

Chapter 1. Background and Description

White seabass, which are targeted by both recreational and commercial fisheries, have great economic and intrinsic value to the people of California. White seabass are migratory fish that are common in Mexican waters and in the Southern California Bight. The fisheries for white seabass have existed since the late 1800s, but increased fishing pressure, oceanographic fluctuations, and habitat degradation have resulted in reductions of white seabass populations. Currently, our monitoring and assessment of white seabass stocks is inadequate for effective management of this important resource.

1.1 Purpose and Need for Action

The overall trend in commercial and recreational landings of white seabass from 1960 to 1997 was one of decline. During the late 1980s and early 1990s, concern over the decline in white seabass landings and conflict between recreational and commercial fishermen over this resource lead concerned citizens to ask the Legislature for management improvements. The resulting legislation required the development of a white seabass fisheries management plan (WSFMP) which was developed in 1995 through the cooperative efforts of academic and federal fishery scientists, consultants, and fishery constituents. The plan was adopted by the Fish and Game Commission (Commission) in 1996; however, no regulations were adopted at that time, so the plan was not implemented.

In 1998, the Marine Life Management Act (MLMA) was enacted and changed the way in which recreational and commercial fisheries are managed in the State of California [Fish and Game Code (FGC) section §7050]. Under MLMA, the Commission was granted authority to regulate specific commercial fisheries, including the white seabass fishery (it already had authority over the recreational fishery). Also, MLMA specified that the previously adopted WSFMP should remain in effect until such time as the existing plan could be amended to comply with MLMA. The amended WSFMP was to be presented to the Commission no later than 01 January 2002; however, the deadline was extended in order to incorporate the recommendations of the peer review panel.

1.1.1 Location and General Characteristics of the Project Area

The sport and commercial harvest of white seabass is proposed statewide in all areas defined as ocean waters (§27.00 Title 14 CCR) except where prohibited or restricted, as specified, in state refuges, reserves or national parks, and as regulated by provision of this WSFMP.

The shoreline of California is one of the longest in the nation. There are approximately 1,072 miles of shoreline along the mainland coast, and 300 miles around the offshore islands. The mainland shore consists of about 354 miles of rocky headlands and cliffs; 602 miles of sandy beaches; and 110 miles of rocky beach. Major embayments are:

Humboldt (17,000 surface acres, or 6,880 hectares); Tomales (7,760 surface acres, or 3,140 hectares); San Francisco (320,000 surface acres, or 129,504 hectares); Morro (2,101 surface acres, or 8,540 hectares) and San Diego (11,500 surface acres, or 4,654 hectares).

The marine environment is composed of numerous micro-habitats which support a distinct assemblage of species uniquely adapted to their environment. A detailed description of the oceanographic and geological conditions that make California's marine environment so complex can be found in the Final Program Environmental Document Ocean Sport Fishing Regulations. An in-depth description of the habitat preferences and life history of white seabass is found in Chapter 2, Section 9 of this document.

1.1.2 Problem Statement

Our knowledge of white seabass population dynamics and the role this species plays in the nearshore ecosystem is limited. Further, there is an urgent need to acquire essential fisheries information which can only be obtained gradually, over a period of several years, and at a considerable cost. As a result, management decisions have lagged behind the development of the fishery and it is difficult to determine whether or not current fishing is at sustainable levels.

The potential effects of changes in fishing effort, oceanographic conditions, and many other factors affecting white seabass stocks need to be assessed in order to manage this resource effectively. Since the ban on gill and trammel nets went into effect in 1994, the recreational seabass catch has surpassed commercial landings. In addition, white seabass range into Mexican waters and may be heavily impacted by Mexican harvests. Thus, an essential step to ensure the long term maintenance of a healthy white seabass resource in California waters is to develop a management plan for this species.

1.2 The Marine Life Management Act

The MLMA was signed into law and incorporated into the FGC (§7050-7090) 01 January 1999. The act created state policies, goals, and objectives to govern the conservation, sustainable use and restoration of California's marine living resources. The MLMA opened a new chapter in the conservation of California's marine wildlife and the management of our marine fisheries (Weber and Heneman 2000). The MLMA gives the Fish and Game Commission and the Department specific guidance for managing marine resources through a comprehensive set of goals and objectives outlined below. The WSFMP is being amended under this direction to better facilitate conservation and stewardship of this important resource.

1.2.1 Goals and Objectives

Goal: To ensure the conservation, sustainable use, and, where feasible, restoration of

California's marine living resources for the benefit of all the citizens of the State.

