

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

Amend Sections 165, and 165.5, and Appendix A, and add Section 705.1
Title 14, 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. Date of Pre-Adoption Statement of Reasons: January 14, 2022
- III. Date of Final Statement of Reasons: April 7, 2022
- IV. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: December 16, 2021

Location: Webinar/Teleconference

(b) Discussion Hearing and Adoption Hearing

Date: February 16, 2022

Location: Webinar/Teleconference

V. Update

Changes were made to the forms described below and to Section 705.1, Title 14, CCR, for clarity and consistency, and to correct typographical or other errors.

The following corrections are made to the existing and new forms, as noted in the Pre-Adoption Statement of Reasons (PSOR).

The Kelp Harvesting License and Drying Application DFW 658 (REV. 11/01/21) is further modified to contain the following:

- Page 1 and 2 header
 - The revision date “REV. 11/01/21” is updated to “REV. 01/06/22” to accurately reflect the date of the most recent revisions.
- Page 1
 - “HAVESTER’S LICENSE #” is replaced with “HARVESTER LICENSE #” to correct a typographical error.
- Page 2
 - The title “INSTRUCTIONS FOR COMPLETING THE KELP HARVESTING LICENSE APPLICATION” is modified to read “INSTRUCTIONS FOR COMPLETING THE KELP HARVESTING LICENSE AND DRYING APPLICATION” to accurately reflect the title of the form.
 - Instructions, bullet 3: “This application will become your license when validated and returned to you by CDFW.” is removed. Recent changes by the Automated License

Data System (ALDS) will result in issuance of a printed Kelp Harvesting License and Drying Permit; therefore, this statement is no longer true.

The Commercial Kelp Harvester's Monthly Report DFW 113 (REV. 11/01/21) is further modified to reflect the following:

- Page 1 and 2 header
 - The revision date "REV. 11/01/21" is updated to "REV. 01/06/22" to accurately reflect the date of the most recent revisions.
- Page 2
 - First paragraph, three occurrences of "Sections" are replaced with "sections" to reflect Fish and Game Commission (Commission) standard rules for capitalization.
 - General Instructions, bullet C, the comma between "CA" and the zip code is removed to correct a typographical error.
 - Log Instructions, bullet 2, "an marine protected area" is replaced with "a marine protected area" to correct a typographical error.
 - Log Instructions, bullet 6, "advance" is replaced with "advanced" to correct a typographical error.

The following modifications have been made to the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (NEW 11/01/21):

- Page 1 and 2 header
 - The creation date "NEW 11/01/21" is updated to "NEW 01/06/22" to accurately reflect the date of the most recent version.
- Page 2, first paragraph
 - Three occurrences of "Sections" are replaced with "sections" to reflect Commission standard rules for capitalization.
 - Second sentence, "Chapther" is changed to "Chapter" to correct a misspelling.
 - The phrase "number of tons" is replaced with "weight" to accurately reflect the weighing reporting options.
- Page 2, General Instructions, bullet C
 - The address "715 P Street, Sacramento" is changed to "715 P Street, 16th Floor, Sacramento" which is the correct address.
 - The comma between "CA" and the zip code is removed to correct a typographical error.

Due to the modifications to DFW 658, 113, and 113A, new Section 705.1 is modified as follows to accurately reflect the dates of forms incorporated by reference:

- Subsection (a)(1) revision date of the 2022 Kelp Harvesting License and Drying Application DFW 658 is modified from "(REV. 11/01/21)" to "(REV. 01/06/22)"
- Subsection (b)(1) revision date of the Commercial Kelp Harvester's Monthly Report DFW 113 is modified from "(REV. 11/01/21)" to "(REV. 01/06/22)"
- Subsection (b)(2) date of the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvesters Monthly Report DFW 113A is modified from "(NEW 11/01/21)" to "(NEW 01/06/22)"

Additionally, subsection (a)(1) of Section 705.1 is further modified to include “(does not include the fees specified in subsection 700.4(e))” to clarify the base license fee provided in 705.1(a)(1) does not include all processing fees. In subsection (b)(3) of Section 705.1 the word “NEW” is added before the date of form DFW 1108 for consistency with the form itself.

