At its May meeting in Huntington Beach, the Commission approved the City of Long Beach's request for an amendment to its LCP to allow for the implementation of a $557 million downtown shoreline plan known as the Queensway Bay Development Plan. The proposed plan includes the following: (1) replacement of Shoreline Lagoon with a new harbor, public esplanade, and public aquarium, (2) expansion of the Shoreline Village shopping center with new shops and restaurants, (3) the addition of commercial uses in the Tidelands and Shoreline Park areas, (4) relocation of displaced park lands, and (5) replacement of a public boat launch with a wetlands mitigation park. In 1991, the Disney Company failed in its bid for permission to build a waterfront theme park in the same area with a plan that included a major re-structuring of the coastline \[12:1\]; this time, the Commission said the City's plan is more consistent with the Coastal Act in protecting and expanding public access to the coastline and expanding public park and recreational facilities. The proposed amendment was approved with some modifications to ensure that all displaced parkland and recreational boating slips be replaced prior to being removed from public use so as to prevent any time gap between displacement of parkland and the provision of replacement park areas. With approval in hand, the City of Long Beach plans to sell revenue bonds this summer to finance the aquarium, which will get under way this fall.

The Commission is sponsoring “California Coastweeks,” scheduled for September 16 to October 9. “Coastweeks” is part of a national celebration of the country's shores and beaches. Last year's activities removed over 550,000 pounds of marine debris from California's coastal and inland waters. Other activities include hikes along the Coast Trail, boating expeditions, and a lecture series.

### FUTURE MEETINGS

- June 13–16 in Carmel.
- July 11–14 in Long Beach.
- August 8–11 in Eureka.
- September 12–15 in Los Angeles.

### FISH AND GAME COMMISSION

**Executive Director:**
Robert R. Treanor
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The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policy-making board of the Department of Fish and Game (DFG). The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 et seq. Each member is appointed by the Governor to a six-year term. Whereas the original charter of FGC was to “provide for reasonably structured taking of California's fish and game,” FGC is now responsible for determining hunting and fishing season dates and regulations, setting license fees for fish and game taking, listing endangered and threatened species, granting permits to conduct otherwise prohibited activities (e.g., scientific taking of protected species for research), and acquiring and maintaining lands needed for habitat conservation. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

Created in 1951 pursuant to Fish and Game Code section 700 et seq., DFG manages California's fish and wildlife resources (both animal and plant) under the direction of FGC. As part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services, and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining, and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission. As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations, and protects land and water habitats. DFG manages over 570,000 acres of land, 5,000 lakes and reservoirs, 30,000 miles of streams and rivers, and 1,300 miles of coastline. Over 648 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians, and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions, and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

On February 23, DFG Director Boyd Gibbons submitted a letter of resignation to Governor Wilson; Gibbons will not leave until June 30 in order to ensure an orderly transition. Gibbons has served as DFG Director since December 11, 1991. At this writing, the Governor has not named Gibbons' replacement.

In May 1994, President Clinton appointed Commissioner Gus Owen to the Interstate Commerce Commission. In April 1995, the ICC chose Owen as its vice-chair, prompting Owen to state he will resign his post on FGC; at this writing, no replacement has been chosen for Owen.

On May 4, Governor Wilson appointed Theodore W. Dutton to fill the Commission vacancy created by the June 1994 death of longtime Commissioner Albert Taucher. Dutton, a Republican from Lake Arrowhead, is vice president of Cadiz Land Company, a San Bernardino agricultural concern. He is also a general partner in Dutton and Associates, a real estate investment firm.

### MAJOR PROJECTS

**DFG Issues Incidental Take Permit for Emergencies.** On March 17, DFG published notice of its issuance of a statewide permit allowing the take of species listed as threatened or endangered (and candidates for threatened or endangered status) under the California Endangered Species Act (CESA) "when activity is necessary to prevent or mitigate an emergency or natural disaster." For purposes of the permit, the term "emergency" means a sudden, unexpected occurrence, involving clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, public safety, or essential public services. The term "emergency" includes but is not limited to occurrences such as fire, flood, earthquake, or other soil or geologic movement, as well as riot, accident, or sabotage.

The terms and conditions of the permit state that a listed or candidate species may be taken to prevent or mitigate an emergency or natural disaster, or to restore any property or public or private facility to the condition in which it existed immediately before an emergency or natural disaster in any county where the Governor has proclaimed a state of emergency or in any county or city in which there has been a
local emergency proclaimed by the governing body or duly designated official. Any person who becomes aware of the take of a candidate or listed species must report the take to DFG as soon as practicable, and must deliver the remains of any animal taken to DFG upon demand. Each DFG Regional Manager must report to the DFG Director annually regarding issues encountered in the administration of this permit.