Objectives:

- Conserve the health and diversity of marine ecosystems and marine living resources;
- Allow and encourage only those activities and uses that are sustainable;
- Recognize the importance of activities and uses that do not involve take;
- Recognize the importance to the economy and culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture;
- Support and promote scientific research on marine ecosystems;
- Manage on the basis of the best available scientific and other relevant information;
- Involve all interested parties;
- Promote the dissemination of accurate information through the management process;
- Coordinate and cooperate with adjacent states, as well as with Mexico and Canada, and encourage regional approaches to management.

Goal: To achieve the management goal of sustainability, every fishery shall be managed under a system whose objectives include:

Objectives:

- Long-term health of the resource is not sacrificed in favor of short-term benefits. A fishery managed on the basis of maximum sustainable yield shall have optimum yield as its objective.
- Health of a habitat is maintained, and to the extent feasible, the habitat is restored and, where appropriate, enhanced.
- Depressed fisheries are rebuilt to highest sustainable yields consistent with environmental and habitat conditions.
- Bycatch is limited to acceptable types and amounts.
- Fishery participants are allowed to propose methods to prevent or reduce excess effort in marine fisheries.
- Management is closely coordinated when a species is the target of both sport and commercial fisheries or of a fishery that employs different gears.
- Fishery management is adaptive and based on best available scientific or other relevant information.
- The management decision-making process is open and seeks advice and assistance of interested parties.
- Adverse impacts of fishery management on small-scale fisheries, coastal communities, and local economies are minimized.
- Collaborative and cooperative approaches to management are encouraged and mechanisms are in place to resolve disputes such as access, allocation, and gear conflicts.

- Management is proactive and responds to changing environmental conditions and market or other socioeconomic factors and concerns of fishery participants.
- The management system is periodically reviewed for effectiveness.

1.2.2 Process of Plan Review

The MLMA requires public and peer review for all FMPs (FGC §7075-7078). For public review, the Department solicits input and/or assistance from the various user groups who may be affected by the FMP or other interested parties prior to development of an FMP. The Department can also approach the National Marine Fisheries Service, Sea Grant, the Pacific Fishery Management Council or advisory committees established by the Department for advice. Once the FMP or amendment has been developed, the plan must be submitted to the Commission for a 30-day public comment period prior to any public hearings. Additionally, the Commission must hold at least two public hearings on the FMP. Any comments or proposals made to the Commission relative to the FMP may be considered by the Commission and forwarded to the Department for inclusion into the FMP.

For external peer review, the Department is required to set up a formalized procedure for examining the science that is used as the basis for any management recommendation. The peer review panel must be given all pertinent comments received by the Department from fishery participants or other interested parties. Any suggestions made through external peer review may be used in whole or part; however, if the Department disagrees with the findings and chooses not to use the recommendations, an explanation of why the peer review recommendations were not used must accompany the FMP or amendment.

More information on the review processes for FMPs can be found in *The Master Plan: A Guide for the Development of Fishery Management Plans* (California Department of Fish and Game 2001).

1.2.3 Process for Plan Amendment

The MLMA also requires a plan amendment process for all FMPs (§7087 FGC). The amendment process must identify the types of regulations that the Department may adopt without amending the plan. In addition, any amendment to an FMP must undergo the review process, as outlined above in section 1.2.2. More information on the FMP amendment process can be found in *The Master Plan: A Guide for the Development of Fishery Management Plans* (California Department of Fish and Game 2001).

1.3 Specific Goals and Objectives of the White Seabass Fishery Management Plan Goals:

1. To manage the white seabass resource for the optimum long-term benefits of

- present and future generations of Californians.
2. To bring the management of this valuable commercial and recreational species under one authority.
 3. To develop a framework for management that will be responsive to environmental and socioeconomic changes.

Objectives (not listed in order of priority):

- Provide for the sustainable use of the white seabass resource and provide for stock growth for commercial and sport fisheries;
- Use adaptive management to provide for necessary changes and modifications of management measures in a timely and efficient manner;
- Minimize bycatch and waste of white seabass and other species;
- Support and promote increased understanding of white seabass natural history, population dynamics, and its ecosystem's role to improve management;
- Ensure effective monitoring of the white seabass population and its fisheries;
- Ensure effective enforcement of regulations and improved compliance;
- Identify, protect, and restore critical white seabass habitat; and
- Minimize the adverse impacts of management on small-scale fisheries, coastal communities, and local economies.

1.3.1 Constituent Involvement

The MLMA requires, and the Department is committed to, a collaborative approach to resource management. One of the over-riding objectives of MLMA is constituent involvement. The Department believes that broad participation in the development of an FMP will improve the effectiveness of management and the ability to implement the plan. Constituent involvement also ensures that decision makers are better informed when making management decisions by:

- Exploring issues, concerns, and management measures from various perspectives;
- Providing increased understanding of a resource and its fishery from participants' and nonparticipants' perspectives through consensus building; and
- Sharing responsibility of sustainable fisheries management with all interested constituents.

