Appendix I. The Fish and Game Commission's Policy on Restricted Access

It is the policy of the Fish and Game Commission to:

The policies in this document provide a source of information for the public and a guide for the Commission and Department in preparing and reviewing legislation, regulations, or policies that propose to restrict access to commercial fisheries. The development and adoption of these policies do not represent an initiative to apply restricted access approaches to all California fisheries. The objective is primarily to guide the Commission and Department in responding to requests for restricted access programs.

1. Restricted Access as a Management Tool

The global context. Virtually every modern fishery faces--or has faced--similar intractable management problems. Because these problems recur in so many dissimilar fisheries, it is clear that they are not caused by the biology of the species harvested, nor do they depend on the type of gear or size of vessel employed by harvesters.

The one factor common to all of these fisheries is that the fishery resources are available to anyone who wants to pursue them. Once a fisheries management authority specifies the total catch, the season length, and the allowable gear, every fisherman competes with every other fisherman to catch as much as possible in the shortest time possible. In some fisheries, bigger and faster boats, more electronics, more gear, longer hours each day and fewer days each season are the result as each fisherman rushes to catch more than the other--the "race for fish" so often described in the fishery management and economics literature. In other fisheries, the problem may just be that the number of participants has increased to a level that jeopardizes the economic viability of the fishery. What makes sense for the individual makes no sense in the aggregate because it results in too many vessels, too much gear, too much waste, and too little income for fishermen. Moreover, excess fishing capacity usually leads to overfished populations of fish, which eventually leads to confrontations between fishermen and fishery managers over the status of the resource and the need for more restrictive regulations. Debate then follows over the need for better data.

The race for fish does not result from inadequate biological information. Population surveys, stock assessments and biological samples are important components of sound fishery management, and improving the science on which management decisions are based is always a desirable objective. But management plans based on better biology alone will not solve problems caused by the economics of the harvest system. Economic problems must be addressed directly.

The most effective solutions to these fishery management problems restrict fishing effort in some way so that the "race for fish" is ended. New entry to a fishery is most often restricted by issuing only a certain number of licenses to participate in the fishery. Existing effort in a fishery is usually restricted by limiting the size of the vessel, limiting the size or amount of gear, or directly limiting the quantity of fish that can be landed.

Theoretically, the "right" number of licenses fished by the "right" size of vessels using the "right" amount of gear can harvest fish more sustainable and efficiently than the unrestricted fleet.

The problems restricted access programs are meant to address can actually become worse if the programs are poorly designed. Because many restricted access programs have been seriously flawed, some fishermen and others lack confidence that they can work. For example, in setting up restricted access programs, fishery managers have sometimes issued licenses to many more participants than are possible for the fishery to be both sustainable and economically viable for its participants. Clearly, expanding the fleet can have no effect on slowing the race for fish. Just as important, effort restrictions, such as those on the size of vessels or amount of gear, have sometimes been insufficient to restrain fishing power. Finally, managers sometimes address only one dimension of the race for fish by restricting access without also restricting capacity expansion by existing fishermen.

Because these mistakes have been frequent, it is sometimes said that restricted access doesn't work. What does not work is a management system that lacks the clear policies, the will, and the compassion to design and implement restricted access systems that reconcile the need of fishermen to make a living with the need to restrict total harvest. The set of policies in this document are intended to provide guidance on restricted access programs for the Commission, the Department, the fishing industry, and other interested members of the public.

The California context. Because California historically did not restrict the number or amount of fishing effort allowed to harvest fish, the State's commercial fisheries generally are overcapitalized: they have the physical capacity to exert more fishing pressure than the resources are able to sustain. Loss and degradation of marine and anadromous habitats and other ecological changes have aggravated this condition of excess fishing capacity.

The build-up in harvest capacity began with the advent of ocean commercial fishing in the mid-1800s and accelerated following World War II. Vessels became larger and faster, have greatly increased fishing power and hold capacity, and use a wide variety of electronic innovations to find and catch fish. At the same time, increasing knowledge of the behavior of target species have made fishermen increasingly skilled at their trade.

Since the early 1980s, various programs have been implemented, through statute or regulation, to limit the number of commercial vessels or fishermen allowed to use specific types of fishing gear or to harvest specific species or species groups of fishes. These programs have seldom resulted in adequate reduction in the overall fishing capacity for those species. They sometimes have been effective in capping the number of fishery participants; however, an unintended consequence has been a shift in effort from restricted fisheries to open access fisheries that were already fully developed.

