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Date: March 27, 2009

About the MLMA Lessons Learned project:

The Harty Conflict Consulting & Mediation [HCCM] project team was selected to conduct a lessons learned study of the Marine Life Management Act [MLMA] as described in the RFP issued by the Ocean Protection Council [OPC] on October 27, 2008. In the words of the Request for Proposals "Both DFG and the Commission have agreed that summarizing lessons learned from the previous FMP-approval processes could help to streamline efforts in the future. Additionally, because each past FMP creation process involved vastly different protocols, standards, costs, and time investments, a study evaluating comparative lessons learned could function as a useful reference for future efforts. The study will evaluate the successes and challenges of the implementation of the MLMA and provide recommendations to direct future MLMA efforts by DFG and the Commission."

About this document: Issues List

This list compiles and organizes issues relevant to this analysis, derived from the MLMA itself, various analyses related to the MLMA, stakeholder comments and judgments of the HCCM team. The list is *not* (1) a framework within which the analysis will be undertaken, or (2) an outline of any report being prepared for this project. The issues list serves a limited, initial purpose: to capture diverse perspectives on the intent, implementation and effects of the MLMA in order to inform the work of the HCCM team. In some cases issues are included "as received," and in other cases the language has been modified with the intention to preserve the meaning. Formatting and editing are minimal, consistent with the purpose for this initial compilation.

Comments:

Comments are welcomed, especially in regard to any missing issue or perspective believed critical to understanding the MLMA and improving fisheries management. While the primary use of public comments is to inform the work of the HCCM team, as appropriate, the comments will be summarized and posted on the MLMA LL project web page which can be accessed from the OPC website (<http://www.opc.ca.gov>). *There is no plan for individual responses to public comments.*

Send comments in electronic format only to: MLMALL@SCC.CA.GOV.

Comments are due by: April 15, 2009

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Introduction to DRAFT MLMA Issues

An early deliverable in the Lessons Learned analysis of the MLMA is identification of issues. *The issues list serves two main purposes:*

- First, the issues list will inform the project analysis, including information sought, individuals interviewed, and questions asked.
- Second, developing the issues list refines expectations among stakeholders and the broader public about how this project will analyze the MLMA. For example, the list captures the existence of differing opinions regarding the provisions of the MLMA itself. The HCCM team does not prejudge the accuracy or usefulness of these differing opinions and notes that the existence of such disagreements may influence implementation of the MLMA.

Sources of information for this draft compilation include:

- MLMA Statute
- Request for Proposals for MLMA Lessons Learned Analysis
- Marine Resources Committee records and meeting discussion
- Available literature on MLMA, e.g., Weber & Heneman
- Professional experience of MLMA Lessons Learned team

This document is organized according to the three tasks of the MLMA Lessons Learned analysis:

- Task 1 issues are based on “what happened” and constructing an accurate history of MLMA implementation.
- Task 2 issues involve assessment and evaluation of MLMA implementation; the majority of issues are in this category.
- Task 3 issues involve lessons learned and recommendations for changed actions. At this early stage of the project the identifiable issues include: what changes to the MLMA have been adopted or proposed and why? What have other countries done and why? What would a policy “sweet spot” look like?

The HCCM team will examine the MLMA/FMP system systematically, looking both at agency-wide processes and achievements and also at selected cases – fisheries, tools, approaches, and episodes – that illuminate either successful approaches or especially difficult challenges. Early in the process, the team will actively solicit suggestions from the public of cases that might offer important “lessons learned” together with information about these cases.

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Addressing the issues identified here will provide information for completion of the written reports associated with each task. The issue lists are NOT outlines of or frameworks for the written report(s), as completion of those reports requires analysis and interpretation across many issues.

1. Task 1 Issues (description):

- 1.1. What was California's management of fisheries prior to passage of MLMA (1999)?
 - 1.1.1. Legal Basis?
 - 1.1.2. Administrative elements (Department, Commission)?
 - 1.1.3. Species/areas managed?
 - 1.1.4. Management measures (in regulations, statutes and plans)?
 - 1.1.5. Relationships with federal policies and activities?
- 1.2. What was the impetus for the MLMA?
 - 1.2.1. What were the goals of MLMA drafters?
 - 1.2.2. What were they trying to change?
 - 1.2.3. What tools did they believe would work in what ways?
 - 1.2.4. How would they define success?
- 1.3. Components of the MLMA as enacted?
 - 1.3.1. What goals/intents are stated in statutory language (e.g., sustainability)?
 - 1.3.2. What components of the MLMA are findings and declarations? Grants of authority? Provision of resources? Remedies for failure to act?
 - 1.3.3. What changed legally?
 - 1.3.4. Management authority?
 - 1.3.5. Requirements for FMPs?
 - 1.3.6. Requirements for process?
 - 1.3.6.1. Section 7057 (recommendations on restricted access fishery policies)
 - 1.3.6.2. Section 7059 b (four items re stakeholder and interest party participation)
 - 1.3.6.3. Section 7060 (four items regarding collection of fishery information, including in collaboration with fishermen and through contracts)
 - 1.3.6.4. Section 7062 (specifies processes for external peer review)
 - 1.3.6.5. Section 7065 (three items on annual reports)
 - 1.3.6.6. Section 7066 (two items re sustainability policies)
 - 1.3.6.7. Section 7072 (specifies two general requirements for fishery management plans and also requires adoption of a near shore fishery management plan before January 1, 2002, if funds are appropriated to that purpose)
 - 1.3.6.8. Section 7073 (MLMA Master Plan)
 - 1.3.6.9. Section 7074 (four items on interim fishery research protocols)
 - 1.3.6.10. Other?