Although the Wilson administration connected the issuance of the emergency take permit to recent flooding in many California counties, environmentalists criticized the blanket waiver as overly broad and excessively lengthy—the waiver is in effect until March 16, 2000.

FGC Adopts 1995-96 Mammal Hunting and Trapping Regulations. Following hearings at its February and March meeting, the Commission adopted amendments to sections 360, 361, 362, 363, 364.5, and 371, Title 14 of the CCR, to make tag quota changes, clarifications, and urgency changes to the 1995-95 mammal hunting and trapping regulations at its April 7 meeting in Alturas.

The amendments to section 360 set a range for deer hunting tag quotas in line with the actual quotas used for the 1994-95 season. The ranges are necessary because spring herd data have not yet been compiled; the actual number of deer tags will be determined based on those data.

The amendments also delete references to archery hunting opportunities from section 360(c) and move them to section 361. FGC believes this change will eliminate confusion about archery hunting regulations and assist the public in locating all available archery hunting opportunities.

The amendments to section 362 increase the fee for Nelson bighorn sheep tags from $218 to $222.75, and set the total number of tags available for bighorn sheep for the 1995-96 season at 16. The amendments to section 363 increase the tag fee for pronghorn antelope from $77.50 to $79.25. Finally, the amendments to section 364.5 reduce the number of bull tule elk hunting tags from five to four, and cow elk hunting tags from nine to six; the license fee was also increased slightly.

During the first week of May, FGC submitted the rulemaking file on these proposed changes to the Office of Administrative Law (OAL), where it is pending at this writing.

Suction Dredge Mining Regulations. On April 14, DFG published notice of its intent to amend sections 228 and 228.5, Title 14 of the CCR, its suction dredge mining regulations adopted in 1994. [14:4 CRLR 173] According to the notice of proposed rulemaking, DFG’s proposed amendments would “maintain fish populations and other resources dependent on the aquatic environment while allowing suction dredge mining.” Clarify and formalize guidelines now used by the Department in issuing special suction dredge permits, add additional restrictions on suction dredging where DFG has determined that current restrictions are inadequate, and remove certain unnecessary restrictions in the existing regulations.

Among other things, the proposed changes would shorten the suction dredging season in the waters of Lassen and Modoc counties; close suction dredging of waters with spring-run salmon or steelhead holding areas; allow limited suction dredging in Saxon and Sherlock creeks; reduce the maximum allowable nozzle size from eight to six inches in portions of the American River, Cosumnes River, Feather River, Scott River, Mokelumne River, and Yuba River; and move the maximum allowable nozzle size from four to four inches in Nelson Creek, Yellow Creek and its tributaries, Feather River, Middle Fork and tributaries. The amendments would also require that before the dredge is removed from the mining site, the streambed must be realigned to its original configuration; add language describing suction dredge permits and the guidelines DFG uses in reviewing applications and approving or disapproving permits; and add language requiring a special permit for the use of motorized winches.

At this writing, DFG is scheduled to hold a hearing on these proposed changes on July 14 in Sacramento.

Prohibition on Black Abalone Sport Fishing Extended. On March 17, FGC published notice of its intent to amend section 29.15, Title 14 of the CCR, to continue to prohibit the take or possession of black abalone for sport fishing purposes. Black abalone have been affected by an unknown agent which produces a weakened, shrunken appearance, called withering syndrome (WS), which results in the death of the abalone; some populations of black abalone have suffered 99% mortality from the effects of WS. FGC closed the commercial fishery for black abalone in 1993 for the maximum two years allowed; the legislature then extended the closure of the commercial harvest until January 1, 1997 with the passage of AB 1406 (Chapter 1100, Statutes of 1993). [13:4 CRLR 179] Section 29.15 prohibits the recreational harvest of black abalone until March 1, 1995; the proposed amendment to section 29.15 would extend that prohibition indefinitely to protect the few remaining sexually mature individuals not affected by WS so they may provide breeding stock for rehabilitation of the black abalone resource. FGC held a public hearing on the proposed amendment on April 7, and adopted the regulatory change on May 12. On May 18, the Commission submitted the rulemaking file to OAL, where it is pending at this writing.

Licensed Game Bird Club Regulations Revised. On March 24, FGC published notice of its intent to amend sections 600, 600.1, 600.2, and 600.3, Title 14 of the CCR, regarding licensed game bird clubs. In 1994, SB 2113 (Chapter 849, Statutes of 1994) eliminated specific requirements pertaining to licensed pheasant clubs and replaced those statutes with a general authorization for FGC to adopt necessary regulations regarding the taking of game birds by licensed bird clubs. [14:4 CRLR 175] The amendments to sections 600, 600.1, 600.2, and 600.3 are necessary because those regulations, which are based on provisions in the Fish and Game Code which were repealed effective in part on July 1, 1995, and entirely on January 1, 1996, are currently redundant, unclear, and difficult to enforce.

