Appendix F. Public Input

Prior to preparing the initial and amended draft environmental documents, the Department developed notices of preparations (NOP). The notices were provided to individuals and organizations that have expressed prior interest in Commission regulatory actions. The NOPs were also submitted to the State Clearinghouse for distribution to appropriate responsible and trustee agencies for their input and comments. No comments were received in response to the NOPs.

1. Summaries of Public Hearings and Meetings

1.1 Initial White Seabass Fishery Management Plan

In addition to the NOPs, the Department conducted three public meetings with a sub-panel of the Director's Marine Resources Advisory Committee (11 October 1994; 31 January 1995; and 31 March 1995) and three public meetings with a panel of scientists (24 October 1995; 06 February 1995; and 09 March 1995) chosen to advise the Department on WSFMP preparation.

At the Commission's 04 August 1995 and 03 November 1995 meetings, the Department provided the Commission information regarding background leading to the development of the draft WSFMP (environmental document), how the draft WSFMP was developed, and what the draft WSFMP proposed to do. Also, the Commission received public testimony on the draft WSFMP at these meetings.

The combination of Department and public testimony, and the discussion of the draft WSFMP's proposed consolidation of management and regulatory authority for white seabass at the 03 November 1995 meeting prompted the Commission to direct the Department to revise the draft WSFMP. The revision, provided for by §7022 FGC, was to reflect that the Commission would have authority for management and regulation of the recreational and commercial white seabass fisheries.

The environmental document that constitutes the WSFMP was revised as directed by the Commission. To comply with CEQA requirements, the revised WSFMP was sent out for a 45-day public review and comment period. Following the end of the public review period, the Department informed the Commission of the public comments and the Department's responses to those comments. The Commission adopted the revised WSFMP on 08 March 1996.

1.2 Amended White Seabass Fishery Management Plan

Amendment of the 1996 version of the WSFMP to bring it into compliance with the MLMA began in October 2000. Under FGC Section §7071(a), the previous plan is to remain in effect until the amended version is brought into compliance with the MLMA

(1998) and adopted by the Commission. On 30 January 2001, the first advisory meeting concerning the WSFMP revision took place. The purpose of the meeting was to provide the Department with feedback and recommendations from constituent groups regarding the development of an MLMA-compliant WSFMP. The next advisory meeting was held 04 June 2001. Management alternatives were discussed, and a preferred management option was agreed upon.

On 05 July 2001, an amended WSFMP was sent out for a 45-day public review period to comply with CEQA requirements. The document was presented to the Commission on 04 August 2001 and public comments were given at the following two Commission meetings (24 August 2001 and 05 October 2001). At the 05 October 2001 meeting, the Department informed the Commission of public comments following the end of the 45-day public review and the Department's responses to those comments.

On 05 July 2001, the revised WSFMP was sent out to a scientific panel for review. The Department received a summary of the scientific review panel's comments and recommendations in early October 2001 and met with the panel on 29 October 2001 to discuss the panel's comments at length. As a result of the scientific review panel's comments on the WSFMP, the Department did not present it to the Commission in January 2002 as originally planned. Also, on 18 December 2001, the Department met with the ad hoc White Seabass Advisory Committee (WSAC) to inform it of the scientific review panel's comments and recommendations. On 22 January 2002, the Department and WSAC met a second time to discuss changes the Department was recommending in order to incorporate several of the scientific review panel's recommendations into the revised WSFMP. The WSAC agreed to the Department's recommended changes to the WSFMP. The WSFMP is scheduled to be presented to the Commission for approval on 04 April 2002.

2. Persons, Organizations, and Public Agencies Commenting on the WSFMP's

2.1 Initial White Seabass Fishery Management Plan

A) Director's Marine Resources Advisory Subpanel and B) Scientific Advisory Panel

A	B
Mr. John Beuttler United Anglers of California	Dr. Larry Jacobsen National Marine Fisheries Service
Mr. Nello Castagnola California Gillnetters Association	Ms. Cindy Thomson National Marine Fisheries Service
Mr. Dan Frumkes United Anglers of California	Dr. Larry Allen California State University, Northridge
Mr. Bill Perkins Western Fishboat Owners Association	Dr. Mia Tegner University of California, San Diego

Mr. Tony West
California Gillnetters Association

Mr. Locky Brown
Greater LA Council of Divers

Mr. Robert C. Fletcher, President
Sportfishing Association of California

Dr. Richard Glenn
United Anglers of California

Mr. Tom Raftican (alternate)

Dr. Ashley Mullen
Inter-American Tropical Tuna Commission

Dr. John Stephens Jr.
Occidental College

Dr. Michael Domeier
Department of Fish and Game
Marine Resources Division

Dr. John Stephens Jr.
Occidental College

Mr. Mike McCorkle (alternate)

2.2 Amended White Seabass Fishery Management Plan

The following individuals acted as members of an ad hoc White Seabass Advisory Committee for the preparation of the amended WSFMP:

Mr. Bob Fletcher
Sporting Association of California

Mr. Tom Raftican
United Anglers of California

Mr. Bob Osborn
United Anglers of California

Mr. Dan Frumkes
Statistician

Dr. Ashley Mullen
Population Biologist,
Inter-American Tropical Tuna Commission

Mr. Gary Burke
Commercial Fisherman

Mr. Tony West
California Gillnetters Association

Mr. Tim Athens
Commercial Fisherman

Mr. Mike McCorkle
Commercial Fisherman

3. Comments Received and Response to Comments

The comments received on the initial WSFMP were incorporated into that document and will not be discussed here. During the Commission meetings on the amended WSFMP, several comments were received. The comments were either in support of the WSFMP or asked for clarification of some aspect of the plan. The comments and the Department's response are listed below:

Comment A. Ron Gaul, Sea Turtle Restoration Project. 04 August 2001 and 24 August 2001.