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1.3.7. What remained the same?

1.4. How has the MLMA been implemented?

1.4.1. How was the Master Plan developed and utilized?

1.4.2. What FMPs have been completed? What FMPs are not completed?

1.4.3. Did the Department and Commission use tools provided by MLMA? Which ones?

1.4.4. Did FMPs include required elements specified in MLMA? Which ones were included and/or excluded?

1.4.5. Where and how did the MLMA affect fisheries for which no FMP has been developed?

1.4.6. What resources – budget and staff – were used to implement the MLMA?

1.4.7. Considering individual FMPs and the whole process of MLMA implementation, what are relationships among managers/authorities, and have they changed during MLMA implementation?

1.4.7.1. Legislature/Department/Commission/stakeholder?

1.4.7.2. State/Federal/Council/PSMFC?

1.4.7.3. Department/Commission?

1.4.7.4. Department/Stakeholders?

1.4.7.5. Commission/Stakeholders?

1.4.7.6. Other?

1.5. What MLMA amendments have been introduced since enactment?

1.5.1. What changes have been made to MLMA provisions/California Fish and Game code since 1999?

1.5.2. What was the process for changes? How were they initiated?

1.5.3. What changes have been recommended? Which have been implemented?

1.5.4. What is the mechanism for making changes? Administrative? Legislative?

1.6. What relevant factors beyond MLMA have changed since 1999?

1.6.1. Implementation of other fisheries-related policies, federal and state (e.g., MLPA)?

1.6.2. Understanding of status of fisheries?

1.6.3. Understanding of fisheries management policies?

1.6.4. Understanding of contextual factors, such as climate change?

1.6.5. Emerging management approaches (e.g., co-management, marine spatial planning)

2. Task 2 Issues (assessment):

Assessments require judgment:

- Did specific actions required in the MLMA occur?
- How did implementation match differing expectations regarding MLMA?

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- What capacities and tools were available to implement the MLMA?
- How were those capacities and tools used?
- What are the effects of actions undertaken under the MLMA on fisheries?

Rarely are these judgments simply “yes” or “no” based on clear evidence. Rather, most relevant assessment judgments require assembling the best available information and then understanding that information in the context of other policies, leading to professional judgments. The professional standards used are developed on the basis of broad experience and focus on the “plausibility” of success in achieving a policy goal and the effectiveness and appropriateness of choices made in policy implementation. The HCCM team intends to be transparent in making assessments by describing (a) the information available and used and (b) the basis on which assessments are offered.

Assessment issues are organized in three categories for purposes of this compilation: process related, implementation capacity focused, and outcomes based.

2.1. Process related issues:

- 2.1.1. What resources and expertise are needed to effectively prepare and implement a FMP? Are there opportunities to make the FMP creation and implementation process more effective and efficient?
- 2.1.2. What guidance and tools has the MLMA provided for DFG and the Commission to make fishery management decisions?
 - 2.1.2.1. Does the MLMA provide an overarching policy framework for fisheries policies?
- 2.1.3. Are there barriers to completion of FMPs? Alternative working hypotheses:
 - 2.1.3.1. The extensive requirements of the MLMA and the FMP creation process have presented both the DFG and Commission with great difficulty to complete FMPs for priority fisheries in a timely manner. A lack of fiscal and staffing resources, including loss of experienced staff, create delays that compound this problem.
 - 2.1.3.2. Choices made in implementation needlessly complicated the process, and legislatively provided “short cut” tools such as framework plans were not employed effectively.
- 2.1.4. How have the process steps specified in the MLMA been satisfied? (see list under 1.3 above).
 - 2.1.4.1. This assessment should go beyond a “check list” of individual process steps to include examination of changes from prior Department and/or Commission practices and how the processes serve the overall policy goals of the MLMA.
- 2.1.5. How have the four categories of specific policies identified in the “Guide to California’s Marine Life Management Act” been satisfied?

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- 2.1.5.1. To what extent has science been employed consistent with requirements of the MLMA? What are examples? What is the track record, and what are the consequences?
- 2.1.5.2. To what extent has constituent involvement in MLMA policy development and implementation satisfied statutory requirements? What are specific examples? What factors are perceived as contributing to successes and/or failures?
- 2.1.5.3. To what extent has adaptive management been institutionalized into MLMA decision making and implementation? Is this consistent with the statute? What are specific examples? What factors are significant contributors to successes and/or failures?
- 2.1.5.4. To what extent have socio-economic considerations in decision making and implementation satisfied the MLMA? What are examples? What factors are seen as significant?
- 2.1.6. Other process issues:
 - 2.1.6.1. How does the MLMA work with other state laws and policies re fisheries (e.g., the Fish and Game Commission's policy on restricted access)?
 - 2.1.6.2. How does the MLMA work with other state laws and policies focused on ecosystem protection (e.g., MLPA)? Is the current articulation, i.e., relationship and interaction, of FMPs with federal fisheries policies effective and appropriate?
 - 2.1.6.3. How does California's experience with the MLMA compare with other experiences in resource management in California, US coastal states, and worldwide?
 - 2.1.6.4. What has been the experience with peer review in connection with FMP development and other MLMA decision making and how might it be improved?
 - 2.1.6.5. As developed and implemented, do FMPs adequately incorporate adaptive management?
 - 2.1.6.6. Have "mechanical" issues affected MLMA implementation (e.g., in squid FMP)?
 - 2.1.6.7. Is the use of fee authority effective and appropriate?