Among other things, the proposed regulations would include the following changes. The existing provisions dealing with all domestically reared game birds would be incorporated into one section (section 600) rather than separate sections for each type of game bird. License fees, which were previously included under now repealed section 3280 of the Fish and Game Code, would be included in the proposed regulations and would be identical to those currently charged. The proposed regulations would change the existing license year of June 1 through May 30 to August 1 through July 31; remove any restrictions on the size of a licensed bird club; clarify that a hunter on a game bird club needs an Upland Game Bird Stamp rather than simply a valid hunting license; require that the licensee maintain a daily log to document who uses the licensed area; require the submission of annual reports, but not daily or monthly reports, to DFG; and delete the restriction that not more than three persons in addition to the licensee may issue permits or affix seals on harvested birds on any licensed area.

The regulations, as proposed, would also delete the requirement that birds be at least ten weeks old at the time of release; expand the number of hunters per trained dog to four; expand the dog requirement to all licensed game bird clubs; provide for DFG inspections for disease among the birds; provide legal descriptions of Zone A and Zone B areas; and provide that DFG, for
REGULATORY AGENCY ACTION

good cause, may suspend or revoke a license or decline to renew a license; and provide for an appeal process for a suspension or revocation.

FGC adopted the proposed regulations following a public hearing on May 12. On May 19, the Commission submitted the rulemaking file to OAL, where it is currently pending.

Salmon Fishing Regulations Revised. FGC continues to conform its ocean and in-river salmon fishing regulations to the recommendations announced by the Pacific Fisheries Management Council (PFMC) in order to protect the depleted salmon resource. [14:4 CRLR 172-73; 14:2 & 3 CRLR 186]

On March 31, FGC published notice of its intent to amend section 27.80, Title 14 of the CCR, to conform its salmon sport fishing regulations for state waters (zero to three miles offshore) to the PFMC’s federal regulations which apply in federal waters from three to 200 miles offshore. FGC held a public hearing on the proposed amendments at its March 3 meeting and adopted the regulations on April 7. OAL approved the changes on April 24.

On April 27, OAL approved FGC’s emergency amendments to section 182, Title 14 of the CCR. These amendments conform the state’s commercial salmon fishing regulations, which apply in state waters, to the PFMC’s federal commercial fishing regulations. These emergency amendments will be effective for 120 days.

On April 21, FGC published notice of its intent to amend section 7.50, Title 14 of the CCR, to conform its in-river salmon fishing regulations to PFMC provisions. The amendments could take the form of one of three alternatives: (1) retention of the 1994-95 regulations for the Klamath River with the exception that the quota would be modified from 1,400 to a number in the range of 800-2,700 depending on the total allocation of fish to ocean and in-river fisheries, which has yet to be decided; (2) closure of the Klamath River system to all salmon fishing all year; or (3) restoration of the more liberal daily and weekly bag limits and possession limits which existed prior to the 1992-93 season in addition to the quota changes specified in Alternative 1. At this writing, FGC is scheduled to hold a public hearing on the proposed amendments at its June 23 meeting in Bishop.

Update on Other Regulatory Changes. The following is a status update on other regulatory changes proposed and/or adopted by FGC in recent months, and reported in detail in previous issues of the Reporter.

- New Ecological Reserves. On February 1, OAL approved FGC’s amendments to section 630, Title 14 of the CCR, which lists habitat areas as state ecological reserves and sets forth rules which protect the biological values while permitting compatible public use (including hunting) of the areas. The amendments designate the following ten areas as California state ecological reserves: Dales Lake in Tehama County; San Felipe Creek in Imperial County; Indian Joe Springs in Inyo County; River Springs Lake in Mono County; Coal Canyon and Laguna Laurel in Orange County; Estelle Mountain, Santa Rosa Plateau, and Sycamore Canyon in Riverside County; and Plaisted Creek in San Diego County. [15:1 CRLR 148]

- Swordfish Permit Procedures. On March 3, FGC agreed to amend section 107, Title 14 of the CCR, to eliminate unnecessary restrictions and clarify the regulations regarding broadbill swordfish take. The amended rules delete a requirement that permits be purchased in Long Beach or San Diego; remove a restriction prohibiting a permittee from transferring to another vessel; eliminate a requirement that permittees who hire pilots to fly as spotters notify DFG in writing of any changes in pilots and/or aircraft within 48 hours prior to fishing; and add a requirement that aircraft used for spotting have a commercial vessel registration. [15:1 CRLR 148] OAL approved these changes on May 9.