In addition to the requirements of the MLMA, the California Environmental Quality Act (CEQA) requires public consultation on all environmental projects. The Department accomplishes this through either a 30-day public comment period, scoping sessions within the communities involved, or at least two Commission meetings.

1.3.1.1 Public Consultation for Definition of Plan Goals and Objectives

In 1994 when the initial WSFMP was developed, one of the first actions taken was the creation of two committees: 1) The White Seabass Subcommittee of the Director's Marine Resources Advisory Committee, composed of representatives from the recreational and commercial fishing communities; and 2) The White Seabass Scientific Advisory Committee, composed of fisheries scientists from academia and the federal government (Appendix F). These two bodies met repeatedly in 1995, each time bringing relevant comments from their constituent groups. It was through these actions that the goals and objectives identified above were generated. In January 2001, the remaining members of the Scientific Advisory Committee and several members of the former White Seabass Subcommittee of the Director's Marine Resources Advisory Committee joined to form the White Seabass Scientific and Constituent Advisory Panel (WSSCAP). The WSSCAP determined that the goals and objectives outlined in the previous WSFMP were still valid.

1.3.1.2 Public Consultation for Selection of Preferred Management Alternative

Prior to preparing the initial draft environmental document in 1995, the Department developed a Notice of Preparation (NOP). The notice was provided to individuals and organizations that had expressed prior interest in Commission regulatory actions. The NOP was 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 initial NOP in 1995.

The Department also conducted three public meetings with a subpanel of the Director's Marine Resources Advisory Committee (11 October 1994; 31 January 1995; and 31 March 1995) and three public meetings with the Scientific Advisory Committee (24 October 1995; 06 February 1995; and 09 March 1995) (Appendix F).

In addition to the NOP and six public meetings, discussion of the WSFMP was held at two Commission meetings (04 August 1995 and 03 November 1995). The result of these meetings was the selection of a management framework for the WSFMP.

As with the WSFMP's goals and objectives, discussions of the preferred alternative and other possible management alternatives were held with members of the WSSCAP and other interested parties on 30 January 2001, 04 June 2001, 18 December 2001, and 22 January 2001. Additionally, a presentation of the status of the WSFMP was given to the MLMA Evaluation Advisory Committee on 09 February 2001.

1.4 Authority and Responsibility

The California Constitution gives authority to the State Legislature which may, by statute, provide for the seasons and the conditions under which different species of fish may be taken. California law consists of 29 codes including the FGC. Laws in the FGC consist of statutes and propositions passed by the voters of the state. Statutes, such as MLMA, are chaptered bills that have passed through both houses of the

Legislature and ultimately signed by the Governor and recorded by the Secretary of State. The FGC is administered and enforced through regulations.

General policies for the conduct of the Department are formulated by the Commission, a body created by the Constitution and appointed by the Governor. The rulemaking powers of the Commission are delegated to it by the Legislature.

The Department is the state agency charged with carrying out policies adopted by the State Legislature and the Commission. The Department enforces statutes and regulations governing recreational and commercial fishing activities, conducts biological research, monitors fisheries, and collects fishery statistics necessary to protect, conserve, and manage the living marine resources of California.

Other state agencies have functions and responsibilities that directly or indirectly affect the management of ocean and coastal resources (California Department of Fish and Game, December 1993). In addition, marine resources are also managed by federal laws governing the take of seabirds, marine mammals, fish, and shellfish (Weber and Heneman 2000).

1.4.1 California Environmental Quality Act (CEQA)

The basic goal of CEQA [Public Resources Code (PRC) §21000-21006] is to develop and maintain a high-quality environment now and in the future. Projects carried out by public agencies are subject to the same level of review and consideration as those of the private sector. Most state agencies satisfy this requirement by preparing a Negative Declaration (ND) if it finds no significant impacts, a Mitigated Negative Declaration (MND) if it finds significant impacts but revises the project to avoid or mitigate those impacts, or an Environmental Impact Report (EIR) if it finds significant impacts.

1.4.1.1 Functional Equivalent

The CEQA requires all public agencies in the State to evaluate the environmental impacts of projects that they approve or carry out. If there are potentially significant environmental impacts, most agencies satisfy this requirement by preparing an Environmental Impact Report (EIR). If no potentially significant impacts exist, a Negative Declaration (ND) is prepared. However, an alternative to the EIR/ND requirement exists for State agencies with activities that include protection of the environment as part of their regulatory program. Under this alternative, an agency may request certification of its regulatory program from the Secretary for Resources. With certification, an agency may prepare functional equivalent environmental documents in lieu of EIRs or NDs. The regulatory program of the Fish and Game Commission has been certified by the Secretary for Resources. Therefore, the Commission is eligible to submit an environmental document in lieu of an EIR (§15252 CEQA Guidelines).

