

Assembly Bill No. 2532

Passed the Assembly August 29, 2008

Chief Clerk of the Assembly

Passed the Senate August 22, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7051, 7071, 7072, 7075, 7077, 7078, and 7088 of, to add Sections 7070.5 and 7079 to, and to repeal and add Section 7074 of, the Fish and Game Code, relating to fisheries.

LEGISLATIVE COUNSEL’S DIGEST

AB 2532, Laird. Marine fisheries: fishery management plans: management frameworks.

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. The act requires a plan to 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.

This bill, except as specified, would authorize the department to prepare management frameworks for any state fishery, for the purpose of developing fishery management measures, as specified, and would require a management framework to be incorporated into a fishery management plan to the extent a fishery management plan is developed. The bill would authorize the inclusion of provisions for comanagement, as defined, in each fishery management plan or management framework, in accordance with prescribed standards. The bill would encourage the department and the commission to promote pilot fishery projects that are comanaged with the fishery participants consistent with those standards and that support innovative allocation strategies that create incentives for ecosystem and economic sustainability of the fishery. The bill would encourage the department to develop fishery advisory committees that can represent the interests and expertise of participants. The bill would make conforming changes to the act.

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

SECTION 1. Section 7051 of the Fish and Game Code is amended to read:

7051. A regulation adopted pursuant to this part shall apply only to ocean waters and bays. Notwithstanding any other provision of this part, nothing contained in this part grants the department or any other agency of the state any regulatory authority not in existence on January 1, 1999, in any river upstream of the mouth of such river, in the Sacramento-San Joaquin Delta or in any other estuary.

SEC. 2. Section 7070.5 is added to the Fish and Game Code, to read:

7070.5. As used in this part, “comanagement” means the apportionment by the department and the commission of duties or decisions to a responsible fishery organization, or other entity as determined by the department, that, in the determination of the department and the commission, is capable of carrying out the proposed management responsibilities.

SEC. 3. 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, plan amendment, or management framework pursuant to Section 7074, 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) The commission may adopt a fishery management plan, plan amendment, or management framework pursuant to Section 7074, and associated implementing regulations for all state marine

fisheries. The department's development of a fishery management plan or management framework shall be guided by the master plan priority list pursuant to Section 7073, and as subsequently amended.

(d) 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. 4. 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) The department and the commission are encouraged to promote pilot fishery projects that are comanaged with the fishery participants consistent with the standards developed in accordance with Section 7079 and that support innovative allocation strategies that create incentives for ecosystem and economic sustainability of the fishery.

(e) The department is encouraged, as it determines appropriate, to develop fishery advisory committees that can represent the interests and expertise of participants.

(f) Consistent with Article 17 (commencing with Section 8585) of Chapter 2 of Part 3, 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. 5. Section 7074 of the Fish and Game Code is repealed.

SEC. 6. Section 7074 is added to the Fish and Game Code, to read:

7074. (a) The department may develop management frameworks, including any proposed regulations necessary to implement the frameworks. A management framework shall be consistent with the objectives of Section 7056 and the purposes described in subparagraph (C) of paragraph (2) of subdivision (b) of Section 35650 of the Public Resources Code, and shall be submitted to the commission for adoption or rejection. A management framework does not replace a fishery management plan, and shall be incorporated into a fishery management plan to the extent a fishery management plan is developed pursuant to this part. Management frameworks may be developed and adopted for any state fishery, except for those for which a state or federal fishery management plan is already in effect. The purposes of developing a management framework shall be to accomplish one or more of the following:

(1) Make improvements in the conservation and economic sustainability of a fishery not already under a fishery management plan.

(2) Allow for increased opportunities to test and implement new innovative fishery management measures.

(3) Provide for a regulatory framework for representative fishery participants to participate in the marine life management act prior to the development of a comprehensive fishery management plan.

(4) Provide additional fishery information to assist the development of future fishery plans.

(5) Allow the commission to adopt measures that are incremental as a fishery management plan is under development.

(6) Provide a set of recommendations and policy changes that facilitate improved management of a discrete component, or several discrete components, of a fishery in accordance with this part.

(b) A management framework shall be based on the best available scientific information and other relevant information that the commission or department possesses or receives. Essential fishery information shall be provided to the commission to the extent it is available.

(c) The department shall provide for the participation of interested parties consistent with this act in the development of a management framework and associated implementing regulations.

(d) Management frameworks may include, but are not necessarily limited to, all of the following:

- (1) Establishing time and area closures.
- (2) Requiring submittal of landing and permit information.
- (3) Regulating fishing gear and permit fees.
- (4) Establishing restricted access fisheries.

(e) The department may include, as part of a management framework, a description from the fishery participants of how any comanagement responsibilities will be carried out, and any relevant economic models and forecasts for the fishery.

(f) The department may develop or evaluate a management framework pursuant to this section only if the department determines that there is sufficient data, staff resources, and funding available for that purpose.

