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Fish and Game Commission

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California



Miscellaneous Policies

AL TAUCHER'S PRESERVING HUNTING AND SPORT FISHING OPPORTUNITIES POLICY

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Through statutory policy, the California Legislature has directed the Department of Fish and Game and the Fish and Game Commission to maintain diversified recreational uses of wildlife, including the sport of hunting. California's hunters and sport anglers have assisted in the management and wise use of fish and wildlife resources since before the inception of the Commission in 1870. Sporting men and women of California have historically provided the major portion of the Department's financial base through payment of license fees and taxes on hunting and fishing equipment and by direct donations. Dollars from hunters and anglers have played a major role in the management, protection and preservation of fish and wildlife that are enjoyed by all Californians, including campers, hikers, bird watchers, photographers and other members of the public.

Therefore, it is the policy of the Fish and Game Commission that:

The Department shall emphasize programs that ensure and enhance hunting and fishing opportunities. These activities shall be integrated into all Department programs.

In its review of federal, state and local plans, special plans and proposed projects to determine consistency with Commission policy and the goals and objectives of the Department's management plans and programs, and in meeting its responsibilities as trustee for the State's fish and wildlife resources, the Department shall establish the goal of preventing loss of hunting and sport fishing opportunities.

To meet the objective of this policy, the Department shall establish a working group to develop enhancement strategies and shall meet semiannually with a Fishing and Hunting Opportunity Subcommittee of the Commission and its staff and members of the interested public to review program progress and future plans.

(Adopted 6/16/94)

CALIFORNIA POLICY FOR NATIVE PLANTS

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The California Fish and Game Commission recognizes the following:

1. The management and conservation of California's native flora are important to the State of California, and native plants, as vital components of the State's natural wildlife communities, are held in trust for the people of the State by and through the Department of Fish and Wildlife. [FGC Sec. 711.2(a), 711.7(a), and Sec. 1600]
2. 'Native plants' are generally defined as plants that occur naturally in California without direct or indirect human actions.
3. The California State Legislature recognized the essential value and importance of California native plants to the State's history, economy, landscape, and environment, as declared in Assembly Concurrent Resolution 173 (2010).
4. The State's policies and practices regarding native plants are in need of review and updating. More/> than 30 years ago state law focused on transplantation as a means of mitigating for listed plant species, however experience and numerous studies document that such practices are largely ineffectual over time and often damaging to species or population survival.
5. Growing concern for the effects of wild land fires continues to raise questions and uncertainty regarding appropriate course of action on such issues as fuels management, post fire salvage and seeding, among other actions that may have significance for native plant conservation.
6. It is incumbent upon the Commission and the Department to address the differing public agency opinions and ideas regarding native plant conservation objectives, survey and mitigation standards, genetic degradation, habitat protection, and other native plant issues. Better coordination between state agencies is necessary to overcome institutional and budget constraints.

Therefore, it is the policy and practice of the Fish and Game Commission that:

- The Commission shall encourage, support, and implement, on its own initiative and with the Department of Fish and Wildlife, strategies and tools to conserve native plants as integral elements of the State's wildlife. The Commission shall consider, as appropriate, native plant conservation when carrying out duties which may have a relevant link to plant conservation.
- Incorporating and using current scientific techniques, tools, and standards in the conservation of native plants is necessary to protect the integrity of natural communities and wildlife resources, make land use decisions, and meet the needs of human communities.
- Conservation planning and management for native plants require proactive approaches that address both naturally occurring and human-induced stressors.
- Data collection and sharing among public and private entities coupled with improved data analysis is critical to successful native plant conservation. This requires adequately trained and experienced human resources being available to the Department and other responsible parties.
- Laws, public policies, and natural resource management practices of public agencies, with regard to native plants, need to be reviewed, modernized, and coordinated to ensure consistent and effective native plant conservation based on current scientific and societal needs and understanding.

Adopted 06/11/15

COOPERATION

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

The Commission, its staff, and the Department shall cooperate with local, state and federal agencies and with all interested persons, groups or organizations in every way to further the aims and purposes of fish and game conservation, preservation, propagation, protection, management, and administration. To this end, agreements may be entered into with such agencies, groups or persons when authorized by law.

ENDANGERED AND THREATENED SPECIES

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

Protect and preserve all native species of fishes, amphibians, reptiles, birds, mammals, invertebrates and plants, and their habitats, threatened with extinction; or those experiencing a significant decline which, if not halted, would lead to a threatened or endangered designation. The Department will work with all interested persons, agencies and organizations to protect and preserve such sensitive resources and their habitats.

INTRODUCTION OF NON-NATIVE SPECIES

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

- I. Proposals to introduce exotic species shall be submitted to the Commission for approval. The Department will review and evaluate proposals to insure that the potential effects of such introductions will not have unacceptable negative impacts on native species, agriculture interests, and public health and safety.
- II. In considering proposed introductions, the Commission and Department will be guided by the following:
 - A. Introduction of exotic species will be authorized only after potential impacts have been carefully evaluated and it has been demonstrated that such impacts will be negligible or positive. Such an evaluation will consider the species' ability to disperse outside the introduction area.
 - B. Initial experimental introduction of an approved exotic species will be made under conditions that will permit the action to be reversed, such as introduction into a confined area or introduction of sterile individuals.
 - C. Benefits of the action will be described, including why the need cannot be satisfied through improved management to enhance native species or previously established non-native species.
- III. Introduction of previously established non-native species into areas of the state where they have not been established will be permitted only after it has been determined by the Department that they will have no significant negative impacts.
 - A. Introduction of previously established non-native animal species shall be done in a manner consistent with Section 671.6 of Title 14.
 - B. Stocking of "fish" into the waters of the State shall be done in a manner consistent with Section 238.5 of Title 14.
- IV. Definitions:
 - A **non-native species** is any of mammal, bird, fish, amphibian, reptile, invertebrate, or plant that is not native to California .
 - A **previously established non-native species** is an animal or plant that has become established in California by the aid of humans.

Amended: 06/23/05

KELP

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

- I. Endeavor to maintain an optimum sustained harvest and utilization of the state's kelp resources and derive an optimum return therefrom, whenever the same are in the best interest of fish and wildlife resources.
- II. Insure a supply of kelp for all interested harvesters. Approximately one-fourth of the total area of the state's kelp beds, as designated by the Department, shall remain unleased and thus open to any licensed harvester.

Amended 12/9/05

LAND USE PLANNING

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

The preservation, protection and restoration of fish and wildlife resources within the State is of significant public interest and is inseparable from the need to acquire, preserve, protect and restore fish and wildlife habitat to the highest possible level, and to maintain in a state of high productivity those areas that can be most successfully used to sustain fish and wildlife and which will provide appropriate consumptive and nonconsumptive public use. To carry out these purposes, it is essential that a comprehensive program be implemented by the Department to assure that there will be close coordination with state, federal and local planning agencies, including county boards of supervisors and other decision-making entities in the formulation and implementation of any plans including, but not limited to, county general plans and any modifications to such plans, which may impact fish or wildlife.

