

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), pursuant to the authority vested by sections 6653, 6653.5, 6700 and 6701 of the California Fish and Game Code and to implement, interpret or make specific sections 51, 6650, 6651, 6652, 6653, 6653.5, 6654, 6656, 6680, 6700, 6701, 6701.5, 6702, 6703, 6704, 6705, 6706, and 6707 of said Code, proposes to amend sections 165 and 165.5, Title 14, California Code of Regulations, relating to commercial bull kelp harvest restrictions and lease of kelp beds for exclusive harvest of giant and bull kelp.

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR), Commission refers to the California Fish and Game Commission, and Department refers to the California Department of Fish and Wildlife.

Informative Digest/Policy Statement Overview

Current Regulations

The current regulations in Section 165 provide the general licensing provisions for the commercial harvest of kelp and other aquatic plants. The section also establishes harvest reporting and harvest royalty fee requirements, establishes geographical limitations on bull kelp harvesting, establishes harvesting method limitations on giant kelp, bull kelp, agar-bearing marine plants, and edible seaweed and prohibits the disturbance of certain 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, including temporary harvest restrictions and weekly reporting for bull kelp which sunset on January 1, 2026.

The existing regulations in Section 165.5 define procedures for leasing administrative kelp beds for the exclusive right to harvest giant or bull kelp. In addition, the regulation spatially describes the existing 87 administrative kelp beds under the following management categories: open, closed, leaseable, and lease only. The designations were designed for optimal harvest, while ensuring sustainable management of the resource and the species that depend upon kelp. Administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties are designated as lease only beds wherein only harvest by lease holders is allowed; however, current regulations allow limited harvest for human consumption of the lease only and closed beds within the limits specified in subsection 165(e). Section 165.5 also provides information on temporary lease closures for bull kelp beds 308, 309, and 312 which sunset on January 1, 2026.

Proposed Amendments

Subsection 165(c): The Department recommends temporary prohibitions, limits, weekly reporting, and lease restrictions for commercial harvest of bull kelp (*Nereocystis luetkeana*).

- The proposed amendment to subsection 165(c)(9) extends the sunset date pertaining to the current harvest restrictions and weekly reporting for bull kelp in Del Norte and Humboldt counties from January 1, 2026 to January 1, 2029.

- Two options are provided for Mendocino and Sonoma counties.
 - Under Option 1 (Department recommendation), the proposed amendment to subsection 165(c)(9) extends the sunset date pertaining to the closure of commercial bull kelp harvest in Mendocino and Sonoma counties from January 1, 2026 to January 1, 2029.
 - Under Option 2, the proposed amendment to subsection 165(c)(9) implements an annual fishery quota, from 1 to 2,000 pounds wet weight, in Mendocino and Sonoma counties combined with the amount to be determined by the Commission; mandatory weekly reporting for bull kelp harvesters in Mendocino and Sonoma counties; authorization for the Department to temporarily close harvest in order to obtain an accurate tally of the harvest; the potential for individual harvester allotments to ensure the quota is not exceeded; the mathematical formula to calculate the fishery allotments if the fishery is temporarily closed and reopened; the process by which the Department will notify the public and harvesters of the attainment of the quota; the harvesters' responsibility to monitor the Department's website to be kept informed of the remaining annual fishery quota; and the requirement that harvest in excess of the annual overall fishery quota or allotments shall be disposed of or used in a manner determined by the Department by forfeiting the excess harvest to the Department. These provisions would sunset on January 1, 2029.

Subsection 165.5(c): The proposed amendment to subsection 165.5(c) extends the temporary closure and lease prohibition of the lease only administrative kelp beds 308, 309, and 312 from January 1, 2026 to January 1, 2029 and amends the availability to lease administrative kelp beds 308, 309, and 312 from "on or after January 2, 2026" to "on or after January 2, 2029."

The Department is also recommending correcting a coordinate error for administrative kelp bed 109.

Subsection 165.5(k)(2)(I): The proposed amendment to subsection 165.5(k)(2)(I) corrects the second coordinate in the description of administrative kelp bed 109 from **34°** 58.999' N. lat. 119° 29.556' W. long to **33°** 58.999' N. lat. 119° 29.556' W. long. A typographical error was introduced in rulemaking file 2013-1205-01S that placed the coordinate on land; this proposed amendment will correct the coordinate to that which was originally noticed in that rulemaking.

Minor edits are proposed 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 (Fish and Game Code (FGC), Section 7050). Furthermore, FGC defines a fishery as one or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics (FGC, Section 94).

Kelp is therefore considered a fishery and is subject to the policy of the state that 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, restoration of marine fishery habitats, and to achieve the sustainable use of the state's fishery resources [subdivision 7055(b), 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), FGC].

To meet the goals of these policies, the Department has determined that a precautionary approach is warranted to protect and maintain the remaining bull kelp along the northern California coast.

The changes to the bull kelp regulations are proposed with the goal to protect and maintain the remaining bull kelp beds in Sonoma, Mendocino, Humboldt, and Del Norte counties.