SEC. 7. Section 7075 of the Fish and Game Code is amended to read:

7075. (a) The department shall prepare fishery management plans and plan amendments, including any proposed regulations necessary to implement plans or plan amendments, to be submitted to the commission for adoption or rejection. Prior to submitting a plan or plan amendment, including any proposed regulations necessary for implementation, to the commission, the department shall submit the plan to peer review pursuant to Section 7062, unless the department determines that peer review of the plan or plan amendment may be exempted pursuant to subdivision (c). If the department makes that determination, it shall submit its reasons for that determination to the commission with the plan. If the commission rejects a plan or plan amendment, including proposed regulations necessary for implementation, the commission shall return the plan or plan amendment to the department for revision and resubmission together with a written statement of reasons for the rejection. The department shall revise and resubmit the plan or plan amendment to the commission within 90 days of the rejection. The revised plan or plan amendment shall be subject to the review and adoption requirements of this chapter.

(b) The department may contract with qualified individuals or organizations to assist in the preparation of fishery management plans, management frameworks, or plan amendments.

(c) The commission, with the advice of the department and consistent with Section 7059, shall adopt criteria to be applied in

determining whether a plan or plan amendment may be exempted from peer review.

(d) Fishery participants and their representatives, fishery scientists, or other interested parties may propose fishery management plan provisions, management frameworks, or plan amendments to the department or commission. The commission shall review any proposal submitted to the commission and may recommend to the department that the department develop a fishery management plan, management framework, or plan amendment to incorporate the proposal.

SEC. 8. Section 7077 of the Fish and Game Code is amended to read:

7077. A fishery management plan, plan amendment, management framework, or associated regulations necessary for implementation shall be available to the public for review at least 30 days prior to a hearing on the management plan or plan amendment by the commission. Persons requesting to be notified of the availability of the plan or regulation shall be notified in sufficient time to allow them to review and submit comments at or prior to a hearing. Proposed fishery plans, management frameworks, and plan amendments and hearing schedules and agendas shall be posted on the department's Internet Web site.

SEC. 9. Section 7078 of the Fish and Game Code is amended to read:

7078. (a) The commission shall hold at least two public hearings on a fishery management plan, plan amendment, or management framework prior to the commission's adoption or rejection of the plan.

(b) The fishery management plan, plan amendment, or management framework shall be heard not later than 60 days following receipt of the plan or plan amendment by the commission. The commission may adopt the plan or plan amendment at the second public hearing, at the commission's meeting following the second public hearing, or at any duly noticed subsequent meeting, subject to subdivision (c).

(c) When scheduling the location of a hearing or meeting relating to a fishery management plan, plan amendment, or management framework, the commission shall consider factors, including, among other factors, the area of the state, if any, where participants in the fishery are concentrated.

(d) Notwithstanding Section 7550.5 of the Government Code, prior to the adoption of a fishery management plan, plan amendment, or management framework that would make inoperative a statute, the commission shall provide a copy of the plan or plan amendment to the Legislature for review by the Joint Committee on Fisheries and Aquaculture or, if there is no such committee, to the appropriate policy committee in each house of the Legislature.

(e) The commission shall adopt any regulations necessary to implement a fishery management plan, plan amendment, or management framework no more than 60 days following adoption of the plan or plan amendment. All implementing regulations adopted under this subdivision shall be adopted as a regulation pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission's adoption of regulations to implement a fishery management plan, plan amendment, or management framework shall not trigger an additional review process under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Regulations adopted by the commission to implement a fishery management plan, plan amendment, or management framework shall specify any statute or regulation of the commission that is to become inoperative as to the particular fishery. The list shall designate each statute or regulation by individual section number, rather than by reference to articles or chapters.

SEC. 10. Section 7079 is added to the Fish and Game Code, to read:

7079. (a) Each fishery management plan or management framework may include provisions for comanagement of the fishery.

(b) To the extent the department implements comanagement provisions pursuant to subdivision (a), the department shall develop standards for comanagement. Those standards may apply statewide or on an individual fishery basis, or both, and shall specify the roles of the fishery participants in the allocation, assessment, and management of a fishery. The standards shall be developed in close cooperation between the department, representative fishery participants, fishery councils or commissions established pursuant

to the Food and Agricultural Code, and other members of the public, and shall be adopted by the commission. The standards shall, at a minimum, address all of the following issues:

- (1) The roles and responsibilities of all participants.
- (2) Accountability to statutory and regulatory mandates.
- (3) Process and transparency.
- (4) Eligible comanagement entities.

SEC. 11. Section 7088 of the Fish and Game Code is amended to read:

7088. Each fishery management plan, plan amendment, or management framework shall include a list of any statutes and regulations that shall become inoperative upon the commission's adoption of implementing regulations for that fishery management plan, plan amendment, or management framework.

Approved _____, 2008

Governor