

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 6651, 6653 and 6653.5 of the Fish and Game Code and to implement, interpret or make specific sections 51, 713, 1050, 6650, 6651, 6652, 6653, 6653.5, 6654, 6656 and 6680 of said Code, proposes to amend sections 165 and 705.1, Title 14, California Code of Regulations, relating to commercial harvest of kelp, including sea palm, and other aquatic plants.

Informative Digest/Policy Statement Overview

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

The current regulations in Section 165 describe general licensing provisions for the commercial harvest of kelp and other aquatic plants. Although Section 165 provides regulations for kelp and other aquatic plants overall, it also contains subsections which provide more nuanced regulations depending on the species harvested and/or use of the harvest. Subsection (e) provides regulations pertaining to species harvested for human food and classified as edible seaweed including regulations specific to bull kelp harvest for human consumption. Sea palm (*Postelsia palmaeformis*) is not specifically listed in current regulation but is an aquatic plant classified as edible seaweed and thus subject to the harvest regulations in subsection 165(e). Current allowable harvest methods for sea palm and other edible seaweed species include cutting and picking attached individuals and taking drift or loose individuals. All harvested individuals must be processed. There are no limits on the number of commercial Kelp Harvesting Licenses sold, and no harvest limits or seasonal closures for sea palm.

The current regulations in Section 705.1 list the permit fee and incorporate by reference the 2023 Kelp Harvesting License and Drying Application (DFW 658), the Commercial Kelp Harvester's Monthly Report (DFW 113), Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report (DFW 113A) and Release of Property (DFW 1108) forms.

Sea palm is an annual kelp species that lives in the upper-mid intertidal zone and is exposed to heavy wave action. The individual's blades are located at the top of the individual and contain the reproductive material. Spores are released during low tide resulting in a limited dispersal of one to five meters. The alga is commercially targeted for harvest for use as human food. Sea palm can be susceptible to overharvest due to its morphology, limited spore dispersal, annual life cycle, and existing allowable harvest methods for commercial take. However, research suggests specific harvest methods may allow for blade regrowth and may help mitigate potential overharvest concerns.

Additionally, there is concern for the species based on long-term fishery-independent data that is collected by the Multi-Agency Rocky Intertidal Network (MARINe). MARINe monitoring data depicts a drop in sea palm density after 2014 at their annually monitored sites, with the most loss in its southern range, which coincides with the Northeast Pacific Marine Heatwave (MHW) that began in mid-2014. Additionally, MARINe monitoring shows slow recovery at most sites, especially in its southern range and a lack of recovery at some sites. Researchers have determined that sea palm loss is primarily due to the Northeast Pacific MHW, similar to the declines that have been documented in bull kelp along the north coast. Additionally, researchers at MARINe suspect sea palms slow recovery at some sites may be partially due to an abundance of California mussels (*Mytilus californianus*) that outcompete for space.

Based on MARINe long-term monitoring, sea palm researcher discussions, stakeholder conversations, and a lack of defined sea palm harvest methods in current regulations, the California

Department of Fish and Wildlife (Department) is recommending that the Commission adopt management changes to the commercial harvest of sea palm which are necessary to improve current and future management of this marine alga. The Department has determined that specific harvest methods for sea palm are warranted as the annual species' reproductive material are contained in the blades at the top of the individual and due to its limited dispersal. Furthermore, a precautionary approach is warranted to protect and maintain the remaining sea palm due to sea palm's reported southern range contraction to southern Big Sur in Monterey County during the 2014-2016 MHW. Finally, the proposed regulations will provide benefits to the sustainable management of marine algae resources and will provide regulatory clarity and enforceability.