- Gnatcatcher Listing. At its May meeting, FGC postponed its reconsideration of the Natural Resources Defense Council’s petition to list the California gnatcatcher as endangered. Following the Third District Court of Appeal’s September 1994 decision which invalidated the Commission’s findings in support of its 1991 rejection of the petition and directed the Commission to reconsider the petition using the correct legal standards [15:1 CRLR 150-51], FGC received considerable evidentiary testimony regarding the bird, its habitat, and its status as an “indicator species” whose decline may reflect a negative shift in the ecological balance. DFG, which is required to make a recommendation to the Commission regarding the status of the species, has reiterated its previous recommendation to list the bird; federal officials agree and listed the gnatcatcher as threatened in March 1993. At this writing, FGC is expected to reconsider the bird’s status at its June 22 meeting in Bishop.

LEGISLATION

AB 137 (Olberg). The California Endangered Species Act provides for listing of endangered species and threatened species by FGC, and provides procedures by which DFG may recommend to FGC, and by which interested persons may petition the Commission, to list or remove from a list any species that meets specified criteria. As introduced January 13, this bill would define the terms “interested person” and “interested party” for purposes of these provisions; provide that after January 1, 1996, species may not be added to the list of endangered or threatened species except by statute enacted by the legislature, and unless a environmental assessment report required by the bill shows that the benefits to be derived from the action exceed the estimated costs associated with protecting the species; delete a provision of existing law that permits FGC to add species to the lists by emergency regulation; provide that no environmental impact report is required to be prepared to remove a species from the list of endangered or threatened species unless an environmental impact report was prepared when the species was listed; require FGC to appoint a panel of scientific experts knowledgeable about the species to review DFG’s report to the Commission on the petition; require FGC to annually prepare and submit to the Governor and the legislature a list of species that FGC recommends be added to the list of endangered or threatened species, and require the report to include specified documents; and provide that just compensation shall be paid for the taking of private or public property, and, for that purpose, define the term “taking.” [A. Appr]

AB 350 (Bustamante), as amended May 1, would require FGC to allocate all public or private resources available to it for the purposes of conservation and recovery of endangered and threatened species in accordance with specified priorities; require FGC, in determining to list a species, to additionally consider the range of the species and to identify potential sources of funding to carry out all recommendations and suggestions; require DFG, after its evaluation of a petition to list a species, to prepare a detailed statement of the cost of attaining recovery, as defined, and delisting of the species or subspecies; require scientific peer review, as defined, upon request; require DFG to prepare a recovery and delisting plan for the species if its recommendation is that the petitioned action is warranted, unless DFG determines that the plan is not necessary; authorize FGC, as an alternative to listing, to recommend the federal listing of a species; and require DFG and FGC to accept and consider independent studies or other assessments of any species that is the subject of a petition. [A. Appr]
AB 428 (Olberg). The California Endangered Species Act requires FGC to notify owners of land which may provide habitat essential to the continued existence of a species for which FGC has accepted a petition for consideration of the species as a threatened species or an endangered species, with specified exceptions. Existing law also requires DFG to promptly commence a review of the status of a species listed in the petition and to provide a written report within twelve months to FGC that includes, among other things, a preliminary identification of the habitat that may be essential to the continued existence of the species. DFG is also required to review listed species, including the habitat that may be essential to the continued existence of the species.

As introduced February 15, this bill would exclude land that may provide habitat of a type necessary for the continuing existence of a candidate species, threatened species, or endangered species from any requirement that it be managed as habitat for that species unless individuals of that species have been observed inhabiting that property during the period of review of the petition. The bill would define the terms "land which is identified as habitat for endangered species and threatened species," "habitat that may provide habitat essential to the continued existence of the species," "'habitat that may be essential to the continued existence of the species' to exclude habitat areas on which the species has not been directly observed by a DFG employee present during the period of DFG's review of the petition. The bill would provide that habitat management activities shall not be required to be conducted on any such property on which the species has not been directly observed by an employee of DFG to be present during the period of DFG's review of the petition.

[AB 87 (Cortese), SB 28 (Leslie)]. Under Proposition 117, every person, or the person's agent or employee, whose livestock or other property is being or has been injured, damaged, or destroyed by a mountain lion may report that fact to DFG and request a permit to take that mountain lion; the initiative requires DFG, after immediate confirmation that the depredation has occurred as reported, to issue the permit to take the mountain lion. The bill would require DFG to establish a procedure whereby personnel will be available at all times to receive reports of injuries from mountain lion depredation to persons and property. The bill would require DFG to designate employees who would be required to be available at all times to authorize taking of mountain lions perceived to be an imminent threat to public health and safety, and to maintain a file of all reports of mountain lion incidents. The bill would require the incident reports to be available free to public safety employees and for the cost of reproduction to the public. [AB 117 (Knowles), as amended May 18, would authorize the legislature, upon the approval of the voters at the March 26, 1996 primary election, to amend or repeal any provision of current law relating to mountain lions by a majority vote, except for appropriations, transfers, or allocations of funds. This bill would also authorize FGC and DFG, upon the approval of the voters at the March 1996 election, to regulate and manage mountain lions in the same manner as it regulates and manages mammals that are not rare, endangered, or threatened species. [S. Appr]

