

Revised Proposed Regulatory Language

KEY

Language originally proposed to be deleted is shown in ~~strikeout~~.

Language originally proposed to be added is shown in underline.

Language originally proposed to be added but now proposed to be removed is shown in ~~underline/double-strikeout~~.

Language newly proposed to be added is shown in double-underline.

Section 165, Title 14, CCR, is amended to read:

§165. Commercial Harvesting of Kelp and Other Aquatic Plants.

- (a) General License Provisions. Pursuant to the provisions of Section 6651 of the Fish and Game Code, no kelp or other aquatic plants may be harvested for commercial purposes except under a revocable license issued by the ~~department.~~ department pursuant to this section or a marine aquaria collector's permit issued pursuant to Section 8597 of the Fish and Game Code.
- (1) ~~Who Shall be Licensed. Each person harvesting kelp and other aquatic plants for profit shall apply each year for a license on 2015 Kelp Harvesting License Application (DFW 658 Rev. 08/14) which is incorporated by reference herein. License applications and a list of laws and regulations governing the harvest of kelp and other aquatic plants (including maps depicting administrative kelp beds) are available on request from the department's Los Alamitos office at 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720. Any person harvesting kelp or other aquatic plants for commercial purposes shall first obtain a valid license for that purpose and shall have that license on their person or in their immediate possession when engaged in carrying out any activity authorized by the license.~~
- (A) Kelp harvesting licenses are valid from January 1 to December 31, inclusive, or if issued after the beginning of that term, for the remainder thereof.
- (B) Drying Permits for agar-bearing marine plants. Pursuant to Section 6653.5 of the Fish and Game Code, no person shall reduce the moisture content or otherwise dry agar-bearing marine plants harvested from waters of the state except under the authority of a Drying Permit issued by the department. To obtain a Drying Permit, the applicant must choose the Drying Permit option on the Kelp Harvesting License and Drying Application (DFW 658) incorporated by reference in Section 705.1.
- (C) License applications, informational maps depicting administrative kelp beds (defined in Section 165.5) and maps of fishing blocks (incorporated by reference in Section 705.1) for edible seaweed and agar-bearing marine algae, and Monthly Harvest Reports are available on request by contacting the department's Los Alamitos office by phone at (562) 342-7100.
- (2) Cost of License. See ~~section~~Section 6651 of the Fish and Game Code.
- (3) Where to Submit Applications. ~~Application forms~~The applicant for a Kelp Harvesting and Drying Permit shall submit the completed application, as specified in Section 705.1, together with the fee authorized by Section 6651 of the Fish and Game Code, to the address listed on the application.~~shall be submitted to the department's Los Alamitos office, 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720. Pursuant to Section 700.5, license applications and authorized fees may also be submitted electronically upon the department's establishment of an online submission system.~~

