



that meeting unless the Navy waived its right to have the issue heard and allowed a continuance. The Navy declined.

Modified Acoustic Temperature Study Moves Forward. At its June meeting, the Commission considered a revised version of the Scripps Institute of Oceanography's proposal to conduct an undersea sound experiment in northern California ocean waters; the project would emit high-intensity, low-frequency sounds, the speed of which will be measured to assist in the determination as to whether global warming is occurring. This project, called the Acoustic Thermometry of Ocean Climate (ATOC) experiment, comes to the Commission as both a federal consistency matter, because the sound can affect the coastal zone by harming marine animals which inhabit the zone, and as a CDP application, because the sounds are emitted by a device which is connected to shore by a power cable. Numerous concerns about the project's marine resource impacts caused the Commission to delay its decision on the project at its May meeting. [15:2&3 CRLR 160]

The bottom-line problem is that very little is currently known about marine animal response to sound. In its report, staff noted that "since the only way to determine the project's impacts is to allow it to proceed in the short term and study its impacts, the authorization of a two-year initial ATOC project is warranted." Commission staff, Scripps, and environmental groups crafted several conditions and protective measures. Scripps agreed to create a Marine Mammal Research Program (MMRP), a six-month pilot study prior to the commencement of the regularly scheduled ATOC emissions. The MMRP will release its evaluation of the impact of sound on marine animals 30 days after conclusion of the pilot study; if no acute responses occur, regularly-scheduled ATOC transmissions would ensue. The MMRP monitoring studies would continue throughout all ATOC transmissions.

Additional mitigation measures include (1) incorporating into ATOC a "ramp-up period" during which the sound will be turned up gradually, rather than starting at "full blast"; (2) a commitment to operate ATOC at "the minimum duty cycle necessary to support MMRP objectives and ATOC feasibility objectives"; (3) an agreement to cease the ATOC project in the event significant adverse effects occur; and (4) an agreement to limit initial ATOC operation to a two-year period.

After the Commission's June approval, Scripps began to install the equipment needed for ATOC; during installation on October 28, it apparently tested the sound source. The project's November 9 start date was postponed when three dead humpback

whales were discovered during the first week of November off the coast of San Francisco. After an investigation, the National Marine Fisheries Service determined that it is unlikely that sound had any connection with the whales' deaths. On December 1, NMFS cleared the project to begin.

LEGISLATION

SB 787 (Mello), as amended April 24, includes the Secretary of Trade and Commerce as a nonvoting member of the Commission, and makes a related statement of legislative intent.

The Coastal Act provides for the certification of LCPs and port master plans by the Commission, and requires that amendments to a certified LCP or port master plan be submitted to the Commission for approval. This bill specifies that, for purposes of those provisions governing certified LCPs and port master plans, "amendment of a certified local coastal program" includes, but is not limited to, any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified LCP as a permitted use of the parcel. This bill was signed by the Governor on July 30 (Chapter 208, Statutes of 1995).

AB 1303 (McPherson). The California Coastal Act of 1976 allows specified individuals to appeal to the Coastal Commission any action taken by a local government on a CDP application. Existing law requires the Executive Director of the Commission to determine whether certain appeals are patently frivolous; if the Executive Director determines that the appeal is patently frivolous, the appeal may not be filed until a filing fee in the amount of \$300 is deposited with the Commission within three days. As amended July 10, this bill provides that any action taken by a local government on a CDP application is final, regardless of whether an appeal is submitted, if any required appeal filing fee is not deposited with the Commission within five days.

The bill also defines the term "minor development" for purposes of the Act and permits a local government, after certification of its local coastal program, to waive the public hearing requirement on a coastal development permit application for a minor development if specified conditions are met. This bill was signed by the Governor on October 8 (Chapter 669, Statutes of 1995).

SB 749 (Hayden), as introduced February 23, would enact the California Parks, Natural Resources, and Wildlife Bond Act of 1996 which, if adopted, would authorize, for purposes of financing an unspecified program for the acquisition, development, rehabilitation, enhancement, restoration, or protection of park, beach, wildlife, and nat-

ural resources, the issuance, pursuant to the State General Obligation Bond Law, of bonds in an amount of \$300 million. The bill would provide for submission of the bond act to the voters at the statewide general election to be held on March 26, 1996. [S. NR&W]

SB 6 (Hayden), as amended May 23, would prescribe procedures by which any person or entity may bring an action for civil penalties, declaratory relief, or equitable relief to enforce certain provisions of the Porter-Cologne Water Quality Control Act involving violations regarding state ocean and coastal waters and enclosed bays and estuaries, as specified. The bill would authorize a court to award costs to a prevailing party, including expert witness fees and reasonable attorneys' fees. [S. Inactive File]

RECENT MEETINGS

At its September meeting in Eureka, the Commission considered the application of the City of Newport Beach and the Newport Harbor Lutheran Church for the creation of a 22-acre park including 83 parking spaces which would encroach upon .23 acre of wetland area. The project also called for approximately one acre of onsite mitigation. The staff report concluded that the encroachment upon the wetland area is inconsistent with the Coastal Act because the parking spaces could easily be moved to a nearby location which would not impact the wetlands. With several members of the public waiting to speak on the issue, the City announced it would willingly conform its proposal to the recommendations of the Commission staff. According to Sara Wan, lobbyist for the League for Coastal Protection, the City declined to argue the matter before the Commission after the League threatened to file suit against the City if the permit was granted as submitted.