The lack of consistent policies for guiding the development of restricted access fisheries has resulted in a myriad of laws and regulations. These are confusing to the industry, difficult for the Department to interpret and administer, and, in some cases, of questionable benefit to the fishery or the resource they were intended to protect.

Potential benefits. Properly designed, restricted access programs can enhance the State's ability to manage its commercial fishery resources. Restricted access programs should:

- Contribute to sustainable fisheries management by providing a means to match the level of effort in a fishery to the health of the fishery resource and by giving fishery participants a greater stake in maintaining sustainability;
- Provide a mechanism for funding fishery management, research, monitoring, and law enforcement activities;
- Provide long-term social and economic benefits to the State and fishery participants; and
- Broaden opportunities for the commercial fishing industry to share management responsibility with the Department.

Need for other fishery management tools. Restricted access programs are important tools for fishery managers, but they do not eliminate the need for other fishery management measures, such as gear restrictions, time and area closures, size limits, landing quotas, total allowable catches, and related measures. In all fisheries, a minority of vessels or divers catches most of the fish. Statistics show that a major fleet size reduction would be required to significantly reduce the fleet's fishing capacity. A severe restriction in the number of fishery participants, while perhaps contributing to fishery sustainability, can have other consequences that are undesirable: processors may have difficulty acquiring fishery product, for example, and the control of harvest might shift to a few individuals. Laws or regulations that limit the amount of gear that vessels may use or that restricts the amount or size of fish that may be taken are usually important in ensuring that restricted access initiatives achieve the desired benefits.

POLICY 1.1: The Commission and the Department may use restricted access programs as one of a number of tools to conserve and manage fisheries as a public trust resource.

2. General Restricted Access Policy/Goals and Objectives of Restricted Access Programs

California's fisheries are a public trust resource. As such they are to be protected, conserved and managed for the public benefit, which may include food production, commerce and trade, subsistence, cultural values, recreational opportunities, maintenance of viable ecosystems, and scientific research. None of these purposes need be mutually exclusive and, ideally, as many of these purposes should be encouraged as possible, consistent with resource conservation.

Fisheries are also a finite and renewable resource. If harvest and other human-caused factors affecting their health are not managed, fishery resources may be less than optimally productive or, in the worst case, may suffer serious declines. Therefore, as part of a program of controlling harvest, it is appropriate to control the amount of fishing effort applied in a fishery, including restrictions on the number of individuals or numbers of vessels participating. Restricting access to a fishery has become one of many standard fishery management tools that have been used by public agencies in carrying out their conservation and management responsibilities for publicly held finite fishery resources.

In general, the goals of restricting access to commercial fisheries are to contribute to the effective conservation and management of the State's marine living resources, provide long-term social and economic benefits to the commercial fishing industry and the State, and retain the public ownership status of those resources. More specifically, the Commission's purposes for restricting access or entry to a fishery are described as being to: 1) promote sustainable fisheries; 2) provide for an orderly fishery; 3) promote conservation among fishery participants; and 4) maintain the long-term economic viability of fisheries. Restricted access programs may be instituted in order to carry out one or more of these purposes in a given fishery.

Promote sustainable fisheries - Depending on the fishery, limiting the fishing capacity of the fishery by limiting the number of individual fishermen or vessels may be one means of reducing take in order to protect the fishery resource. In most instances, reducing the number of individuals or vessels alone will not in itself reduce take unless it is accompanied by complementary measures such as trip limits, quotas, seasons, or gear limitations. Together, restrictions on access coupled with other measures can be an effective way of controlling effort to protect fishery resources and contribute to sustainability.

Provide for an orderly fishery - Extreme overcapitalization can lead to unsafe conditions as part of the competition among fishery participants, as in the case of "derby" fisheries. Properly designed restricted access programs can promote safety in those circumstances. Where fishing grounds are limited due either to geographical factors or fish congregating in small areas where harvest occurs, it may be necessary to limit the number of individuals or vessels involved in the fishery. The herring roe fishery is one example of where restricted access was established primarily for the purpose of maintaining an orderly fishery.

Promote conservation among fishery participants - Limiting the number of individuals or vessels in a fishery can give those in the fishery a greater stake in the resource, a sense of ownership, and confidence that a long-term opportunity exists in the fishery that usually does not exist in open access fisheries. A well-designed restricted access program can give fishery participants greater incentive to be stewards of that resource and even to invest in rebuilding the fishery (the commercial salmon stamp program, for example). Limiting access can also increase compliance with fishery regulations since an individual with a restricted access permit is much less likely

to risk losing the opportunity to participate in that fishery because of a fishery violation.

