

Addendum to 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

October 13, 2022

I. Update

On October 13, 2022, the California Fish and Game Commission (Commission) approved the following revisions 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. “Release of Property form DFW 1108” is replaced with “Release of Property DFW 1108”. “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 nonprofit 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 165.5(k): The “g” in grand is show in underline format to correct a strikeout/underline formatting error. The symbol “=” is replaced with “equals”.

Subsection 165.5(k)(2)(l): The strikeout/underline formatting is removed from the regulatory text illustrating the correction of the publishing error such that the text aligns with text previously approved by the Office of Administrative Law.

Subsection 165.5(k)(4): The dotted line before “5.83” is repealed.

Subsection 705.1(a): The format of the regulatory text is revised from a table format to paragraph format and “(US\$)” is removed. 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 113: On page 1, the certification is revised to refer to “Fish and Game Code sections 6650-6711 and sections 165, 165.5, and 705.1 Title 14 of the California Code of Regulations.” On page 2, a citation to section 705.1 is added in two places.

Form DFW 113A: On page 1, the certification is revised to refer to “Fish and Game Code sections 6650-6711 and sections 165, 165.5, and 705.1 Title 14 of the California Code of Regulations.” On page 2, a citation to section 705.1 is added in two places and “Submit the original to California Department of Fish and Wildlife, Accounting Services Branch/Cash Receipts at 715 P Street, 16th Floor, Sacramento, CA 95814. Or by postal delivery to P.O. Box 944209, Sacramento, CA 94244-2090” is replaced with “Submit the original to California Department of Fish and Wildlife, Accounting Services Branch/Cash Receipts at 715 P Street, 16th Floor, Sacramento, CA 95814 or by postal delivery to P.O. Box 944209, Sacramento, CA 94244-2090”.

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 and a comma is added between “If new” and “you must” to correct a punctuation 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.

II. Necessity

Subsections 165(a)(3) and 165(b)(3)(H):

The Commission requests to retain informational language in subsections 165(a)(3) and 165(b)(3)(H), regarding electronic submittal of license applications, monthly harvest reports, and license and royalty fees. As described in the Initial Statement of Reasons (ISOR), an online submission system has not yet been developed for the Kelp Harvesting License and Drying Application, monthly harvest reports and fees; however, commercial kelp harvesters have expressed a desire for electronic application and reporting. The Department regularly receives requests from harvesters for an online license purchasing, reporting, and payment system similar to other fisheries. Once an online system is established, harvesters will continue to have the option to purchase their license at the Department’s Los Alamitos office and/or to submit paper copies of their harvest reports with royalty payments to the Department’s Accounting Services/Cash Receipts office in Sacramento.

Subsection 165(c)(9)(B)1.a.:

The Department has determined that the harvesters who may target harvest of bull kelp for human consumption in Del Norte and/or Humboldt counties if the fishery is temporarily closed and reopened are (1) the harvesters who have indicated they **plan to target bull kelp** for human consumption by indicating “Bull Kelp (Human Consumption)” on their Kelp Harvesting License and

Drying Application DFW 658 and (2) the harvesters who have **reported bull kelp harvest** for human consumption in Del Norte and/or Humboldt counties on their previously submitted Commercial Edible Seaweed/Agarweed Aquatic Harvester's Monthly Reports DFW 113A in one or more months during the annual fishery quota period. Therefore, the number of harvesters in these two groups will be used in calculating the harvest allotment amount. The formula allows an equitable distribution of the remaining quota amount by ensuring that all harvesters who may target harvest of bull kelp for human consumption in Del Norte and/or Humboldt counties are included in the harvest allotment calculation.

Subsection 165(c)(9)(B)1.b.

The allotment approach in this subsection ensures that all harvesters who may target harvest of bull kelp for human consumption in Del Norte and/or Humboldt counties will be allotted amounts. However, since harvesters may not exceed their annual license quota, any allotment in excess of a licensed harvester's annual license quota will be allotted to other harvesters who the Department has identified may target harvest of bull kelp for human consumption in Del Norte and/or Humboldt counties to ensure the full amount of the annual overall fishery quota may be harvested.