- (4) License Limitation. All provisions of sections 6650-6680 of the Fish and Game Code, and sections 165 and 165.5 of the commission regulations these regulations shall become a condition of all licenses issued under this section to be fully performed by the holders thereof, their agents, servants, employees or those acting under their direction or control.
- (b) General Harvesting Provisions.
- ~~(1) Weighing of Kelp. A kelp harvester shall determine the weight of harvested kelp or other aquatic plants upon landing or delivery to the harvester's place of business. The harvester may determine the weight of harvested kelp or other aquatic plants by either direct weighing with a state certified scale or a volume conversion that has been approved by the department. If the weight is determined by a certified or licensed weighmaster, the harvester shall obtain a receipt and maintain the receipt in the landing record required under subsection (b)(3) below.~~
- ~~(2) Harvesting Records.~~
- ~~(A) Every person harvesting kelp and other aquatic plants and licensed pursuant to Section 6650 of the Fish and Game Code shall keep a record of the following:~~
- ~~1. Category of plants harvested as defined in subsections 165(c), (d) and (e).~~
 - ~~2. The wet weight of harvested kelp or other aquatic plants recorded in pounds or tons (1 ton = 2000 lb).~~
 - ~~3. Name and address of the person or firm to whom the plants are sold, unless utilized by the harvester.~~
- ~~(B) The record shall be open at all times for inspection by the department.~~
- ~~(3) Landing Records. Records of landing shall be prepared by all harvesters licensed pursuant to Section 6650 of the Fish and Game Code. Records of landing shall be made in triplicate using Kelp Harvester's Monthly Report forms FG 113 (Rev. 1/97, see Appendix A) and FG 114 (Rev. 1/07, see Appendix A).~~
- ~~(A) The landing records shall show:~~
- ~~1. The wet weight of all aquatic plants harvested in units as defined in subsection (b)(2)(A)2. above.~~
 - ~~2. Name and address of harvester.~~
 - ~~3. Department of Fish and Wildlife kelp harvester number.~~
 - ~~4. Report period, royalty rate, balance of advance deposit (applicable to leased beds), royalty rate amount due and dates of landing.~~
 - ~~5. Administrative kelp bed number and, if applicable, marine protected area where plants were harvested.~~
- ~~(B) A duplicate copy of the landing record shall be retained by a kelp harvester for a period of one year and shall be available for inspection at any time within that period by the department. A kelp harvester who harvests kelp from a marine protected area established under subsection 632(b) shall maintain a copy of the landing record on board the harvest vessel for all harvesting conducted during that harvest control period. The original and one copy of the landing record shall be submitted to the department's Accounting Services Branch at 1416 Ninth Street, Room 1215, Sacramento, CA 95814 (or by postal delivery to P.O. Box 944209, Sacramento, CA 94244-2090) on or before the 10th day of each month following the month to which the landing records pertain with the specified royalty required for all kelp and other aquatic plants harvested. Landing records that are mailed shall be postmarked on or before the 10th day of each month following the month to which the landing records pertain. The landing record shall be submitted whether or not harvest occurred.~~

~~(C) Failure to submit the required landing records of harvest activity and royalty fees within the prescribed time limit and/or failure to retain the required landing records for the prescribed time period(s) may result in revocation or suspension (including non-renewal) of the harvester's license for a period not to exceed one year. Any revocation, suspension, or nonrenewal may be appealed to the commission.~~

- (1) Pursuant to Section 51 of the Fish and Game Code, kelp is defined as kelp or other marine aquatic plants and the seeds thereof. For the purposes of these regulations, marine aquatic plants include marine algae.
- (2) Harvesting Records. Every person harvesting kelp, other aquatic plants, and marine algae and licensed pursuant to Section 6650 of the Fish and Game Code shall keep a record of the following:
- (A) Category of harvest as defined in subsections (c), (d), and (e).
 - (B) The wet weight of harvest recorded in pounds or tons (1 ton = 2,000 lbs) wet weight.
 - (C) Month, day, and year of harvest.
 - (D) Name and address of the person or firm to whom the harvest is sold, unless utilized by the harvester.
 - (E) The record shall be available for inspection by the department.
- (3) Monthly Harvest Reports. Monthly harvest reports refer to both forms DFW 113 and DFW 113A unless otherwise described.
- (A) Monthly Harvest Reports shall be prepared by all harvesters licensed pursuant to Section 6650 of the Fish and Game Code and the harvester shall keep a record of the following:
 - 1. the harvest specified by scientific or common name, and
 - 2. the harvest's wet weight in pounds or tons (1 ton = 2,000 lbs).
 - (B) For harvest of giant (*Macrocystis*) and bull (*Nereocystis*) kelp not for human consumption, the report shall be made using the Commercial Kelp Harvester's Monthly Report form DFW 113; see incorporated by reference in Section 705.1.
 - (C) For harvest of agar-bearing marine plants and edible seaweed, including giant and bull kelp, for human consumption, the report shall be made using the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report form DFW 113A; see incorporated by reference in Section 705.1.
 - (D) Weighing of Kelp, Other Marine Aquatic Plants, Marine Algae, Agar-bearing Plants, and Edible Seaweed. The harvester shall determine and record the weight of harvest upon landing or delivery to the harvester's place of business. The harvester may determine the wet weight of harvest by either direct weighing with a state certified scale or a volume conversion that has been approved by the department. If the weight is determined by a certified or licensed weighmaster, the harvester shall obtain a receipt and maintain the receipt with the Monthly Harvest Report.
 - (E) The Monthly Harvest Report shall be available for inspection by the department for a period of one year.
 - (F) A duplicate paper copy of the Monthly Harvest Report shall be retained by a kelp harvester for a period of one year.
 - (G) A kelp harvester who harvests kelp from a marine protected area established under subsection 632(b) shall maintain a copy of the Monthly Harvest Report on board the harvest vessel for all harvesting conducted during that harvest control period.
 - (H) Monthly Harvest Reports and royalty fees shall be submitted via paper copies or, pursuant to Section 700.5, may be submitted electronically upon the department's establishment of an online submission system. If submitting via paper copies, the original

