

Assembly Bill No. 892

CHAPTER 559

An act to amend Sections 94, 2859, 7058, 7071, 7072, 7090, 7650, 8510, and 8587.1 of, and to repeal Section 7057 of, the Fish and Game Code, relating to fisheries, and making an appropriation therefor.

[Approved by Governor September 14, 2002. Filed
with Secretary of State September 15, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 892, Keeley. Fisheries.

(1) Existing law, the Marine Life Management Act, generally establishes a comprehensive plan for the management of marine life resources, and utilizes fishery management plans as the primary basis for managing the state's sport and commercial marine fisheries. Existing law requires the Department of Fish and Game to submit fishery management plans to the Fish and Game Commission for adoption or rejection and also requires the Director of Fish and Game to report annually in writing to the commission on the status of sport and commercial marine fisheries managed by the state and identify those fisheries that do not meet the sustainability policies set forth in the act. Existing law authorizes the department, upon the recommendation of the commission, to adopt regulations that limit the taking of fish in a fishery, and permits those regulations to remain in effect until a fishery management plan is adopted, or for 12 months, whichever is shorter.

This bill would, instead, provide that those regulations shall remain in effect until a fishery management plan is adopted. The bill would delete obsolete references and would make other clarifying and technical changes to the act.

(2) Existing law requires the department to submit to the commission a draft of a master plan prepared pursuant to the Marine Life Protection Act on or before January 1, 2003, a proposed final master plan on or before April 1, 2003, and a final master plan on or before December 1, 2003.

This bill would instead require the department to submit to the commission a draft of the master plan on or before January 1, 2005, a proposed final master plan on or before April 1, 2005, and a final master plan on or before December 1, 2005.

(3) Existing law authorizes the director to adopt regulations to conform state law or regulations of the commission to the fishery

management plan prepared pursuant to the federal Magnuson-Stevens Fishery Conservation and Management Act.

This bill would revise the definitions applicable to those provisions to conform with the existing act and with the federal Magnuson-Stevens Fishery Conservation and Management Act.

(4) Existing law prohibits the taking or landing of krill of the genus *Thysanoessa* or the genus *Euphausia* for commercial purposes until January 1, 2011, and prohibits that commercial taking or landing after January 1, 2011, unless permitted under regulations adopted by the commission.

This bill would expand those provisions to apply to the taking or landing of all species of krill.

By changing the definition of a crime, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department and the commission to carry out the Fish and Game Code.

By revising the duties of the department and the commission, this bill would make an appropriation.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 94 of the Fish and Game Code is amended to read:

94. “Fishery” means both of the following:

(a) One or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(b) Fishing for, harvesting, or catching the populations described in (a).

SEC. 2. Section 2859 of the Fish and Game Code is amended to read:

2859. (a) On or before January 1, 2005, the department shall submit to the commission a draft of the master plan prepared pursuant to this chapter.



(b) On or before April 1, 2005, after public review, not less than three public meetings, and appropriate modifications of the draft plan, the department shall submit a proposed final master plan to the commission. On or before December 1, 2005, the commission shall adopt a final master plan and a Marine Life Protection Program with regulations based on the plan and shall implement the program, to the extent funds are available. The commission's adoption of the plan and a program based on the plan shall not trigger an additional review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) The commission shall hold at least two public hearings on the master plan and the Marine Life Protection Program prior to adopting the plan and program. The commission may adopt the plan and the program immediately following the second public hearing or at any duly noticed subsequent meeting.

(d) Upon the commission's adoption of the program, the commission shall submit the master plan and program description, including marine life reserve and other MPA designations, to the Joint Committee on Fisheries and Aquaculture for review and comment. Upon receipt of the plan, the joint committee shall have 60 days to review the plan and to submit written recommendations to the commission regarding the plan and program. The joint committee shall only submit a recommendation to the commission if a majority of the members agree to that recommendation. The commission shall consider all recommendations submitted by the joint committee, and may amend the program to incorporate the recommendations. If the commission does not incorporate any recommendations submitted by the joint committee, the commission shall set forth, in writing, its reasons for not incorporating that recommendation.

SEC. 3. Section 7057 of the Fish and Game Code is repealed.

SEC. 4. Section 7058 of the Fish and Game Code is amended to read:

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

SEC. 5. Section 7071 of the Fish and Game Code is amended to read:

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

Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any white seabass fishery management plan adopted by the commission and



in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

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

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

SEC. 6. Section 7072 of the Fish and Game Code is amended to read:

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

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

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

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

SEC. 7. Section 7090 of the Fish and Game Code is amended to read:

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the



commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

SEC. 8. Section 7650 of the Fish and Game Code is amended to read:

7650. As used in this article:

(a) “Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

(b) “Council” means the Pacific Fishery Management Council established pursuant to the act, or its successor agency.

(c) “Fishery” has the same meaning as defined in Section 1802(13) of Title 16 of the United States Code.

(d) “Joint committee” means the Joint Committee on Fisheries and Aquaculture created pursuant to Resolution Chapter 88 of the Statutes of 1981.

(e) “Optimum,” with respect to the yield from a fishery, has the same meaning as defined in Section 1802(28) of Title 16 of the United States Code.

(f) “Secretary” means the federal Secretary of Commerce.

SEC. 9. Section 8510 of the Fish and Game Code is amended to read:



8510. (a) It is unlawful to take or land krill of any species of euphausiid for commercial purposes except under regulations adopted by the commission.

(b) Notwithstanding subdivision (a), krill of any species of euphausiid shall not be taken or landed for commercial purposes before January 1, 2011.

SEC. 10. Section 8587.1 of the Fish and Game Code is amended to read:

8587.1. (a) The commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, to regulate nearshore fish stocks and fisheries. Regulations adopted by the commission pursuant to this section may include, but are not limited to, requiring submittal of landing and permit information, including logbooks; establishing a restricted access program; establishing permit fees; and establishing limitations on the fishery based on time, area, type, and amount of gear, and amount of catch, species, and size of fish.

(b) Regulations adopted by the commission pursuant to this section may make inoperative any fishery management statute relevant to the nearshore fishery. Any regulation adopted by the commission pursuant to this subdivision shall specify the particular statute to be made inoperative.

(c) The circumstances, restrictions, and requirements of Section 219 do not apply to regulations adopted pursuant to this section.

(d) Any regulations adopted pursuant to this section shall be adopted following consultation with fishery participants and other interested persons consistent with Section 7059.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