Subsections 705.1(a), (b), and (c):

The 2022 Kelp Harvesting License and Drying Application DFW 658 (REV. 01/06/22), Commercial Kelp Harvester's Monthly Report DFW 113 (REV. 01/06/22), Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (NEW 01/06/22), and Release of Property DFW 1108 (NEW 07/01/22) forms are proposed to be incorporated by reference as their length would make them cumbersome to print in the California Code of Regulations. The forms were available on the Commission's website and available upon request directly from the Commission during the original notice period, the February 2022 15-day notice period and the July 2022 15-day notice period.

Subsection 705.1(d):

Maps of department origin blocks, also known as fishing blocks, [Northern California Fisheries Chart (September 2015), Central California Fisheries Chart (September 2015), and Southern California Fisheries Chart (April 2016)] are proposed to be incorporated by reference because it would be cumbersome and impractical to publish the maps in the California Code of Regulations. The maps were available on the Commission's and Department's websites and available upon request directly from the Commission during the July 2022 15-day notice period .

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

Responses 1c, 2a and 6m are updated in Attachment 1.

The Commission received 27 comments from four commenters on the July 14, 2022 15-day notice. Summary and response to the comments on the July 14, 2022 15-day notice are provided in Attachment 2.

Attachment 1. Updated summary and response to public comments 1c, 2a, and 6m received on the proposed amendments to Sections 165, and 165.5, and Appendix A, and addition of Section 705.1, Title 14, California Code of Regulations

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.

Table 1. List of assigned commenter identification number, date received, comment type, commenter name(s) and organization(s) (if applicable).

Commenter ID Number	Date Received	Comment Type	Commenter Name and Organization(s)
1	1/31/22	Letter via email	Doug Bush, The Cultured Abalone Farm, LLC
2	2/2/22	Letter via email	Dr. Jeanine Pfeiffer, ethnoecologist letter on behalf of California Seaweed Harvesters: Brandon Barney (Primary Ocean), Doug Bush (The Cultured Abalone Farm), Annie Cappelli (Seaweed Soul), Andrew Daunis (Pacific Wildcraft), Terry d'Selkie (Ocean Harvest Sea Vegetable Co.), Tessa Emmer (Intertidal Seaweed Co.), Tom Ebert (American Abalone Farm), Heidi Herrmann (Strong Arm Farm), Ian O'Hollaren (Sequoia Wild Seaweed), James Jungwirth and Kari (NatureSpirit Herbs), Melissa Hanson (Kelpful), Eliza C. Harrison (Ocean Rainforest), Larry Knowles (Rising Tide Seaweed), Harry Liquornik (H. L. Fisheries), Art Seavey (Monterey Abalone Co.), Kirk Sparks (Pacific NW Organics), and Autumn Summers (California School of Herbal Studies)
6	2/3/22	Letter via email	James Jungwirth and Kari Rein, Naturespirit Herbs, LLC

Table 2. Comment summaries and responses to comments. Each comment has an associated commenter identification number and corresponding comment designated as “a,” “b” etc.

Comment	Comment Summary	Response
1c.	<p>1c. It is not possible for CDFW to use quantitative data to determine when to close and reopen harvest when lacking the status of bull kelp biomass. The proposal suggests an indeterminate closure that “feels appropriate” and does not improve management of the resource.</p>	<p>1c. The quantitative data for bull kelp, Landsat satellite imagery quarterly dataset of kelp canopy area from 1984 to the third quarter of 2021 compiled by the Santa Barbara Coastal Long Term Ecological Research program (SBC LTER), is the best available science. The data reveal the maximum annual bull kelp canopy area has remained at least 90% below the historical average (1984–2013) from 2014 through the third quarter of 2021 for Sonoma and Mendocino counties. The data are detailed in the Pre-Adoption Statement of Reasons (PSOR), January 14, 2022. Previously, data was provided through 2020 in the Initial Statement of Reasons (ISOR), November 10, 2021.</p> <p>There is a lack of scientific data to explain if commercial kelp harvest does or does not have an impact on the currently depressed kelp population. Therefore, as described in the ISOR Section III(b), CDFW is taking a precautionary approach as mandated by the Marine Life Management Act (MLMA) to protect and maintain the remaining bull kelp populations.</p> <p>The bull kelp harvest limits and closures are temporary, with a three-year sunset date to allow development and potential adoption of a comprehensive, statewide Kelp Restoration and Management Plan (KRMP).</p>