- I. Commensurate with this policy, the Commission recognizes that:
 - A. The land resources of the state provide an essential habitat component necessary for the annual renewability and well-being of the state's fish and wildlife resources;
 - B. The land resources are a limited resource subject to increasing demands;
 - C. Conservation, efficient planning and implementation of various land uses are necessary to meet the competing needs of urban communities, industry, agriculture, recreation, and fish and wildlife; and
 - D. There is a need for the Department to provide timely consultation with Federal, State and local governments and agencies on land use planning and projects with a view toward resolving conflicts with the Department management plans, programs and other responsibilities.
 - E. Locally developed regional landscape conservation planning is a forward-looking method which can provide early resolution of land use/wildlife resource protection conflicts and lead to the preservation of essential wildlife habitat while allowing for appropriate growth and economic development.
- II. To provide maximum protection and enhancement of fish and wildlife, the Department shall:
 - A. Promote the development of regional conservation planning at the ecosystem level through active participation in the local development of regional Natural Community Conservation Planning (NCCP) and other forward-looking multiple habitat conservation planning efforts.
 - B. Review, coordinate and provide comments and recommendations on federal, state, local general plans, special plans and proposed projects as appropriate, including the conservation and land use elements adopted by local government pursuant to provisions of Section 65300 et seq., of the Government Code for the purpose of determining the consistency of such plans with Commission policies, and the goals and objectives of the Department's management plans, programs and other responsibilities for the state's fish and wildlife resources. An initial review of local general plans will be completed by January 1986;
 - C. Carry out subsequent reviews of general and special plans and proposed projects and provide appropriate comments and recommendations to the affected federal, state and local government or agency, as needed to assure such plans remain consistent with the Commission's policies and the Department's management plans, programs and other responsibilities;
 - D. Notify the Commission prior to adoption, if possible, but as soon as feasible, when a federal, state or local general or special plan, or a proposed project authorized by such a plan, is determined to be in conflict with Commission policy or the Department's management plans and programs, and would have a significant adverse impact on fish or wildlife resources. In the case of local agency plans or special projects where changes are made late in the review and comment period or at an adoption hearing, notification of the Commission will be within 30 days following the receipt by the Department of the text of the approved plan or project;
 - E. Provide to the Commission as soon as feasible, the Department's remedial action or actions for responding to such findings and determinations or the Department's reasons for finding that no remedial action is necessary. In the case of local agency plans or special projects, notification of the Commission will be within 30 days following the receipt by the Department of the text of the approved plan or project;
 - F. Participate in the local land use planning process and project review implemented in connection with the requirements of Section 21,000, et seq., of the Public Resources Code, for the purpose of conserving and protecting fish or wildlife habitat consistent with the Department's management plans, programs and other responsibilities;
 - G. Oppose the adoption of plans or portions of plans for land use or approval of proposed projects if, after following diligent efforts to resolve issues affecting fish and wildlife resources, the Department finds that such actions are not consistent with the Department's management plans, programs and other responsibilities and will result in significant losses to fish and wildlife resources.

(Amended 3/3/94)

DESIGNATION OF DEPARTMENT CONTROLLED LANDS AS STATE WILDLIFE AREAS

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

The Department, within 30 days of the date of obtaining legal control of any lands which are to be managed as a state wildlife area or as a public hunting area, shall request that the Commission formally designate such lands as a "State Wildlife Area". The Commission will periodically, but not less than once every three years, consider taking regulatory action to add such formally designated lands to the list of "State Wildlife Areas" in Title 14, California Code of Regulations.

(Amended 8/18/05)

MANAGEMENT AND UTILIZATION OF FISH AND WILDLIFE ON FEDERAL LANDS

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

The Department manage and protect all fish and wildlife and threatened or endangered native plants within the state's jurisdiction on lands administered by the federal government in accordance with the laws of this state and regulations adopted pursuant thereto. This policy will not extend to lands over which the state has ceded exclusive jurisdiction nor to the right of the federal government to manage habitat and control access in its proprietary capacity. Management and protection of migratory fish and wildlife will be coordinated between the Department and the federal government on all lands under federal jurisdiction, if appropriate. It is recognized that the federal government has the right under treaty to regulate migratory, endangered and threatened species, and marine mammals under the appropriate Federal Statutes.

MANAGEMENT AND UTILIZATION OF FISH AND WILDLIFE ON PRIVATE LANDS

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

- I. Program Assistance
The owners or tenants of privately owned lands shall be actively encouraged to propagate, conserve, and promote the wise use of fish and wildlife populations on their lands, consistent with other reasonable uses. The Department shall, whenever possible, provide interested persons with guidance and information on programs for developing and employing management techniques to effect such purposes and which will protect and enhance native wildlife or vegetation, even though access to such private lands is subject to the owner's or tenant's control.
The Department, before processing any application for a license for a new Private Lands Wildlife Habitat Enhancement and Management Area (herein referred to as a Private Wildlife Management Area), shall determine that:
 - o (a) The applicant has sent a copy of the application, by certified mail, to each adjoining landowner; and
 - o (b) The applicant has published a notice in a paper of general circulation in the area affected. Such notice shall include: the applicant's name; the name of the Private Wildlife Management Area; the total acreage and its location by county, section, township, and range; the species to be taken; and the proposed seasons. That notice shall also specify that comments regarding the application should be sent to the Department of Fish and Game, Wildlife Management Division, 1416 Ninth Street, Sacramento, California 95814, within 15 days of the notice publication date.
- II. Private Wildlife Management Areas
Private Wildlife Management Area plans (PLM) shall be utilized as a vehicle to maintain and enhance habitat for wildlife.
To this end, except as provided herein, requirements for all plans shall include written findings by the Department that, when implemented, the terms and conditions of the management plan can reasonably be expected to result in:
 - o (a) An increase in the carrying capacity for the species being managed. The aim of this provision is to ensure higher density and/or improved habitat conditions for the featured species. The net result of implementation of the plan is to benefit the species/population while enhancing native wildlife or vegetation.
If the Department makes written findings that the above enhancement measures would not be appropriate requirements of a plan for biological reasons, it may propose alternative management enhancement strategies which result in a net benefit to wildlife.
 - o (b) Exceptions to enhancement requirement. The Department may make a written determination that habitat maintenance, rather than enhancement, is appropriate if:
 - (1) The landowner has, prior to entering the PLM program, consistently engaged in the best management practices beneficial to the species in question; or
 - (2) The land in question is designated, on the applicable county or city general and specific plan maps, for development at a density or with permitted uses which would have or could have a significant adverse impact on wildlife habitat values, and that such development activity or use is probable within the foreseeable future.
- III. Deer
All plans will be based upon sound biological data and will be consistent with the applicable deer herd management plan(s). Additionally, harvest plans will be submitted only if they:
 - o (a) Are consistent with Department management goals and objectives for the species involved; and
 - o (b) Assure seasons and methods of take which are consistent with biologically sound principles intended to achieve or maintain deer herd goals and objectives. Department recommendations for deer hunts during the rut shall include analysis and findings of consistency with these criteria; and
 - o (c) Ensure that, when antlerless, either sex, or late season buck hunts are proposed for migratory deer herds, they are consistent with proposed harvest regimes for antlerless, either sex, or late season buck hunts in the same or adjacent zones unless the Department makes a specific finding that such special hunts are not biologically or statutorily feasible. The intent of this provision is to seek parity for the nonattached hunters.
- IV. Game Species Other Than Deer
Department recommendations for harvest programs involving species other than deer shall reflect an intent to provide parity for the nonattached hunters in the same general area, unless the Department makes a specific finding that such hunts are not biologically or statutorily feasible.
- V. Monitoring
All plans shall include provisions for at least annual monitoring of compliance with habitat enhancement provisions. The costs of monitoring shall be borne by the applicant to ensure compliance.
Accurate records of hunting activities conducted pursuant to the approved plans shall be maintained by all licensees and shall be made available to the Department upon request. Such information shall be analyzed annually by the Department.