Proposed Amendments

The proposed sea palm regulation amendments define specific harvest methods for sea palm that allow for consistency of methods across all harvesters and potentially allows for the sea palm blades to regrow and reproduce. The proposed amendment defines a partial blade cut approach above the meristem as determined by locating the grooved area on the blade and cutting the blade at least one-and one-half inches away towards the terminal tip of the blade. This proposed harvest method memorializes the blade cut approach harvest methods conducted by the commercial sea palm harvesters and has received sea palm harvester consensus support. Additionally, the Department recommends that the Commission prohibit the take of drift and beached sea palm to establish regulatory clarity and assist the Department's Law Enforcement Division (LED) with enforceability of the regulations. Finally, the Department is recommending that the Commission restrict the incidental take of marine invertebrate species as requested by LED. The restriction will prohibit take or possession of marine invertebrate species one inch or greater in width while harvesting sea palm and require that sea palm be inspected for marine invertebrate species less than one inch in width prior to transport. The Department further recommends that unless take is otherwise prohibited, marine invertebrate species less than one inch in width may be incidentally taken if every effort is made to return them near their habitat of origin upon harvest.

The Department recommends prohibiting sea palm harvest in the southern portion of its range from Pigeon Point in San Mateo County southward to the United States-Mexico border due to concerns around the loss and lack of recovery of sea palm. The 37° 11' north latitude line at Pigeon Point in San Mateo County is recommended by LED as the northern boundary for closure to aid in enforcement of the regulations and the Department has confirmed, based on the most recent harvest data, that there are no commercial harvesters who would be impacted by the closure.

The Department also recommends updates to subsection 705.1(a) which will allow for the removal of the Kelp Harvesting License and Drying Application form (incorporated by reference) from Title 14 and negate the need for annual regulation updates to the form. Instead of incorporating the form by reference, the Department recommends that the form fields of a form to be issued by the Department be listed in proposed subsections 705.1(a)(1)(A) through (X). Most fields will remain unchanged, however, minor edits are proposed to some fields and form instructions: Existing language on the form stating, "It is mandatory to complete all items unless otherwise specified" is proposed to be amended by changing "unless specified as voluntary" to "unless otherwise specified"; language specifying "(Not required for individuals)" is proposed to be added to the Business Name field; changes are proposed to correct terminology from "application for a permit" to "application for a license" in the Harvester License # field; language specifying "(if applicable)" is proposed to be added to the Name, Place, and Date of Incorporation field; language specifying "(except kayak)" is proposed to be added to the California vessel registration number field; language specifying the "Seal Beach office" is proposed to be repealed from the verification section; and language in the signature section

is proposed to clarify text about suspended or revoked licenses and reasons therefor, to add citations to Fish and Game Code (FGC) sections 1054 and 6656, and to make non-substantive changes.

To improve the Departments' knowledge of giant kelp and bull kelp harvest methods and provide information on kelp harvest effort, the Commercial Kelp Harvester's Monthly Report DFW 113 (REV. 01/01/23) is proposed to undergo a complete strike and replace with DFW 113 (REV. 04/17/25). The proposed amendments to the form include new fields to specify whether harvest was drift or beached, and the number of individuals harvesting and the estimated harvest time in minutes for the business each day of harvest of giant kelp or bull kelp. The proposed amendments define drift and beached and add an electronic signature ability and an acknowledgment that the electronic signature is legally binding.

To improve the Department's management of sea palm, knowledge of sea palm harvest locations, marine algae harvest methods, and provide information on marine algae harvest effort, the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (REV. 01/01/23) is proposed to undergo a complete strike and replace with DFW 113A (REV. 04/17/25). The proposed amendments to the form include new fields to specify the day of harvest for all harvested algae, the central latitude/longitude coordinates of sea palm harvest, whether harvest was drift or beached, and the number of individuals harvesting and the estimated harvest time in minutes for the business each day of harvest of each species. The proposed amendments define drift and beached, clarify that harvest reporting information should be recorded for one species per row, and add an electronic signature ability and an acknowledgment that the electronic signature is legally binding.

The Department also recommends amending subsection 705.1(a)(2) to update the kelp harvesting license fee for 2025, pursuant to Section 713, FGC.