AB 87 (Cortese). Under Proposition 117, $30 million is required to be transferred annually to the Habitat Conservation Fund from various funds; the money in the Fund is required to be used for the acquisition of habitat necessary to protect deer and mountain lions and rare, endangered, threatened, or fully protected species, and for other specified purposes. As amended April 17, this bill, which would take effect upon the approval of the voters at the March 26, 1996 primary election, would appropriate $500,000 of the money in the fund annually to DFG for mountain lion management.

This bill would also authorize DFG or an appropriate authorized local agency to remove or take one or more mountain lions that are perceived to be an imminent threat to public health or safety. The bill would require DFG to develop a statewide policy and procedure that considers specified factors to facilitate the removal of taking of mountain lions perceived to be an imminent threat to public health or safety. The bill would also require DFG to make information available to inform members of the public on the means and methods of reducing the potential for adverse interaction with mountain lions. The bill would also authorize DFG to take mountain lions for the purpose of conducting management studies and applied research; as part of a comprehensive plan adopted by DFG to provide for the public health or safety or to reduce property damage; and for the purpose of conserving and protecting other protected wildlife species.

Under Proposition 117, every person, or the person's agent or employee, whose livestock or other property is being or has been injured, damaged, or destroyed by a mountain lion may report that fact to DFG and request a permit to take that mountain lion; the initiative requires DFG, after immediate confirmation that the depredation has occurred as reported, to issue the permit to take the mountain lion. The bill would require DFG to establish a procedure whereby personnel will be available at all times to receive reports of injuries from mountain lion depredation to persons and property. The bill would require DFG to designate employees who would be required to be available at all times to authorize taking of mountain lions perceived to be an imminent threat to public health and safety, and to maintain a file of all reports of mountain lion incidents. The bill would require the incident reports to be available free to public safety employees and for the cost of reproduction to the public. [AB 87 (Cortese), SB 28 (Leslie)], as introduced May 18, would authorize the legislature, upon the approval of the voters at the March 26, 1996 primary election, to amend or repeal any provision of current law relating to mountain lions by a majority vote, except for appropriations, transfers, or allocations of funds. This bill would also authorize FGC and DFG, upon the approval of the voters at the March 1996 election, to regulate and manage mountain lions in the same manner as it regulates and manages mammals that are not rare, endangered, or threatened species. [S. Appr]

AB 117 (Knowles), as amended March 29, would repeal the California Wildlife Protection Act and enact the Mountain Lion Management Act, contained in the bill, upon the approval of the voters at the March 1996 primary election. Under the bill, mountain lions would be authorized to be taken as game mammals under license tags issued by DFG for a fee equal to the fee imposed for bear tags. The bill would authorize an owner or tenant, or their agent, of land or property being or in danger of being damaged or destroyed by a mountain lion to take that lion except by means of poison. The bill would authorize the use of traps for that purpose, except steel-jawed traps. The bill would also require DFG to make an annual report to the legislature of specified content and authorize DFG to relocate mountain lions to other states and negotiate agreements with bordering states. The bill would provide that any enforcement of any law or regulation relating to the management of mountain lions or wildlife habitat constitutes a taking for public use pursuant to the Fifth Amendment to the U.S. Constitution. [A. WP&W]

• AB 1362 (Knowles), as introduced February 23, would—upon approval of the voters at the March 1996 primary elec-
AB 1363 (Knowles). Under existing law, mountain lions are specially protected mammals. As introduced February 23, this bill would require DFG to submit biennial reports to the legislature of specified content relating to the mountain lion population, commencing January 15, 1996. [A. WP&W]

AB 1364 (Knowles). Existing law declares the policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state. Existing law also includes specified objectives, including maintaining sufficient populations of all species of wildlife and the habitat necessary to achieve the other specified objectives in that policy. Under existing law, the only specially protected mammals are mountain lions. As introduced February 23, this bill would expressly include specially protected mammals in the wildlife specified in that objective. [A. WP&W]

AB 1402 (House), as introduced February 24, would require DFG to compensate the owner of any property damaged or destroyed by a protected species, including but not limited to rare, threatened, or endangered species, species of special concern, or any other depredatory mammals protected, controlled, or relocated. The bill would require the compensation to be at the fair market value of the property damaged or destroyed and to be made from funds appropriated for that purpose. [A. WR&W]

SB 123 (Thompson), as amended March 15, would require DFG to report on or before January 30, 1996, to the Senate Committee on Natural Resources and Wildlife and the Assembly Committee on Water, Parks and Wildlife on the feasibility of DFG entering into the National Wildlife Violator Compact.