Maintain the long-term economic viability of fisheries - To assure the greatest economic benefit to society from the harvest of a public fishery resource, it may be necessary to limit the number of individuals or vessels to assure economically viable fishing operations. When open access contributes to the impoverishment of fishery participants or illegal or unsavory behavior by participants competing for the limited resource, some form of restricted access based on economic viability may be necessary. Any restricted access program established, entirely or in part, for the purpose of economic viability must be crafted to avoid restricting access more than is necessary.

POLICY 2.1: The Commission may develop restricted access programs for fisheries that retain the public ownership status of the resource for one or more of the following purposes: 1) to promote sustainability; 2) to create an orderly fishery; 3) to promote conservation among fishery participants; 4) to maintain the long-term economic viability of fisheries.

3. Development and Review of Restricted Access Programs

Participation of stakeholders in program development. Restricted access programs should be developed with substantial support and involvement from stakeholders. Indeed, many of California's current restricted access programs were drafted by, or with considerable input from, the affected fishermen (the salmon, herring, Dungeness crab, and sea urchin fisheries, for example). Programs in which fishery participants and others have a substantial role in the design benefit from their knowledge of both the resource and the business aspects of the fishery. Such programs are also more likely to enjoy the support of fishery participants during implementation. Furthermore, any restricted access program must be developed consistent with the stakeholder participation requirements of Section 7059 of the Fish and Game Code.

Programs specific to the needs of the fishery. Standardization in the elements of restricted access programs is a laudable goal and could help reduce some of the complexity fishermen and the Department are faced with when dealing with different requirements for different fisheries. However, the overriding concern is that each restricted access program meets the needs of its particular fishery.

Each of the existing restricted access programs in California fisheries was designed to meet the needs of a particular fishery. As a result of periodic reviews of those programs, it may be possible to reduce some of the complexity that has resulted. However, a program should not be revised solely for the purpose of uniformity or consistency if there is a sound basis for the unique features of the program.

Program review. Restricted access programs need periodic review for possible revision. Restricted access programs should be reviewed periodically by the Department and fishery participants in the particular fishery to determine whether the

program still meets the objectives of the State and the needs of the fishery participants. For the statutorily created restricted access programs, this review should take place preceding the expiration ("sunset") dates when the law is under consideration for extension. In addition, this restricted access policy should be reviewed at a regularly scheduled Commission meeting at least once every four years following its adoption.

POLICY 3.1: Restricted access programs shall be developed with the substantial involvement of participants in the affected fishery and others, consistent with the stakeholder participation requirements of Section 7059 of the Fish and Game Code. This approach shall balance the specific needs of the fishery with the desirability of increasing uniformity among restricted access programs in order to reduce administrative complexity.

POLICY 3.2: Each restricted access program shall be reviewed at least every four years and, if appropriate, revised to ensure that it continues to meet the objectives of the State and the fishery participants. Review of each restricted access program shall occur at least as often as the particular fishery is reviewed in the annual fishery status report required by Section 7065 of the Fish and Game Code. The general restricted access policy should be reviewed at a regularly scheduled Commission meeting at least once every four years following its adoption.

4. Elements of Restricted Access Programs

Categories of restricted access fisheries. Existing restricted access programs in California generally are based on target species or species groups of the fishery. The Commission expects that most new restricted access programs will follow that pattern.

Another option that may be appropriate for some fisheries, or groups of fisheries, is basing the restricted access system on gear type. Sixteen species or species groups of fishes comprise 90 percent of the State's commercial fish landings, although only a relatively few basic gear types produce the entire catch. As a means to minimize the number of programs and provide greater flexibility for fishery participants, the Commission and Department could base each restricted access program, first, on the gear type and then, if necessary, on endorsements for the species or species groups that are the target of that gear type. Where possible, the entire range of species (i.e., multi-species, ecosystem approach) contacted by a particular gear type would be included in the same program.

Additional flexibility would be provided in instances in which a fishery participant converted a restricted access permit from one gear type to another. Whether such conversions are allowed would be decided on a fishery-by-fishery basis depending on whether the conversion is consistent with the State's sustainable fisheries policies and the objectives of the two restricted access programs involved.

Each restricted access program should take into account possible impacts on open

access fisheries and on other restricted access fisheries.