Comment	Comment Summary	Response
2a.	2a. States modifications to allowable harvest limits will significantly impact their small business in the long term and near term. The CDFW and FGC have not made an effort to acknowledge socio-economic impacts.	<p>2a. The ISOR, Section VI describes the assessment of the potential for significant statewide adverse economic impacts that may result from the proposed regulatory amendments, including bull kelp harvest limits or closure. Section VI(a) provides a review of bull kelp harvest records before 2003-2013 and after the decline in bull kelp in 2014-2020. Considering Section VI(a), the temporary closure of Mendocino and Sonoma counties will diminish individual harvester’s income opportunities from bull kelp, that has comprised an average of 3% of the total edible kelp harvest over the years 2014-2020.</p> <p>Additionally, the economic impact assessment described in Section VI(a) specifies the temporary harvest limits in Del Norte and Humboldt counties combined are within the average annual harvest range from 2014-2020 (based on harvest of 23,522 lbs over seven years), therefore the average revenue per permittee is anticipated to be within recent historic levels.</p> <p>The economic analysis was appropriate because it takes into account conserving the resource to maintain the bull kelp populations for their long-term ecological importance and their importance for stakeholders, small business harvesters, and Tribal communities. Furthermore, the ISOR Section III(b) describes programs for fisheries “...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, to achieved 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].”</p> <p>Also see Final Statement of Reasons section X(c) and amended STD 399 Economic and Fiscal Impact Statement and STD 399 Addendum.</p>

Comment	Comment Summary	Response
6m.	<p>6m. The CDFW’s proposed “Release of Property” form could have major adverse financial impacts to businesses. If bull kelp harvest exceeds the quota before they receive notice from CDFW, the CDFW can require them to release the overage. Although bull kelp fronds that are freshly harvested are not worth much, once transported, hung to dry, processed and packaged for human food it is worth many times more than what it was worth when it was harvested. It takes a couple of days after harvest to dry and process bull kelp, by the time the CDFW can request them to release harvest they would have invested \$2,000 to \$3,000 in cost of labor. Asked if CDFW requires businesses to release harvest will CDFW buy the harvest from them and if so, will CDFW sell it? Stated it took them years to develop their customer base of bull kelp fronds and there is no real “market” for it. States that if CDFW will not pay for the release of bull kelp it will cause major adverse financial impacts to their business which serves no reasonable purpose.</p>	<p>6m. For counties with bull kelp harvest quotas, harvesters are required to provide weekly email reporting of harvest to CDFW. CDFW will compile and track harvest and post status updates on the CDFW webpage, compare the weekly to monthly reporting and will communicate with license holders as needed if there are any discrepancies found to determine the status of harvest towards the quota. CDFW will draft and email notices to license holders prior to implementation of restrictions triggered by the quota and post notice of temporary closure on the CDFW webpage.</p> <p>The “Release of Property” form is a record-keeping tool and does not authorize or provide additional regulatory authority independent of the regulations which sets forth the release of property requirements under authority of Fish and Code sections 1001, 1050(b) and 6653.</p> <p>Only harvesters who exceed the legally permissible limit for bull kelp are subject to release the harvest overlimit. Surrender of excess harvest would only result after notice of harvest restrictions. Harvesters would therefore already have been put on notice of harvest restrictions prior to harvest and subsequent processing. The Department could not apply and/or enforce an amended quota retroactively and seize kelp that did not violate the previously set limit that applied when the kelp was harvested. So, if the harvest complies with the noticed restrictions, no lost processing costs would be incurred.</p> <p>Harvesters should keep themselves informed of the annual fishery quota status updates that will be posted on the CDFW webpage and emails regarding temporary closures to avoid forfeiture and associated financial loss.</p> <p>Any bull kelp released to CDFW will be used, sold, disposed of, or donated to a non-profit institution. If sold, the proceeds shall be paid into the Fish and Game Preservation Fund. Please refer to the ISOR, July 14, 2022 15-day notice, and the “Release of Property” form for additional details.</p>