2.2. Implementation capacity focused issues:

- 2.2.1. Does California's MLMA contain elements professionals believe are required for successful policies? Those dimensions of successful policies include:
 - 2.2.1.1. the legal foundations of policies,
 - 2.2.1.2. choices of policy tools, including incentives provided to private interests,

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- 2.2.1.3.extent of agreement or conflict over problem definition, measures of success, and appropriate policy instruments among significant stakeholders,
- 2.2.1.4.capacity of bodies charged with making decisions, such as the Fish and Game Commission,
- 2.2.1.5.formal structures of policy implementation (for example, the organizational competencies of and fiscal resources available to the Department of Fish and Game),
- 2.2.1.6.political support,
- 2.2.1.7.effectively incorporating science,
- 2.2.1.8.use of technology,
- 2.2.1.9.capacity to learn and adapt
- 2.2.2. Issues related to effectiveness in achieving MLMA goals:
 - 2.2.2.1.Judged by the objectives under MLMA Section 7056, a-m (see Appendix)
 - 2.2.2.2.Use of other policies or legislation to achieve goals reasonably expected of MLMA (e.g., Abalone Recovery and Management Plan? SB 1690 Dungeness crab)
 - 2.2.2.3.Lack of application of MLMA where possibly appropriate (e.g., sea urchins?)

2.3. Outcomes-based issues:

- 2.3.1. The MLMA seeks to achieve sustainable fisheries in California and achieving this goal is of greatest importance. Has the MLMA achieved sustainable fisheries? Has it achieved measurable progress? What factors are significant in success or lack thereof?
- 2.3.2. How have individual FMPs advanced or not advanced the goals and objectives of the MLMA. Answering this question requires assembling and assessing information comparing and contrasting existing Fishery Management Plans.
 - 2.3.2.1.Is California achieving an effective mix of policy tools for fishery management and ecosystem conservation– restricted access programs like ITQs & LAPs, community/port-based management, traditional regulatory limits on effort and gear, and MPAs?
- 2.3.3. What management of CA marine fisheries is possible under current conditions? Are there scientific and technical difficulties that cannot be resolved with the resources that one could reasonably hope to gather?
 - 2.3.3.1.For example, the 2006 State of the Fisheries report appears to say that fundamental biological data (e.g., population size) are missing for perhaps 10

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of the 15 fisheries described. Also, the markets for some species fluctuate due to competition with other regions and rapidly shifting demand. With 150 more-or-less distinct fisheries, management may be inherently difficult. Are there cultural and political schisms between regions or between commercial and recreational fishermen that are too deep to bridge? Accurately assessing the opportunities, constraints and challenges of these complex issues can inform recommendations for improvement in Task 3.

- 2.3.4. Is it possible to anticipate emerging issues which may affect implementation of the MLMA? Addressing anticipated climate change has impacted policy making in energy and land use policy and is a large factor in discussions of links between water policy, ecosystem function and species protection policies. What emerging issues could have similar relevance to the MLMA?

3. Task 3 issues (recommendations):

- 3.1. Improve the legal foundations, policy designs and strategies used to achieve MLMA goals.
- 3.1.1. Drawing on the assessments of Task 2, contributed recommendations and the professional competencies of the HCCM team, identify improvements in the legal foundations, policy designs, and strategies used to achieve MLMA goals.
Preliminary concepts for review include [not in a particular order]:
- 3.1.1.1. Clarifying the appropriate use of MLMA tools among the suite of policy tools available for achieving the fishery policy goals of California.
- 3.1.1.2. To the extent consistent with project scope, make recommendations regarding the desirability of a substantial reworking of California's approach to fisheries management, including the potential of IFQs, catch shares and similar tools for California fisheries. Where and if changes are recommended, identify the major elements required to implement the new approaches.
- 3.1.1.3. Identify any opportunities to achieve the goals of the MLMA with simpler processes.
- 3.1.1.4. To the extent possible, clarify the information needed for policy making and management of different species. Should California adopt a formal policy, perhaps similar to the federal categories?
- 3.1.1.5. Establish more formalized approaches to allocation of take in fisheries between commercial and recreational fishers.
- 3.1.1.6. Decide if a different approach is needed for forage species and, if so, develop policy tools to implement that approach.
- 3.1.1.7. Examine the relationships between California and federal fisheries policy and make adjustments where appropriate.
- 3.1.1.8. Ensure effective use of adaptive management of existing FMPs.