Mr. Gaul had concerns about the white seabass gill net fishery with regard to potential marine mammal, marine turtle, and seabird mortality; the lack of an observer program; and an observed high rate of discard mortality of finfish in white seabass gill nets. He also wanted the Commission to ensure that the gill net fishery would be conducted in a manner that is safe and sustainable for several named marine resources (See Section D4).

Response:

A1. Discard mortality rate: With regard to the 52% discard mortality rate that Mr. Gaul attributes to the white seabass drift gill net fishery, this number comes from the six year average of observation data from 1983 through 1988, and does not accurately illustrate the discard mortality rate. Analysis of the data shows that the annual discarded mortality rate ranges from 20 to 80%. The disparity in values was the result of two anomalous years, 1985 and 1987. In each of these years, there was an unusually high catch of one species (spiny dogfish in 1985, Pacific sardines in 1987), which skewed the six year average. If the two years are removed, 40% of the catch taken in white seabass drift gill nets were either sold or kept by the fishermen, approximately 35% of fish and invertebrates were discarded alive and about 25% of finfish and invertebrates were discarded dead.

The ratios reported in the study (Vojkovich et al. 1990) do not reflect the bycatch mortality associated with the white seabass gill net fishery relative to the impact of the other gill net fisheries which have higher landings overall. The total number of fish and invertebrates taken by the white seabass fishery compared to the total taken by all gill net fisheries accounted for only 5%. In comparison, the halibut gill net fishery and the white croaker gill net fishery took eight and ten times the number of animals, respectively. Thus, available data suggests that the white seabass drift gill net fishery takes significantly fewer fish compared to other net fisheries.

A2. White seabass gill net fishery should be conducted in a manner that is safe for nontarget species such as marine mammals, turtles and birds: As stated in Chapter 6, of the WSFMP, there are few documented interactions between marine mammals and marine seabirds and no documented take of sea turtles in white seabass drift gill nets. Onboard observation of this fishery during the 1980s found that interactions with marine mammals and seabirds accounted for less than one marine mammal per set day and less than one seabird per every four set days. Based on the NMFS take numbers for pinnipeds, cetaceans and sea birds, this level of take does not impede the long term sustainability of these resources. For this reason, the NMFS does not require onboard observation of this fishery despite its classification as a Category I fishery.

The Department has identified the need to conduct on-board observations of the white

seabass commercial fishing fleet to document possible changes in bycatch composition that may have occurred following Proposition 132, which moved the fleet further offshore in 1994 (Chapter 7, Section 7.4.1).

A3. White seabass gill net fishery should be conducted in a manner that is sustainable for targeted species such as sharks, tunas, billfish, halibut and white seabass: It is unclear from Mr. Gaul's comments if he is addressing the take of the above mentioned species in the white seabass fishery specifically or in drift gill net fisheries generally. However, as for the take of sharks, observation of the white seabass drift gill net fishery identified about a dozen species that were captured in white seabass drift gill nets. The majority were nearshore, kelp bed species such as brown and gray smoothounds, horn sharks, swell sharks, and leopard sharks. Several marketable species of shark (i.e., mako, Pacific angel, soupfin, and thresher) were also taken by this gear. The overall disposition of the shark catch resulted in 18% kept or sold, 51% discarded alive and 31% discarded dead during the six year study. The disposition for unmarketable species or those without size limits was 16% kept for personal use, 74% returned alive and 10% discarded dead. The total number of sharks taken by this fishery during the six year period was less than 3,000. Additionally, the take of shortfin mako and common thresher by all fishing gears has been addressed in the draft Highly Migratory Species Fishery Management Plan prepared by the National Marine Fishery Service.

As for billfish, there has never been documented take of either species group in the white seabass drift gill net fishery. Bluefin tuna and thresher sharks are occasionally captured in gill nets, however, this incidental take is considered insignificant. Further, any questions about the sustainability of these species groups have been addressed in the Pacific Fisheries Management Council's draft Highly Migratory Species Fisheries Management Plan.

Few halibut are taken in the commercial white seabass fishery. During the Department's six year observation project, the entire white seabass fleet took an estimated average of 3,556 lb (1159 kg) of California halibut, which represented less than 0.5% of annual landings during the 1980's. This figure is expected to be even smaller now due to the movement of this fishery outside of three miles along the mainland coast and outside of one mile around the islands. Based on these factors, the take of California halibut by the white seabass fishery is not likely to impact the halibut resource.

<u>Comment B</u>. Mike McCorkle, Commercial fisherman. 04 August 2001.

Mr. McCorkle supported the WSFMP. In addition, he stated that the white seabass drift gill net fishery is one of the cleanest fisheries, and stated that he believed the comments made by Mr. Gaul were politically motivated.

<u>Response</u>: no response.

Comment C. Bob Fletcher, Sportfishing Association of California. 24 August 2001.

Mr. Fletcher stated that allocation was a contentious issue, but it was not necessary to decide that issue now. He went on to say that the Commission should maintain management of white seabass with the existing regulations and with the addition of the proposed harvest guideline.

Response: no response.

Comment D. Eric Hopper, Commercial Fisherman. 24 August 2001.

Mr. Hopper stated that he did not feel that allocation was an issue at this time but he did not agree with the proposed harvest guideline because up to 75% of fishing areas closed to commercial take. He stated that he did not support a harvest limit as it was unnecessary.

Response: no response.

Comment E. Bob Osborne, United Anglers of Southern California. 24 August 2001.

Mr. Osborne agreed with Mr. Fletcher's comments and requested that the WSFMP undergo scientific peer review to assure the correctness of the proposed harvest guideline. In addition, Mr. Osborne requested that the issue of allocation be addressed in the Marine Life Management Act Master Plan as this would provide direction and consistency between all fishery management plans.

Response:

The WSFMP was sent out for scientific peer review on 05 July 2001. The conclusions of the peer review panel were received October 2001 and several of its recommendations of have been incorporated into the latest revision of the WSFMP.

Comment F. Chris Hoeflinger, Commercial Fisherman and Nearshore Advisory Panel member. 24 August 2001.