The Department and the Commission hold the public trust for managing the State's fish and wildlife populations. That responsibility is fulfilled by a staff of experts, including those with expertise in marine resources management and enforcement issues related to the harvesting of white seabass. The knowledge and training represented by that expertise qualifies them to perform the review and analysis of the proposed project contained in this document.

1.4.1.2 Use of the Environmental Document

This environmental document contains a description of the proposed management action, potential effects of the proposed action, reasonable alternatives to the proposal, cumulative effects, and a discussion of mitigation of adverse environmental effects related to the proposal and alternatives. In addition, it considers relevant policies of the Legislature and Commission. These standards are contained in §781.5 Title 14 California Code of Regulations (CCR). This environmental document presents information to allow a comparison of the potential effects of various alternatives to adoption of sport and commercial fishing regulations for white seabass as they are currently written and enforced.

1.4.2 Federal Law

The Federal government manages the marine resources and fishing activities of the United States (US) through the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The purpose of the MSFCMA is to provide conservation and management of US fishery resources, develop domestic fisheries, and phase out foreign fishing activity within the Exclusive Economic Zone (EEZ) consisting of ocean waters from the edge of State waters three mi (5 km) to 200 mi (322 km) offshore.

Eight Regional Fishery Management Councils implement the goals of the MSFCMA in coordination with the National Marine Fisheries Service. The Pacific Fishery Management Council manages the fisheries resources off Washington, Oregon, and California by developing fishery management plans for the EEZ. Although white seabass are a trans-boundary stock occurring in Mexican and U.S. waters, the fishery in both countries has primarily been a coastal fishery (within three miles of shore). As such, the fishery in California is not subject to federal management. Even with the removal of gill nets from state waters along much of the California coast, and subsequent move to federal waters, the fishery continues to be managed by the state because vessels taking white seabass are registered by the State and land their catch in California ports.

1.5 Current Management of White Seabass

Management of the white seabass fishery has been divided between the Legislature

and the Commission. In the past two decades, the Legislature and the Commission have adopted statutes and regulations specific to the management of various components of the white seabass fishery (Appendix B). The most recent and far reaching management change occurred with the enactment of the MLMA.

1.5.1 Legislative Responsibilities

Statutes passed by the State Legislature regulating commercial fishing are contained in the Fish and Game Code of California. Some provisions of law apply specifically to white seabass, while others apply generally to the take of all fish such as some area closures and gear restrictions. Statutes pertaining specifically to the commercial take of white seabass are listed in Appendix B.

As mentioned earlier, The MLMA identifies a number of policies, goals, objectives, requirements, and processes for managing California's marine resources. These resources are to be managed to assure long-term economic, recreational, ecological, cultural, and social benefits.

The MLMA requires that fishery management plans (FMPs) form the primary basis for managing the State's marine fisheries. An FMP is a planning document that contains comprehensive review of the fishery along with clear objectives and measures to insure sustainability of that fishery. An FMP is based on the best available scientific or other relevant information.

1.5.2 Fish and Game Commission Responsibilities

The authority and responsibility of the Commission and the Department to make and enforce regulations governing recreational and commercial fishing are provided by the Legislature. General policies for the conduct of the Department are formulated by the Commission (FGC §704). General policy for conservation of aquatic resources is provided by FGC §1700, and specific policy for the management of marine resources (MLMA) is provided in FGC §7500- §7090.

1.5.2.1 Recreational Fisheries

Recreational fishing regulations are adopted by the Commission following procedures listed in the FGC. General provisions applying to the taking and possession of fish by recreational fishermen are provided in FGC §7100-7400. Specific sportfishing regulations are found in California Code of Regulations (CCR), Title 14, Chapter 4. Regulations specific to the recreational take of white seabass are listed in Appendix B.

1.5.2.2 Commercial Fisheries

Commercial fishing regulations are created by the Legislature and the Commission. Provisions relating to the taking and possession of fish for commercial purposes is

provided in FGC §7600-9101 and CCR, Title 14, Chapter 6. With the passage of the MLMA, the Commission has been granted broad authority to regulate commercial fisheries, including white seabass.

1.5.2.3 Rulemaking Process under the Administrative Procedures Act (APA)

The California Constitution and Legislative statutes create state agencies and can grant them certain powers including the ability to make rules and regulations in order to carry out their duties. The California APA (§11340-11359) of the Government Code provides guidance on the rulemaking process.

The Commission's rulemaking process is provided in FGC §200-221. Basic minimum procedural requirements for the adoption, amendment or repeal of regulations are provided in the California Government Code §11346. Emergency rulemaking considerations are provided in California Government Code §11346.1 and in FGC §240.