Monthly Harvest Report shall be submitted to the department's Accounting Services Branch/Cash Receipts 715 P Street, 16th Floor, Sacramento, CA 95814 (or mailed to P.O. Box 944209, Sacramento, CA 94244-2090) on or before the 10th day of each month following the month to which the Monthly Harvest Reports pertain with the specified royalty required for all kelp and other aquatic plants harvested. Monthly Harvest Reports that are mailed shall be postmarked on or before the 10th day of each month following the month to which the Monthly Harvest Reports pertain. The Monthly Harvest Report shall be submitted whether or not harvest occurred.

- (l) Failure to submit the required Monthly Harvest Reports of harvest activity and royalty fees within the prescribed time limit and/or failure to retain the required Monthly Harvest Reports for the prescribed time period(s) may result in revocation or suspension (including non-renewal) of the harvester's license for a period not to exceed one year. Any revocation, suspension, or nonrenewal may be appealed to the commission.
- (4) No eel grass (*Zostera*) or surf grass (*Phyllospadix*) may be ~~cut or~~ cut, disturbed, or possessed.
- (5) No ~~kelp or other~~ marine aquatic plant, or marine algae may be harvested in a state marine reserve or state marine park as per subsection 632(a). Commercial harvest of ~~kelp or other~~ kelp, marine aquatic plants, or marine algae may be limited in state marine conservation areas as per subsection 632(b).
- (6) It is unlawful to cause or permit waste of any ~~kelp or other~~ kelp, marine aquatic plants, or marine algae taken in the waters of this state or to take, receive or agree to receive more ~~kelp or other~~ kelp, marine aquatic plants, or marine algae than can be used without waste or spoilage.
- (7) No person shall harvest kelp, marine aquatic plants, or edible seaweed from Tomales Bay and San Francisco Bay.
- (8) Bull kelp may not be harvested in closed or lease only administrative kelp beds as described in subsection 165.5(k) ~~of these regulations~~ unless harvest is for human consumption as specified pursuant to subsection (e)(2) of this section. Bull kelp may be harvested for other uses by the lease holder in lease only beds if a lease is granted by the commission.
- (9) Only lease holders may harvest giant and bull kelp from their leased administrative kelp bed(s) per stipulations of their lease agreement and Section 165.5.
- (c) Harvesting of ~~Macroecystis and Nereocystis (giant and bull kelp)~~ giant and bull kelp. In this subsection, kelp means both giant and bull kelp.
- (1) A kelp harvester may harvest kelp by cutting and removing portions of attached kelp or by collecting unattached kelp.
- (2) A kelp harvester shall not cut attached kelp at a depth greater than four feet below the surface of the water at the time of cutting.
- (3) No kelp received aboard a harvesting vessel shall be allowed to escape from the vessel or be deposited into the waters of this state.
- (4) In beds north of Point Montara, San Mateo County, ~~Nereocystis (bull kelp)~~ bull kelp may only be taken by hand harvesting. Hand harvesting includes using manually operated hand-held tools. No mechanical harvesters of any kind shall be allowed.
- (5) Between April 1 and July 31, a kelp harvester may not harvest bull kelp from a nonleased kelp bed that lies partially or totally within the boundary of the Monterey Bay National Marine Sanctuary extending from Santa Rosa Creek, San Luis Obispo County, northward to Rocky Point, Marin County. This subsection does not preclude the removal of bull kelp from beaches within the Monterey Bay National Marine Sanctuary during the seasonal closure.

