

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

Amend Subsection (c)(9), of Section 165,
and
Subsections (c), and (k)(2)(I), of Section 165.5, Title 14, California Code of Regulations

Re: Commercial Bull Kelp Harvest Restrictions

I. Date of Initial Statement of Reasons: August 5, 2025

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:

Date: August 13-14, 2025

Location: Sacramento

(b) Discussion and Adoption Hearing:

Date: October 8-9, 2025

Location: Sacramento

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

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.

Background

Bull kelp (*Nereocystis luetkeana*) is a foundational species providing physical structure of biodiverse and productive habitats that provide ecological functions and ecosystem services as well as supporting fisheries for invertebrates and fish, is important in cultural and ceremonial traditions, and supports tourism.

Bull kelp is managed for commercial harvest in Section 165, Commercial Harvesting of Kelp and Other Aquatic Plants, and Section 165.5, Lease of Kelp Beds for Exclusive Harvest of *Macrocystis* and *Nereocystis*. The reproductive material of this annual species — although some individuals may live into a second year — are located within its blades at the top of the kelp. Current commercial harvest regulations allow cutting of attached kelp up to four feet below the surface of water, and those harvesting bull kelp for human consumption may take the entire individual. The allowance of take of blades which contain or will contain the reproductive material, and its annual life history can result in less available reproductive material.

At its October 2022 meeting, the Commission approved a precautionary approach temporarily restricting commercial bull kelp harvest in the north coast in response to a dramatic and persistent decline of bull kelp populations in Mendocino and Sonoma counties and a lack of scientific data to inform understanding of potential effects of commercial harvest on the remaining kelp population (Office of Administrative Law (OAL) rulemaking file 2022-1014-04SR). The temporary harvest amendments enacted in that rulemaking span a three-year period, to sunset on January 1, 2026, with the intent to allow for drafting and potential adoption of a comprehensive, statewide Kelp Restoration and Management Plan (KRMP). Development of the KRMP was initiated in 2023 and is actively underway. Critical studies addressing knowledge gaps around bull kelp biomass and harvest are in progress, and results are essential to informing the consideration of harvest management within the KRMP.

As described in the January 14, 2022 Pre-Adoption Statement of Reasons (PSOR) in OAL rulemaking file 2022-1014-04SR, Mendocino, Sonoma, and Del Norte counties experienced kelp canopy declines of 90 percent, 95 percent, and 5 percent, respectively, while Humboldt County experienced a 20 percent increase during 2014 through the third quarter of 2021 compared to the mean annual maximum canopy area prior to the Marine Heatwave (MHW), 1984 through 2013. The Department and California Ocean Protection Council's *Status of Research and Monitoring, Restoration Efforts, and Developing Management Strategies for Kelp Canopy Forming Species in California* presented on November 16, 2023 to the Commission's Marine Resources Committee, highlighted continued declines in kelp canopy for 2014 through 2022 post-MHW for Mendocino and Sonoma counties, and declines in Humboldt and Del Norte counties, which continue to be reflected through the fourth quarter of 2024 (Table 1). Kelp canopy area (annual maximum) across the four northernmost counties through the fourth quarter of 2024 have not increased (Figure 1). Del Norte and Humboldt counties historically have supported significantly less kelp than Mendocino and Sonoma counties, as depicted by the total amount of kelp in each county shown in the y-axis in Figure 1. The kelp canopy data processes are improving and refined over time, which may result in changes in the data when comparing past datasets as depicted in the January 2022 PSOR to data updated through 2024. Additionally, minor changes in canopy area in Del Norte and Humboldt counties may reflect larger percentage changes (Table 1). For example, in 2021 the increase in Humboldt County was the result of a small kelp patch that emerged and was sustained for one season.