(Amended 5/9/94)

MARINE PROTECTED AREAS

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

Cooperate with other State, Federal, and Local Government agencies in the consideration and designation of certain marine and estuarine submerged lands as marine protected areas under the Marine Life Protection Program which has all of the following goals:

- To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems.
- To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.
- To improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.
- To protect marine natural heritage, including protection of representative and unique marine habitats in California waters for their intrinsic value.
- To ensure that California's marine protected areas have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines.
- To ensure that the state's marine protected areas are designed and managed, to the extent possible, as a network.

Designation of individual or networks of marine protected areas is intended to protect marine habitats, ecosystems and living marine resources. Marine protected areas shall be selected based on sound, peer reviewed science readily available for public scrutiny and comment in a timely manner. Such marine protected area proposals shall be created using guidance contained in the Marine Life Protection Act Master Plan Framework concerning marine protected area design, management,

enforcement, monitoring, evaluation, and financing to satisfy one or more of the following purposes:

- Natural Heritage:
 - To protect unique or representative areas of marine habitat for their intrinsic values.
 - To protect unique or representative areas of marine habitat for their recreational values.
 - To insure continued public ownership and access.
 - To provide insurance against catastrophic loss of a significant portion of a habitat.
 - To provide a baseline for damage assessment of other areas.
- Ecosystem Biodiversity:
 - To protect a portion of an ecosystem with all its component parts.
 - To protect unique or representative species or species assemblages.
 - To provide for genetic diversity and stable stock compositions for species of concern.
 - To provide insurance against the catastrophic loss of a significant species or species assemblage.
- Education/Research:
 - To provide research areas subject to minimal human activities.
 - To foster stewardship of living marine resources and habitats.
 - To provide educational opportunities for schools, colleges, universities and the public.
 - To provide baseline areas or reference sites for comparison with other areas.
 - Protection of Marine Populations:
 - To help the recovery, restoration, or enhancement of one or more species of concern.
 - To provide for natural size and age compositions, and genetic diversity of populations in representative habitats.

Amended: 12/9/05

MULTIPLE USE OF LANDS ADMINISTERED BY THE DEPARTMENT OF FISH AND GAME

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

Lands under the administration of the Department be made available to the public for fishing, hunting or other forms of compatible wildlife dependent recreational use, and for scientific studies whenever such use or uses will not unduly interfere with the primary purpose for which such lands were acquired.

For the purposes of this policy, undue interference shall not mean that hunter and angler access to properties that would otherwise be available for access for passive recreational activities (i.e., bird watching, interpretive tours, etc.) is deemed to be necessarily incompatible. Further, hunting and fishing shall not be banned simply because a Department administered land was acquired primarily for the protection of various threatened and endangered species unless it can be clearly demonstrated that such activities would be likely to have a detrimental effect on listed species on the property in question.

Amended: 8/2/02

NAMING INSTALLATIONS

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

- I. No fish hatchery, game refuge, wildlife area or any installation, other than Marine Protected Areas (MPAs), shall be named for any person, living or dead. Installations shall be named in a manner which will indicate their geographical location, avoiding as far as possible the names of local political units. Vessels shall be named for fish.
- II. The Commission may commemorate an individual by including that individual's name after the geographic name of an MPA if all of the following criteria are met:
 - 1. The individual has been deceased for a minimum of 5 years;
 - 2. It has been determined the individual has made an extraordinary, unique, and long-lasting contribution to the conservation, use, and/or enjoyment of California's living marine resources;
 - 3. It has been determined with reasonable care and consideration that the individual's merit and/or contribution can stand the test of time;
 - 4. The individual and/or their efforts have a direct connection with the geographic location of the MPA or immediate vicinity.
- III. The Commission shall be represented at and may participate in all ceremonies dedicating the launching or inauguration of any of the facilities mentioned above. The Department and the Commission staff shall coordinate their work and efforts in setting up or arranging such programs.

(Amended 5/23/2012)

NATIONAL FORESTS

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

National forest lands provide habitat essential to the annual renewability and well-being of a host of fish and wildlife resources. The Fish and Game Commission and the Department of Fish and Game have the responsibility and authority to manage the fish and wildlife resources on national forest lands in this state. Management practices of the U.S. Forest Service can affect fish and wildlife and their habitat and can affect the management of fish and wildlife by the Commission and the Department.

To ensure effective communication between the Commission, Department and the U.S. Forest Service, the following procedures will be used:

- I. The Department shall cooperate and work closely with the U.S. Forest Service with the goal of ensuring adequate protection and conservation of fish and wildlife resources and their habitat during U.S. Forest Service planning and management activities.
- II. The Department shall request from the U.S. Forest Service an annual report summarizing plans, management practices and policies on national forest lands in California that have or may have impacts on fish and wildlife resources or their habitat.
- III. The Department shall provide the Commission with an analysis of this annual report and of existing management practices of which it is aware, with particular emphasis on specific plans, management practices and policies of the U.S. Forest Service in specific California national forests that are or may be adverse to fish and wildlife resources or their habitat.
- IV. The Department shall make specific recommendations to the U.S. Forest Service via the Commission intended to correct or alleviate any adverse conditions identified in its analysis of the annual report.
- V. The Department shall invite the U.S. Forest Service to appear before the Commission when it considers the annual report.

(Adopted 11/13/84)

NON-NATIVE TURTLES AND FROGS

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The Fish and Game Commission declares that:

- 1. The Fish and Game Commission and the Department of Fish and Game have been charged by the Legislature to protect and wisely manage the State's living natural resources and the habitats upon which they depend.
- 2. The importation of non-native turtles and frogs poses threats not only to the State's native turtles and frogs, but also to the native source populations of the

- imported turtles and frogs.
- 3. These threats include, but are not limited to: disease, hybridization, competition, and predation.

Therefore, it is the policy of the Fish and Game Commission that the Department of Fish and Game shall cease issuing importation permits for any live non-native turtles or frogs pursuant to Section 236, Title 14, CCR.

(Adopted: 4/8/2010)

PLANNING

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

- I. Proper management of the state's fish and wildlife resources can only be accomplished through sound planning.
- II. The Department shall prepare and submit annually to the Commission a report on the Department's progress in implementing the Comprehensive Management System adopted by the Department in March 1992. This report will include a status report on attaining the goals and objectives contained in the strategic planning component of the Comprehensive Management System.
- III. The Department operations shall be guided by the plan. Any proposed program not provided for in the plan shall be submitted to the Commission for approval unless mandated by the Legislature.

(Amended 5/9/94)

PROSPECTING ON FISH AND GAME LANDS

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

Oppose all applications for a prospecting permit on, or a lease of, any state land administered by the Department for the purpose of prospecting or producing any mineral, or commodity, including geothermal and petroleum resources unless no adverse effect to fish or wildlife or their habitat will occur.

The Department shall urge any state agency or agencies, empowered to grant such a permit or enter into such a lease, to provide for such protection and safeguards as the Department deems necessary to protect fish and wildlife and their habitat.