Additional updates with this Final Statement of Reasons (FSOR) are as follows:

- On February 16, 2022, the Commission adopted, with the modifications to forms DFW 658, 113, 113A and Section 705.1 described above, the proposed regulations set forth in the Initial Statement of Reasons (ISOR) including the following options:
 - Bull kelp harvest closure in Sonoma and Mendocino counties regardless of intended use of harvested kelp.
 - Change the status of the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties to closed.
 - Impose a three-year sunset date for bull kelp harvest closure in Mendocino and Sonoma counties, administrative kelp bed status change from lease only to closed, combined annual harvest limits in Del Norte and Humboldt counties, and weekly reporting of bull kelp harvest in Del Norte and Humboldt counties with annual quota described in the ISOR.

There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

A total of 130 comments from 32 commenters were received on the proposed regulatory amendments during the regular public comment period from December 31, 2021 through February 16, 2022. The Commission published a 15-day notice on February 22, 2022 regarding minor changes to forms and Section 705.1, Title 14, CCR. The 15-day public comment period extended from February 22, 2022 through March 9, 2022. Four comment letters with 10 commenters as signatories were received during the 15-day comment period. All written and verbal comments received by the Commission during the public comment periods from December 31, 2021 through February 16, 2022 and February 22, 2022 through March 9, 2022 are summarized and responded to in Attachment 1.

VII. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at

California Fish and Game Commission
715 P Street, 16th Floor
Sacramento, CA 95814

VIII. Location of Department Files

Department of Fish and Wildlife
715 P Street, 17th Floor
Sacramento, CA 95814

IX. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

During the review process the Department of Fish and Wildlife (Department) received recommendations for bull kelp which were rejected as they were considered not equally effective as the regulations **recommended by the Department. The Commission concurs with the Department's reasons for rejecting the alternatives.**

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 **recommended** 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 **recommended** 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 **recommendation.**

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 **recommended** 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 **recommended** 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 **the proposed regulations 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 proposed regulations 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 **recommended** 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 **and Commission recognize** 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) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

See alternatives described in IX(a).

X. 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 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.

The adopted temporary closure for Mendocino and Sonoma counties is anticipated to result in reductions in annual gross revenue for two harvesters. The gross revenue per harvester is estimated to be range from \$0 - \$2,066/year over the years of 2014-2020, in which individual harvested weight varied from 0 – 560 wet lbs in Mendocino and Sonoma counties. See tables 1a and 1b in the STD 399 addendum.(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 x 740 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

Updated 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 **third quarter of 2021**.

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 **Fish and Game Commission (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. **Additional minor edits are made to ensure consistency with the license sales process.**

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. 01/06/22**). 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 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 (**NEW 01/06/22**). 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. 01/06/22**) including the central latitude/longitude coordinates of bull kelp harvest locations.

The Release of Property form DFW 1108 (**NEW 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 **DFW 658 (REV. 01/06/22)**, the Commercial Kelp Harvesters Monthly Report DFW 113 (**REV. 01/06/22**), the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (**NEW 01/06/22**) and the Release of Property form DFW 1108 (**NEW 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 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.

Update:

On February 16, 2022, the Commission adopted the proposed regulations as set forth in the Initial Statement of Reasons (ISOR) dated November 10, 2021, and the Pre-Adoption Statement of Reasons dated January 14, 2022.

The regulatory proposed amendments described in the ISOR provided three options for the Commission's decision. For the proposed regulations with options, the following were adopted by the Commission:

- **Bull kelp harvest closure in Sonoma and Mendocino counties regardless of intended use of harvested kelp.**
- **Change the status of the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties to closed.**
- **Impose a three-year sunset date for bull kelp harvest closure in Mendocino and Sonoma counties, administrative kelp bed status change from lease only to closed, combined annual harvest limits in Del Norte and Humboldt counties, and weekly reporting of bull kelp harvest in Del Norte and Humboldt counties with annual quotas described in the ISOR.**

There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.