FUTURE MEETINGS

January 9-12 in Los Angeles.
February 6-9 in San Diego.
March 12-15 in Santa Barbara.
April 9-12 in Carmel.
May 7-10 in Long Beach.
June 11-14 in San Rafael.
July 9-12 in Huntington Beach.

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



policymaking 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.

In September, Governor Wilson appointed Margie J. Phares of San Diego to FGC; Phares attended her first Commission meeting on October 3 in Redding. Phares, 51, is president of the M.F. Realty Corporation, a real estate corporation which specializes in real property consultation and brokerage including industrial land, industrial research development, shopping centers, mixed-use projects, and master planned communities. Phares is also the founder and owner of M.J. Realty, which specializes in real property consultation and brokerage of undeveloped and untitled property for residential development. Phares' appointment is subject to Senate confirmation.

At this writing, the Governor has not yet appointed a new DFG Director to replace Boyd Gibbons, who resigned effective June 30. [15:2&3 CRLR 163] Charles Raysbrook, who has served as DFG Acting Chief Deputy Director since November 1994, has been named Interim Director.

MAJOR PROJECTS

FGC Adopts Sport Fishing Regulations for 1996 and 1997. On December 8, following public hearings on October 6 and November 3, FGC adopted 1996 and 1997 sport fishing regulations which are applicable statewide except for the Upper Sacramento River area. In the face of extensive public and DFG input, FGC postponed a decision on regulations for the Upper Sacramento River between Mount Shasta and Shasta Lake; the area has been the object of numerous proposals and debate since a lethal chemical spilled from a 1991 train derailment killed the main river's entire fishery. [14:2&3 CRLR 192-93; 11:4 CRLR 164, 204-05] At this writing, FGC is scheduled to consider Upper Sacramento River sport fishing regulations at its January 9 meeting in Sacramento.

In adopting the rules applicable to the rest of the state, FGC incorporated the majority of its 1994-95 rules with a few dozen changes proposed in recent months by DFG, conservation organizations, and individuals. Some of the changes include "slot" limits for black bass in Millerton and McClure reservoirs; anglers may take bass under 12 inches and over 15 inches, but none in the "slot" between 12 and 15 inches. DFG supported and FGC adopted

a recommendation for the slot limits instead of the originally-proposed 15-inch minimum size limit.

In a move affecting both ocean and river sport salmon fishing, FGC approved elimination of the "tail clip" requirement—one that has required anglers to mark or cut off the top or lower half of the tail of any sport-taken salmon.

Consistently low summer, or spring-run, steelhead populations in North Coast district streams brought reductions in the trout limit from two to zero fish on Red Cap and Bluff creeks in Humboldt County; Wooley, Indian, Elk, Dillon, and Clear creeks in Siskiyou County; and Canyon Creek in Trinity County. The Commission also eliminated existing 14-inch maximum size limits—designed to protect the larger steelhead, but allow resident trout angling—on waters where fishing closures or zero limits have been approved as steelhead protection.

At this writing, FGC staff is preparing the rulemaking file on these proposed regulatory changes for submission to the Office of Administrative Law (OAL); if approved, the rules will take effect on March 1, 1996.

1995-96 Migratory Waterfowl Hunting Regulations. At its August 24 meeting, FGC voted to amend section 502, repeal section 504, and add new section 251.7 to Title 14 of the CCR, to set the state's 1995-96 migratory waterfowl hunting regulations and bring FGC's rules into conformity with federal regulations regarding possession, transportation, and importation of migratory game birds. OAL approved the new rules on October 12.

1995-96 Commercial Herring Season Regulations. Following public comment at its August 4 and 25 meetings, FGC adopted amendments to sections 163 and 164, Title 14 of the CCR, to establish herring fishing quotas by area and gear type, establish herring egg quotas, and make other changes for the 1995-96 commercial herring season. Among other things, these regulatory changes provide for a 6,000-ton fishing quota in San Francisco Bay; provide for an initial 350-ton fishing quota in Tomales Bay; clarify procedures on boat transfers and temporary permit substitutions; reinstate the permit qualification requiring an applicant (who is not a new gill net permittee) to have been a permittee during the previous herring season; clarify language pertaining to the San Francisco Bay quota for the take of herring for the fresh fish market; and change DFG's office for receipt of Humboldt Bay and Crescent City herring permit correspondence to Menlo Park. OAL approved these regulatory changes on November 7.