- ~~(6) Prior commission approval of a kelp harvest plan is necessary before a kelp harvester may use a mechanical harvester to harvest giant kelp.~~
- ~~(A) A kelp harvest plan must identify how a mechanical harvester will be used while avoiding:~~
- ~~1. repetitive harvest from individual giant kelp plants;~~
 - ~~2. harvest of bull kelp from those portions of kelp beds that contain both giant kelp and bull kelp; and~~
 - ~~3. harvest of giant kelp near sea otter rafting sites used by female sea otters with dependent pups.~~
- ~~(B) All kelp harvest plans shall also include the following:~~
- ~~1. the number of the designated bed or beds as shown in subsection 165.5(j), a description of the kelp bed or portion of the kelp bed requested and the designated number of square miles in each bed or portion thereof;~~
 - ~~2. intended use of kelp;~~
 - ~~3. amount of kelp proposed to harvest on a monthly and annual basis during the next five years;~~
 - ~~4. estimated frequency of harvesting activities for each kelp bed;~~
 - ~~5. number of harvest boats, maximum kelp holding capacity in wet tons for each boat, including the operating vessel gross tonnage and fuel tank capacity;~~
 - ~~6. harvesting methodology (harvest operation description);~~
 - ~~7. all locations (addresses) where kelp landing and weighing will take place;~~
 - ~~8. specific details of wet kelp weighing equipment and methods to be used at the landing sites for accurate reporting; and~~
 - ~~9. name, address, phone number, and license number of kelp processor and method of transporting the kelp to the processing location.~~
- ~~(C) Kelp harvest plans must be updated and submitted to the commission for approval every five years.~~
- ~~(7) In addition to the license fee, a kelp harvester shall pay a royalty of \$1.71 for each ton (2,000 lb) of wet kelp harvested from a non-leased bed.~~
- (6) Monthly Harvest Reports for uses other than human food. Monthly Harvest Reports shall be made in duplicate using Commercial Kelp Harvester's Monthly Report form DFW 113; see subsection (b)(2) and incorporated by reference in Section 705.1.
- (A) In addition to the license fee, a kelp harvester shall pay a royalty fee of \$1.71 for each ton (2,000 lbs) of wet kelp harvested from a non-leased administrative kelp bed.
- (B) Maintenance and submission requirements for Commercial Kelp Harvester's Monthly Harvest Reports and submission requirements for royalty fees are specified in subsection (b)(3).
- (7) Mechanical Harvest of Kelp. Prior commission approval of a kelp harvest plan is necessary before a kelp harvester may use a mechanical harvester to harvest giant kelp.
- (8) Kelp Harvest Plans. All kelp harvest plans shall include the following:
- (A) The number of the designated bed or beds as shown in subsection 165.5(k), a description of the kelp bed or portion of the kelp bed requested, and the designated number of square miles in each bed or portion thereof;
- (B) The intended use of kelp;
- (C) If a mechanical harvester will be used, the kelp harvest plan must identify how the mechanical harvester will be used while avoiding:

1. repetitive harvest of individual giant kelp plants;
2. harvest of bull kelp from those portions of kelp beds that contain both giant kelp and bull kelp; and
3. harvest of giant kelp near sea otter rafting sites used by female sea otters with dependent pups.

(D) The amount of kelp proposed to harvest on a monthly and annual basis during the next five years.

(E) The estimated frequency of harvesting activities for each kelp bed.

(F) The number of harvest boats, maximum kelp holding capacity in wet tons for each boat, including the operating vessel gross tonnage and fuel tank capacity.

(G) Harvesting methodology (harvest operation description).

(H) All locations (addresses) where kelp landing and weighing will take place.

(I) The specific details of wet kelp weighing equipment and methods to be used at the landing sites for accurate reporting.

(J) The name, address, phone number, and license number of kelp processor and method of transporting the kelp to the processing location.

(K) Kelp harvest plans must be updated and submitted to the commission for approval every five years.

(9) Temporary harvest restrictions and weekly reporting for bull kelp. Subsections (c)(9) through (c)(9)(C)3. shall remain in effect only until ~~date will be three to five years from the effective date of this regulation amendment~~ [OAL will insert date three years after effective date of these regulations], and as of that date are repealed, ~~unless a later enacted amendment deletes or extends that date.~~

~~[Subsection (c)(9)(A) Option 1 adds subsection (c)(9)(A): Sonoma and Mendocino counties harvest closure]~~

(A) Notwithstanding subsection (b)(8), bull kelp may not be taken for any purpose in Sonoma and Mendocino counties.