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- 3.1.1.9. Assess the tools available in the MLMA and adjust as appropriate.
 - 3.1.1.10. Based on analysis of fisheries management internationally, including integration with policies to protect marine protected areas and experience in other nations with federal political systems, propose appropriate changes in California laws, policies and strategies.
 - 3.1.1.11. Assess the consequences of providing the Fish and Game Commission authority to set landing fees (now retained by the Legislature) and seek appropriate changes to legislative authority.
 - 3.1.1.12. Identify a process which can develop recommendations for appropriate articulation of MPAs and fisheries management.
 - 3.1.1.13. Assess possible changes in the roles of the Legislature, the Commission and DFG in FMP development, if any, and propose actions to achieve those changes.
- 3.2. Improve implementation of the MLMA.
- 3.2.1. Acknowledging the centrality of achieving sustainable fisheries in the MLMA, identify what can be done to achieve this policy goal.
 - 3.2.2. As resources will always be limited, identify what approaches, including process simplification, partnerships and other relationships, can advance the goals of the MLMA.
 - 3.2.3. Assess the desirability of template(s) for future FMPs, based on summarizing lessons learned from the previous FMP approval processes, which are characterized by notably different protocols, standards, costs, and time investments. Preliminary concepts which could inform judgments regarding the utility of one or more templates are:
 - 3.2.3.1. Should there be clearer sideboards for FMP development? Feasibility criteria to shape the policy decision space?
 - 3.2.3.2. What should be the future role of the Master Plan? Is there value in revising it? Can the Master Plan serve as a future template?
 - 3.2.3.3. Effective balance of process and action with adequate resources (In the words of a Commissioner, the “sweet spot” for policy implementation where available resources support an effective process to successfully implement the policy)
 - 3.2.3.4. Are there areas of the FMP development process that can be streamlined for faster implementation? What is the appropriate level of specificity?
 - 3.2.3.5. Innovative strategies to effectively implement the MLMA in a long term environment of limited resources
 - 3.2.3.6. What roles should be specified for various participants in FMP development?
 - 3.2.4. Identify any desirable improvements in the fiscal, human and technological capacities of the Department and the Commission required to more effectively

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achieve the policy goals of the MLMA and propose actions to achieve those improvements. For example:

- 3.2.4.1. Can legal requirements be simplified to facilitate partnerships?
- 3.2.4.2. Does MLPA offer useful ideas, including Science Advisory Team and development of the Regional Profile as a baseline?

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Appendix: The Marine Life Management Act

FISH AND GAME CODE

SECTION 7050-7051

7050. (a) The Legislature finds and declares that the Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic importance to the people of California.

(b) It is the policy of the state to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objective of this policy shall be to accomplish all of the following:

- (1) Conserve the health and diversity of marine ecosystems and marine living resources.
- (2) Allow and encourage only those activities and uses of marine living resources that are sustainable.
- (3) Recognize the importance of the aesthetic, educational, scientific, and recreational uses that do not involve the taking of California's marine living resources.
- (4) Recognize the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with the marine living resource conservation policies of this part.
- (5) Support and promote scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions.
- (6) Manage marine living resources on the basis of the best available scientific information and other relevant information that the commission or department possesses or receives.
- (7) Involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.
- (8) Promote the dissemination of accurate information concerning the condition of, or management of, marine resources and fisheries by seeking out the best available information and making it available to the public through the marine resources management process.
- (9) Coordinate and cooperate with adjacent states, as well as with

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Mexico and Canada, and encourage regional approaches to management of activities and uses that affect marine living resources. Particular attention shall be paid to coordinated approaches to the management of shared fisheries.

7051. (a) A regulation adopted pursuant to this part shall apply only to ocean waters and bays. Notwithstanding any other provision of this part, nothing contained in this part grants the department or any other agency of the state any regulatory authority not in existence on January 1, 1999, in any river upstream of the mouth of such river, in the Sacramento-San Joaquin Delta or in any other estuary.

(b) The policies in this part shall apply only to fishery management plans and regulations adopted by the commission on or after January 1, 1999. No power is delegated to the commission or the department by this part to regulate fisheries other than the nearshore fishery, the white sea bass fishery, emerging fisheries, and fisheries for which the commission or department had regulatory authority prior to January 1, 1999.

FISH AND GAME CODE SECTION 7055-7059

7055. The Legislature finds and declares that it is the policy of the state that:

(a) California's marine sport and commercial fisheries, and the resources upon which they depend, are important to the people of the state and, to the extent practicable, shall be managed in accordance with the policies and other requirements of this part in order to assure the long-term economic, recreational, ecological, cultural, and social benefits of those fisheries and the marine habitats on which they depend.

(b) 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.

(c) Where a species is the object of sportfishing, a sufficient resource shall be maintained to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.

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(d) The growth of commercial fisheries, including distant-water fisheries, shall be encouraged.

7056. In order to achieve the primary fishery management goal of sustainability, every sport and commercial marine fishery under the jurisdiction of the state shall be managed under a system whose objectives include all of the following:

(a) The fishery is conducted sustainably so that long-term health of the resource is not sacrificed in favor of short-term benefits.

In the case of a fishery managed on the basis of maximum sustainable yield, management shall have optimum yield as its objective.

(b) The health of marine fishery habitat is maintained and, to the extent feasible, habitat is restored, and where appropriate, habitat is enhanced.

(c) Depressed fisheries are rebuilt to the highest sustainable yields consistent with environmental and habitat conditions.

(d) The fishery limits bycatch to acceptable types and amounts, as determined for each fishery.

(e) The fishery management system allows fishery participants to propose methods to prevent or reduce excess effort in marine fisheries.

(f) Management of a species that is the target of both sport and commercial fisheries or of a fishery that employs different gears is closely coordinated.

