

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

Amend Subsection (c)(9), of Section 165,
and
Subsections (c), and (k)(2)(l), of Section 165.5, Title 14, California Code of Regulations
Re: Commercial Bull Kelp Harvest Restrictions

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: August 5, 2025
- (b) Pre-adoption Statement of Reasons Date: September 3, 2025
- (c) Final Statement of Reasons Date: October 10, 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. Update

At its October 9, 2025 meeting, the California Fish and Game Commission (Commission) adopted the changes to sections 165 and 165.5, Title 14, California Code of Regulations as originally proposed: temporary fishery annual harvest quota in Del Norte and Humboldt counties, temporary closure and lease prohibition of lease only administrative kelp beds 308, 309, and 312, and correction of administrative kelp bed 109 coordinate. Additionally, the Commission adopted Mendocino and Sonoma counties temporary amendment Option 1, closure of commercial bull kelp harvest. Temporary weekly reporting amendments were adopted for the counties with annual fishery limits. The temporary amendments will sunset on January 1, 2029. Proposed language for Mendocino and Sonoma counties option 2 was removed from the regulatory text. Non-substantive edits were made to list counties in north to south order were made for counties with temporary amendments and to revise “Bull Kelp (Human Consumption)” to “bull kelp for human consumption” in subsections 165(c)(9)(B)1.a. and 165(c)(9)(B)1.b. for consistency with subsection 705.1(a)(1)(U). Additionally, base language has been updated to reflect changes made in OAL rulemaking file 2025-0702-01S. There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

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

Responses to public comments received are provided in Attachment A.

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Option 2 (to allow limited harvest in **Mendocino and Sonoma** 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 **Del Norte, Humboldt, Mendocino, and Sonoma** counties and weekly reporting to monitor the annual quota in **Del Norte and Humboldt** counties will expire on January 1, 2026, **reverting to what existed prior to 2023**.

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 **Kelp Restoration and Management Plan (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)(l) will continue to be inaccurate and may affect enforceability of the regulations.

(c) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as

effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

Option 2 (to allow limited harvest in **Mendocino and Sonoma** counties) was added as a result of discussion at the July 16-17, 2025, Marine Resources Committee meeting. **However, the Commission rejected Option 2. The Commission adopted Option 1 (keeping Mendocino and Sonoma counties closed) as a precautionary approach to protect and maintain the resource while the KRMP is being developed.** No alternatives that would lessen adverse impact on small business were identified or brought to the attention of Commission staff.

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 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 **Mendocino and Sonoma** counties and imposed an annual fishery quota and weekly reporting for bull kelp harvest in **Del Norte and Humboldt** 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 **sustain** current use and harvest post-2014. Due to the temporary closure, no commercial harvest of bull kelp was reported in **Mendocino or Sonoma** 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 **the proposed** Option 2, the reopening of Mendocino and Sonoma counties to harvest could **have** potentially yielded an annual monetary benefit of approximately \$21,406 **for the fishery** if the full 2,000-pound wet weight harvest quota **were** met while also introducing approximately \$120 in reporting costs per harvester. **However, the Commission did not adopt Option 2.** 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 **the proposed** Option 2 harvesters in **Mendocino and Sonoma** counties may **have** resumed their harvesting activities, but it is anticipated that this **would have** reactivated existing harvesters from that area who did not move **their harvest** to Del Norte or Humboldt counties. **However, the Commission did not adopt Option 2.**

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 **had been** selected, it is estimated that harvesters in **Mendocino and Sonoma** counties would **have** faced annual reporting costs of approximately \$120 per harvester (see STD 399 Addendum for further details). **However, the Commission did not adopt Option 2.**

- (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. **Under proposed** Option 2 the Department could **have seen** up to

\$24 in additional annual revenue from the collection of the edible seaweed royalty in the reopened **Mendocino and Sonoma** counties, **as detailed in the original STD 399 Addendum. However, the Commission did not adopt Option 2.**

(e) Nondiscretionary Costs/Savings to Local Agencies

None

(f) Programs Mandated on Local Agencies or School Districts

None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(h) Effect on Housing Costs

None

Updated Informative Digest/Policy Statement Overview

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 **Del Norte, Humboldt, and Mendocino** 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 **Del Norte, Humboldt, Mendocino, and Sonoma** 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.

Update:

On October 9, 2025, the Commission adopted the changes to sections 165 and 165.5, Title 14, California Code of Regulations. The amendments were adopted as originally proposed: temporary fishery annual harvest quota in Del Norte and Humboldt counties, temporary closure and lease prohibition of lease only administrative kelp beds 308, 309, and 312, and correction of administrative kelp bed 109 coordinate. Additionally, the Commission adopted Mendocino and Sonoma counties temporary amendment Option 1, closure of commercial bull kelp. Temporary weekly reporting amendments were adopted for the counties with annual fishery limits. The temporary amendments will sunset on January 1, 2029. Language for Option 2 has been removed. Non-substantive edits were made to list counties in north to south order were made for counties with temporary amendments and to update subsections 165(c)(9)(B)1.a. and 165(c)(9)(B)1.b. for consistency with subsection 705.1(a)(1)(U). Additionally, base language has been updated to reflect changes made in OAL rulemaking file 2025-0702-01S. There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.