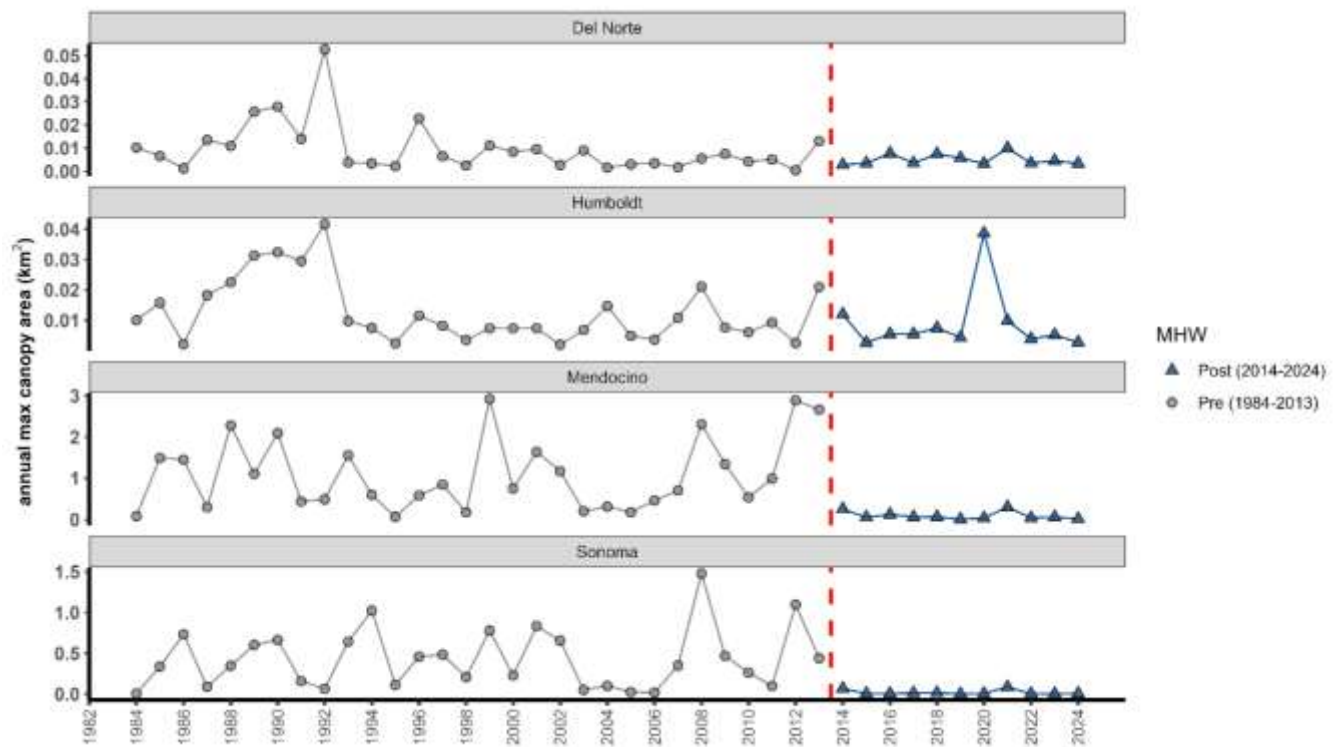


Figure 1. Annual kelp canopy area maximum (measured quarterly) in square kilometers estimated from Landsat satellites (SBC LTER et al., 2025) for Del Norte, Humboldt, Mendocino, and Sonoma counties, 1984 through the fourth quarter of 2024. The vertical dashed line reflects the timeframe before and after the Marine Heatwave (MHW). Bell, T., K. Cavanaugh, and D. Siegel. 2025. SBC LTER: Time series of quarterly NetCDF files of kelp biomass in the canopy from Landsat 5, 7 and 8, since 1984 (ongoing) ver 28. Environmental Data Initiative.

<https://doi.org/10.6073/pasta/d33bd376547863acffc675a611b40289>. Accessed 2025-03-14.