Fishery capacity goals and means to achieve capacity goals. Because a primary purpose of restricted access programs is to match the level of effort in a fishery to the health of the fishery resource, each restricted access program that is not based on harvest rights (see section on harvest rights) shall identify a fishery capacity goal intended to promote resource sustainability and economic viability of the fishery. Fishery capacity goals can be expressed as some factor or combination of factors that fairly represents the fishing capacity of the fleet. These factors may include the number of permitted fishery participants, number of permitted boats, net tonnage of the permitted fleet, amount of gear used in the fishery, and cumulative hold capacity. Fishery capacity goals should be based on such biological and economic factors as what is known about the size and distribution of the target species, historic fleet size or harvest capacity, and distribution of harvest within the current fleet. Conflicts with other fisheries or ocean interest groups and economic conditions (current and future) within the fishery may also be factored in to such determinations. Depending on the fishery, the fishery capacity goal may be expressed as a single number or as a range.

The preferred approach to determining the capacity goal is to conduct a biological and economic analysis of the fishery. The analysis should consider the probable level of resource sustainability and the impact of various fleet capacities on the fishery and local communities. When such an analysis is not feasible, the Commission, Department, and stakeholders should work together in reviewing available information to arrive at a reasonable capacity goal for the fishery.

Capacity goals should be included in each restricted access program review. A fishery capacity goal will not be useful in managing effort in a fishery unless the restricted access program includes mechanisms for achieving the goal. If the fishery is overcapitalized and above its fishery capacity goal, there must be a system to reduce capacity as a basic requirement of the restricted access program. If the fishery is below its capacity goal, there must be a method to increase participation. In fisheries that are above their fishery capacity goals, transfers of permits should be allowed only if they are consistent with the system for achieving the fishery capacity goal (see Permit Transfers section).

In restricted access fisheries in which the permit is vessel based, the system for achieving fishery capacity goals must include a means of comparing and controlling the fishing power of individual vessels. Without that ability, the system controls only one aspect of fishery capacity–the number of vessels--without providing a means to manage the fishing power of those vessels (see policies on Permit Transfers and Replacement Vessels). The system may be based on factors such as vessel length, displacement, horsepower, hold capacity, or allowable amount of gear.

There are several options available to reduce the number of permits to meet fishery capacity goals. A few examples include:

- Attrition--permit reduction when permit holders fail to renew their permits--has contributed to reducing effort in some fisheries. That process is slow, however, and only occurs when the outlook for the fishery is so poor that the permit has little value.
- "Two-for-one" or similar requirements in transfer of permits have been used in several fisheries to reduce capacity and are effective if there is an active market for permits.
- Annual "performance" standards can be required of each permit holder. For example a minimum number of landings could be required to qualify for permit renewal. This approach may be appropriated in some fisheries although it can artificially increase effort.
- Permit or vessel buybacks have been used in a few fisheries and being explored for others in the United States. California's experience with this system is limited to nearshore set gill nets in Southern California. Buyback programs have been funded by both industry (through permit transfer fees, landing fees, special permit fees, etc.) and the public.

POLICY 4.1: Each new restricted access program shall be based either on one or more species or species groups targeted by the fishery or on a type of gear. In programs based on a type of gear an endorsement may be required for one or more species or species groups targeted by the gear type. Each restricted access program should take into account possible impacts of the program on other fisheries.

POLICY 4.2: Each restricted access program that is not based on harvest rights shall have a capacity goal. The Commission, Department and stakeholders will use the best available biological and economic information in determining each capacity goal.

POLICY 4.3: Each restricted access fishery system shall have an equitable, practicable, and enforceable system for reducing fishing capacity when the fishery is exceeding its participation goal and for increasing fishing capacity when the fishery is below its fishery capacity goal.

POLICY 4.4: In fisheries that exceed their fishery capacity goals, permit transfers will be allowed only if they are consistent with the means for achieving the fishery capacity goal.

5. Permits

Issuance of initial permits. The public will be given reasonable notice of intent to limit access to the fishery. A legislative bill may serve as an initial notice of intent or the Commission may take an action that serves as a notice of intent.

The Commission may set a Control Date for determining qualification for a restricted access program. Some level of fishery participation may be required to qualify for an

initial permit. Fishery qualification can be based upon fishery participation during a period of time preceding notification of intent. In determining criteria for qualifying for the program, the Commission may consider the balance of gear types currently or historically relying on the fishery or the specialty markets or niches that the fishery was intended to serve. Fish landing data maintained by the Department shall be the basis for documenting fishery participation. Affidavits of fishery participation, or medical statements of inability to meet qualification standards shall not be accepted unless a system for considering exceptions, consistent with Policy 5.1, is included in the design of the restricted access program. Vessels under construction or inoperable during the qualification period shall not be considered for a permit.