(Amended 5/9/94)

PUBLIC INFORMATION AND EDUCATION

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

- I. The Department shall disseminate to the maximum extent feasible information to the public through the news media, books, pamphlets, motion pictures and other appropriate means regarding all matters dealing with the conservation, protection, management and administration of the state's fish and wildlife resources. It shall also inform the public about the authority and activities of the Commission and the Wildlife Conservation Board.
- II. The Department shall develop education programs in conjunction with the Department of Education directed toward the state's youth, which emphasize the importance of the preservation, enhancement and proper management of California's fish, wildlife and habitat resources and which recognize the role and value of hunting and fishing as resource management tools. Young people will be encouraged to participate in conservation, hunting and fishing programs based on a sound renewable natural resource ethic.
- III. The Department shall encourage education programs that increase the public's respect and concern for wild animals; and their knowledge of the interrelationships between wild animals, their environment, and their human neighbors.

The Department shall not support any program increasing the demand for possession or ownership of wild animals as pets.

(Amended 3/2/95)

RESEARCH

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

- I. Research, including the investigation of disease, shall be performed to provide scientific and management data necessary to promote the protection, propagation, conservation, management or administration of fish and wildlife resources of this state when such data is not available by other means.
- II. Whenever possible and advantageous, the services of the University of California or other academic or research institutions, or federal, state or local agencies shall be used.
- III. The Department shall review the following information, which must be clearly stated in any proposed research programs: (a) goals and objectives of proposed research, including benefits to be derived from such research; (b) pertinent background information, including a literature review which supports this research; (c) experimental design, including methods of data collection and analysis; (d) estimated cost of program; (e) its estimated duration; and (f) how results will be presented to the Department. The provisions of this paragraph shall not extend to emergency investigations of disease.
- IV. The Department shall report regularly to the Commission on the status of major research programs in progress.

(Amended 6/16/94)

RESTRICTED ACCESS COMMERCIAL FISHERIES

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

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

1. Restricted Access as a Management Tool

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

The one factor common to all of these fisheries is that the fishery resources are available to anyone who wants to pursue them. Once a fisheries management authority specifies the total catch, the season length, and the allowable gear, every fisherman competes with every other fisherman to catch as much as possible in the shortest time possible. In some fisheries, bigger and faster boats, more electronics, more gear, longer hours each day and fewer days each season are the result as each fisherman rushes to catch more than the other--the "race for fish" so often described in the fishery management and economics literature. In other fisheries, the problem may just be that the number of participants has increased to a level that jeopardizes the economic viability of the fishery. What makes sense for the individual makes no

sense in the aggregate because it results in too many vessels, too much gear, too much waste, and too little income for fishermen. Moreover, excess fishing capacity usually leads to overfished populations of fish, which eventually leads to confrontations between fishermen and fishery managers over the status of the resource and the need for more restrictive regulations. Debate then follows over the need for better data.

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

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

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

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

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

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

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

The lack of consistent policies for guiding the development of **restricted access fisheries**¹ has resulted in a myriad of laws and regulations. These are confusing to the industry, difficult for the Department to interpret and administer, and, in some cases, of questionable benefit to the fishery or the resource they were intended to protect.

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

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

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

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

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

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

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

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

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

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

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

Maintain the long-term economic viability of fisheries. To assure the greatest economic benefit to society from the harvest of a public fishery resource, it may be necessary to limit the number of individuals or vessels to assure economically viable fishing operations. When open access contributes to the impoverishment of

fishery participants or illegal or unsavory behavior by participants competing for the limited resource, some form of restricted access based on economic viability may be necessary. Any restricted access program established, entirely or in part, for the purpose of economic viability must be crafted to avoid restricting access more than is necessary.

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

3. Development and Review of Restricted Access Programs

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

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

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

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

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

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

4. Elements of Restricted Access Programs

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

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

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

Each restricted access program should take into account possible impacts on open access fisheries and on other restricted access fisheries.

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

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

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

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

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

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

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

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

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

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

5. Permits

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Permit Transfers.

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

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

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

In order to prevent an increase in fishing power, in California's salmon limited entry program permits are transferable with the fishing vessel at the time of sale or to

another vessel of equal or less fishing capacity, under specified conditions.

In the herring fishery, where the permit is to the individual rather than the vessel, permit transfers may only be made to a fishing partner or an individual holding a maximum number of points in that fishery, with points based on years of crew experience and years in California fisheries. This limitation on transfers is intended to give an advantage to those who have spent time in the fishery. Thus, those deserving of a permit are given a preference. By limiting the market for permit sales, the cost of entry is lower than it would be if the permits were available on a wide open market.

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

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

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

7. Vessel Issues

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

Replacement vessels. Replacement vessels of the same or lower fishing capacity as the permitted vessel will be allowed only if the permitted vessel is lost, stolen, or no longer able to participate as a commercial fishing vessel, as shown on State or government documents, or other sources of information that the Department might consider. This requirement is necessary to preclude effort shift to open-access and other restricted access fisheries. The Department will make replacement vessel determinations. The ownership of the replacement vessel, as shown on government documents, shall be same as the permitted vessel.

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

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

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

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

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

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

8. Harvest Rights

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

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

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

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

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

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

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

- **3. Transferability.** The degree to which quotas are transferable (buy, sell, lease, "fishing on behalf of") must be determined.
- **4. Total Allowable Catches.** Assuming individual quotas are a percentage of the TAC, in order to determine how much actual quota each quota owner may harvest, a TAC will have to be set. Setting TACs requires high quality resource assessment information and scientifically sound estimates of sustainable yields.
- **5. Aggregation Limits.** Limits on the amount of quota an individual, company, community or other entity may hold needs to be considered, perhaps on a fishery by fishery basis.
- **6. Enforcement and Monitoring.** Emphasis would likely shift towards enforcement methods to prevent quota holders from under-reporting their catches. Methods used elsewhere include increased record keeping/tracking of catches, limiting number of landing ports and increased use of industry-funded monitors at landing ports.
- **7. Cost Recovery.** Most individual quota systems include, at a minimum, methods for having quota owners pay the cost of managing the system.
- **8. Processor-Fishery Participant Relationships.** Depending on who winds up owning the harvest right, this relationship might change. Past experience shows that the quota owner will have increased influence on fishing decisions.
- **9. Quality Considerations.** Early experience with individual quotas shows a consistent trend towards maximizing quality to maximize prices received. This could affect the timing and location of fishing and the other types of regulations needed.

POLICY 8.1: It is the policy of the Commission that harvest rights systems such as individual transferable quotas may be considered only after careful consideration of stakeholder input. In establishing such management systems, the State should consider: (1) fair and equitable initial allocation of quota shares which considers past participation in the fishery, (2) resource assessment for establishing total allowable catch estimates, (3) fishery participation goals and aggregation limits, (4) cost recovery from quota owners, (5) quota transferability, and (6) recreational fisheries issues.

9. Administration of Restricted Access Programs

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

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

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

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

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

POLICY 9.1: Administrative costs shall be minimized and those costs shall be borne by the respective programs. Review or advisory boards may be considered on a program-by-program basis. The programs shall be administered in their entirety within an existing department unit.

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

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

1 Restricted access is used in this document to mean the application of laws, regulations, or policy that affect the number of fishing units or allowable take by individual units in a commercial fishery. [Return to body of policy](#)

Adopted: 06/18/99

SALTON SEA

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

Recognize that the Salton Sea has been designated as a repository for agriculture drainage water (Federal Public Water Reserve Number 90 and Number 114). The Commission recognizes the importance of this designation to agriculture.