Mr. Hoeflinger supports the WSFMP proposed project, and hopes that the Nearshore Fishery Management Plan will be of as high quality as the WSFMP.

Response: no response.

Comment G. Ron Gaul for Tom Raftican, United Anglers of Southern California. 04 August 2001.

Mr. Raftican supported the WSFMP but requested the Commission take into consideration the following issues when determining allocation of the white seabass

resource: 1) fishery data, 2) legality of commercial fishing, 3) access, 4) significance to user group, and 5) economic value.

Response:

With the exception of the second item, all of the allocation criteria raised by Mr. Raftican are already part of the Allocation section of the WSFMP. The previous advisory committee spent considerable time on the issue of allocation and their decisions resulted in the allocation criteria that was adopted in the initial white seabass FMP and have been brought forward in the amendment (Section 5.4.3).

The question raised regarding the legality of commercial fishing was addressed by Mr. Joseph Milton, DFG staff counsel:

"At the Fish and Game Commission meeting of August 4, 2001, comments on the White Seabass Fishery Management Plan were submitted on behalf of Mr. Tom Raftican of United Anglers of Southern California, which requested that the Commission take into consideration several issues when determining allocation of the white seabass resource, including the legality of commercial fishing. Mr. Raftican contends that the state constitution gives every citizen the right to recreational fish but not commercial fish. Mr. Raftican has also intimated that this right to fish precludes the Fish and Game Commission from barring recreational fishing in Marine Protected Areas (MPAs). This contention is incorrect, for the following reasons.

First, the courts have considered section 25 in the context of both recreational and commercial fishing.[1] The so-called "right to fish" is neither absolute nor fundamental, but has been characterized by the courts as only a "privilege" or a "qualified right" subject to the Legislature's regulation of fishing.[2] Indeed, it is well-settled that section 25 must be read in connection with article 4, section 20 (formerly section 25½), which states that the Legislature may enact appropriate laws for protection of fish and game, and may delegate to the Fish and Game Commission such powers relating to protection and propagation of fish and game.[3] In that respect, the California Supreme Court found it "most apparent" that the purpose of (now) article 4, section 20 "was to clothe the Legislature with ample power to adequately protect the

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See e.g. *In re Quinn* (1973) 35 Cal.App.3d 473; *State of California v. San Luis Obispo Sportsman's Association* (1978) 22 Cal.3d 440) [recreational]; *Paladini v. Superior Court* (1918) 178 Cal. 369; *California Gillnetters Association v. Department of Fish and Game* (1995) 39 Cal.App.4th 1145 [commercial].

[2] *Paladini*, supra, 178 Cal. 372; *California Gillnetters*, supra, 39 Cal.App.4th 1153.

[3] *Ex parte Parra* (1914) 24 Cal.App. 339, 340.

fish and game of the state."[4] Further, the California Supreme Court has long declared that the power to regulate fishing has always existed as an aspect of the inherent power of the Legislature to regulate the terms under which a public resource may be taken by private citizens.[5] Without question, this regulatory power applies to both recreational and commercial fishing.

Mr. Raftican has also asserted that sportfishing license revenues cannot fund the establishment of MPAs because such revenues cannot be used to support commercial fishing programs or nongame fish and wildlife programs. (See Fish & G. Code § 711(c).) However, the Legislature has yet to appropriate any funds for the implementation of the MPA program, and neither the Department nor the Commission has ever suggested that MPAs should be exclusively funded from sportfishing license revenue. This does not mean that sportfishing revenues can never fund a share of MPA development. In enacting the Marine Life Protection Act, the Legislature declared that MPAs are necessary to maintain marine biological diversity, which is "a vital asset" and important to "ocean-dependent industry," and because of the expansion of fishing activities to formerly inaccessible marine areas that once recharged nearby fisheries. The enhancement of fishery resources in general is a stated goal as is the enhancement of recreational opportunities in particular. Thus, MPAs are clearly intended to benefit recreational fisheries, as well as commercial fisheries and nongame fish. The law is clear that a portion of marine resource protection costs may be allocated to those who use and benefit from management of the marine fishery resources. This reasonably includes ocean sportfishers as well as other extractive and non-extractive users who benefit from MPAs".

Comment H. Todd Steiner, Sea Turtle Restoration Project. 26 November, 2001

Mr. Steiner expressed concern that the WSFMP would be implemented "without adequate oversight of the environmentally harmful effects of gillnet fishing." Specifically, he stated that the impact on protected species from the white seabass gill net fishery may have worsened since the implementation of Proposition 132 which moved the fishery farther off shore. Also, the observed coverage of the white seabass gill net fishery during a 1983-1989 DFG study was low relative to total fishing effort and no observer program has been initiated since 1989. Mr. Steiner recommended that an observer program be initiated for the white seabass fishery and that such a program have 100% observer coverage.

Mr. Steiner pointed out that several named species observed in the 1983-1989 study as white seabass gill net mortalities are protected under the Marine Mammal Protection Act or the Migratory Bird Treaty Act. Mr. Steiner expressed concern about a potential

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[4] *In re Makings* (1927) 200 Cal. 474, 479.

[5] *In re Phoedovius* (1918) 177 Cal. 238, 245-246; *People v. Monterey Fish Products Company* (1925) 195 Cal. 548, 563.

impact from white seabass gill nets on sea otters around the Channel Islands and Ventura and elephant seals at San Miguel Island. Mr. Steiner also brought up the 52% finfish discard mortality rate recorded in the 1983-1989 DFG study for the white seabass gill net fishery.

Mr. Steiner expressed concern about the recent emergence of a tuna gill net fishery, known as a white seabass fishery because it uses the same size mesh, but that is actually targeting albacore and bluefin tuna and therefore may potentially impact dolphins.