Finally, the Department recommends clarifying regulatory language by referring individuals interested in marine algae collections for broodstock purposes to the appropriate regulations, updating outdated contact information to purchase a commercial Kelp Harvesting License and to receive copies of informational maps depicting administrative kelp beds and fishing blocks and monthly harvest reports, providing reference to existing FGC section describing conditions in which a license can be revoked or not reissued, a non-substantive clarification of kelp harvest language, and other non-substantive changes for clarity and consistency.

Benefits of the Regulations

Under the Marine Life Management Act (MLMA), it is the policy of the state to ensure the conservation, sustainable use, and restoration of California's living marine resources for the benefit of all citizens of the state (FGC, Section 7050). Sea palm and other marine algae, considered a fishery under FGC Section 94, are subject to the policy of the state that mandates programs for the conservation and management of the marine fishery resources of California shall be established and administered to prevent overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection, and, where feasible, to restore marine fishery habitats, and to achieve the sustainable use of the state's fishery resources [subdivision 7055(b) of the FGC] 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 FGC].

The proposed regulatory changes will benefit the sustainable management of the fishery by specifying harvest methods for sea palm, employing a precautionary approach to remaining sea palm populations in the southern range of the species, requiring specific harvest location to better manage

sea palm populations, improve the Department's knowledge of allowable marine algae harvest methods utilized, provide further clarification of license allowances, and update outdated references.

Consistency and Compatibility with Existing Regulations

The proposed regulatory changes are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing the harvest of kelp and other aquatic plants for profit (FGC Section 6653). No other state agency has the authority to adopt regulations governing the harvest of kelp and other aquatic plants for profit. The Commission has reviewed its own regulations and finds that the proposed regulatory changes are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR and has found no other state agency regulations pertaining to the commercial harvest of kelp and other aquatic plants; therefore, the Commission has concluded that the proposed regulatory changes are neither inconsistent nor incompatible with existing state regulations.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before April 3, 2025 at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received on or before April 14, 2025.** If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Meetings

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Sacramento, California, which will commence at 8:30 a.m. on Wednesday, April 16, 2025, and may continue at 8:30 a.m., on Thursday, April 17, 2025. The exact location of this meeting has not yet been determined. As soon as this information is available but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and will be published on the Commission's website. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or

Sherrie Fonbuena at FGC@fgc.ca.gov or at the preceding address or phone number. **Environmental Scientist Rebecca Flores Miller, Department of Fish and Wildlife, kelp@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, 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 businesses in other states. The Commission anticipates that the impact of the proposed regulations on the entirety of commercial kelp and other marine algae harvesting activity is not expected to be sufficient to significantly impact kelp and other marine algae harvesting businesses nor expenditures from kelp and other marine algae harvesting businesses to other businesses within the state. The Commission does not anticipate any impacts on the ability of California businesses to compete with businesses in other states because commercial harvest of wild marine algae is not allowed in nearby states of Oregon and Washington.

- (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 significant impacts on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California. Kelp harvesting and other marine algae harvesting businesses may have to adjust to changes in reporting procedures as described in the proposed regulations, but these changes are not expected to be substantial due to the opportunity for commercial kelp and other marine algae harvest being kept open, except for the proposed sea palm area closure south of Pigeon Point from which sea palm is not currently harvested.

The Commission does not anticipate impacts on the health and welfare of California residents or on worker safety.

The Commission anticipates benefits to the state's environment in the sustainable management of sea palm.

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

The Commission anticipates that the annual reporting costs for business from these proposed regulations will be \$29.23 per license holder, as described in the STD 399 Economic and Fiscal Impact Statement addendum. Commercial businesses which harvest sea palm may have to make a one-time purchase, if not already in possession, of a GPS unit (\$200) to comply with the central latitude and longitude reporting requirements of the proposed regulations.

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

None.

(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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

FISH AND GAME COMMISSION

Melissa Miller-Henson
Executive Director

Dated: February 18, 2025