The Commission also finds that the Salton Sea has unique and valuable fish and wildlife resources and associated recreational values, and the Commission and the Department shall be guided by the following objectives:

- I. Preserve the biological integrity of the Salton Sea and its associated wetland habitats.
- II. Protect and perpetuate the diverse fish and wildlife resources of the Salton Sea ecosystem for the use and enjoyment of present and future generations.
- III. Prevent or alleviate those aspects of projects, developments and activities which would or do exert adverse impact on the habitats and fish and wildlife resources of the Salton Sea ecosystems.

(Amended: 06/23/05)

SEASON OPENING DATES

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

Where and when practical, hunting and fishing seasons will open on a Saturday. In order that vacations and other plans can be scheduled well in advance, the following are designated as opening dates for the named species and will be adhered to unless there are strong reasons why the Commission should deviate:

- Trout: General - Last Saturday in April
- Pheasant: Second Saturday in November
- Dove: September 1
- Quail: Coastal Season north of San Francisco Bay - Last Saturday in September
- Quail: Remainder of State - Third Saturday in October
- Special Mountain Quail: Second Saturday in September
- Chukar: Statewide - Third Saturday in October
- Sage Grouse: Second Saturday in September (Lassen County), and first Saturday in October (Mono and Inyo counties)
- Sierra and Ruffed Grouse: Second Saturday in September
- Turkey: Fall Season - Second Saturday in November
- Turkey: Spring Season - Last Saturday in March

(Amended 8/1/2003)

SHELLFISH AND SEA OTTER CONFLICTS

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The Fish and Game Commission declares the following:

- 1. The management and conservation of marine resources are important to the State of California and fish and wildlife resources are held in trust for the people of the State by and through the Department of Fish and Game. [FGC Sec. 711.7(a) and Sec. 1600]
- 2. It is the policy of the State to encourage the conservation, maintenance, and utilization of marine resources for the benefit of all citizens and to promote the development of local fisheries, to encourage the growth of commercial fisheries, and to achieve the sustainable use of the state's fisheries. [FGC Sec. 1700 and Sec. 7055]
- 3. Significant legislation enacted in 1998 established the State policy that marine living resources are to be conserved, used and restored for the benefit of all citizens; that the health and diversity of entire marine ecosystems and all marine resources are to be conserved; and that State actions are to recognize the importance of sustainable fisheries to the economy and the culture of California. [AB 1241]
- 4. The Commission has previously adopted policies to encourage the development and expansion of commercial fishing and to cooperate with local, state and federal agencies and private persons and organizations to further the conservation of fish and wildlife.
- 5. In 1986 a federal law was enacted amending the Endangered Species Act. The amendment specifically provides authority for the U.S. Fish and Wildlife Service to cooperatively undertake, with the Department of Fish and Game, a zonal management plan for the threatened southern sea otter that has its primary objective to conserve both sea otters and local commercial fisheries. This federal law paved the way for a Memorandum of Understanding between the two agencies and initiated an extraordinary effort to balance apparently competing needs and give assurances to both wildlife conservation and commercial fishing interests.

Therefore, it is the policy of the Fish and Game Commission to:

- 1. Actively encourage on its own initiative and with the Department of Fish and Game, consistent with state law and legislatively established policy, a balanced solution to minimize shellfish fishery and sea otter conflicts that provides assurances for sea otter recovery, sustainable local commercial and sport fishing, healthy marine ecosystems, and strong local economies.
- 2. Support and encourage the Department in completing and maintaining a current comprehensive Sea Urchin management plan that considers among other issues the long-term impacts of various levels of fishing effort, predation, and habitat quality.
- 3. Confer with appropriate state and federal agencies, local governments, scientific experts, fishery participants, sea otter support groups, and other interests in exploring options for and identifying a balanced zonal management plan that protects the marine resources of the State and supports sustainable local commercial fishing industries.
- 4. Promote a healthy marine ecosystem as the single best way to recover sea otters and promote local fisheries and encourage appropriate federal and State agencies to undertake research efforts necessary to identify the cause or causes for the continued decline in the sea otter population.
- 5. Pursue financial resources to match federal funds in undertaking research and management efforts designed to promote recovery of California's sea otter population while minimizing conflicts with shellfish fisheries and other marine resource uses. These funds could include general State revenues and the State's share of federal funds from Section 6 of the Endangered Species Act, sections 109 and 110 of the Marine Mammal Protection Act, or Pittman-Robertson federal aid.

(Adopted April 2, 1999)

TRAINING, TESTING AND TRIALING OF HUNTING DOGS

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

The training, testing and trialing of hunting dogs facilitates hunting in that the use of a trained hunting dog is recognized as a conservation tool which will increase the recovery of downed game.

The use of a trained hunting dog is recognized as contributing to the enjoyment of the hunting experience.

The testing and trialing of hunting dogs is recognized as a recreational activity which is an extension of the hunting experience determines the best dogs for the improvement of hunting breeds, and provides means of evaluating the success of a training program.

The emphasis on programs that ensure and enhance hunting opportunities shall, where feasible, include opportunities to train, test and trial dogs to be used in hunting.

Adopted: 05/09/02

TRIBAL CONSULTATION POLICY

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The Policy

On September 19, 2011, Governor Edmund G. Brown, Jr., issued Executive Order B-10-11, which provides, among other things, that it is the policy of the administration that every state agency and department subject to executive control implement effective government-to-government consultation with California Indian Tribes.

Purpose of the Policy

The mission of the California Fish and Game Commission (FGC) is, on the behalf of California citizens, to ensure the long term sustainability of California's fish and wildlife resources by setting policies, establishing appropriate rules and regulations, guiding scientific evaluation and assessments, and building partnerships to implement this mission. California Native American Tribes, whether federally recognized or not, have distinct cultural, spiritual, environmental, economic and public health interests and unique traditional knowledge about the natural resources of California.

The purpose of this policy is to create a means by which tribes and FGC can effectively work together to realize sustainably-managed natural resources of mutual interest.

Policy Implementation

1. Communication. Both FGC and the tribes are faced with innumerable demands on their limited time and resources. In the interest of efficiency, FGC will annually host a tribal planning meeting to coordinate the upcoming regulatory and policy activities before FGC. The meeting will provide a venue for education about process, identifying regulatory and policy needs, and developing collaborative interests; this will include inviting sister agencies to participate.
2. Collaboration. In areas or subjects of mutual interest, FGC will pursue partnerships with tribes to collaborate on solutions tailored to each tribe's unique needs and capacity. The structure of these collaborative efforts can range from informal information sharing, to Memorandum Of Understanding with more specific agreements regarding working relationships and desired outcomes, to co-management agreements with specific responsibilities and authorities.
3. Record-keeping. FGC will maintain a record of all comments provided by tribes and will include them in administrative records where appropriate.
4. Training. FGC will provide training to interested tribes on its processes for regulation and policy development.

Adopted 06/10/15

USE OF DESIGNATED DEPARTMENT LANDS FOR PRIVATELY MANAGED PUBLIC HUNTING AREAS

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

Diversified uses of wildlife resources will be promoted by the Department including hunting of designated species subject to regulations consistent with maintaining

healthy, viable populations, public safety and a quality outdoor experience. Suitable Department administered lands may provide opportunities for public hunting programs, however, due to limitations on funding and staffing these lands may not be fully used. Therefore, the Department shall consider alternatives to its management of hunting programs on these lands, consistent with approved management plans, including leases to private parties for operating public hunting programs.