Response:

H1. Need for an observer program: As stated above in our response to Mr. Gaul, the Department has identified the need to conduct on-board observations of the white seabass commercial fishing fleet to document possible changes in bycatch composition that may have occurred following Proposition 132, which moved the fleet further offshore in 1994 (Chapter 7, Section 7.4.1). Although we recognize that a high rate of observer coverage is desirable, implementing 100% coverage is unrealistic because of the costs involved (i.e., hiring more observers and higher charter boat costs for transporting those observers to off-shore fishing boats).

H2. Potential gill net mortality of marine mammals, including elephant seals at San Miguel Island, and seabirds: Please see Response A2 to Comment A above.

H3. Potential gill net mortality of sea otters around the Channel Islands and Ventura, if the otter population expands southward from Point Conception: Currently, the southern sea otter (*Enhydra lutris nereis*) population ranges along the California coastline from Half Moon Bay in San Mateo County to Gaviota in Santa Barbara County. Although otters have been sited as far south as San Diego County in southern California, they are rare in that portion of the state. The 2001 sea otter survey showed a decrease in the number of otters in the southern portion of the species' range (Pt. Conception to Gaviota) from 50 (in 2000) to 26 (G. Sanders, USFWS pers. comm.). With the exception of San Nicholas Island, sea otters are sparsely scattered on the Channel Islands; though they have been consistently observed on the west end of San Miguel Island during annual aerial surveys. The Marine Resources Protection Act of 1990 (effective 01 January 1994) established a gill and trammel net exclusion zone (Section §8610.2 FGC) which protects areas that include sea otter habitat. Since the white seabass gill net fishery is restricted to waters outside typical sea otter habitat, it is unlikely to catch otters in its active nets.

H4. Discard mortality rate: Please see response A1 to Comment A above.

H5. California tuna gill net fishery: no response.

Comment I. Craig S. Harrison, Pacific Seabird Group. 26 November, 2001

Mr. Harrison complemented the Commission and the Department for the development of fishery management plans as mandated by the MLMA. Mr. Harrison expressed concern about the bycatch associated with the white seabass drift gill net fishery and he recommended that the Department implement an independent fishery research program to collect data on bycatch.

Response: Please see Response A2 to Comment A above.

Comment J. Ashley Mullen, Tuna Commission and Bob Osborn, United Anglers of California. 18 December 2001.

Dr. Mullen and Mr. Osborn expressed their concern with regard to Section 51.04(a) of the white seabass regulations which refers to the annual white seabass harvest allocation "in pounds". The gentlemen suggested that removing the words "in pounds" from the regulatory language would improve the flexibility of this regulation and allow for other means of measuring catch, such as number of fish, when determining allocation of white seabass between the recreational and commercial fisheries.

Response: In response to the above comment, and additional discussion during the 18 December meeting, the following changes were made in the Title 14 regulations: 1) Section 51.04(a) now reads "Allocation of an annual white seabass harvest between recreational and commercial fisheries will be determined consistent with options specified in the White Seabass Fishery Management Plan." 2) Section 51.04(b) now reads "The commission shall consider at least the following factors in the allocation of white seabass:"...

The Pre-adoption Statement of Reasons for Revised White Seabass Fishery Management Plan containing the above mentioned changes was submitted to the Office of Administrative Law on 05 February 2002 for publication in the Notice Register.

Comment K. Robert W. Hetzler, President of Harbour Ocean Preservation Enhancement. 18 March 2002

K1. The plan states that the fishery is fully recovered and derives an MSY from data collected in the 1970s. Mr. Hetzler did not understand the rationale for using a historical MSY, stating that the historical catch data doesn't support the plan's proposed MSY. According to Mr. Hetzler, the fishery has been unable to support an MSY of 1.5 million pounds since the 1950s. Mr. Hetzler strongly recommended a more conservative OY such as option C1 which used recent catch data rather than an OY based on a historical MSY.

K2. The plan does not address why stock levels remained very low for nearly 20 years (1980s to1997) and why it recently increased during the last three years. "What

happened to allow the stock to go from depleted to fully recovered in just three years?"

Preliminary landings in 2001 are down significantly, which indicates that the population cannot withstand the current level of fishing mortality.

K3. The plan is flawed because it lacks a new estimate of mortality and data on year classes, spawning biomass capacity, and recruitment levels. The present stock has a different year class makeup: the stock of the 1950s and 1960s consisted of more mature fish which provided greater recruitment levels and was able to sustain a higher OY. The current white seabass spawning biomass is substantially below that of the 1950s and 1960s and therefore can not sustain as high an MSY.

K4. Mr. Hetzler was concerned about the plan's call for a reassessment of the stock in two years, because adjustments that may be made in the fishery at that time may come too late and cause a set back in the recovery of the stock. He felt that the proposed OY of 1.2 million pounds could severely deplete the stock before it is determined that the yield was set too high.

Response:

K1. The plan does not state that the fishery is fully recovered, but that it is recovering. The preferred alternative uses National Standard Guidelines (NSGs), which are used to assist in the development of federal FMPs, to derive an MSY proxy for the white seabass fishery. The NSGs allow for situations when MSY can not be estimated directly. The lone stock assessment for white seabass used catch and effort data in the 1970s and came up with an MSY similar to the preferred alternative. The similarity of the two MSY estimates suggests that the MSY proxy has some value. Recent catch data was not used for determining an MSY since recent catches have not been stable.

Harvest levels below 1.5 million pounds since the 1950s may be due to other factors, and not necessarily related to the fishery's inability to presently support this level. During the 1980s to the present, more restrictive regulations have been implemented that have limited the number of white seabass that can be landed. Oceanographic changes favorable for white seabass have also occurred during the last few years (see response K2) and may explain the increased landings since 1997.

K2. This comment was more applicable to an earlier draft of the plan. The present plan provides a possible explanation for this: A pattern seen in the 1890s and 1940s seems to be occurring today whereby white seabass abundance increases substantially following a shift from warmer to colder ocean waters. Warmer waters occurred in the Southern California Bight from the late 1970s to mid 1990s, but have become colder over the last few years. Again, the plan does not state that the fishery is fully recovered, but that it is recovering.