Summaries and responses to public comments received on the 15-day notice of revised proposed amendments to Sections 165 and 165.5, and forms DFW 658, DFW 113 and DFW 114, and addition of Section 705.1, forms DFW 113A and DFW 1108, and incorporation by reference of Department origin block (a.k.a. fishing block) maps, Title 14, California Code of Regulations 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.

Summaries and responses to public comments received from July 14 to August 1, 2022

Table 1. List of assigned commenter identification number, date received, comment type, commenter name(s) and organization(s) (if applicable).

Commenter ID Number	Date Received	Comment Type	Commenter Name and Organization(s), if applicable
21	7/29/22	Email	Douglas Bush, The Cultured Abalone Farm, LLC
22	8/01/22	Email	Andrew Daunis, commercial edible seaweed harvester in Mendocino
23	8/01/22	Letter via Email	James Jungwirth, Naturespirit Herbs, LLC
24	8/01/22	Email	Kevin F. Roux

Table 2. Comment summaries and responses to comments. Each comment has an associated commenter identification number and corresponding comment designated as “a”, “b” etc.

Comment	Comment Summary	Response
21a.	1a. Refers to the proposed regulatory language which amends existing regulation prohibiting cutting or disturbing eel grass (<i>Zostera</i>) or surf grass (<i>Phyllospadix</i>) to include that eel grass or surf grass may not be possessed. States that, although not mechanically harvested, drift eel grass is occasionally tangled in kelp canopy and is taken incidentally. Suggests the possession restriction is removed or to include an allowance of incidental take of eel grass.	21a. Comments are outside the scope of the 15-day notice.

Comment	Comment Summary	Response
21b.	<p>1b. States the amended format of the kelp harvesting monthly report [Commercial Kelp Harvester’s Monthly Report DFW 113 (REV. 01/06/22)] “does not meaningfully improve the reporting.” States the existing two separate forms [Kelp Harvester’s Monthly Report FG 113 (January 1, 1997) and Giant/Bull Kelp Harvester’s Monthly Report – Detail Sheet FG 114 (Rev. 1/07)] were more intuitive. States it would be better to include the Marine Protected Area location and central latitude/longitude coordinates for bull kelp harvest on the existing detail page [Giant/Bull Kelp Harvester’s Monthly Report – Detail Sheet FG 114 (Rev. 1/07)]. States his business uses a summary form template that they have pre-filled with the bed numbers his business typically harvests and that the form he uses provides is a more clear “picture of use” for resource managers than the amended Commercial Kelp Harvester’s Monthly Report DFW 113 (REV. 01/06/22). States he recommends to not amend the reporting forms for kelp and only online reporting of take would provide “meaningful improvement.”</p>	21b. Comments are outside the scope of the 15-day notice.