~~[Subsection (c)(9)(A) Option 2 adds subsections (c)(9)(A) through (c)(9)(A)4.: Sonoma and Mendocino counties annual harvest quota. The Commission will select a quota within the range provided.]~~

~~(A) Bull kelp may be harvested in Sonoma and Mendocino counties for human consumption only, not to exceed an annual overall fishery quota of [1 lb to 2,000 lbs (1 ton)] wet weight for the combined counties between January 1 and December 31.~~

~~1. The department may announce a temporary commercial bull kelp harvest closure in order to obtain an accurate tally of harvest. If the fishery is reopened permittees may be limited to equally allotted amounts to preclude exceeding the quota, as may be announced.~~

~~2. The department shall inform the public by posting a notice on its webpage <https://wildlife.ca.gov/Conservation/Marine/Kelp/Commercial-Harvest> and shall notify commercial Kelp Harvester License holders by email prior to any implementation of restrictions triggered by the quota. (Note: A department status report on progress toward the quota is updated weekly and available at <https://wildlife.ca.gov/Conservation/Marine/Kelp/Commercial-Harvest>.)~~

~~3. It is the responsibility of the harvester to keep themselves informed of the remaining quota by monitoring the reported harvest on the department's webpage.~~

~~<https://wildlife.ca.gov/Conservation/Marine/Kelp/Commercial-Harvest>. Any announcement issued shall constitute as official notice.~~

~~4. All harvest in excess of any established quota shall be forfeited to the department by signing a Release of Property form DFW 1108. The excess harvest shall be disposed of or used in a manner determined by the department.~~

(B) Bull kelp may be harvested in Humboldt and Del Norte counties for human consumption only, not to exceed an annual overall fishery quota of 4 tons (8,000 lbs) wet weight for the combined counties between January 1 and December 31.

1. The department may announce a temporary commercial bull kelp harvest closure in order to obtain an accurate tally of harvest. If the annual overall fishery quota has not been met, the fishery will reopen ~~fishery is reopened~~ permittees may and commercial kelp harvester license holders shall be limited to ~~equally-allotted~~ harvest amounts to preclude exceeding the annual overall fishery quota and the annual license quota specified in subsection 165(e)(2)(A), ~~as may be announced.~~

a. 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.

b. 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."

2. The department shall inform the public by posting a notice on its webpage <https://wildlife.ca.gov/Conservation/Marine/Kelp/Commercial-Harvest> and shall notify commercial ~~Kelp Harvester License~~ kelp harvester license holders by email prior to any implementation of ~~restrictions~~ 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. (Note: A department status report on progress toward the annual overall fishery quota is updated weekly and available at [https://wildlife.ca.gov/Conservation/Marine/Kelp/Commerical-Harvest.](https://wildlife.ca.gov/Conservation/Marine/Kelp/Commerical-Harvest))

3. It is the responsibility of the harvester to keep themselves informed of the remaining quota by monitoring the reported harvest on the ~~department's~~ department's webpage: [https://wildlife.ca.gov/Conservation/Marine/Kelp/Commerical-Harvest.](https://wildlife.ca.gov/Conservation/Marine/Kelp/Commerical-Harvest) Any announcement issued shall constitute ~~an~~ official notice.
4. All harvest in excess of ~~any established~~ the annual overall fishery quota ~~or allotments~~ shall be forfeited to the department by signing a Release of Property form DFW 1108 incorporated by reference in Section 705.1. The excess harvest shall be ~~disposed of or used in a manner determined by the department 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.~~

(C) Mandatory Harvest Data Reporting Requirements for bull kelp.

~~[Subsection (c)(9)(C)1. Option 1 — if subsection (c)(9)(A) Option 1 is selected:]~~

1. In addition to monthly reporting, persons harvesting bull kelp in Humboldt and Del Norte counties must submit weekly reports by email to kelp@wildlife.ca.gov.