California has had a practice--shared with other states, the Federal government, and other nations--of giving preference for issuing permits into a restricted access fishery to fishermen or vessels with past participation in that fishery. The practice has meant, as well, that permits generally have been issued to licensed California commercial fishermen rather than to nonfishermen or persons not licensed in the State. The practice is a fair means to assure that those who rely on that fishery or who have invested in that fishery can remain in the fishery. In determining priorities for the issuance of permits in a restricted access fishery, first priority for permits shall be given to licensed commercial fishermen/vessels with past participation in that fishery. Among fishermen or vessels with past participation in the affected fishery, preference for permits may be based on factors such as years of participation in the fishery or level of participation (landings). Second priority for permits may be based on such factors as crew experience, number of years in California fisheries, or participation in fisheries similar to that for which a program is being developed (An example of a similar fishery being considered for eligibility for a permit was when displaced abalone divers were added to those eligible for any new sea urchin permits). Drawings or lotteries for permits should only be used when two or more applicants have identical qualifications (for example, the same number of points for eligibility for a herring permit).

When initiating a restricted access program with vessel-based permits, designing a formula for deciding which vessels qualify that is equitable but does not increase the number of permits or the amount of effort already in the fishery is difficult but necessary. Without such a formula, the program can easily exacerbate the fishery's problems. The Commission's policy on this issue has three elements. First, the policy for all restricted access fisheries begins with the premise that initiating a restricted access program must not increase the recent level of fishing effort. Second, the default approach in designing a new program will be to issue initial permits only to the current owners of qualifying vessels. Third, in order to meet the needs of a particular fishery, it may be desirable to modify the approach of giving permits only to current owners of qualifying vessels.

Such exceptions would be decided fishery by fishery, but in no case would the formula allow increasing the recent level of effort.

A permit issued for dive, gill net, and some trap fisheries shall be issued to qualifying

fishermen. A permit issued for a boat-based fishery may be issued to: 1) an individual who owned a qualifying vessel during the period in which the vessel qualified, and 2) 20-year commercial fishermen (as provided in Section 8101 of the Fish & Game Code).

Issuance of new permits. In the case of restricted access fisheries that are below their fishery capacity goals, new permits may be issued. The factors used to determine priority for issuance of new permits might be the same as for the issuance of initial permits.

Permit renewal and duration. Permits are renewable annually upon application and payment of the permit fee if the permit holder meets the requirements of the restricted access program. Permits may be renewed annually for the life of the restricted access program. Limiting participation to a period less than the actual life of the limited access program has several drawbacks. First, it could eliminate incentive for conservation among permit holders if they know that their participation in the fishery will be limited. Second, a limitation on permit life would tend to discourage investment and diminish value of existing investment (vessels, for example) in the fishery. New investment in many fisheries is needed for safer, more fuel-efficient vessels, for equipment to maintain quality of the catch, and for changing gear. That will be discouraged if the duration of the permits is limited.

Substitutes. Each restricted access program with fisherman-based permits should determine whether substitutes for the permit holder will be allowed and, if so, in what circumstances and for what length of time. One option is that the permit holder must be present. Some programs have allowed temporary use of the permit by another in the case of death or disability of the permit holder.

POLICY 5.1: The Commission will give adequate public notice of intent to establish a restricted access program. The Commission may set a Control Date for determining qualification for a restricted access program. A new restricted access program shall not allow fishing effort to increase beyond recent levels. Some level of fishery participation may be required to qualify for an initial permit. Fishery qualification can be based upon fishery participation during a period of time preceding notification of intent or on other factors relevant to the particular fishery. Affidavits of fishery participation or medical statements of inability to meet qualification standards shall not be accepted. Vessels under construction or inoperable during the qualification period shall not be considered for a permit.

POLICY 5.2: New permits in a restricted access fishery shall only be issued when the fishery is below its fishery capacity goal.

POLICY 5.3: Restricted access fishery permits shall be of one year duration and are renewed upon annual application and payment of the permit fee and shall be valid, provided they are annually renewed and the permit holder meets the requirements of the restricted access program for the life of the program.

POLICY 5.4: Each fisherman-based program shall determine in what circumstances, if any, a substitute may fish the permit.