Existing law provides, upon conviction, specified punishment for a violation of the Fish and Game Code. Existing law also provides, generally, for the commencement of prosecution of an offense within one year after the commission of the offense. This bill would make it a misdemeanor with specified punishment to knowingly unlawfully possess for commercial purposes any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer, the pelt of a fur-bearing mammal, a live reptile or amphibian, any fully protected, threatened, or endangered species, or any quantity of fish or shellfish in excess of the quantity permitted by other provisions of the Fish and Game Code with specified exclusions. The bill would also make it a misdemeanor with specified punishment to knowingly unlawfully possess for commercial purposes any part of, or product made from, unlawfully taken fish or shellfish in excess of the quantity permitted by other provisions of the Fish and Game Code any part of, or product made from, unlawfully taken fish or shellfish in excess of the quantity permitted by other provisions of the Fish and Game Code.

Existing law provides, upon conviction of violations of the Fish and Game Code, this bill would, in addition to any other penalty prescribed by law, prohibit any person convicted of a violation of an offense described above relating to taking of wildlife from thereafter taking any wildlife, except fish, in this state for a period of not less than one year from the date of conviction. The bill would require any license, permit, license tag or stamp, or other entitlement to take or possess wildlife, except fish, for any purpose other than for commercial purposes that has previously been issued to that person to be immediately revoked and would prohibit any license, permit, license tag or stamp, or other entitlement to take or possess wildlife, except fish, for any purpose other than for commercial purposes from thereafter being issued to that person during the period of the prohibition. The bill would define the term "commercial purposes" for those purposes.

The bill would also, in addition to any other penalty prescribed by law, prohibit any person convicted of a violation of an offense described above relating to taking of fish from thereafter taking or possessing any fish in this state for a period of not less than one year from the date of conviction. The bill would require any license, permit, license tag or stamp, or other entitlement to take or possess wildlife, except fish, for any purpose other than for commercial purposes from thereafter being issued to that person during the period of the prohibition. This bill would provide for the issuance, renewal of the vessel permits; and establish a fee of $285 for the permits. If the number of vessel permits issued in any year is less than 50% of a base number determined as specified in the bill, the bill would provide for the issuance of certain new vessel permits by lottery to applicant groups in a specified order of priority until that total number of vessel permits is issued. The bill would authorize the transfer of certain vessel permits under specified conditions, but would prohibit transfer of other permits. [A. WP&W]

AB 666 (Hauser). Until April 1, 1998, existing law prohibits using a vessel to take or land Dungeness crab using crab traps unless the owner of the vessel has a Dungeness crab vessel permit, and specifies the qualifications for that permit. As amended April 26, this bill would define the term "owner" for those purposes and would, additionally, authorize a person to obtain a Dungeness crab vessel permit if that person held an individual's Dungeness crab permit under a specified provision of law existing before April 1, 1994, for specified landings from a vessel owned or operated by him/her, and, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or constructed a vessel and used that vessel to take Dungeness crabs in this state, and that person intended to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995. The bill would also change the financial hardship qualifications for a Dungeness crab vessel permit. [A. Appr]
AB 25 (Hauser). Existing law authorizes the Director of Fish and Game to order a delay in the opening of the commercial Dungeness crab fishery in Districts 6, 7, 8, and 9 after December 1 in any year if recommended by the California Seafood Council and if the Dungeness crab fishing industry votes to join that council or otherwise reimburse it for all costs in carrying out a specified testing program for Dungeness crab and related hold inspections. As amended April 6, this bill would delete those conditions on the authority of the Director to order the delay in the opening of the commercial Dungeness crab fishery. The bill would, instead, require the Director to order the opening of the Dungeness crab season on December 1 if the quality tests conducted pursuant to an approved testing program indicate the Dungeness crabs are not soft-shelled or low quality and to delay the season opening if the second testing, as specified, indicates the crabs are soft-shelled or low quality. The bill would authorize the entity that is approved by DFG to conduct the approved testing program to test, or cause to be tested, a limited number of crabs pursuant to the approved testing program before the season opening. The bill would require the entity conducting a testing program to fund the testing program as a condition of approval of the program.