The Department shall review on an ongoing basis the status of lands under its jurisdiction and control to determine if there are lands which more properly could be leased to private enterprise to be managed as public hunting areas. If suitable, Department lands shall be made available to the private sector pursuant to appropriate Government Code provisions and General Services leasing procedures. In determining the qualifications of a proposed lessee, the Department shall take into account the experience of the proposed lessee in managing lands for wildlife habitat maintenance purposes and for providing hunting opportunities to the general public.

(Amended 8/4/94)

WATER

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

- I. The quantity and quality of the waters of this state should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife. Commensurate with this policy, the Commission recognizes that:
 - A. The waters of the state are a limited resource subject to ever increasing demands; and that
 - B. Conservation and the efficient management of water resources are necessary to meet the competing needs of urban communities, industry, agriculture, recreation and fish and wildlife.
- II. Quantity:

To provide maximum protection and enhancement of fish and wildlife and their habitat, the Department shall:

 - A. Review and comment on proposed water development projects, on application for licenses or permits for water use, water development, and on projects affecting aquatic habitat.
 - B. Recommend and seek the adoption of proposals necessary or appropriate for the protection and enhancement of fish and wildlife and their habitat. The primary habitat objective is the maintenance of natural conditions in state waters, the adaption of impounded waters for fish and wildlife purposes, and the creation of new waters or areas which will support fish and wildlife, provided that such new waters enhance fish and wildlife.
 - C. Oppose the issuance of permits or licenses, or the authorization of appropriation of funds for water use projects which have not prevented or adequately compensated for damage to fish and wildlife resources.
 - D. Prepare and render reports on water use or development in relation to their effect on fish and wildlife at the request of federal or state agencies whenever the same may be required by law or otherwise be appropriate.
 - E. Monitor and maintain surveillance over existing water use projects to prevent avoidable damage to aquatic habitat and to insure compliance with fish and wildlife protection or enhancement requirements.
 - F. Take an active part in the planning of water development projects, and take appropriate action designed to insure adequate water supplies to maintain and enhance fish and wildlife habitat.
 - G. Assist, cooperate, and negotiate agreements with federal, state, public or private agencies or organizations, subject to the approval of the Commission, provided Commission approval shall not be required for agreements of a routine nature except when they call for a substantial augmentation of the budget.
 - H. Seek an allocation of water for fish and wildlife on an equitable basis with other uses, and protect fish and wildlife from the hazards created by such other uses.
 - I. Periodically reassess permit and license terms and conditions and where feasible, seek corrective action where original terms and conditions were inadequate.
 - J. Advise the Commission at one of its regularly scheduled meetings of any project which may have significant adverse impacts on fish and wildlife, and shall indicate the measures by which fish and wildlife resources will be protected from damage by the project in question. The Department shall also state the extent to which the agency or person preparing the plans for such project has incorporated therein plans for enhancing such resources.
 - K. Maintain field and technical expertise in all areas of instream flow assessment in order that the Department can provide recommendations which are biologically sound and technically defensible.
- III. Quality:

Encourage and support programs to maintain or restore a high quality of the waters of this state, and prevent the degradation thereof caused by pollution and contamination. The Department shall take all appropriate actions to further these ends. In addition, the Department shall inform the State Water Resources Control Board and Regional Water Quality Control Board of water quality problems affecting fish and wildlife and shall seek mutual cooperation in solving such problems.
- IV. Access:

Endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife.

(Amended 11/3/94)

WETLANDS RESOURCES

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The Fish and Game Commission finds that:

- I. California's remaining wetlands provide significant and essential habitat for a wide variety of important resident and migratory fish and wildlife species.
- II. The quantity and quality of the wetlands habitat remaining in California have been significantly reduced; thus, maintenance and restoration are essential to meet the needs of the public for fish and wildlife resources and related beneficial uses. In addition, the protection, preservation, restoration, enhancement and expansion of wetlands as migratory bird breeding and wintering habitat are justly recognized as being critical to the long-term survival of such species. Wetland habitat is also recognized as providing habitat for over half of the listed endangered and threatened species in California.
- III. Projects which impact wetlands are damaging to fish and wildlife resources if they result in a net loss of wetland acreage or wetland habitat value.
- IV. Through the passage of Senate Concurrent Resolution 28 (January 1, 1983), the Legislature, in recognition of the importance of wetlands, indicated its "intent to preserve, protect, restore and enhance California's wetlands and the multiple resources which depend upon them for the benefit of the people of the State". In addition, on August 23, 1993, Governor Wilson issued the California Wetlands Conservation Policy which established a specific goal of "no net loss of wetlands." To achieve this goal, the policy emphasizes program elements that reduce procedural complexity with wetland conservation programs, and encourages landowner incentive programs and cooperative planning efforts such as Central Valley Joint Venture.

Therefore, it is the policy of the Fish and Game Commission to seek to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California.

Further, it is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion which would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage.

The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values.

(Amended 8/18/05)

DEPARTMENT OF FISH AND GAME RECOMMENDED WETLAND DEFINITION, MITIGATION STRATEGIES, AND HABITAT VALUE ASSESSMENT METHODOLOGY

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INTRODUCTION

At the March 9, 1987 Fish and Game Commission hearing during which the Commission adopted a wetlands policy, the Commission assigned the Department two tasks. These tasks were: 1) to recommend a wetland definition for use in the implementation of the Commission's adopted policy, and 2) to recommend a means by which retention of wetland habitat values may be assured when it becomes necessary to compensate for the loss of wetland acreage and/or wetland habitat values resulting from the implementation of projects or other activities. This report is intended to respond to the Commission's request.

The Commission's wetland policy is not a regulatory program. The Department and the Commission possess only limited regulatory authority over potential uses within remaining wetlands not currently owned by the Department. Our role in wetland protection, as we have explained in our March 9, 1987 report to the Commission, is primarily advisory in nature. Therefore, this report identifies a wetland definition and an implementable procedure by which wetland acreage and habitat values will be retained when it has been determined that projects, plans or other activities will occupy or otherwise adversely impact wetlands.

WETLAND DEFINITION

It is apparent that the adequacy of the Commission's wetland policy is directly related to the adequacy of the wetland definition to which the policy relates. As we indicated in our previous report to the Commission, the Department has found the U.S. Fish and Wildlife Service (USFWS) wetland definition and classification system to be the most biologically valid of those definitions and classification systems presently utilized in California.

The USFWS definition utilizes [hydric soils](#)², saturation or inundation, and vegetative criteria, and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. The USFWS definition has been employed in project review nationwide for over 8 years. It has been well tested and proven to be adequate. Further, because it requires the application of the same array of biological and physical parameters, it exhibits a degree of consistency and uniformity which is advantageous to biological and developmental planners alike. The Department's use of the USFWS wetland definition as the principal means of wetland identification, combined with on-site inspections to establish actual wetland acreage and habitat values, will substantially increase the consistency of our wetland determinations. This improved level of consistency should subsequently alleviate the past uncertainties and frustrations experienced by the development community. Lastly, and as will be explained in greater detail later, if a wetland compensation site is to be located within or adjacent to the project site, assurances regarding the establishment and long-term retention of fish and wildlife habitat values must be provided.