Table 1. The percent change of the mean annual maximum kelp canopy area in Del Norte, Humboldt, Mendocino, and Sonoma counties. Data reflects the time frame considered during the adopted temporary bull kelp amendments, 2014 through the third quarter of 2021, and current proposed amendments, 2014 through the fourth quarter of 2024.

County	2022 Pre-Adoption Statement of Reasons: 2014 Through the Third Quarter of 2021 Percent Change Time Frame (Compared to 1984-2013 mean)	Updated: 2014 Through the Fourth Quarter of 2024 Percent Change Time Frame (Compared to 1984-2013 mean)
Mendocino	90% decline	91% decline
Sonoma	95% decline	96% decline
Humboldt	20% increase	29% decline
Del Norte	5% decline	48% decline

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 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. Current subsections which pertain to the more substantive proposed amendments include:

- Subsection (b) pertains to general harvest of kelp and other aquatic plants and includes information on harvest reporting, harvest restrictions in marine protected areas established under subsections 632(a) and 632(b), prohibition of kelp, marine aquatic plants, and edible seaweed harvest from Tomales Bay or San Francisco Bay, and prohibition of bull kelp harvest in closed or lease only administrative kelp beds as described in subsection 165.5(k), unless harvested for human consumption pursuant to subsection 165(e)(2), or, if a lease is granted for lease only beds by the Commission.
- Subsection (c) pertains to harvest of giant kelp and bull kelp and includes information on allowable harvest methods, the bull kelp harvest seasonal closure within non-leased administrative kelp beds which lie partially or completely within the Monterey Bay National Marine Sanctuary boundaries, kelp harvest reporting, and kelp harvest plans for mechanical harvest or administrative kelp bed leasing as described in Section 165.5. Subsection (c) also provides information on temporary

harvest restrictions and weekly reporting for bull kelp which sunset on January 1, 2026.

- Subsection (e) specifies regulations regarding harvest of marine plants, classified as edible seaweed, for human consumption. These regulations allow limited harvest of bull kelp for human consumption, including take in closed or lease only administrative kelp beds. Subsection (e) also specifies that license holders harvesting bull kelp for human consumption cannot exceed an annual limit of two tons (4,000 pounds (lbs)) wet weight per license.

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: beds which are available to harvest by all commercial kelp harvesters;
- closed: all commercial kelp harvest is prohibited;
- leasable: available for harvest by all commercial kelp harvesters until an exclusive lease is granted by the Commission, then only available for harvest by the lessee; and
- lease only: commercial kelp harvest is prohibited unless an exclusive lease is granted by the Commission.

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 in administrative kelp beds 308, 309, and 312 which sunset on January 1, 2026.

Proposed Regulatory Changes

The Department recommends that the Commission amend one subsection of 165 and one subsection of 165.5 pertaining to temporary restrictions for commercial harvest of the marine alga bull kelp. At the request of the Commission's Marine Resources Committee during its July 2025 meeting, an option for Mendocino and Sonoma counties has been added for subsection (c)(9) to allow for limited commercial bull kelp harvest.

Section 165

Subsection (c)(9): Current regulations in subsection (c)(9) specify temporary harvest restrictions and weekly reporting for bull kelp.

- The proposed amendment to subsection 165(c)(9)(A) includes two harvest options for Mendocino and Sonoma counties:
 - Subsection 165(c)(9)(A) Option 1 (Department recommendation): Extend the sunset date of the current bull kelp harvest closure in Sonoma and

Mendocino counties regardless of intended use of harvested bull kelp to January 1, 2029.