(g) Fishery management decisions are adaptive and are based on the best available scientific information and other relevant information that the commission or department possesses or receives, and the commission and department have available to them essential fishery information on which to base their decisions.

(h) The management decisionmaking process is open and seeks the advice and assistance of interested parties so as to consider relevant information, including local knowledge.

(i) The fishery management system observes the long-term interests of people dependent on fishing for food, livelihood, or recreation.

(j) The adverse impacts of fishery management on small-scale fisheries, coastal communities, and local economies are minimized.

(k) Collaborative and cooperative approaches to management, involving fishery participants, marine scientists, and other interested parties are strongly encouraged, and appropriate mechanisms are in place to resolve disputes such as access, allocation, and gear conflicts.

(l) The management system is proactive and responds quickly to

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changing environmental conditions and market or other socioeconomic factors and to the concerns of fishery participants.

(m) The management system is periodically reviewed for effectiveness in achieving sustainability goals and for fairness and reasonableness in its interaction with people affected by management.

7058. Any fishery management regulation adopted by the commission shall, to the extent practicable, conform to the policies of Sections 7055 and 7056.

7059. (a) The Legislature finds and declares all of the following:

(1) Successful marine life and fishery management is a collaborative process that requires a high degree of ongoing communication and participation of all those involved in the management process, particularly the commission, the department, and those who represent the people and resources that will be most affected by fishery management decisions, especially fishery participants and other interested parties.

(2) In order to maximize the marine science expertise applied to the complex issues of marine life and fishery management, the commission and the department are encouraged to continue to, and to find creative new ways to, contract with or otherwise effectively involve Sea Grant staff, marine scientists, economists, collaborative factfinding process and dispute resolution specialists, and others with the necessary expertise at colleges, universities, private institutions, and other agencies.

(3) The benefits of the collaborative process required by this section apply to most marine life and fishery management activities including, but not limited to, the development and implementation of research plans, marine managed area plans, fishery management plans, and plan amendments, and the preparation of fishery status reports such as those required by Section 7065.

(4) Because California is a large state with a long coast, and because travel is time consuming and costly, the involvement of interested parties shall be facilitated, to the extent practicable, by conducting meetings and discussions in the areas of the coast and in ports where those most affected are concentrated.

(b) In order to fulfill the intent of subdivision (a), the commission and the department shall do all of the following:

(1) Periodically review marine life and fishery management operations with a view to improving communication, collaboration, and dispute resolution, seeking advice from interested parties as part of the review.

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(2) Develop a process for the involvement of interested parties and for factfinding and dispute resolution processes appropriate to each element in the marine life and fishery management process. Models to consider include, but are not limited to, the take reduction teams authorized under the Marine Mammal Protection Act (16 U.S.C. Sec. 1361 et seq.) and the processes that led to improved management in the California herring, sea urchin, prawn, angel shark, and white seabass fisheries.

(3) Consider the appropriateness of various forms of fisheries comanagement, which involves close cooperation between the department and fishery participants, when developing and implementing fishery management plans.

(4) When involving fishery participants in the management process, give particular consideration to the gear used, involvement of sport or commercial sectors or both sectors, and the areas of the coast where the fishery is conducted in order to ensure adequate involvement.

FISH AND GAME CODE SECTION 7060-7062

7060. (a) The Legislature finds and declares that for the purposes of sustainable fishery management and this part, essential fishery information is necessary for federally and state-managed marine fisheries important to the people of this state to provide sustainable economic and recreational benefits to the people of California. The Legislature further finds and declares that acquiring essential fishery information can best be accomplished through the ongoing cooperation and collaboration of participants in fisheries.

(b) The department, to the extent feasible, shall conduct and support research to obtain essential fishery information for all marine fisheries managed by the state.

(c) The department, to the maximum extent practicable and consistent with Section 7059, shall encourage the participation of fishermen in fisheries research within a framework that ensures the objective collection and analysis of data, the collaboration of fishermen in research design, and the cooperation of fishermen in carrying out research.

(d) The department may apply for grants to conduct research and may enter into contracts or issue competitive grants to public or private research institutions to conduct research.

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7062. (a) The department shall establish a program for external peer review of the scientific basis of marine living resources management documents. The department, in its discretion and unless otherwise required by this part, may submit to peer review, documents that include, but are not limited to, fishery management plans and plan amendments, marine resource and fishery research plans.

(b) The department may enter into an agreement with one or more outside entities that are significantly involved with researching and understanding marine fisheries and are not advocacy organizations. These entities may include, but not be limited to, the Sea Grant program of any state, the University of California, the California State University, the Pacific States Marine Fisheries Commission, or any other entity approved by the commission to select and administer peer review panels, as needed. The peer review panels shall be composed of individuals with technical expertise specific to the document to be reviewed. The entity with which the department enters into an agreement for a peer review shall be responsible for the scientific integrity of the peer review process. Each peer reviewer may be compensated as needed to ensure competent peer review. Peer reviewers shall not be employees or officers of the department or the commission and shall not have participated in the development of the document to be reviewed.