Comment	Comment Summary	Response
21c.	1c. States that there have been continuing issues with the commercial kelp harvesting licenses not being clear that employees are allowed to harvest under the business license. Provides an example that the license application [2022 Kelp Harvesting License and Drying Application DFW 658 (REV. 01/06/22)] continues to request “height” and “hair color”, instead of indexing the license to the DFW [California Department of Fish and Wildlife (CDFW)] registration of the kelp harvesting vessel. States the regulations do not clearly state that employees working under a business license for commercial kelp harvest are not also required to obtain a commercial fishing license. States that his employees have one to two occurrences per year with [C]DFW Law Enforcement on this issue.	21c. Comments are outside the scope of the 15-day notice.
22a.	States concern about the proposed regulation changes, specifically related to the administrative process and scientific and economic review for the rulemaking. States CDFW and FGC [California Fish and Game Commission] ignored input from expert scientists who state harvest has zero impact on bull kelp recruitment and biomass. States that lack of data is insufficient reason for harvest closure in Sonoma and Mendocino.	22a. Comments are outside the scope of the 15-day notice. Refer to responses 1d, 3d, 4e, 4j, 5i and 7j.

Comment	Comment Summary	Response
22b.	<p>States proposed harvest regulations in Humboldt and Del Norte counties and additional harvest landing reporting requirements propose a punitive fine and seizure of property for lawfully conducting business activity. States that CDFW and FGC recognize there is no need for harvest restriction due to lack of decline in the resource in Humboldt and Del Norte counties. States the proposed punitive fine and seizure of property following inadvertent exceeding of a harvest quota in Humboldt and Del Norte counties is a violation of APA [Administrative Procedure Act] rules.</p>	<p>22b. The “Release of Property” form will ensure any bull kelp harvest in excess of the quota is forfeited to CDFW. Subsection 165(c)(9)(B)1. and subsection 165(c)(9)(B)2. state harvest restrictions will be announced to harvesters prior to implementation, including progress toward the quota, to ensure communications to harvesters are timely and to mitigate potential “inadvertent” excess harvest over quota due to delay in communications to harvesters.</p> <p>Proposed changes to subsection 165(c)(9)(B)1. and subsection 165(c)(9)(B)2. define when the fishery will reopen or not reopen and clarify that neither the annual overall fishery quota nor the annual license quota may be exceeded. Specifically, subsection 165(c)(9)(B)1.b. clarifies CDFW notification to harvesters affected by the allotment process, including timing and notification mechanism (i.e., email).</p> <p>Also see responses 1c and 6m.</p>
22c.	<p>States CDFW and FGC did not evaluate the adverse economic impacts (of the proposed regulation changes). States consultation with seaweed harvesters did not occur as a part of the economic impact assessment. States proposed regulations will affect (harvester’ s) ability to compete with businesses from other states, will impact creation/elimination of jobs, and impact the expansion of existing businesses. States economic impact assessment does not demonstrate any expected benefit, nor account for impacts on tourism.</p>	<p>22c. Comments are outside the scope of the 15-day notice. Refer to responses 3c, 4d, 4l, 5i and 7m; Initial Statement of Reasons (ISOR) section VII(f); Economic and Fiscal Impact Statement (std 399) and addendum.</p>

Comment	Comment Summary	Response
22d.	States the economic impact assessment does not include information about proposed elimination of seapalm harvest. States CDFW decided to separate seaweed harvest regulations into 3 different categories (bull kelp, seapalm, and other species). States there hasn't been a comprehensive economic assessment that accounts for future proposed regulations for other seaweeds.	22d. Comments on potential future rulemakings are outside the scope of the proposed regulation.
22e.	Stated that FGC must determine that no reasonable alternative considered by FGC, or that has otherwise been identified and brought to the attention of FGC, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.	22e. Comments are outside the scope of the 15-day notice. See Response 4m; and Final Statement of Reasons (FSOR) sections IX(a), IX(c) and IX(d).
22f.	Referred to Commissioner Zavaleta's statement during the December 2021 FGC meeting which suggests it is not necessary to close bull kelp harvest in Mendocino and Sonoma counties due to the current harvest levels and bull kelp biomass.	22f. Comments are outside the scope of the 15-day notice. Refer to Response 1d.
22g.	Stated that FGC has the duty to enact alternatives that do not violate the APA rules, such as temporarily limiting entry to new harvesters out of an abundance of caution, while allowing existing businesses to continue to conduct their sustainable harvest business activities.	22g. Comments are outside the scope of the 15-day notice. Refer to Response 4m.