~~[Subsection (c)(9)(C)1. Option 2 if subsection (c)(9)(A) Option 2 is selected:]~~

~~1. In addition to monthly reporting, persons harvesting bull kelp in Sonoma, Mendocino, Humboldt, and Del Norte counties must submit weekly reports by email to kelp@wildlife.ca.gov.~~

~~1. In addition to monthly reporting, persons harvesting bull kelp in Humboldt and Del Norte counties must submit weekly reports by email to kelp@wildlife.ca.gov.~~

2. Weekly harvest reports shall be submitted by 5:00 p.m. on each Monday for the Sunday through Saturday of the preceding week. Weekly harvest reporting is required for the duration of the annual license unless the harvester provides a notice via email to kelp@wildlife.ca.gov that bull kelp ~~harvest~~ will not be harvested within a specified time frame or no longer occur for the remainder of the license year.
3. Harvest ~~Reporting~~ reporting shall be provided in the email body and shall include business name, business contact name, harvester license number, amount of harvest in pounds by county in which harvest occurred, and time period of harvest ~~to which includes~~ the month, specific calendar days of harvest, and year.

(d) Harvesting of marine plants of the genera *Gelidium*, *Pterocladia*, *Gracilaria*, *Iridaea*, *Gloiopeltis* or *Gigartina* which are classified as agar-bearing plants.

(1) General Provisions.

- (A) All agar-bearing plants must be harvested by cutting, except that drift or loose plants may be picked up by the harvester. Agar-bearing plants may be cut no closer than two inches to the holdfast and no holdfast may be removed or disturbed. All agar-bearing plants which are removed from a bed must be taken from the water for weighing and processing.
- (B) While harvesting agar-bearing plants, it is unlawful to ~~harvest abalone or to have abalone harvesting equipment in possession.~~ take or possess abalone.
- (C) When harvesting agar-bearing plants, the harvester's license number ~~License numbers of the harvesters~~ will be legibly displayed on both sides of the boat from which they are

operating in 10-inch black numbers on a white background. However, on boats less than 12 feet long, the harvester's license number may be displayed no smaller than 6-inch black numbers on a white background on both sides of the boat from which they are operating. All harvester's license numbers must be kept clearly legible, kept in good repair, and the harvester must ensure that the harvester's license number is not obstructed from view.

(D) A harvester may use conventional underwater diving gear or SCUBA when harvesting agar-bearing plants.

(E) Weighing of Agar-bearing Marine Plants. All agar-bearing marine plants shall be weighed upon landing pursuant to the provisions of subsection (b)(3)(D) of these regulations.

~~(2) Kelp Drying Permits. Pursuant to section 6653.5 of the Fish and Game Code, no company or individuals shall reduce the moisture content or otherwise dry agar-bearing plants harvested from waters of the state except under the authority of a kelp drying permit issued by the department. Drying permits shall be issued under the following conditions:~~

~~(A) Where Issued. Requests for kelp drying permits shall be submitted to the Department of Fish and Game at the address listed in section 165(a)(3).~~

~~(B) Cost of Permit. See subsection 699(b) of these regulations for the fee for this permit.~~

~~(C) Permit Review. The department shall return permit application forms to the applicant within three working days of receipt.~~

~~(D) Duration of Permits. Except as otherwise provided, kelp drying permits shall be valid for a term of one year from date of issue.~~

~~(E) Weighing of Kelp. All agar-bearing marine plants shall be weighed upon landing pursuant to the provisions of subsection (b)(1) of these regulations.~~

~~(F) Plant Delivery. Every person taking delivery of agar-bearing marine plants for drying purposes from persons licensed pursuant to section 6650 of the Fish and Game Code or harvesters drying their own plants shall keep a book or books recording the following:~~

~~1. A full and correct record of all agar-bearing plants received from other licensed agar harvesters or taken by permittee.~~

~~2. Names of the different species.~~

~~3. The number of pounds received.~~

~~4. Name, address and kelp harvester number of the person from whom the agar-bearing plants were received. The book(s) shall be open at all times for inspection by the department.~~

~~(G) Landing Receipts. Receipts shall be issued by all kelp drying permittees to harvesters licensed pursuant to subsection (b)(3) of these regulations and shall show:~~