Existing law excludes the Dungeness crab fishery from the jurisdiction of the California Seafood Council unless the Dungeness crab fishery elects to join the council or otherwise reimburse the council for costs incurred to carry out the testing and hold inspection programs referred to above. This bill would repeal the provisions that authorize the Dungeness crab fishery to make that election. [S. NR&W]

AB 1737 (Katz). Under existing law, it is a misdemeanor for any person to take any marine mammal except in accordance with the federal Marine Mammal Protection Act of 1972. As amended May 15, this bill would enact the California Marine Mammal Protection Act which would, with a specified exception, make it unlawful for any person to possess or display any live cetacean or pinniped in California unless it was in captivity on the effective date of the bill or an offspring of cetaceans or pinnipeds that are in captivity on the effective date of the bill. The bill would require DFG to compile a list of all cetaceans and pinnipeds on display. The bill would require DFG to inspect facilities' records and cetaceans and pinnipeds for compliance with the bill, require facilities to send a copy of a specified federal notice to DFG in specified circumstances, require DFG to maintain an inventory of displayed cetaceans and pinnipeds, and authorize DFG to assess specified civil penalties for violations of the reporting requirements in the bill or for displaying cetaceans or pinnipeds that are held for display and that were not in captivity, or an offspring of marine mammals in captivity, on the effective date of the bill.

The bill would also require an unlawfully displayed cetacean or pinniped to be released to the wild or, if unreleasable as determined by a veterinarian approved by DFG, the bill would require the facility to pay a specified penalty for every year the marine mammal remains in captivity.

The bill would also authorize any interested person to commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of the bill or to determine the applicability of the bill to actions or threatened future action of a person or entity relating to display of a cetacean or pinniped and would authorize the recovery of costs, attorney fees, and expert witness fees in those actions. [A. WP&W]

SB 39 (Thompson). Statutory provisions were repealed on January 1, 1995, which prohibited the use of set lines, vertical fishing lines, or troll lines to take fish other than salmon or California halibut for commercial purposes in Fish and Game Districts 7 or 10 within one mile of the mainland shore from sunset on Friday to sunset on the following Sunday or from sunset on the day before a legal holiday until sunset on that holiday. As introduced December 15, this bill would reenact that provision, effective until January 1, 1998. [A. WP&W]

SB 55 (Kopp). Existing law prohibits the importation into this state of those wild animals specified on a list published from time to time by the state Department of Health Services without a permit issued by that department. In addition, existing law prohibits the importation, transportation, possession, or release into this state of certain wild animals without a permit issued by DFG. As amended March 2, this bill would allow domestic ferrets to be imported for, and owned as, pets without a permit if the owner of a ferret maintains, and can produce, documentation showing that the ferret has been vaccinated against rabies with a vaccine approved for use in ferrets by the U.S. Department of Agriculture and administering in accordance with the recommendations of the vaccine manufacturer and if the ferret is spayed or neutered. [S. NR&W]

SB 458 (Beverly). Existing law prohibits causing or permitting any deterioration or waste of any fish and, with exceptions, to use any fish or fish part, except fish offal, in or by a reduction plant. As amended April 20, this bill would, with a specified exception, make it unlawful to sell, purchase, deliver for commercial purposes, or possess on any commercial fishing vessel registered, as specified, any shark fins or tails, or portions thereof that have been removed from the carcass of a shark prior to landing.

Existing law prohibits the use of drift gill nets to take shark or swordfish for commercial purposes except under a shark and swordfish permit issued by DFG, prohibits the use or possession aboard a vessel or in the water of a drift gill net with mesh size less than 14 inches and more than 8 inches in stretched mesh, and prescribes the season when those nets may be used for that purpose. This bill would also authorize the use of drift gill nets, under a general gill net permit with a mesh size smaller than eight inches in stretched mesh and twice size number eighteen or
smaller, to take sharks other than thresher shark, shortfin mako shark, and white shark during the shark and swordfish season. The bill would authorize the incidental taking of no more than two thresher sharks and two shortfin mako sharks for possession and sale. The bill would specify the conditions for that incidental taking.

Existing law prohibits the use of round haul nets in specified areas, except (among other uses) for live bait in District 19B, but not within 750 feet of specified public piers. This bill would also exempt the use of round haul nets to take live bait in District 19A, and would condition the exception from that prohibition in Districts 19A and 19B to exclude the use of those nets within 750 feet of any public pier. [A. WP&W]

**AB 76 (Morrow).** Existing law authorizes persons operating a commercial fishing vessel registered in this state to land fish taken in a far offshore fishery, as defined, when those fish may be lawfully imported into this state from a foreign nation or from another state. Existing law also prohibits the operator of any vessel operating under that authorization from fishing in or landing fish from any waters within the 200-mile fishery conservation zone during any trip for which the operator has received clearance by U.S. Customs for departure for the high seas. As introduced December 22, this bill would redefine the term "far offshore fishery" to mean a fishery that lies outside the U.S. 200-mile exclusive economic zone, as defined by federal law. The bill would authorize the landing in this state of fish taken in a far offshore fishery which may be lawfully imported by persons operating a commercial fishing vessel registered in this state who took the fish in the far offshore fishery. The bill would delete the requirement for clearance and declaration of the location of the catch on reentry to the U.S. Customs. The bill would, instead, require the operator to file a declaration with DFG before departure and to complete and submit the return portion of the declaration to DFG within twelve hours of arrival at a port in this state.