(c) The external peer review entity, within the timeframe and budget agreed upon by the department and the external scientific peer review entity, shall provide the department with the written report of the peer review panel that contains an evaluation of the scientific basis of the document. If the report finds that the department has failed to demonstrate that a scientific portion of the document is based on sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons for the finding. The department may accept the finding, in whole or in part, and may revise the scientific portions of the document accordingly. If the department disagrees with any aspect of the finding of the external scientific peer review, it shall explain, and include as part of the record, its basis for arriving at such a determination in the analysis prepared for the adoption of the final document, including the reasons why it has determined that the scientific portions of the document are based on sound scientific knowledge, methods, or practice. The department shall submit the external scientific peer review report to the commission with any peer reviewed document that is to be adopted or approved by the commission.

(d) The requirements of this section do not apply to any emergency

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regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(e) Nothing in this section shall be interpreted, in any way, to limit the authority of the commission or department to adopt a plan or regulation.

FISH AND GAME CODE SECTION 7065-7066

7065. (a) The director shall report annually in writing to the commission on the status of sport and commercial marine fisheries managed by the state. The date of the report shall be chosen by the commission with the advice of the department. Each annual report shall cover at least one-fourth of the marine fisheries managed by the state so that every fishery will be reported on at least once every four years. The department shall, consistent with Section 7059, involve expertise from outside the department in compiling information for the report, which may include, but need not be limited to, Sea Grant staff, other marine scientists, fishery participants, and other interested parties.

(b) For each fishery reported on in an annual report, the report shall include information on landings, fishing effort, areas where the fishery occurs, and other factors affecting the fishery as determined by the department and the commission. Each restricted access program shall be reviewed at least every five years for consistency with the policies of the commission on restricted access fisheries.

(c) Notwithstanding subdivision (a), the first annual report shall be presented to the commission on or before September 1, 2001, and shall cover all the marine fisheries managed by the state. To the extent that the requirements of this section and Section 7073 are duplicative, the first annual report may be combined with the plan required pursuant to Section 7073.

7066. (a) The Legislature finds and declares that a number of human-caused and natural factors can affect the health of marine fishery resources and result in marine fisheries that do not meet the policies and other requirements of this part.

(b) To the extent feasible, the director's report to the commission pursuant to Section 7065 shall identify any marine fishery that does not meet the sustainability policies of this part. In the case of a fishery identified as being depressed, the report shall indicate the causes of the depressed condition of the fishery,

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describe steps being taken to rebuild the fishery, and, to the extent practicable, recommend additional steps to rebuild the fishery.

(c) The director's report to the commission pursuant to Section 7065, consistent with subdivision (m) of Section 7056, shall evaluate the management system and may recommend modifications of that system to the commission.

FISH AND GAME CODE SECTION 7070-7074

7070. The Legislature finds and declares that the critical need to conserve, utilize, and manage the state's marine fish resources and to meet the policies and other requirements stated in this part require that the state's fisheries be managed by means of fishery management plans.

7071. (a) Any white seabass fishery management plan adopted by the commission on or before January 1, 1999, shall remain in effect until amended pursuant to this part.

Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any white seabass fishery management plan adopted by the commission and in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

(b) In the case of any fishery for which the commission has management authority, including white seabass, regulations that the commission adopts to implement a fishery management plan or plan amendment for that fishery may make inoperative, in regard to that fishery, any fishery management statute that applies to that fishery, including, but not limited to, statutes that govern allowable catch, restricted access programs, permit fees, and time, area, and methods of taking.

(c) On and after January 1, 2000, the commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, and in a process consistent with Section 7059, to regulate all emerging fisheries, consistent with Section 7090, all fisheries for nearshore fish stocks, and all fisheries for white seabass. Regulations adopted by the commission may include, but need not be limited to, establishing time and area closures, requiring submittal of landing and permit information, regulating fishing gear, permit fees, and establishing restricted access fisheries.

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7072. (a) Fishery management plans shall form the primary basis for managing California's sport and commercial marine fisheries.

(b) Fishery management plans shall be based on the best scientific information that is available, on other relevant information that the department possesses, or on the scientific information or other relevant information that can be obtained without substantially delaying the preparation of the plan.

(c) To the extent that conservation and management measures in a fishery management plan either increase or restrict the overall harvest or catch in a fishery, fishery management plans shall allocate those increases or restrictions fairly among recreational and commercial sectors participating in the fishery.

(d) Consistent with Article 17 (commencing with Section 8585), the commission shall adopt a fishery management plan for the nearshore fishery on or before January 1, 2002, if funds are appropriated for that purpose in the annual Budget Act or pursuant to any other law.

7073. (a) On or before September 1, 2001, the department shall submit to the commission for its approval a master plan that specifies the process and the resources needed to prepare, adopt, and implement fishery management plans for sport and commercial marine fisheries managed by the state. Consistent with Section 7059, the master plan shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(b) The master plan shall include all of the following:

(1) A list identifying the fisheries managed by the state, with individual fisheries assigned to fishery management plans as determined by the department according to conservation and management needs and consistent with subdivision (f) of Section 7056.

(2) A priority list for preparation of fishery management plans. Highest priority shall be given to fisheries that the department determines have the greatest need for changes in conservation and management measures in order to comply with the policies and requirements set forth in this part. Fisheries for which the department determines that current management complies with the policies and requirements of this part shall be given the lowest priority.

(3) A description of the research, monitoring, and data collection activities that the department conducts for marine fisheries and of any additional activities that might be needed for the department to acquire essential fishery information, with emphasis on the higher

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priority fisheries identified pursuant to paragraph (2).

