)(B)4.: “any established quota” is replaced with “the annual overall fishery quota or allotments”. This change is necessary to clarify that all excess take must be forfeited. “incorporated by reference in 705.1” is added. This amendment informs the public where to find the Release of Property form DFW 1108. “The excess harvest shall be disposed of or used in a manner determined by the department.” is replaced with “The excess harvest shall be used, sold, disposed of, or donated to a non-profit institution. If sold, the proceeds of all such sales shall be paid into the Fish and Game Preservation Fund.” This amendment is necessary to clarify “manner determined by the department” and for consistency with form DFW 1108.

Subsection 165(c)(9)(C): Informational text that describes Option 1 and Option 2 is deleted. This text was informational only and is not a part of the regulatory language. Option 1 was selected; therefore, regulatory text for originally proposed Option 2 is deleted. These amendments are necessary to inform the public of the option adopted by the Commission.

Subsection 165(c)(9)(C)2.: “required” is added; “harvest” is deleted. These amendments are necessary to clarify the regulations.

Subsection 165(c)(9)(C)3.: “Harvest Reporting” is changed to “Harvest reporting” to correct a capitalization error. “to include” is replaced with “which includes” to clarify the regulations.

Subsection 165(d)(1)(E): “of these regulations” is deleted. This amendment deletes unnecessary regulatory language.

Former subsection 165(d)(2)(F): the subsection numbers “2” and “3” are deleted. These amendments are necessary to remove numbers that were not deleted previously with other regulatory text.

Former subsection 165(d)(2)(H): The period at the end of the sentence is deleted. This amendment is necessary to remove a period that was not deleted previously with other regulatory text.

Subsection 165(d)(2): “, see subsection (b)(3) and Section 705.1.” is replaced with “incorporated by reference in Section 705.1.” This amendment informs the public where to find the Commercial Kelp Harvester’s Monthly Report form DFW 113A.

Subsection 165(e)(3): “of these regulations” is deleted. This amendment deletes unnecessary regulatory language.

Former subsection 165(e)(4): The period at the end of the sentence is deleted. This amendment is necessary to remove an extra period that was not deleted previously with other regulatory text.

Subsection 165(e)(4): “, see subsection (b)(3) and Section 705.1.” is replaced with “incorporated by reference in Section 705.1.” This amendment informs the public where to find the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester’s Monthly Report form DFW 113A.

Subsection 165.5(b)(1): “designated bed” is changed to “designated kelp bed”. This amendment is necessary to clarify the regulatory language.

Subsection 165.5(c): Informational text describing the option is deleted. This language was informational only and is not a part of the regulatory language. In the first sentence, “[date will be three to five years from the effective date of this subsection]” is replaced with “[OAL will insert date three years after the effective date of these regulations]”. In the second sentence “[date will be the day after the date in the first sentence of this subsection]” is replaced with “[OAL will insert date one day after three years from effective date of these regulations]”. These amendments are necessary to inform the public of the option adopted by the Commission and direct the Office of Administrative Law to insert the exact dates into the regulatory text before filing the regulations with the Secretary of State. In both the first and second sentences, “unless a later enacted amendment deletes or extends that date” is deleted. This amendment deletes unnecessary informational language. This language is unnecessary as the Fish and Game Commission may consider regulation amendments at any time through the regulatory process.

Subsection 705.1(a): The format of the regulatory text is revised from a table format to paragraph format. This amendment is necessary for compliance with accessibility laws including California Government Code Sections 7405 and 11135, and the Web Content Accessibility Guidelines.

Subsection 705.1(c): the date of the Release of Property form is changed from “11/01/21” to “07/01/22” to accurately reflect the most recent version of the form.

Subsection 705.1(d) is added, incorporating by reference fishing block maps. While fishing blocks, also known as “department origin blocks”, have been in use by the Department and commercial fishers for nearly 90 years, they have not previously been codified in statute or regulation. This amendment will codify the fishing blocks by incorporating fishing block maps by reference in Section 705.1

Section 705.1 authority and reference citations: 713 is removed from the list of authority citations. This is a non-substantive change. In addition, extra commas are removed in the lists of authority and reference citations for consistency with the Commission's standard rules of punctuation.

Form DFW 658: On the first page, a space is added between "OF" and "AQUATIC" in "CHECK THE BOX FOR EACH TYPE OF AQUATIC PLANT TO BE HARVESTED" to correct a typographical error. In the header on page 2, "1 of 2" is changed to "2 of 2". This change is necessary to correct a typographical error.

Form DFW 1108 – The date on the form is changed from "11/01/21" to "07/01/22" to accurately reflect the most recent version of the form. "authorize the Department to donate subject property to a non-profit institution, or if applicable, the proceeds from the sale of property to the Fish and Game Preservation Fund." is changed to "authorize the Department to use, sell, dispose of, or donate subject property to a non-profit institution. If sold, the proceeds of all such sales shall be paid into the Fish and Game Preservation Fund." This amendment is necessary for consistency with subsection 165(c)(9)(B)4. Capitalization errors are corrected.