6. Permit Transfers.

Permits within a restricted access program may be transferable or not, depending on the fishery. California currently manages some restricted access fisheries in which the permits are not transferable. Although non-transferable permits may be appropriate for some fisheries, the Commission expects that the trend will be toward transferability. First, permit transferability can and should be used as part of the mechanism for reducing capacity in a fishery that is above its capacity goal. Second, permit transferability allows for new entry into a restricted access fishery, particularly for younger fishermen or crew. Third, permit transferability protects part of an individual's investment in a fishery.

In California, as in nearly all states and federally managed fisheries, most limited access permits are transferable. Although a number of limited access fishery programs in California initially did not allow for permit transfers, these systems were found unworkable. Permit holders, even the aged, the sick, or those seeking to leave the fishery, held on to their permits, attempting in many instances to have the permit fished by another, non-permitted, individual. Non-transferability encouraged some fishery participants to work around the program rather than within it. Moreover, fishing vessels, particularly the larger ones or those built for a specific fishery, were rendered useless if there was no permit to go with them at the time of sale. For fishermen, as is the case with small business owners or farmers, their retirement funds are derived from the sale of their business, which in the case of a fisherman may be his/her vessel.

Fully transferable permits in restricted access programs have been criticized for the following reasons: 1) sales of permits on the open market can make the cost of entry into a fishery for young fishermen or crew extremely expensive and does not assure that the most deserving individuals obtain permits, 2) sales of permits on the open market can result in windfall profits for those individuals who were initially issued a permit by the State and whose investment in the permit has only been the payment to the State of the permit fee; and 3) sales of permits on the open market can result in permits going to more active participants or to larger vessels deploying more fishing effort thereby increasing the fishing effort or capacity of the fleet. To the extent that these criticisms are valid, they can, and currently are in California, being addressed through conditions placed on permit transfers.

In order to prevent an increase in fishing power, in California's salmon limited entry program permits are transferable with the fishing vessel at the time of sale or to another vessel of equal or less fishing capacity, under specified conditions.

In the herring fishery, where the permit is to the individual rather than the vessel, permit transfers may only be made to a fishing partner or an individual holding a maximum number of points in that fishery, with points based on years of crew experience and

years in California fisheries. This limitation on transfers is intended to give an advantage to those who have spent time in the fishery. Thus, those deserving of a permit are given a preference. By limiting the market for permit sales, the cost of entry is lower than it would be if the permits were available on a wide open market.

It is also possible to prevent increases in fishery capacity and reduce speculation in permits by setting fishery participation criteria in selected qualifying years for a permit to be transferable, or by requiring that the permit be held for some minimum number of years before it can be sold.

It is possible, as well, for the State and other participants in the fishery to benefit from the sale of permits through transfer fees or two-for-one permit transfer requirements. In California, there are transfer fees in some restricted access fisheries where the fees exceed the cost of administering a change in the permit. A transfer fee addresses the concern that permit holders may be making windfall profits from the sale of permits and can allow the State to share in the economic benefits of good conservation and management measures. Other participants in the fishery can benefit if the permit transfer fees are re-invested in the fishery, such as through a permit buyback program. Both the State and participants in the fishery can benefit through two-for-one permit transfer requirements if they are used to help reach a fishery capacity goal.

POLICY 6.1: Restricted access permits may be transferable. In fisheries in which the permit is transferable, transfer may be subject to conditions that contribute to the objectives of the restricted access program. In new restricted access programs, permit transfers will not be allowed unless a fishery capacity goal and a system for achieving that goal are part of the restricted access program. In existing restricted access programs, the objective is to review and revise those programs to include fishery capacity goals and systems to achieve those goals. A restricted access program may include a fee on the transfer of permits, in excess of actual administrative costs for the permit change, to offset other costs involved in the conservation and management of that fishery.

7. Vessel Issues

Vessel retirement. All vessel-based restricted access programs should provide for the voluntary retirement of commercial fishing vessels so that these vessels are no longer eligible to compete with permitted vessels in future years. Any vessels requested by the owner to be retired will be permanently identified on registration documents required for commercial vessels. Permits from retired vessels may be allowed to transfer to replacement vessels within one year of retirement provided the replacement vessel is of equal or lower fishing capacity or to a larger vessel if the restricted access program provides for vessel upgrades (see section on vessel upgrades).

Replacement vessels. Replacement vessels of the same or lower fishing capacity as the permitted vessel will be allowed only if the permitted vessel is lost, stolen, or no longer able to participate as a commercial fishing vessel, as shown on State or

government documents, or other sources of information that the Department might consider. This requirement is necessary to preclude effort shift to open-access and other restricted access fisheries. The Department will make replacement vessel determinations. The ownership of the replacement vessel, as shown on government documents, shall be same as the permitted vessel.