- Subsection 165(c)(9)(A) Option 2: Impose an annual overall bull kelp harvest quota from 1 pound to 2,000 pounds (1 ton) wet weight in Sonoma and Mendocino counties, combined, between January 1 – December 31 to sunset on January 1, 2029. Harvest is limited for human consumption only. The Commission will select the annual quota within the range provided if this option is chosen.
- Subsections (c)(9)(A)1. through (c)(9)(A)3.: In the event the Commission adopts subsection (c)(9)(A) Option 2, proposed subsections (c)(9)(A)1. through (c)(9)(A)3. are necessary to ensure an orderly fishery in Sonoma and Mendocino counties and that the quota will not be exceeded. The proposed amendment specifies:
 - the Department may temporarily close the harvest in order to obtain an accurate tally of the harvest;
 - the potential for individual harvester allotments;
 - 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; and
 - the harvesters' responsibility to monitor the Department's website to be kept informed of the remaining quota.

The Department has determined that the harvesters who may target harvest of bull kelp for human consumption in Sonoma and/or Mendocino 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 Sonoma and/or Mendocino 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 Sonoma and/or Mendocino counties are included in the harvest allotment calculation. The allotment approach in this subsection ensures that all harvesters who may target harvest of bull kelp for human consumption in Sonoma and/or Mendocino 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 Sonoma and/or Mendocino counties to ensure the full amount of the annual overall fishery quota may be harvested.

- Subsection (c)(9)(A)4.: In the event the Commission adopts subsection (c)(9)(A) Option 2, proposed subsection (c)(9)(A)4. specifies that all 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 by signing a Release of Property form DFW 1108. This regulation is necessary to ensure that any inadvertent excess harvest is discouraged to prevent waste, and is consistent with existing regulations in subsection (b)(6) which specifies it is unlawful to cause or permit waste of kelp, marine aquatic plants, or marine algae taken in California waters or to take, receive, or agree to receive more kelp, marine aquatic plants, or marine algae than can be used without waste or spoilage.

All Option 2 provisions will sunset January 1, 2029.

- **Subsection 165(c)(9)(B):** The proposed amendment extends the sunset date pertaining to the current harvest restrictions for bull kelp in Del Norte and Humboldt counties from January 1, 2026 to January 1, 2029 in subsection (c)(9)(B).
- **Subsection 165(c)(9)(C):** 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 requirements for weekly reporting via email of bull kelp harvest with options dependent on the Commission's decision on Sonoma and Mendocino counties.
 - Subsection 165(c)(9)(C) Option 1: If subsection (c)(9)(A) Option 1 is adopted by the Commission, requirements for weekly reporting of bull kelp harvest for Del Norte and Humboldt counties will remain unchanged and the sunset date will be extended through January 1, 2029.
 - Subsection 165(c)(9)(C) Option 2: If subsection (c)(9)(A) Option 2 is adopted by the Commission, the sunset date for weekly reporting of bull kelp harvest for Del Norte and Humboldt counties will be extended to January 1, 2029 and weekly reporting of bull kelp harvest will be implemented for Mendocino and Sonoma counties, with a sunset date of January 1, 2029.

Section 165.5

Subsection (c): The proposed amendment to subsection (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 also recommends that the Commission amend subsection 165.5(k)(2)(I) to correct an error.

Subsection (k)(2)(I): The proposed amendment to subsection (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 (Figure 2); this proposed amendment will correct the coordinate to that which was originally noticed in that rulemaking.