The USFWS definition is as follows:

"Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly [hydrophytes](#)³; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year." (Classification of Wetlands and Deepwater Habitats of the United States; FWS/OBS 79/31; December 1979).

The USFWS wetland classification publication also describes the upper (landward) and lower (waterward) limits of wetlands. These limits are described as follows:

"The upland limit of wetland is designated as (1) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (2) the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or (3) in the case of wetlands without vegetation or soil, the boundary between land that is flooded or saturated at some time each year and land that is not." (Ibid, page 4).

The lower limit of wetlands in estuarine or marine areas (i.e., those wetlands which are subject to the ebb and flow of the tide) is established as coincident with the extreme low spring tide.

The lower limit of wetlands in an inland setting (i.e., those wetlands associated with lakes, rivers, ponds, vernal pools, etc.) is established at a depth of two meters (6.6 feet) below low water; however, if emergents, shrubs, or trees grow beyond this depth at any time, then the deepwater edge of such vegetation is the boundary.

The USFWS definition includes, swamps; freshwater, brackish water, and saltwater marshes; bogs; vernal pools; periodically inundated saltflats; intertidal mudflats; wet meadows; wet pastures; springs and seeps; portions of lakes, ponds, rivers and streams; and all other areas which are periodically or permanently covered by shallow water; or dominated by hydrophytic vegetation, or in which the soils are predominantly hydric in nature. Therefore, for all of the reasons set forth above, the Department recommends the USFWS definition as its principal means of wetland identification in conjunction with on-site inspections for implementation of the Fish and Game Commission's policy.

RETENTION OF WETLAND ACREAGE AND HABITAT VALUES

The Commission's wetland policy contains essentially two considerations for offsetting adverse impacts to wetland resources. The policy stresses the need to compensate for the loss of wetland habitat on an acre-for-acre basis. That is, for every acre of wetland lost, no less than an acre of wetland must be created from non-wetland habitat. Compensation for the loss of wetland habitat values to fish and wildlife resources requires the creation of habitat values at the compensation site which at least duplicates those habitat values which are lost to project implementation. Requisite assurance that habitat values will, in fact, be at least retained shall be the subject of the remainder of this discussion.

Mitigation for habitat values lost to the implementation of a project may be accomplished in four ways taking into consideration mitigation site location and wetland type to be created. The term "out-of-kind" as used in mitigation scenarios 3 and 4 refers to different types of wetlands and does not include the replacement of wetland habitat with nonwetland habitat. These mitigation alternatives, in descending order of general acceptability are:

- I. "In-kind, On-site": This form of mitigation would seek to duplicate the physical nature of the wetland area to be negatively impacted within or adjacent to a project site. This mitigation technique, if properly applied, would tend to assure that the habitat derived from wetland creation is essentially identical to that which was lost to development; would concentrate on benefiting those fish and wildlife species and local populations adversely impacted by development; and would tend to provide a greater degree of certainty that the benefits provided by the impacted wetland to associated plant and animal communities in the project vicinity are retained.
- II. "In-kind, Off-site": This form of mitigation would be selected when "in-kind, on-site" mitigation would result in the creation of wetlands of demonstrably inferior quality to those which could be created elsewhere. In general, "in-kind, off-site" mitigation should be located as near to the impact site as is feasible. The advantage of "in-kind, off-site" mitigation is that it would, through duplication of the physical nature of the wetland area to be negatively impacted, tend to benefit those fish and wildlife species which would be adversely impacted at the project site and would also tend to maintain their population levels. This form of mitigation does not necessarily assure retention of the local fish and wildlife populations affected by the project.
- III. "Out-of-kind, On-site": It is conceivable that situations could exist where fish and wildlife resources would be better served from a regional standpoint if creation of wetlands of a different type than those adversely impacted through development were selected as mitigation. For example, it could be that, from a management perspective, a freshwater marsh is more valuable to fish and wildlife resources in a given region than an equivalent area of saltmarsh. In such a situation, the Department believes that an alternative to mandatory in-kind replacement of habitat values can be desirable. However, out-of-kind mitigation is generally inferior to in-kind mitigation, since it does little to provide assured benefit to those species which would be negatively impacted as a result of development. Therefore, only if a compelling biologically-based rationale exists for acceptance of out-of-kind mitigation should such a form of mitigation be employed. Application of out-of-kind compensation on-site would generally provide values which relate geographically to those values lost through development, and would generally result in benefiting that ecosystem, or collection of communities, with which the developed wetland was associated.
- IV. "Out-of-kind, Off-site": This form of mitigation would not result in the maintenance of those fish and wildlife values lost through development nor would it necessarily have any bearing upon the ecosystem involved at the project site. For these reasons, "out-of-kind, off-site" mitigation is a less acceptable means of compensating for adverse impacts to wetlands. However, if mitigation approaches 1, 2, and 3 cannot be employed, and if the choice is retention of wetland acreage through "out-of-kind, off-site" compensation or a net loss of wetland acreage, then, and only then, would the Department accept "out-of-kind, off-site" compensation.

For the reasons explained above, the Department will normally seek to compensate for adverse impacts to wetland through in-kind compensation. The controlling assumptions involved in this mitigation approach are: (1) Given duplication of the physical features associated with wetlands to be impacted, the vegetative component of the wetland to be impacted can also be duplicated either through a planting program or through natural colonization; and (2) If the physical feature and the vegetational components of the impacted area are duplicated, then fish and wildlife resources should become established at the mitigation site at levels which compensate for losses sustained at the project site. Physical features include substrate contours, water depth, duration of inundation, periodicity of inundations, salinity, and soil type.

When dealing with in-kind compensation, it is essential to consider each of the representative species or species groups present at a project site and to assure that

those representative species or species groups will not be negatively affected. This can be accomplished by taking into consideration existing values provided at the project site and comparing those to the values which would be provided at the compensation site. A habitat evaluation procedure, such as that used by the USFWS, could be used to assure no reduction in habitat value for any of the representative species or species groups present at the project site, provided that such a procedure presumes that there shall be no net loss of wetland acreage. When dealing with out-of-kind compensation, it is neither desirable nor reasonable to attempt to show equivalency between values foregone at the project site and those different values to be generated at the compensation site. As we have previously indicated, the rationale for acceptance of out-of-kind compensation shall be based upon a biological determination that, from a regional perspective, out-of-kind compensation is demonstrably superior to in-kind compensation.

Buffers between existing or proposed development and existing wetlands or wetland compensation sites should be included as an integral component of all mitigation plans in order to assure the attainment and maintenance of habitat values sufficient to compensate for project impacts. Buffers should be of sufficient width and should be designed to eliminate potential disturbance of fish and wildlife resources from noise, human activity, feral animal intrusion, and any other potential sources of disturbance. The size and character of buffers shall ultimately be determined by the requirements of the affected species most sensitive to such disturbances. When feasible, buffers should be designed in a manner which complements the habitat values associated with adjacent wetland. For example, a buffer located near freshwater ponds could be planted with those grasses and forages known to support high density nesting by waterfowl. In no case shall such buffers be credited as wetland acreage necessary to achieve compliance with the requirements of the Commission's policy regarding retention of wetland acreage.

The loss of wetland acreage and habitat values to project implementation is permanent. Therefore, it is necessary to maintain the mitigation area in perpetuity in order to compensate for the permanent effects of development. It follows then that the project sponsor and his successor(s) must be responsible for the acquisition, development, and permanent maintenance of the compensation site in a manner which fully mitigates the projects impacts to fish and wildlife resources. For this reason, the Department recommends that permanent maintenance of compensation sites be required as a condition of the granting of any permits which might be required for project construction.