Vessel permit upgrades. Fishermen who hold vessel permits may want the option of acquiring a larger or more efficient vessel and transferring their existing permits or acquiring and adding new permits to the new vessel. The concern with allowing fishermen to upgrade their vessels is that by doing so the overall capacity of the fleet to catch fish increases, which should be allowed only to the extent that it is consistent with the fishery capacity goal. To offset this increase in fleet harvest capacity in fisheries that are above their fishery capacity goal, a permit consolidation process is needed whereby two or more permits can be combined to allow for the permitting of a single larger vessel. This is not a new concept in restricted access programs elsewhere. The Pacific Fishery Management Council, for example, uses a formula based on vessel length and capacity that allows for combining permits to allow for larger vessels in the groundfish fishery. In the California salmon fishery, vessel length is used by the Salmon Review Board in approving or denying vessel transfer requests for vessels in the 20-to 40-foot range.

Support vessels. In some fisheries, the use of support vessels can substantially increase the available fishing power of the fleet. In such restricted access fisheries with vessel-based permits, only vessels with a permit for that fishery should be allowed to support fishing operations of other permitted vessels. Non-permitted vessels shall not be allowed to attract fish for permitted vessels or to receive fish from permitted vessels for landing. In programs in which the permit is fisherman based, the use of support vessels may be allowed if they do not create significant enforcement problems or significantly add to the capacity of the fishery, but a registration fee may be required that is the same as the annual permit fee paid by a fishery participant.

POLICY 7.1: Vessels requested to be retired by the vessel owner will no longer be eligible to participate in commercial fisheries in California.

POLICY 7.2: Replacement vessels of the same or lower fishing capacity as the permitted vessel will be allowed only if the permitted vessel is lost, stolen, retired or no longer able to participate as a commercial fishing vessel.

POLICY 7.3: Each restricted access program that allows for vessel permit transfers may allow for vessel upgrades provided a permit consolidation/vessel retirement process consistent with the fishery capacity goal is made part of the program.

POLICY 7.4: A restricted access program may prohibit the use of support vessels or require that they be permitted in the fishery or that they pay a fee comparable to the permit fee.

8. Harvest Rights

Background. Harvest rights, often called individual transferable quotas (ITQs), involve the assignment of the exclusive rights to harvest a share of the annual total allowable catch (TAC) in a fishery. Harvest rights systems are a form of restricted access programs in that participation in the fishery is restricted to those who own quota shares. Setting TACs has been a key element in determining quota shares. The State or nation retains ownership of the fisheries resource. In most cases, individual quota systems have been implemented in fisheries with previously established limited entry programs. These individual quotas can be allocated for specific time periods, but most often are allocated in perpetuity. Individual quotas are often allocated for specific geographic areas such as the International Pacific Halibut Commission's zones. Usually, individual quotas are fully transferable (buy, sell, lease) to allow quota owners to optimize their business activities. Transferability of quota shares allows fishermen to move between fisheries. In exchange for this exclusive harvest right, quota owners usually are required to pay the costs of management, enforcement, and research. This cost recovery often leads to increased involvement of industry in research and management.

Harvest rights have usually been allocated to vessel owners. In some fisheries around the world quotas have also been allocated to communities, processors, and fishermen's organizations. Limits on the amount of quota harvest rights each entity can hold are set to prevent excessive aggregation. Aggregation limits currently range from 0.5 percent in Alaska's halibut fishery to 35 percent in some New Zealand offshore fisheries.

Similar management systems have been used to allocate fishing gear units instead of shares of a TAC. A tradable lobster trap certificate program developed by fishermen in the southeastern United States is an example.

When these restricted access policies were adopted (1999) industry comment was negative in regard to harvest rights systems. Nonetheless, these programs have become a tool for managing fisheries in various parts of the world, with the herring-roe-on-kelp fishery in California being one example. This policy acknowledges the existence of this tool as well as the complex issues that must be dealt with in developing any harvest rights program. The Commission may consider recommending development of a harvest rights program after careful consideration of stakeholder input.

The first 15 years of experience with individual quota management has shown that they end the race for fish and provide incentives to fishermen to change their business to maximize revenues and minimize costs. However, individual and community transferable quota systems have been controversial in the United States. In the Sustainable Fisheries Act of 1996, Congress placed a four-year moratorium on implementation of new ITQs and instructed the National Academy of Sciences to conduct a thorough study. In December 1998, the NAS study recommended that Congress end the moratorium.