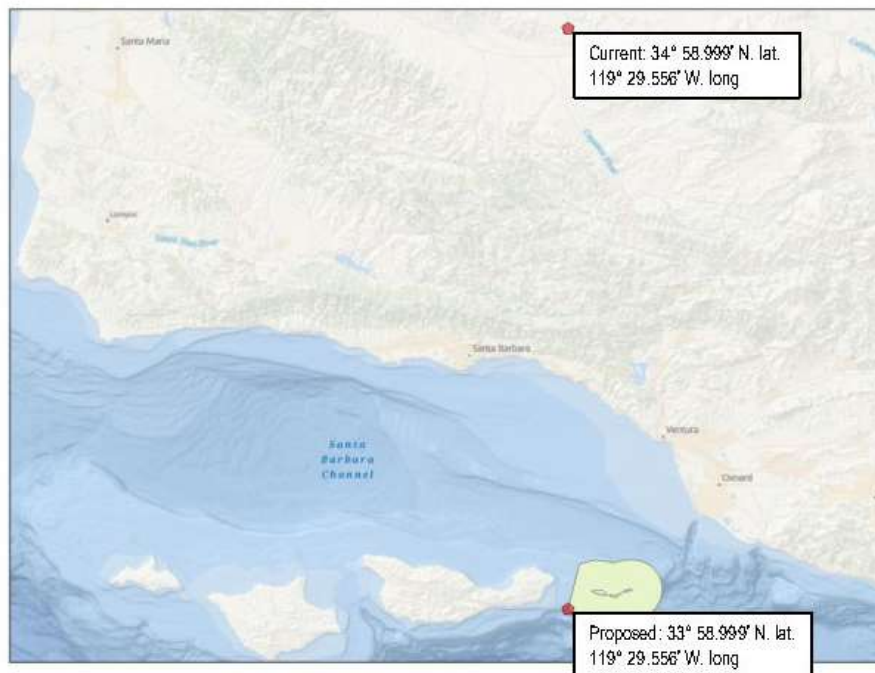


Figure 2. Image depicting current coordinate and proposed amendment to coordinate for administrative kelp bed 109, Anacapa Islands.

Minor edits are proposed for clarity and consistency.

(b) Goals and Benefits of the Regulation

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 KRMP.

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

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Section 165

Authority cited: Sections 6653 and 6653.5, FGC.

Reference: Sections 51, 6650, 6651, 6652, 6653, 6653.5, 6654, 6656 and 6680, FGC.

Section 165.5

Authority cited: Sections 6653, 6700 and 6701, FGC.

Reference: Sections 6653, 6700, 6701, 6701.5, 6702, 6703, 6704, 6705, 6706, and 6707, FGC.

(d) Specific Technology or Equipment Required by Regulatory Change:

None.

(e) Identification of Reports or Documents Supporting Regulation Change

None.

(f) Identification of Documents Providing Background Information

Documents from Office of Administrative Law Rulemaking file 2022-1014-04SR:

- California Fish and Game Commission. January 14, 2022. Pre-Adoption Statement of Reasons for Regulatory Action. Amend Sections 165, and 165.5, and Appendix A, and add Section 705.1 Title 14, California 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.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=199028&inline>

- California Fish and Game Commission. April 7, 2022. Final Statement of Reasons for Regulatory Action. Amend Sections 165, and 165.5, and Appendix A, and add Section 705.1 Title 14, California 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. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=207556&inline>

California Department of Fish and Wildlife, Marine Region and California Ocean Protection Council. November 2023. Status of Research and Monitoring, Restoration Efforts, and Developing Management Strategies for Kelp Canopy Forming Species in California. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=216814&inline>

California Ocean Protection Council. December 9, 2024. Staff Recommendation Action Item: Consideration and Approval of Disbursement of Funds to Support Adaptive Management and Resilience of Kelp Forests. <https://opc.ca.gov/wp-content/uploads/2024/11/Item-7-Kelp-Package-2024-508.pdf>

California Department of Fish and Wildlife, Kelp Restoration and Management Plan webpage. <https://wildlife.ca.gov/Conservation/Marine/Kelp/KRMP>. Last accessed 2025-0617.

(g) Public Discussions of Proposed Regulations Prior to Notice Publication

- July 1, 2025, Stakeholder informational meeting webinar. Webinar invitees included commercial kelp harvest licensees (years 2024 and 2025), and members of the 2022 Bull Kelp Working Group. Additionally, the informational meeting information was posted on the Department's Marine Management News blog and sent to the KRMP listserv.
- July 16-17, 2025 Marine Resources Committee meeting

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Option 2 (to allow limited harvest in Sonoma and Mendocino counties) was added as a result of discussion at the July 16-17, 2025, Marine Resources Committee meeting. No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect as the proposed regulations.