(4) A process consistent with Section 7059 that ensures the opportunity for meaningful involvement in the development of fishery management plans and research plans by fishery participants and their representatives, marine scientists, and other interested parties.

(5) A process for periodic review and amendment of the master plan.

(c) The commission shall adopt or reject the master plan or master plan amendment, in whole or in part, after a public hearing. If the commission rejects a part of the master plan or master plan amendment, the commission shall return that part to the department for revision and resubmission pursuant to the revision and resubmission procedures for fishery management plans as described in subdivision (a) of Section 7075.

7074. (a) The department shall prepare interim fishery research protocols for at least the three highest priority fisheries identified pursuant to paragraph (2) of subdivision (b) of Section 7073. An interim fishery protocol shall be used by the department until a fishery management plan is implemented for that fishery.

(b) Consistent with Section 7059, each protocol shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(c) Interim protocols shall be submitted to peer review as described in Section 7062 unless the department, pursuant to subdivision (d), determines that peer review of the interim protocol is not justified. For the purpose of peer review, interim protocols may be combined in the following circumstances:

(1) For related fisheries.

(2) For two or more interim protocols that the commission determines will require the same peer review expertise.

(d) The commission, with the advice of the department, shall adopt criteria to be applied in determining whether an interim protocol may be exempted from peer review.

FISH AND GAME CODE SECTION 7075-7078

7075. (a) The department shall prepare fishery management plans and plan amendments, including any proposed regulations necessary to implement plans or plan amendments, to be submitted to the commission for adoption or rejection. Prior to submitting a plan or plan

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amendment, including any proposed regulations necessary for implementation, to the commission, the department shall submit the plan to peer review pursuant to Section 7062, unless the department determines that peer review of the plan or plan amendment may be exempted pursuant to subdivision (c). If the department makes that determination, it shall submit its reasons for that determination to the commission with the plan. If the commission rejects a plan or plan amendment, including proposed regulations necessary for implementation, the commission shall return the plan or plan amendment to the department for revision and resubmission together with a written statement of reasons for the rejection. The department shall revise and resubmit the plan or plan amendment to the commission within 90 days of the rejection. The revised plan or plan amendment shall be subject to the review and adoption requirements of this chapter.

(b) The department may contract with qualified individuals or organizations to assist in the preparation of fishery management plans or plan amendments.

(c) The commission, with the advice of the department and consistent with Section 7059, shall adopt criteria to be applied in determining whether a plan or plan amendment may be exempted from peer review.

(d) Fishery participants and their representatives, fishery scientists, or other interested parties may propose plan provisions or plan amendments to the department or commission. The commission shall review any proposal submitted to the commission and may recommend to the department that the department develop a fishery management plan or plan amendment to incorporate the proposal.

7076. (a) To the extent practicable, and consistent with Section 7059, the department shall seek advice and assistance in developing a fishery management plan from participants in the affected fishery, marine scientists, and other interested parties. The department shall also seek the advice and assistance of other persons or entities that it deems appropriate, which may include, but is not limited to, Sea Grant, the National Marine Fisheries Service, the Pacific States Marine Fisheries Commission, the Pacific Fishery Management Council, and any advisory committee of the department.

(b) In the case of a fishery management plan or a plan amendment that is submitted to peer review, the department shall provide the peer review panel with any written comments on the plan or plan amendment that the department has received from fishery participants and other interested parties.

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7077. A fishery management plan or plan amendment, or proposed regulations necessary for implementation of a plan or plan amendment, developed by the department shall be available to the public for review at least 30 days prior to a hearing on the management plan or plan amendment by the commission. Persons requesting to be notified of the availability of the plan shall be notified in sufficient time to allow them to review and submit comments at or prior to a hearing.

Proposed plans and plan amendments and hearing schedules and agendas shall be posted on the department's Internet website.

7078. (a) The commission shall hold at least two public hearings on a fishery management plan or plan amendment prior to the commission's adoption or rejection of the plan.

(b) The plan or plan amendment shall be heard not later than 60 days following receipt of the plan or plan amendment by the commission. The commission may adopt the plan or plan amendment at the second public hearing, at the commission's meeting following the second public hearing, or at any duly noticed subsequent meeting, subject to subdivision (c).

(c) When scheduling the location of a hearing or meeting relating to a fishery management plan or plan amendment, the commission shall consider factors, including, among other factors, the area of the state, if any, where participants in the fishery are concentrated.

(d) Notwithstanding Section 7550.5 of the Government Code, prior to the adoption of a fishery management plan or plan amendment that would make inoperative a statute, the commission shall provide a copy of the plan or plan amendment to the Legislature for review by the Joint Committee on Fisheries and Aquaculture or, if there is no such committee, to the appropriate policy committee in each house of the Legislature.

(e) The commission shall adopt any regulations necessary to implement a fishery plan or plan amendment no more than 60 days following adoption of the plan or plan amendment. All implementing regulations adopted under this subdivision shall be adopted as a regulation pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission's adoption of regulations to implement a fishery management plan or plan amendment shall not trigger an additional review process under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Regulations adopted by the commission to implement a plan or

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plan amendment shall specify any statute or regulation of the commission that is to become inoperative as to the particular fishery. The list shall designate each statute or regulation by individual section number, rather than by reference to articles or chapters.