Numerous issues have arisen when individual quotas are implemented and need to be considered:

1. Allocation of Initial Quotas. This usually, but not always, has been based on historical catches and/or vessel fishing power. The NAS study recommends that alternative methods of initial allocation be considered in addition to catch histories. Who receives the allocations (fishermen, processors, communities, tribes, etc.) must be determined and other issues resolved. Will initial allocation be free? Will the harvest right be for a certain time or perpetuity? Who is and is not eligible to obtain quota?

2. Catch Histories. If initial harvest rights are based to some degree on catch histories, accurate individual vessel or fisherman landing data is needed.

3. Transferability. The degree to which quotas are transferable (buy, sell, lease, "fishing on behalf of") must be determined.

4. Total Allowable Catches. Assuming individual quotas are a percentage of the TAC, in order to determine how much actual quota each quota owner may harvest, a TAC will have to be set. Setting TACs requires high quality resource assessment information and scientifically sound estimates of sustainable yields.

5. Aggregation Limits. Limits on the amount of quota an individual, company, community or other entity may hold needs to be considered, perhaps on a fishery by fishery basis.

6. Enforcement and Monitoring. Emphasis would likely shift towards enforcement methods to prevent quota holders from under-reporting their catches. Methods used elsewhere include increased record keeping/tracking of catches, limiting number of landing ports and increased use of industry-funded monitors at landing ports.

7. Cost Recovery. Most individual quota systems include, at a minimum, methods for having quota owners pay the cost of managing the system.

8. Processor-Fishery Participant Relationships. Depending on who winds up owning the harvest right, this relationship might change. Past experience shows that the quota owner will have increased influence on fishing decisions.

9. Quality Considerations. Early experience with individual quotas shows a consistent trend towards maximizing quality to maximize prices received. This could affect the timing and location of fishing and the other types of regulations needed.

POLICY 8.1: It is the policy of the Commission that harvest rights systems such as individual transferable quotas may be considered only after careful

consideration of stakeholder input. In establishing such management systems, the State should consider: (1) fair and equitable initial allocation of quota shares which considers past participation in the fishery, (2) resource assessment for establishing total allowable catch estimates, (3) fishery participation goals and aggregation limits, (4) cost recovery from quota owners, (5) quota transferability, and (6) recreational fisheries issues.

9. Administration of Restricted Access Programs

Administration. Administrative costs should be minimized by requiring easily understood regulatory or statutory language including a minimum of exceptions to the main provisions. The use of review or advisory boards may be considered on a program-by-program basis. Board members should be reimbursed for travel and per diem expenses. The total cost for administration of each program should be borne by that program.

The Department will determine what unit is responsible for program administration and make all determinations relating to vessel fishing capacity.

Cost Accounting. Fees collected from restricted access initiatives should, for cost accounting and reporting purposes, be deposited in a single, dedicated Restricted Access Fishery Account within the Fish and Game Preservation Fund. Charges would be made against the account for direct restricted access program support. A fund condition and activity report should be published annually and include the amount of funds received from each restricted access fishery and the distribution and expenditure of those funds.

Enforcement. Restricted access programs should provide specific disincentives for violations of pertinent laws and regulations. Provision for a Civil Damages schedule, pursuant to regulations of the Commission, can serve in this regard. Because restricted access programs confer benefits to permit holders that are denied to those not in the fishery, penalties should be high for violations of the provisions of restricted access programs.

Restricted access programs should minimize enforcement costs. New technologies such as satellite-based vessel tracking are available and can be required of commercial fisheries that operate under Federal fishery management plans. Commission authority to require such technology, if deemed desirable, should be a part of any legislation or regulation creating a restricted access fishery. Enforcement staff will be responsible for monitoring the vessels and enforcing the pertinent laws and regulations. Enforcement costs for restricted access fisheries should be borne by the restricted access programs.

POLICY 9.1: Administrative costs shall be minimized and those costs shall be borne by the respective programs. Review or advisory boards may be considered on a program-by-program basis. The programs shall be administered

in their entirety within an existing department unit.

POLICY 9.2: Fees collected from restricted access initiatives may, for cost accounting and reporting purposes, be deposited in a single dedicated Restricted Access Fishery Account within the Fish and Game Preservation Fund. A fund condition and activity report should be published annually.

POLICY 9.3: Restricted access programs should provide specific disincentives for violations of pertinent laws and regulations. Enforcement costs of restricted access programs should be minimized through the use of new technologies or other means.