

Appendix A. California Fish and Game Code Pertaining to the Marine Life Management Act

PART 1.7. CONSERVATION AND MANAGEMENT OF MARINE LIVING RESOURCES

CHAPTER 1. GENERAL POLICIES

§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 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.

CHAPTER 2. MARINE FISHERIES GENERALLY

§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.

(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 decision making 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 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 pursuant to this part 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 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 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 fact finding 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 fishery management activities including, but not limited to, the development and implementation of research 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 fishery management operations with a view to improving communication, collaboration, and dispute resolution, seeking advice from interested parties as part of the review.

(2) Develop a process for the involvement of interested parties and for fact finding and dispute resolution processes appropriate to each element in the 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.A. 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 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.

CHAPTER 3. FISHERIES SCIENCE

§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.

§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 time frame 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 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.

CHAPTER 4. COMMISSION AND DEPARTMENT

§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 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.

(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, 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 (n) of Section 7056, shall evaluate the management system and may recommend modifications of that system to the commission.

CHAPTER 5. FISHERY MANAGEMENT PLANS--GENERAL POLICIES

§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) Sections 7070 to 7088, inclusive, do not apply to the white seabass fishery.

(b) Part 1.5 (commencing with Section 7000) does not apply to any fishery other than to the white seabass fishery.

(c) Any fishery management plan adopted on or before January 1, 1999, pursuant to Part 1.5 (commencing with Section 7000) shall remain in effect until amended pursuant to Part 1.5 or this part. Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any fishery management plan adopted pursuant to Part 1.5 (commencing with Section 7000) and in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

§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 such scientific information or other relevant information that can be obtained without substantially delaying the preparation of the plan, based on the schedule developed pursuant to paragraph (5) of subdivision (b) of Section 7073.

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

(d) 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 (g) 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 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 plan 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 re-submission 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 (4) 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 (e), 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.

CHAPTER 6. FISHERY MANAGEMENT PLAN PREPARATION, APPROVAL, AND REGULATIONS

§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 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.

§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 rule making 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 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.

CHAPTER 7. CONTENTS OF FISHERY MANAGEMENT PLANS

§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 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, 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.

CHAPTER 8. NEW OR DEVELOPING FISHERIES

§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 fisheries and other marine-dependent activities. It is therefore the intent of the Legislature that the commission, upon recommendation of the department, shall have the authority to 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 or for 12 months, whichever is shorter.

(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 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 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. Such fees may include, but not be limited to, ocean fishing stamps and permit fees. Such 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.