In addition, AB 76 would provide that the Pacific sardine season is from August 1 to July 31, inclusive, and establish a 12,000-ton-per-season quota unless DFG produces an estimate of the total biomass of the northern stock of sardines and uses that estimate to calculate a quota. The bill would also require DFG to consider in-season adjustments to the quota at the request of the commercial fishing industry. The bill would permit sardines to be taken for live bait purposes at any time.

Existing law establishes the tolerance for sardines taken incidentally to other fishing operations. This bill would permit the DFG Director to establish those tolerances up to certain specified percentages of the landings.

Existing law permits 250 tons of sardines to be taken, possessed, and landed for dead bait purposes during the period of March 1 to February 28, inclusive. This bill would repeal that provision.

Under existing law, any person who operates or assists in operating any trap to take finfish or who possesses or transports finfish on a vessel when a trap is aboard is required to have a general trap permit issued by DFG. This bill would require the persons who take finfish with traps for commercial purposes to obtain a finfish trap permit. The bill would set the fee for the permit at $110. The bill would limit the persons who may obtain a finfish trap permit to persons who held a general trap permit in the preceding permit year and who made specified landings of finfish taken in traps. The bill would provide that persons denied a permit may appeal to FGC. The bill would provide for certain restrictions on the taking of finfish pursuant to the permit. This bill would also authorize DFG to enter into contracts for the purpose of printing finfish permits and informational material and would exempt these contracts from certain provisions of the Public Contract Code.

Existing law prohibits taking, possessing, or selling California halibut less than 22 inches in total length, except as specified. Existing law also authorizes a person who holds a commercial fishing license to possess for noncommercial use not more than four California halibut but less than 22 inches in total length or less than the minimum weight if taken incidentally in commercial fishing. This bill would limit that incidental possession to halibut taken with a gill net, trammel net, or trawl net while commercial fishing. [S. NR&W]

**AB 77 (Morrow),** as amended March 20, would declare the garibaldi as the official state marine fish, and prohibit the taking or possession of garibaldi for commercial purposes until February 1, 2002 and, thereafter, permit that taking only under a marine aquaria collector's permit from October 31 to February 1, inclusive.

Existing law that is effective until January 1, 2000, prohibits the taking of organisms for marine aquaria pet trade purposes on the south side of Santa Catalina Island. This bill would continue that existing law beyond January 1, 2000, by deleting that date. [A. Floor]

**AB 704 (Hauser).** Under existing law, DFG may accept gifts and grants from various sources for specified purposes, including funds for fish and wildlife habitat enhancement for deposit in the Wildlife Restoration Fund. This bill would authorize DFG to deposit grants from the federal government, grants from private foundations, money disbursed from court settlements, and donations and bequests from individuals in the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund. [A. Appr]

**LITIGATION**

FGC’s appeal of San Francisco Superior Court Judge Thomas J. Mellon’s decision in *Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.,* No. 953860 (July 19, 1994), is still pending. In this case, Judge Mellon invalidated the Commission’s unprecedented delisting of the Mohave ground squirrel from the state’s threatened species list under CESA. Judge Mellon found that FGC’s action to remove the squirrel from the CESA threatened list is a “project” under the California Environmental Quality Act (CEQA) such that an environmental impact report is required. [14:4 CRLR 177]

On April 17, the U.S. Supreme Court heard oral argument in the federal government’s appeal of the D.C. Circuit Court of Appeals’ decision in *Sweet Home Chamber of Communities for a Great Oregon v. Babbitt.* 17 F.3d 463 (Mar. 11, 1994), in which the appellate court ruled that significant habitat degradation is not within the meaning of the term “harm” as used in and prohibited by the federal Endangered Species Act. [13:1 CRLR 152; 14:4 CRLR 177; 14:23 CRLR 192] The D.C. Circuit’s decision conflicts directly with the Ninth Circuit’s decision in *Patilla v. Hawaii Dep’t of Land and Natural Resources,* 852 F.2d 1106 (9th Cir. 1988), thus prompting the Supreme Court to review the issue. At this writing, the high court has not yet released its decision.

**FUTURE MEETINGS**


**BOARD OF FORESTRY**

Executive Officer: Dean Cromwell (916) 653-8007

The Board of Forestry is a nine-member Board appointed to administer the