Although not available at the time of plan preparation, final white seabass landings for

2001 are actually higher than in 2000, indicating that the stock is supporting the current level of fishing mortality.

K3. We agree that current estimates of mortality, year class strengths, and spawning biomass are valuable data; we have emphasized that a current stock assessment for white seabass is needed. Information on recruitment is currently being collected through studies done by OREHP. We are unaware of any data showing that the present stock of white seabass consists of smaller fish and a spawning biomass substantially below that of the stock of the 1950s and 1960s. Recreational fishery data and anecdotal information from the commercial fishery suggest that the average size of white seabass being caught has increased in recent years.

K4. The plan recommends that a current stock assessment be done immediately. The plan also calls for the Department's white seabass management team to monitor the fishery throughout the year and for the Commission to evaluate the effectiveness of management measures annually. The fishery management plan framework allows the commission to adjust, impose, or remove management measures at any time during the year for resource conservation, social or economic reasons. This allows for adaptive management of the fishery, enabling quick adjustment of OY if needed.

–End of response to comment K–

The Department presented the White Seabass Management Plan to the Commission for adoption at the 04 April 2002 meeting in Long Beach, California. Following Ms. Marija Vojkovich's presentation, members of the public were invited by the Commission to comment on the plan. The following individuals spoke at this meeting.

Comment L. Bob Strickland, United Anglers of Southern California

Mr. Strickland directed the following questions to Ms. Vojkovich: What data source was used to determine that most of the white seabass take is by the recreational component of the fishery, are these data accurate, and do these data actually capture the take by private boaters up and down the whole coast?

Response by Ms. Vojkovich: Marine Recreational Fisheries Statistical Survey (MRFSS) data are used to estimate the take by recreational fishers and to estimate the pounds of white seabass taken by this component of the fishery. Yes, these data estimates could be wrong. Yes, these surveys do cover the entire coast of California.

Comment M. Chris Miller, California Lobster and Trap Fisherman's Association

Mr. Miller stated that he supports the WSFMP and that because we share the white seabass resource with Baja California, Mexico, resource managers from California should strive to have a cooperative relationship with their Mexican colleagues for the sharing of data gathered for white seabass stock assessments. Mr. Miller encouraged

the Commission to consider this issue as it moves forward with the implementation of the MLMA.

Response: President Flores thanked Mr. Miller for his comments.

Comment N. Tom Raftican, President of United Anglers of Southern California (UASC)

Mr. Raftican thanked the Department for compiling an impressive compilation of data on the white seabass resource and he felt that the document (WSFMP) highlighted the necessity of using fishery management plans for managing fished stocks. Mr. Raftican stated that the plan lacks any substantial precautions in managing the white seabass fishery because the management options, although within the National Standard Guidelines for managing fisheries, are based on very optimistic assumptions about the current status of the white seabass stock. Mr. Raftican stated that there are important elements in this plan that still need to be completed and these include 1) ongoing fishery monitoring and review of the plan's successes and failures; 2) obtaining research to fill a wide assortment of data gaps; 3) and establishing an allocation policy. Mr. Raftican continued by saying, "We [UASC] are particularly concerned with performance standards and triggers that would quickly implement additional regulations in a timely manner. The plan indicates the Department intends to continue to monitor and develop standards and triggers to better manage the fishery." Mr. Raftican told the Commission the white seabass fishery is an extremely valuable resource to the recreational fishing community. Mr. Raftican stated that "the success of this plan will hinge upon the speed and precision with which the Department is able to monitor the fishery and ultimately fill the data gaps." Mr. Raftican commended and thanked "Ms. Marija Vojkovich and the new staff of this plan for stepping in late in the plan process and doing an excellent job of putting together a couple of very productive meetings and productive revisions to previous drafts that have vastly improved this plan." Mr. Raftican stated that the vulnerability of this fishery and the problems associated with managing it have not been glossed over in the plan and this is an indication of the quality of the plan. Mr. Raftican stressed, however, that "the success of the plan is clearly dependent upon timely and committed implementation." "In adopting this plan, we [UASC] urge the Commission to establish priorities within the Department to move this fishery to the top of the list of state managed species and to establish active and effective mechanisms to proactively manage the fishery while doing their best to obtain funding to improve the data situation."

Response: President Flores thanked Mr. Raftican for his comments and Commissioner Schuchat asked Ms. Vojkovich if there is a priority list by which the Department manages species under the purview of California. Ms. Vojkovich responded that there is no written document; however, priority is based on what was indicated by the Legislature. For the nearshore species these include the white seabass and squid management plans.

Comment O. Mr. Bob Osborn, United Anglers of Southern California

Mr. Osborn identified himself to the Commission as one of the members of the White Seabass Advisory Panel and he supported the position expressed by Mr. Raftican.

Response: No response.

Comment P. Robert Hetzler

Mr. Hetzler told the Commission that he considered the plan to be well-developed and he commended the Department for its work on the plan. Mr. Hetzler questioned the need for setting an optimal yield (OY) for this fishery at this time because he felt that this OY was based on historical stock levels and that it had nothing to do with the current stock size. Mr. Hetzler stated that the current stock size is probably much different than it was in the past and that there may have been changes in habitat, recruitment and spawning biomass. Mr. Hetzler recommended that the harvest level be set at a lower, more precautionary level in order to build up the stock.

Response: In response to Mr. Hetzler's comments, President Flores asked Ms. Vojkovich to state why the Department had chosen the annual harvest limit of 1.2 million pounds for white seabass. Ms. Vojkovich told the Commission that the limit was set as a starting point to begin setting boundaries on the fishery because, under the status quo, there is no harvest limit.

Once all public comment had been heard, the Commission voted unanimously to adopt the WSFMP. Mr. Bob Treanor, Executive Director of the Fish and Game Commission, announced that the environmental document would be certified at the 09 May 2002 Commission meeting, and the regulations would also be adopted at that time.