~~1. Price paid.~~

~~2. Department origin block number where the agar-bearing plants were harvested.~~

~~3. Such other statistical information the department may require.~~

~~(H) The original signed copy of receipt shall be delivered to the agar harvester at the time of purchase or receipt of the agar-bearing plants. The duplicate copy shall be kept by the kelp drying permittee for a period of one year and shall be available for inspection at any time within that period by the department, and the triplicate shall be delivered to the department at the address indicated within 10 days after the close of each month, with a royalty of \$17.00 per wet ton (2,000 lbs.) for all agar-bearing seaweed received. Failure to submit the required landing receipts and royalty fees within the prescribed time limit is grounds for revocation of the permittee's drying permit.~~

- (2) Monthly Harvest Reports shall be made in duplicate using Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A, see subsection (b)(3) and incorporated by reference in Section 705.1.
- (3) Royalty rate amount due. In addition to the license fee, an agar-bearing marine plant harvester shall pay a royalty fee of \$17.00 per ton (2,000 lbs) of wet agar-bearing marine plant harvested.
- (4) Maintenance and submission requirements for Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report and submission requirements for royalty fees are specified in subsection (b)(3).
- (e) Harvesting of marine plants, including the genera Porphyra, Laminaria, Monostrema, and other aquatic plants utilized fresh or preserved as human food and classified as edible seaweed.
- (1) General Provisions.
- (A) Edible varieties of marine plants must be harvested by cutting or picking, except that drift or loose plants may be picked up by the harvester. All harvested plants must be processed.
- (B) Edible seaweed may be harvested from state waters throughout the year, except as provided under ~~section~~Section 164.
- (C) While harvesting edible seaweed, it is unlawful to take or possess abalone harvest abalone or to have abalone harvesting equipment in possession.
- (D) A harvester may use conventional underwater diving gear or SCUBA while harvesting edible seaweed.
- (E) Harvesters of giant and bull kelp shall adhere to regulations specified in subsections (c)(1) and (c)(4) through (c)(5). Harvesters of giant kelp shall adhere to the regulations specified in subsection (c)(2).
- (2) Harvest of Bull Kelp for Human Consumption. ~~Notwithstanding subsection 165(c) (5)(A), persons operating under the authority of an edible seaweed harvesters license may take, not to exceed, 2 tons (4,000 lbs) of bull kelp per year. The entire plant may be harvested.~~
- (A) Unless otherwise prohibited, in addition to open or leasable beds, bull kelp may be harvested for human consumption in a closed or lease-only administrative kelp beds described in subsection 165.5(k) if the beds are not leased. Persons operating under the authority of an edible seaweed harvesters license may take, not to exceed, 2 tons (4,000 lbs) of bull kelp annually per license. The entire plant may be harvested.
- (B) Temporary bull kelp harvest restrictions and harvest reporting are specified in subsections (c)(9) through (c)(9)(C)3.
- (3) Weighing of Edible Marine Plants. All edible marine plants shall be weighed pursuant to the provisions of subsection ~~(b)(1)-(b)(3)(D) of these regulations~~ and landing receipts in duplicate issued as per subsection (b)(3).
- (4) ~~The original copy of the receipt shall be delivered to the department at the address indicated within 10 days after the close of each month with a royalty of \$24 per wet ton (2,000 lbs.) of edible marine plants harvested from state waters other than San Francisco Bay and Tomales Bay.~~
- (4) Monthly Harvest Reports shall be made in duplicate using Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A, see subsection (b)(3) and incorporated by reference in Section 705.1.
- (5) In addition to the license fee, an edible seaweed harvester shall pay a royalty fee of \$24 per ton (2,000 lbs) of wet edible seaweed harvested.

(6) Maintenance and submission requirements for Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report and submission requirements for royalty fees are specified in subsection (b)(3).

(f) All Other Species of Kelp.

(1) Applicant shall apply to the commission, outlining the species to be harvested, amount and location. The commission may set conditions and amount of royalty after review of the application.

(g) Commercially manufactured and processed food for human consumption in California is regulated by the California Department of Public Health. Commercial marine algae harvesters shall refer to the California Department of Public Health for information on regulations, requirements, and permitting for commercially manufactured and processed food.

NOTE: 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.