(b) No Change Alternative

The no change alternative would leave the existing regulations in place and the bull kelp temporary harvest restrictions in Sonoma, Mendocino, Humboldt, and Del Norte counties and weekly reporting to monitor the annual quota in Humboldt and Del Norte counties will expire on January 1, 2026.

Despite the continued loss of bull kelp, temporary precautionary measures to prohibit and limit bull kelp harvest would not be extended and harvest of bull kelp for human consumption would be allowed to resume and 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. Knowledge gaps around the potential effects of commercial harvest on the remaining kelp population are actively being addressed. Once available, results will be integrated into the harvest framework within the KRMP.

The current temporary closure of lease only administrative kelp beds would expire on January 1, 2026, and the lease only beds will be available for lease on January 2, 2026, regardless of bull kelp decline. Leaving the beds available for lease would also contradict the proposed bull kelp harvest closures (Option 1) or harvest limits (Option 2) 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 error in the administrative kelp bed 109 description in Section 165.5, subsection (k)(2)(I) will continue to be inaccurate and may affect enforceability of the regulations.

(c) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

Option 2 (to allow limited harvest in Sonoma and Mendocino counties) was added as a result of discussion at the July 16-17, 2025, Marine Resources Committee meeting. No alternatives that would lessen adverse impact on small business were identified or brought to the attention of Commission staff.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 initial 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 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.

VII. Economic Impact Assessment

The proposed continued temporary harvest limits for bull kelp in Humboldt and Del Norte counties combined (8,000 lbs per year) are above recent annual harvest range during the current limits from 2023 through 2024, thus the average revenue per harvester is anticipated to be within recent historic levels. The proposed continued temporary closure of bull kelp harvest for Mendocino and Sonoma counties under Option 1 could result in a continued decline in revenue for the industry that harvests bull kelp.

The proposed continuation of the weekly reporting requirement would continue to temporarily introduce additional time that is estimated to be \$200 annually per harvester (see Table 1. Bull Kelp Harvester Weekly Reporting Costs for Del Norte and Humboldt Counties in the STD 399 Addendum).

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 STD 399 for further details.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission anticipates no impacts on the creation or elimination of jobs within the state because the proposed action will not spur the need for more or less labor. While Option 2 does restore the ability of harvesters in Sonoma and Mendocino to resume the harvest of bull kelp, it is unlikely to spur job growth as these activities are typically done under smaller operations, and these businesses have remained in the area due to the harvesting of other marine plants still being permitted under current regulations.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commission anticipates no impacts on the creation of new businesses or the elimination of existing businesses within the state. The proposed changes under either option are not expected to spur new business creation or the elimination of businesses. The proposed harvest limit in Del Norte and Humboldt counties is within historic take. Harvest of other marine plants is still authorized in Del Norte, Humboldt, Mendocino and Sonoma counties.

Under Option 2 existing harvesters in Sonoma and Mendocino counties are expected to resume their harvest of bull kelp, but as mentioned previously these harvesters have largely remained active in those counties due to the harvest of other marine plants being authorized under current regulations.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

Under Option 1 the Commission anticipates no impacts on the expansion of businesses currently doing business within the state because the harvest limit is not being increased. However, under Option 2 harvesters could resume activity in Sonoma and Mendocino counties, which could have an annual monetary benefit of approximately \$21,406 if the full 2,000-pound wet weight quota for those two counties is fully harvested.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission anticipates no direct benefits to the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The Commission anticipates no impacts on the worker safety because the proposed action does not have any bearing on working conditions.

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the State's environment by contributing to the conservation of kelp forest ecosystem benefits.

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), Commission refers to the California Fish and Game Commission, and Department refers to the California Department of Fish and Wildlife.

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 (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)(l): The proposed amendment to subsection (k)(2)(l) 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.