SEA TURTLE RESTORATION PROJECT
P.O.B. 401760 Montezuma Avenue • Forest Knolls, CA 94933
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California Fish and Game Commission
Robert Treanor, Executive Director
Mike Chrisman, President
Sam Schuchat, Vice President
Michael Flores, Commissioner
1416 Ninth Street
Sacramento, California 95814

August 14, 2001

Dear Mr Treanor and Commissioners Chrisman, Schuchat and Flores;

The Sea Turtle Restoration Project is pleased to comment on the white seabass (WSB) fishery management plan (FMP). While we are primarily concerned with the conservation and restoration of marine turtles, we have an interest in all protected species that interact with fishing gear.

The WSB gillnets are an example of such gear. NOAA Fisheries categorizes the WSB gillnet fishery as "Category I" under the MMPA, meaning it is highly likely to interact with marine mammals. DFG has a gillnet observer study from 1983 to 1989, and NMFS has an observer program on the halibut gillnet fishery from 1990 to 1995 and 1994 to 2000. These studies included 6½-7" mesh nets used in the WSB gillnet fishery. Data we have analyzed from these observer programs demonstrate that porpoises and dolphins can be entangled in the 6½-7" mesh nets that are used in WSB gillnets, and suffer mortalities. Seabirds, such as cormorants and grebes, also have interactions with these nets.

The WSB gillnet fishery, along with the larger halibut gillnet fishery, currently have no observer program. These nets have been pushed farther offshore since 1994, but this is no guarantee that interactions with protected species has lessened. In fact, it may be worse. The swordfish gillnet fishery fishes farthest offshore than any other of California's main gillnet fisheries. Yet the swordfish nets have a high impact on marine turtles and mammals. Another concern is the high level of waste in the WSB gillnet fishery. According to the 1983-89 DFG study, there is a 52% discard mortality rate of finfish in the WSB gillnets, the highest of all gillnet fisheries observed in the DFG study.

As a result we respectfully ask the Commission for the following:

1. California's WSB gillnet fishery should be conducted in a manner that (a) is safe for non-target species including protected marine mammals, turtles and birds, and (b) is sustainable for targeted species such as sharks, tuna, billfish, halibut, and white seabass.
2. If this fishery can't be proven safe and sustainable, then it should be closed.

Thank you for your consideration of this matter.

Sincerely,

Ron Tarr

Ron Tarr, Marine Species Campaigner, Sea Turtle Restoration Project

Cc: Robert Hight, Director, California DFG
William Hogarth, Assistant Director, NOAA Fisheries

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DIRECTOR'S OFFICE

November 26, 2001

California Fish and Game Commission
Robert Treanor, Executive Director
Mike Chrisman, President
Sam Schuchat, Vice President
Michael Flores, Commissioner
1416 Ninth Street
Sacramento, California 95814

Dear Mr Treanor, and Commissioners Chrisman, Schuchat and Flores;

The Sea Turtle Restoration Project (STRP) is concerned that the White Sea Bass Fishery Management Plan (WSBFMP) will move forward without adequate oversight of the environmentally harmful effects of gillnet fishing. We would like to provide a synopsis of the white sea bass (WSB) gillnet fishery and recommendations for its regulation.

The impact on protected species may have worsened with the implementation of Proposition 132 because WSB gillnet fishing moved farther offshore. Based on earlier DFG studies, we believe there is a likelihood that this fishery is now impacting species protected under the state and federal Endangered Species Act and the state Fully Protected Species Act (see below).

In 1999, two thirds of the days fished by white sea bass gillnets were with seinets, the rest with driftnets. A 1983-1989 Department of Fish and Game (DFG) study showed that protected species like seabirds, dolphins and pinnipeds are entangled in nets with 6-7" mesh, which is the size used in white sea bass nets.

Of the 7,633 estimated days of effort in the WSB gillnet fishery from 1983-1989, 250 were observed (3.3% coverage).

The mortalities observed in WSB nets in the 1983-89 DFG study include:

Common Dolphin	6
Pacific White sided Dolphin	1
Pelagic Cormorant	4
Brandt's Cormorant	4
Unidentified Cormorant	1
California Sea Lion	7

These species are protected under the Marine Mammal Protection Act or the Migratory Bird Treaty Act. Also there is WSB gillnetting around the Channel Islands and Ventura, which may impact sea otters that may expand southward from Pt Conception, and elephant seals, which have

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a nursery on San Miguel Island. Both these species are protected under the state Fully Protected Species Act.

It is worth also noting that the WSB gillnet fishery also had the highest rate of finfish discard mortalities of any gillnet fishery, 52% (by count for all species observed), as recorded in the 1983-1989 DFG study. This included both targeted and untargeted finfish. No other observer program specifically for WSB gillnets has been in place since 1989.

The California tuna gillnet fishery

The California tuna gillnet fishery is a recent phenomenon, but is also referred to as a "white sea bass fishery." This is because it uses the same 6-7" mesh. The difference is that it is in offshore waters, apparently fishing the same areas of the California/Oregon drift gillnet swordfish fishery (which uses larger mesh, 14" or larger). Despite major similarities with the federally managed swordfish fishery, this tuna fishery, which is targeting albacore and bluefin, is presently managed exclusively by the state, and presently has no observer program. The DFG warden in Morro Bay received reports of dolphin interactions in this fishery this year.

There are other fisheries of concern currently managed by the state:

1. California high seas pelagic longline fishery; (unobserved)
2. California/Oregon swordfish drift gillnet fishery (20% observer coverage)
3. California halibut gillnet fishery (unobserved)

All of these fisheries have recorded interactions with protected species, as well as significant economic and regulatory discard mortalities of finfish. In light of the cumulative impacts of the fisheries listed above, we believe the proposals in the WSBFMP to regulate the WSB/tuna gillnet fishery are inadequate.