Comment	Comment Summary	Response
22h.	States that FGC has a duty to notify the Office of Administrative Law that it did not conduct an Economic Impact Assessment or develop its rulemaking in accord with its Consideration of Alternatives.	22h. FGC has completed an Economic Impact Assessment and has considered alternatives in compliance with the APA.
23a.	Founded their business in 1990, harvests, produces and sells kelp and seaweed products for food, nutrition, and medicinal use. Have developed their niche business/market over decades. States their business is one of two businesses currently harvesting bull kelp in Del Norte and Humboldt counties and they are concerned with the stakeholder engagement process and several of the proposed regulations.	23a. Comment noted.
23b.	States CDFW's proposed bull kelp harvest limits and/or closures are arbitrary and set a dangerous precedent for managing their industry.	23b. Comments are outside the scope of the 15-day notice. Refer to Response 1c.
23c.	States CDFW has ignored 2001 Kelp CEQA [California Environmental Quality Act] data, input from qualified scientists and experienced commercial harvesters; did not define parameters guiding proposed limits and/or closures; and has claimed lack of data vaguely invoking the precautionary principle and traditional ecological knowledge.	23c. Comments are outside the scope of the 15-day notice. Refer to responses 1c, 1d, 4b, 4j and 6d.
23d.	States CDFW has not provided trigger points to initiate or end proposed harvest limits and closures. Canopy-to-biomass levels have not been determined, and definitions of sustainable harvest levels and decline or recovery are not provided. States CDFW has not provided any scientific data which indicates limits and/or closures will benefit bull kelp populations.	23d. Comments are outside the scope of the 15-day notice. Refer to responses 1b and 1c.

Comment	Comment Summary	Response
23e.	States CDFW has not assessed the financial impact of closing bull kelp harvest to small businesses in Mendocino and Sonoma counties - specifically, the closure option does not recognize the significant adverse financial impact to Terry d'Selkie and Andrew Daunis' small seaweed businesses. States that these harvesters were not consulted.	23e. Comments are outside the scope of the 15-day notice. Refer to responses 3c and 4d.
23f	States CDFW ignored the fact that seaweed harvest businesses are 'artisanal, entrepreneurial, and focused on value-added products.' States that most (harvesters) worked for decades to develop mail order businesses and niche markets for their products. States it takes years to develop a market for a new product and if products can't reliably be supplied, long-term customers will go elsewhere to purchase and likely not return. State (harvesters) avoid running out of their seaweed products.	23f. Comments noted. Comments are outside the scope of the 15-day notice. Refer to responses 4d and 4l.
23g	States kelp harvest is distinct from other fisheries in that there is no 'market' for the products. States seaweed harvesters are business owners and not fishermen, noting even temporary harvest limit, season or closure will result in significant and long-term economic impact.	23g. Comments are outside the scope of the 15-day notice. Refer to responses 4d and 4m, and the std 399 and addendum.
23h	States setting harvest limits, seasons, and closures particularly when not imposing a restriction on new licenses, results in a derby-style fishery that will undermine cooperation between harvesters and is not conducive to stable long-term business. States the total amount of seaweed harvested accounts for less than 1% of the total seaweed biomass.	23h. Comments are outside the scope of the 15-day notice. Refer to responses 1b, 1d, 4n and 6f.