FISH AND GAME CODE
SECTION 7080-7088

7080. Consistent with subdivision (b) of Section 7072, each fishery management plan prepared by the department shall summarize readily available information about the fishery including, but not limited to, all of the following:

- (a) The species of fish and their location, number of vessels and participants involved, fishing effort, historical landings in the sport and commercial sectors, and a history of conservation and management measures affecting the fishery.
- (b) The natural history and population dynamics of the target species and the effects of changing oceanic conditions on the target species.
- (c) The habitat for the fishery and known threats to the habitat.
- (d) The ecosystem role of the target species and the relationship of the fishery to the ecosystem role of the target species.
- (e) Economic and social factors related to the fishery.

7081. Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department shall include a fishery research protocol that does all of the following:

- (a) Describe past and ongoing monitoring of the fishery.
- (b) Identify essential fishery information for the fishery, including, but not limited to, age and growth, minimum size at maturity, spawning season, age structure of the population, and, if essential fishery information is lacking, identify the additional information needed and the resources and time necessary to acquire the information.
- (c) Indicate the steps the department shall take to monitor the fishery and to obtain essential fishery information, including the data collection and research methodologies, on an ongoing basis.

7082. Each fishery management plan or plan amendment prepared by the department shall contain the measures necessary and appropriate for the conservation and management of the fishery according to the policies and other requirements in this part. The measures may

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include, but are not limited to, all of the following:

- (a) Limitations on the fishery based on area, time, amount of catch, species, size, sex, type or amount of gear, or other factors.
- (b) Creation or modification of a restricted access fishery that contributes to a more orderly and sustainable fishery.
- (c) A procedure to establish and to periodically review and revise a catch quota in any fishery for which there is a catch quota.
- (d) Requirement for a personal, gear, or vessel permit and reasonable fees.

7083. (a) Each fishery management plan prepared by the department shall incorporate the existing conservation and management measures provided in this code that are determined by the department to result in a sustainable fishery.

(b) If additional conservation and management measures are included in the plan, the department shall, consistent with subdivision (b) of Section 7072, summarize anticipated effects of those measures on relevant fish populations and habitats, on fishery participants, and on coastal communities and businesses that rely on the fishery.

7084. (a) Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department for a fishery that the department has determined has adverse effects on marine fishery habitat shall include measures that, to the extent practicable, minimize adverse effects on habitat caused by fishing.

(b) Subdivision (a) does not apply to activities regulated by Chapter 6 (commencing with Section 6650) of Part 1.

7085. Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department, in fisheries in which bycatch occurs, shall include all of the following:

- (a) Information on the amount and type of bycatch.
- (b) Analysis of the amount and type of bycatch based on the following criteria:
 - (1) Legality of the bycatch under any relevant law.
 - (2) Degree of threat to the sustainability of the bycatch species.
 - (3) Impacts on fisheries that target the bycatch species.
 - (4) Ecosystem impacts.
- (c) In the case of unacceptable amounts or types of bycatch, conservation and management measures that, in the following priority,

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do the following:

- (1) Minimize bycatch.
- (2) Minimize mortality of discards that cannot be avoided.

7086. (a) Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department shall specify criteria for identifying when the fishery is overfished.

(b) In the case of a fishery management plan for a fishery that has been determined to be overfished or in which overfishing is occurring, the fishery management plan shall contain measures to prevent, end, or otherwise appropriately address overfishing and to rebuild the fishery.

(c) Any fishery management plan, plan amendment, or regulation prepared pursuant to subdivision (b), shall do both of the following:

(1) Specify a time period for preventing or ending or otherwise appropriately addressing overfishing and rebuilding the fishery that shall be as short as possible, and shall not exceed 10 years except in cases where the biology of the population of fish or other environmental conditions dictate otherwise.

(2) Allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

7087. (a) Each fishery management plan prepared by the department shall include a procedure for review and amendment of the plan, as necessary.

(b) Each fishery management plan or plan amendment prepared by the department shall specify the types of regulations that the department may adopt without a plan amendment.

7088. Each fishery management plan and plan amendment shall include a list of any statutes and regulations that shall become inoperative, as to the particular fishery covered by the fishery management plan or plan amendment, upon the commission's adoption of implementing regulations for that fishery management plan or plan amendment.

FISH AND GAME CODE

SECTION 7090

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport

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fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

(b) "Emerging fishery," in regard to a marine fishery, means both of the following:

(1) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(2) A fishery that is not an established fishery. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(A) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(B) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(C) A fishery for which a population estimate and catch quota is established annually.

(D) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(E) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

(c) The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

(d) The commission, upon the recommendation of the department, may do either, or both, of the following:

(1) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted.

(2) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

(e) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this part. In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years

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unless extended by the commission. During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but need not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

(f) The commission is authorized to impose a fee on an emerging fishery in order to pay the costs of implementing this chapter. The fees may include, but need not be limited to, ocean fishing stamps and permit fees. The fees may not be levied in excess of the necessary costs to implement and administer this chapter. The commission may reduce fees annually if it determines that sufficient revenues exist to cover costs incurred by the department in administering this chapter. The commission and the department, with the advice of fishery participants and other interested parties, shall consider alternative ways to fund the evaluation of emerging fisheries.

(g) An emerging fishery is subject to this section unless the department incorporates the fishery into a fishery management plan developed under Sections 7070 to 7088, inclusive.

(h) In the event that this section is found to conflict with Section 8606, 8614, or 8615, this section shall prevail.