In conclusion, we recommend redrafting the WSBFMP with options incorporating the following:

1. the new WSBFMP seriously evaluate the cumulative impacts of all gillnet and pelagic longline fisheries on protected species and reduce the WSB gillnet impacts significantly;
2. the WSB gillnet fishery implement a 100% observer coverage plan in order to effectively assess impacts on protected species, as well as other non-targeted finfish species;
3. various gillnet fisheries be regulated and permitted in a coherent manner that does not allow fishers to avoid certain protective regulations by changing its so-called "intended target species" or mesh size.

Sincerely,

Todd Steiner
Director

Cc: Robert Hight, Director, California DFG
William Hogarth, Assistant Director, NOAA Fisheries

Pacific Seabird Group

DEDICATED TO THE STUDY AND CONSERVATION OF PACIFIC SEABIRDS AND THEIR ENVIRONMENT

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November 26, 2001

John M. Duffy
Assistant Executive Director
Fish and Game Commission
1416 Ninth Street
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Sacramento, CA 94244-2090

Re: Comments on Proposed Regulations for the White SeaBass Fishery

Dear Mr. Duffy,

These are the comments of the Pacific Seabird Group (PSG) on the Fish and Game Commission's (Commission) proposed changes in regulations under Title 14 of the Fish and Game Code pertaining to white seabass (*Atractoscion nobilis*) and the draft White Seabass Fishery Management Plan (White Seabass FMP). PSG is an international organization that was founded in 1972 to promote knowledge, study and conservation of Pacific seabirds. PSG draws its members from the rim of the entire Pacific Basin, including the United States, Canada, Mexico, Japan, China, Australia, New Zealand, and Russia. Among PSG's members are biologists who have research interests in Pacific seabirds, state and federal officials who manage seabird populations and refuges, and individuals with interests in marine conservation. Over the years we have advised and worked cooperatively with government agencies to further these interests. PSG is especially active with regard to seabird-fishery conflicts and oil spill restoration.

First, we applaud the Commission and the Department of Fish and Game (CDFG) for the development of Fishery Management Plans in general, as mandated by the Marine Life Management Act of 1998. These plans hold much promise to more effectively manage

California's fisheries, better assuring healthy stocks and reduced ecological impacts. The draft of the updated White Seabass FMP holds many positive proposals for white seabass management. However, we feel that any adopted plan requires implementation of a program, independent of the fishery, to collect data on fishery bycatch on non-target species, to assess the extent of this bycatch and its potential ecological impacts, and provide guidance for mitigation of bycatch impacts. The commercial set and drift gill net fishery for white seabass is of particular concern because of the high bycatch typical of such gill net fisheries and the relatively large size of this fishery. Information provided in Chapter 2 of the draft White Seabass FMP suggests that the white seabass gill net fishery is no exception. According to the draft White Seabass FMP, seabirds, marine mammals, invertebrates, and 145 species of fish were recorded as white seabass gill net bycatch during an on-board observation study conducted by CDFG in 1982 to 1988.

While the only seabirds reported caught in the observer study were 10 cormorants (*Phalacrocorax* spp.), observers covered only 3% of fishing days. Thus, this study may have grossly underrepresented seabird bycatch during the study period. This study is also outdated. Since the fishery moved farther offshore following the gill net closure within state waters south of Point Conception in 1994, the level of bycatch and species taken as bycatch likely have changed. In the past, species that forage close to shore, such as cormorants, likely were most susceptible. Currently, species that forage over more open waters, such as Sooty Shearwater (*Puffinus griseus*), Common Murre (*Uria aalge*), Xantus's Murrelet (*Synthliboramphus hypoleucus*), Cassin's Auklet (*Ptychoramphus aleuticus*), and Rhinoceros Auklet (*Cerorhinca monocerata*), would be more susceptible to gill net capture. Common Murres, and to a lesser extent, Sooty Shearwaters and other species, were common bycatch in the California halibut set gill net fishery. The Xantus's Murrelet, which breeds on the California Channel Islands and forages throughout the offshore waters of the Southern California Bight, is a California Species of Special Concern.

In summary, we highly recommend the implementation of an onboard observer program for bycatch in the white seabass gill net fishery as part of the White Seabass FMP. Such a program would need higher observer coverage than the past study, with adequate temporal and spatial coverage to assess the entire fishery. For example, in the Monterey Bay set gillnet observer program conducted by the National Marine Fisheries Service in 1999 and 2000, observer coverage ranged from 20% to 31% per quarter. In addition, the potential need for bycatch data from the smaller-scale white seabass longline fishery requires examination. Longline fisheries are well-known for high seabird bycatch. Without observer data, it will be impossible to make necessary, scientifically-based decisions regarding potential ecological impacts of the white seabass gill net and longline fisheries, and all gill net and longline fisheries.

Sincerely,

Craig S. Harrison
Vice Chair for Conservation

March 18, 2002

Mr. Micael Flores, President
California Fish & Game Commission
1416 Ninth Street
Sacramento, CA. 95814

Re: White Sea Bass Management Plan

Dear Mr. Flores:

I recently received a copy of the Department of Fish & Game's (DFG) White Sea Bass. Plan (dated 12/01) (Plan) and after reviewing it, I am concerned about the conclusions and recommendations made therein. I am a former fishery biologist having worked under Dr. B. Schaefer at the Inter - American Tropical Tuna Commission, ialso have worked as an executive for Star-Kist Foods Inc. for 31 years retiring in 1991. Since then I have been a Director of United Anglers of Southern California (UASC) and am presently President of Harbour Ocean Preservation Enhancement, a white sea bass grow out pen located in Huntington Harbour. During all these years I have been a avid recreational angler. Although I am sure you have received many comments on the plan, I believe my views may be somewhat different than you have received so far.