Comment	Comment Summary	Response
23i.	<p>States allowing the harvest of 2,000 lbs. of Bull Kelp per year in Sonoma and Mendocino counties is in the public interest and is required by APA rules. States the FGC is required to act in the public interest and refers to Commissioner Zavaleta’s statements during the December 16, 2021, FGC meeting that an annual 2,000 lbs. harvest limit is not going to impact recovery. States it is not in the public interest to close bull kelp harvest in the Mendocino and Sonoma counties due to the significant financial impacts to the two businesses. States that APA requires CDFW and FGC explore management alternatives that avoid undue financial impacts on small business.</p>	<p>23i. Comments are outside the scope of the 15-day notice. See responses 3d, 4d, 4m and 6j; and FSOR sections IX(a), IX(c) and IX(d).</p>
23j.	<p>23j. States the CDFW’s proposed “Release of Property” form is unnecessary. Commenter presents an alternative approach which would be to eliminate the annual harvest limit or to simply limit the harvest in Humboldt and Del Norte to the two current harvesters, noting the lack of declines in bull kelp within these two counties.</p>	<p>23j. The alternative approach provided by the commenter to eliminate the annual harvest limit [annual overall fishery quota] is outside the scope of the 15-day notice. See responses to comments 1c, 4n, 6f.</p> <p>The alternative approach provided by the commenter to limit the harvest in Humboldt and Del Norte to the two current harvesters, does not address the purpose of the of the regulation to ensure that any illegal harvest in excess of the annual overall fishery quota or allotments is forfeited to the Department to be used, sold, disposed of or donated to a non-profit institution in order to prevent waste, and consistent with subsection 165(b)(6).</p> <p>Also see responses 6m and 22b; and ISOR section IV(a)</p>

Comment	Comment Summary	Response
23k.	States the CDFW's proposed "Release of Property" form and punitive fine in response to exceeding a harvest quota could have major adverse financial impacts to businesses. If bull kelp harvest exceeds the quota before they receive notice from CDFW, CDFW can require them to release the overage. Although bull kelp fronds that are freshly harvested are not worth much, once transported, hung to dry, processed and packaged for human food it is worth many times more than what it was worth when it was harvested. It takes a couple of days after harvest to dry and process bull kelp, by the time the CDFW can request them to release harvest they would have invested \$2,000 to \$3,000 in cost of labor. Asked if CDFW requires businesses to release harvest where will CDFW sell it? Stated it took them years to develop their customer base of bull kelp fronds and there is no real "market" for it.	23k. See responses 1c, 6m, 22b and 23j. Any bull kelp released to CDFW will be used, sold, disposed of, or donated to a nonprofit institution. If sold, the proceeds of all such sales shall be paid into the Fish and Game Preservation Fund. Please refer to the ISOR, FSOR, and the "Release of Property" form for additional details.
24a.	FGC with its proposed and current regulations, and desire to release more permits for growing kelp on all levels, whether edible or for commercial products is in desperate need of re-evaluation.	24a. The comments are outside the scope of the proposed regulations. This rulemaking is not related to the aquaculture of kelp.
24b.	States there are no boating safety regulations in place or surface markers indicating growing and harvest areas. Identifies presence of low-lying fog and night sailing/cruising as safety concerns.	24b. Comments are outside the scope of the proposed regulations as they do not pertain to kelp harvesting practices or regulations.

Comment	Comment Summary	Response
24c.	States FGC does not provide regulations for what “farms” will be constructed of and notes several materials that will have negative impact on marine life and the environment.	24c. Comments are outside the scope of the proposed regulations as they do not pertain to kelp harvesting practices or regulations.
24d.	States that self-reporting by lease holders will not take place.	<p>24d. FGC may lease to any person the exclusive privilege to harvest kelp in designated kelp beds. However, taken in context with the whole of the letter, this comment appears to be about aquaculture of kelp; therefore, the comments are outside the scope of the proposed regulations as they do not pertain to kelp harvesting practices or regulations.</p> <p>If the comment does pertain to self-reporting by kelp bed lease holders, this comment is outside the scope of the 15-day notice.</p>
24e.	Identifies concerns about monitoring of aquaculture ‘ventures’ and states such activities allow unprecedented pollution. States authority of ‘our waters’ should be transferred to County governments and the National Park Service, specifically to safeguard the Northern Channel Islands.	24e. The comments are outside the scope of the proposed regulations as they do not pertain to kelp harvesting practices or regulations.