As was pointed out by several public speakers at the Commission's March 9, 1987 hearing, the art of wetland creation and enhancement is not yet a science. The Department is confident that wetlands can be created in such a manner as to duplicate or exceed the acreage and those habitat values associated with wetland areas which may, in the future, be developed. However, we are also aware of the possibility that wetland creation sites may not develop all of those fish and wildlife values which were projected at their inception. Therefore, the Department recommends the universal application of requirements that fish and wildlife values at compensation sites shall be thoroughly assessed after their construction pursuant to appropriate permit conditions; that these values be compared to the values which were lost through project development; and that the project sponsor or his successor(s) be required to take such actions as may be necessary to offset any habitat value shortfall which may be discovered as a result of follow-up studies.

The foregoing discussion relates primarily to individual project review, and provides a framework for assuring retention of wetland habitat values lost through project implementation. However, a related, but somewhat less obvious, problem threatens the preservation of wetland habitat values on a statewide basis. This problem involves the direct impacts of large-scale urban expansion upon upland plant communities, and the indirect impact of such upland development upon wetland habitat values. The problem revolves around the fact that wetlands generally exist as biologically valuable components of larger aggregations of biological communities including a variety of upland communities. Wetlands and associated uplands complement one another. Numerous animals found in wetland areas are, nevertheless, at least partially dependent upon associated uplands. For example, waterfowl, which rest and forage in wetlands, are also, at times, dependent upon associated upland areas for nesting. If, in this example, we protected the wetland but lost the associated upland to development, then the wetland would provide reduced habitat values for waterfowl. So it is with many animals. In spite of the fact that elimination of the ecological bond between wetlands and associated uplands often reduces the value of wetlands to fish and wildlife resources, relatively little regulatory authority exists for dealing with this issue on a project review, or permit review, basis. It seems that the most effective means of addressing this ongoing problem is to place increased emphasis upon the future review of county general plans in an attempt to steer unavoidable future urban expansion into patterns which provide for retention of upland/wetland relationships. Failure to retain this ecological bond between wetland and associated uplands will result in the creation of isolated wetland enclaves scattered throughout highly urbanized areas, and will result in indirect loss of wetland habitat values. The Commission should be aware that no universal regulatory framework exists for effectively dealing with this issue. Nevertheless, the Department shall attempt to address this issue through county general plan review and the review of other long-range planning documents and actions by local, state, and federal agencies.

The Department believes that a concerted effort to protect California's remaining wetlands can result in achieving compliance with the Commission's wetland policy. In order to retain and to expand California's wetland acreage and wetland habitat values, it will be necessary, in light of the non-regulatory nature of the Commission's policy, to work closely with the development community and various local, state, and federal governmental entities. Given a mutual commitment on the part of all concerned parties, maintenance of wetland acreage and attendant fish and wildlife values is possible. Through a combination of such cooperation and a continuation of ongoing wetland acquisition, enhancement, and creation activities by local, state, and federal agencies as well as similar efforts by various sportsmen's groups and other conservation organizations, the Department is optimistic that expansion of California's wetland acreage and considerable increases in attendant wetland habitat values are both achievable.

The Department wishes to thank the Commission for the opportunity to recommend a comprehensive wetland definition and identification process, and to recommend the means by which the Commission's wetland policy may be implemented.

NOTES:

2 Hydric soils are those soils identified as such by the U.S. Soil Conservation Service criteria. ([return to body of text](#).)

3 Pursuant to the USFWS document *List of Plant Species That Occur in Wetlands Region O*. (Region O is California.) ([return to body of text](#))

FISH AND GAME COMMISSION COMMENT TO THE DEPARTMENT OF FISH AND GAME ON THE WETLAND POLICY IMPLEMENTATION PROPOSAL

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PRINCIPLES OF APPLICATION

The Fish and Game Commission accepts the wetland definition, mitigation strategies and habitat value assessment methodologies recommended by the Department in its report submitted to the Commission Wetland Subcommittee on June 24, 1987. The Commission expects the Department of Fish and Game to apply the Commission's wetland policy and the Department's proposed implementing procedures with scientific accuracy; sound judgment; and in a manner which assures the protection and enhancement of the state's wetland resources. The Department, in its application of the policy and implementation procedures to specific situations, should strive to maximize the long-term interests of the fish and wildlife resources involved and to make recommendations that are both timely and appropriate to this end. The Department may depart from the letter of the policy only when such departure will better serve the long-term interests of wetland resource protection. The Department shall report such departure and the rationale for such departure to the Commission at its next scheduled meeting.

SCOPE OF POLICY

The Commission has found the policy and implementation procedures to be nonregulatory in nature. Their intended application is in those circumstances where the Department's role is advisory, as in, but not limited to, the application of the California Environmental Quality Act, National Environmental Protection Act, California Coastal Act, Clean Water Act, and other applicable state and federal laws and regulations.

The Commission does not wish the policy and the implementing procedures to be applied to projects or actions previously reviewed and commented upon by the Department and for which relevant permits have been issued. However, when further Department review is authorized or required due to project modification or additional public actions, the Department should consider any prior recommendations or agreements when applying the Commission's wetland policy.

DEFINITION

The Commission concurs with the Department's recommendation to use the U.S. Fish and Wildlife Service's (USFWS) definition as the basis for wetland identification. When all three wetland indicators (i.e., hydric soils, wetland vegetation, and hydrology) are present, the presumption of wetland existence shall be conclusive. Where less than three indicators are present, policy application shall be supported by the demonstrable use of wetland areas by wetland associated fish or wildlife resources, related biological activity, and wetland habitat values.

The USFWS wetland identification system should be applied by professionals trained in its methodology. The accuracy of existing wetland inventory mapping should

not necessarily be assumed. The Commission supports the Department's current practice of on-site inspections of projects which would impact wetlands and strongly encourages the Department to conduct on-site inspections of such projects and particularly whenever requested to do so by project proponents or concerned public agencies.

LANDOWNER COOPERATION

Both the Commission and the Department recognize that the response of landowners, private and public, is an important factor in the success or failure of any State policy to create, protect, restore or enhance wetland habitat. The Commission acknowledges that landowners are not normally obligated to either create or enhance wetlands on their property except as may be otherwise required by law, thus, many wetlands and wetland values exist primarily because of voluntary actions taken by landowners. Therefore, the Commission urges the Department to proceed with the development and implementation of a comprehensive program of incentives that will encourage and facilitate landowner cooperation with the State in achieving its wetland objectives, including the voluntary retention of existing wetlands and the creation of new wetlands and enhanced habitat values, and the elimination of disincentives to accomplishing these objectives. This program should be viewed as an important component of the Commission's wetland policy, and a desirable complement to programs based directly or indirectly on regulatory authority.

(Amended 8/4/94)

WILDERNESS AREAS

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

- I. Support selected habitat management programs when they are vital to the perpetuation of fish and wildlife populations. Such programs must be conducted in such a manner as to have minimum impact on the natural resource values of the wilderness area.
- II. Support restrictions on the opening of any primitive wilderness or wild areas in California to commercial interests of any kind that will adversely affect the natural resource values of such areas.

(Amended 8/4/94)

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