After pushing for a White Sea Bass Management Plan (Plan) for a number of years, I am happy to see that it has finally arrived. I would like to commend the DFG for a well developed Plan and the information and data provided therein. They have done a great job with the limited available data as acknowledge in the plan itself. This is a concern as the Plans recommendations and stock assessments are based on very limited current data. The average annual fish size cannot be determined from the data presented in the plan because it does not represent the actually number of fish caught (in the commercial landings) nor the actual weight landed (in the recreational landings) with possible exception in the most recent years for recreational catches (since 1990). As a result, the plan has no valid data to determine the fish size and year class strengths in the fishery. Actually, the plan has no current information as to the year class make up of the current sea bass stocks. This information is imperative to have in order to determine what spawning level the stock can produce and thereby the level of recruitment of replacement fish that is available to harvest.

The historical catch data itself does not support the Plan's proposed Maximum Sustainable Yield (MSY). The Plan's position is that the white sea bass fishery has fully recovered and has a MSY based on a model calculations derived in the 1970's of 1.6 million pounds. Yet when we look at the historic landing data, on an average, the fishery was not able to support an average catch level of 1.5 million pounds in the 1950's. The following table taken from the landings table in the Plan reflects the average catch from only California waters in ten year average increments.

1950-1959	1,553,630 lb.
1960- 1969	708,772 lb.
1970- 1979	598,090 lb.
1980- 1989	112.257 lb.
1990- 1999	238,332 lb.

As is evident from the table, the sea bass stocks could not sustain the higher catches in the 1950's, dropping by about 55 percent in the 1960's and continued to drop thereafter to a low of only 112, 257 pounds in the 1980's. At the low, the stocks could yield only about eight percent of the 1950's average catch levels. These low catch levels persisted through 1997 and reflect the stock reaching an equally low equilibrium size that sustained these catch amounts.

The Plan does not answer some very important questions about why the stock levels remained very low for nearly twenty years (1980's through the 1997's) and why it suddenly increased in the last three years (1998 - 2000). What happened to allow the stock to change from a depleted stock to a fully recovered stock in just three years? If one looks at the data through 1997, the indices show the stock is still at a very low level. Based on the growth rates of three to five years from spawning to when a fish enters the fishery and the average age of 7 to 10 years to reach the average size of the past average commercial and recreational fish size (remember the size data is flawed), how did the fishery fully recover in only three years? The answer is obvious that the stock did improve, but has definitely not recovered to the 1950's level in such a short period of time. If this position is correct, can the current recovered stock support the Plan's recommended 1.2 million pound OY catch level? The answer is no, it cannot and the 2000 catch of over nine hundred thousand pounds probably was greater than the MSY yield the current stock could support, meaning the stock has been reduced somewhat with that catch level. Preliminary landings in 2001 are down significantly, by as much as 25 to 30 percent, which is indicative that the population could not support this level of fishing mortality. The next few years data will tell, but it appear that the 2000 fishing mortality level reduced the current standing stock.

The Plan's conclusions appear flawed because there is no data as to the year class make up of the current stock, no evaluation on the spawning biomass capacity nor its recruitment level. There are also no new estimates of mortality level. The Plan uses historical data to make these estimates assuming the parameters are the same today as they were 30 to 50 years ago when this information was available. The problem is that the sea bass stock today does not have the same year class make up as it did in the early years and, as a result, has a different spawn and recruitment level. In the 1950's and 1960's, the stock was mature and had a much larger make up of bigger older fish. Larger fish spawn a much greater quantity of eggs than smaller fish. The mature stock in this earlier period had a high spawn level providing a large recruitment

into the fishery and thereby a higher optimum fishing yield. The current sea bass stocks are recovering from a depleted state and thereby would appear to have a much younger year class makeup. As as result, its spawning biomass level is substantially below that of the 1950's and 1960's stock and thereby cannot sustain as high a MSY level.

There have been other changes over the years that have probably adversely impacted the stock and its current potential yield level. The inshore habitat has changed substantially with the loss of coastal estuaries and bays. Such loss can reduce the level of recruitment of fish back into the fishery. The natural mortality levels have probably changed as well. The increased seal population, as an example, probably has a greater negative impact on the current recruitment level than in earlier years. All of these changes have a negative impact on both the current MSY and OY the current stock can support . One positive area that has not been evaluated in the plan is the impact the OREHP hatchery and grow out program will provide. In 2001, over 100,000 sea bass were released into the wild. Because of improvements in the hatchery's process, the number of released fish is expected to exceed 200,000 in 2002 and could even meet the hatchery's capacity of 400,000 fish per year. In 2000, the estimated individual fish catch was over 46,000. It is obvious that the the hatchery program could become an important factor in maximizing the yield from the sea bass stocks. In time it could help raise the MSY level of the stocks.

The Plan calls for a reassessment of the stocks in two years and to make adjustments in the levels of catch at that time. My concern here is that if the recommended OY catch level of 1.2 million pound is accepted, at this level, the stocks could be severely depleted by the time it is determined that the yield was set too high. California and its fishing industries would then have lost the present level of recovery of the fishery and the ten years or so to rebuild it back to what it is today (note it has taken 20 years to reach current levels). What I don't understand is why the DFG is recommending the historical MSY of 1.6 million pounds (adjusted by twenty-five percent to a OY of 1.2 million pounds as a precautionary figure) rather than use the 1996 / 2000 data supported MSY less the precautionary twenty-five percent of 453,000 pounds as provided in option C-1. I strongly recommend that the commission take a conservative approach in setting the annual catch limits at this lower level so that we do not loose the stock level improvement obtained so far. I think it is far better to be in a position to further increase catch limits in the future when the data provides better estimates of the stock size, spawning biomass and recruitment than to have to cut catch limits because the Plan erred on the high side.

I hope this letter helps you make the decision on the yield level the Plan should adopt and that it is a correct one that allows the white sea bass fishery to recover to its former level. I have tried to present my views, concerns and question in a concise way knowing that you do not have the time for a long dissertation on the merits and

problems with the Plan. If you have any questions, I would be happy to try to answer them.

Sincerely,

Robert W. Hetzler
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