The temporary nature of the proposed bull kelp regulations provides an interim management measure to protect the resource while allowing for the Department, Tribes, industry, and interested stakeholders to continue to collaboratively develop the Kelp Restoration and Management Plan, a comprehensive management framework for kelp.

The proposed regulations will provide benefits to the sustainable management of kelp resources and will provide regulatory clarity and enforceability.

Business Reporting Requirements

The Commission finds it is necessary for the welfare of the people of the state that the proposed reporting requirements apply to business.

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. Commercially manufactured and processed food for human consumption in California is regulated by the California Department of Public Health (CDPH); however, CDPH regulations do not address the harvesting of kelp. 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 September 26, 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 before 12:00 noon on October 7, 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 the East End Complex Auditorium, 1500 Capitol Avenue, Sacramento, California, which will commence at 8:00 a.m. on October 8, 2025 and may continue at 8:00 a.m., on October 9, 2025. The Commission will make a reasonable effort to provide the public additional opportunities to observe or provide comment in the meeting through the Zoom videoconference platform by computer, mobile device, or telephone connections. However, the Commission cannot guarantee the accessibility or functionality of the remote connection options. Should technical issues affect remote attendee access or quality, an attempt will be made to resolve them, but the meeting will continue with in-person attendees. 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 strikeout 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, who can be reached at 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 adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states.

The proposed amendments extend the current temporary regulatory amendments established through OAL rulemaking file 2022-1014-04SR that closed all commercial bull kelp harvest in Sonoma and Mendocino counties and imposed an annual fishery quota and weekly reporting for bull kelp harvest in Humboldt and Del Norte counties.

The temporary four ton (8,000 lbs) annual fishery quota restriction that expires on January 1, 2026 for Del Norte and Humboldt counties combined has not restricted the industry from harvest in these counties. Weekly reporting of commercial harvest of bull kelp in the combined counties reflected 1,620.2 lbs in 2023 and 2,926.2 lbs in 2024. Extending the current annual fishery quota in Del Norte and Humboldt counties combined would maintain current use and harvest post-2014. Due to the temporary closure, no commercial harvest of bull kelp was reported in Sonoma and Mendocino counties in 2023 and 2024.

Commercial harvesters in Mendocino and Sonoma counties did not shift their harvest to Del Norte and Humboldt counties during the temporary closure in 2023 and 2024. Under Option 2, the reopening of Mendocino and Sonoma counties to harvest could potentially yield an annual monetary benefit of approximately \$21,406 if the full 2,000-pound wet weight harvest quota is met while also introducing approximately \$120 in reporting costs per harvester. See the Addendum to the economic and fiscal impact statement (STD 399) for further details.

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.

- (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. Under Option 2 harvesters in Sonoma and Mendocino counties may resume their harvesting activities, but it is anticipated that this will reactivate existing harvesters from that area who did not move to Del Norte or Humboldt counties.

The Commission does not anticipate any benefits to health and welfare of California residents or worker safety under either option.

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 current long-standing monthly harvest reporting requirement for all commercially harvested marine alga will continue. The proposed extension of the current weekly reporting requirement for bull kelp harvest would continue to introduce additional time for harvesters in Del Norte and Humboldt counties, which is estimated to be about \$200 annually per harvester (see Table 1. Bull Kelp Harvester Weekly Reporting Costs for Del Norte and Humboldt Counties in the STD 399 Addendum). If Option 2 is selected, it is estimated that harvesters in Sonoma and Mendocino counties would face annual reporting costs of approximately \$120 per harvester (see STD 399 Addendum for further details).

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

Management of bull kelp harvest quota and weekly reporting of harvest will continue for an additional three years 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. The continuation of these activities by the Department does not represent a new cost to the state as it has already been budgeted. However, under Option 2 the Department could see up to \$24 in additional annual revenue from the collection of the edible seaweed royalty in the reopened Sonoma and Mendocino counties, see STD 399 Addendum for further details.

(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.

(i) Business Reporting Requirements:

The current long-standing monthly harvest reporting requirement for all commercially harvested marine algae will continue. The proposed regulations extend the current weekly reporting requirements for commercial harvest of bull kelp in Humboldt and Del Norte counties for three years and, under Option 2, implement weekly reporting requirements for commercial harvest of bull kelp in Sonoma and Mendocino counties for three years. The data provided in the weekly reports will help the Department to monitor bull kelp harvest in order to obtain an accurate tally of harvest and avoid exceeding the annual harvest quota. Without these weekly reporting requirements for commercial harvester businesses, the Department's ability to closely monitor bull kelp harvest in order to obtain an accurate tally of harvest and to avoid exceeding the annual harvest quota would not be realized.

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 and that programs for the conservation and management of the marine fishery resources 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, and to achieve the sustainable use of the state's fishery resources and that fisheries are conducted sustainably so that long-term health of the resources is not sacrificed in favor of short-term benefits. Therefore, the Commission finds it is necessary for the welfare of the people of the state that the proposed reporting requirements apply to business.

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: August 12, 2025