Commission Lists Coho Salmon as Endangered. At its June 22 meeting in Bishop, FGC made a finding that the coho salmon south of San Francisco Bay should be listed as endangered under the California Endangered Species Act, Fish and Game Code section 2070 *et seq.* The finding follows FGC's April 1994 decision to list the coho salmon as a candidate species, and a yearlong study in which DFG documented its population and the threats to its survival. [14:2&3 CRLR 186]

On July 7, FGC published notice of its intent to add the coho salmon south of San Francisco Bay to its list of endangered species in section 670.5, Title 14 of the CCR. Following a public hearing at its October 6 meeting, FGC adopted the proposed listing; OAL approved the regulatory change on December 1.

FGC Closes Fishery for Pink, Green, and White Abalone. After public hearings at its October 6 and November 3 meetings, FGC adopted proposed amendments to sections 29.15 and 100, Title 14 of the CCR, to prohibit the take and/or possession of any pink, green, or white abalone for two years; the closure applies to both the sport and commercial fisheries. According to DFG, these three species of abalone have been affected by a long-term decline in abundance; the prohibition on pink, green, and white abalone harvest will protect the individuals remaining in the population. DFG's draft environmental document indicated that abalone landings have declined from over four million pounds in 1960 to under 440,000 pounds during 1990-1995; FGC closed the black abalone fishery in 1993 due to concern over a fatal syndrome which has decimated that population (*see below*).

At the hearings, commercial abalone fishers disputed the veracity of the population surveys compiled by DFG, and offered their equipment and time to the Department to develop "accurate" measurements of abalone stocks. Although it voted to close the fishery, FGC directed DFG to continue its programmed abalone evaluation scheduled for March 1996, and report those findings to the Commission.

At this writing, FGC staff is preparing the rulemaking file on these proposed regulatory changes for submission to OAL.

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*.

• **1995-96 Mammal Hunting and Trapping Regulations.** On June 9, OAL approved FGC's 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 its 1995-95 mammal hunting and trapping regulations. [15:2&3 CRLR 164]

• **Extension of Prohibition on Black Abalone Take.** On June 5, OAL approved FGC's amendment to section 29.15, Title 14 of the CCR, which extends indefinitely its prohibition on the take or possession of black abalone for sport fishing purposes. [15:2&3 CRLR 164]

• **Licensed Game Bird Club Regulations.** On June 30, OAL approved FGC's amendments to sections 600, 600.1, 600.2, and 600.3, Title 14 of the CCR, pertaining to licensed game bird clubs. [15:2&3 CRLR 164-65]

Commission Rejects Gnatcatcher Listing. At its June 23 meeting, FGC reconsidered the Natural Resources Defense Council's petition to list the California gnatcatcher as endangered under the California Endangered Species Act (CESA). The reconsideration was required by a September 1994 decision of the Third District Court of Appeal, 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. [15:2&3 CRLR; 15:1 CRLR 150-51]

Since FGC's 1991 rejection of the petition under CESA, the gnatcatcher has been listed as a threatened species by the federal government under the federal ESA, thus affording the species and its coastal sage scrub habitat protection under the federal statute. Additionally, the Wilson administration—in partnership with the federal government, local governments, private and public landowners, and environmentalists—has been implementing the Natural Community Conservation Planning (NCCP) program, under Fish and Game Code section 2800 *et seq.*, to protect the habitat of the gnatcatcher. [13:2&3 CRLR 188-89] Under the NCCP program, 59 local government jurisdictions are participating with scores of private landowners, federal wildlife authorities, the environmental community, and DFG to establish long-term conservation plans that will protect large areas of valuable habitat which is home not only to the gnatcatcher but to approximately 90 other potentially threatened or endangered species. According to FGC, as much as \$20 million has been spent or appropriated by state and federal wildlife agencies, the California legislature, the U.S. Congress, private landowners, and the nonprofit sector on the NCCP process.

In light of the protections afforded since 1991, DFG reversed its earlier recommendation to list the bird and submit-

ted a report finding that "the California gnatcatcher is already adequately protected." DFG stated that "existing regulatory mechanisms alleviate any immediate threat to the gnatcatcher. Accordingly, the Department recommends that the petition not be accepted. If the above protections fail to forestall immediate threat to the gnatcatcher in the future because of judicial, legislative, or other action, an emergency listing of the gnatcatcher remains available to the Commission."

Following consideration of DFG's recommendation and public comment, FGC denied the petition but ordered that it be kept in its files for emergency or urgency reactivation at the request of any Commissioner, should he/she conclude that the level of protection provided is significantly reduced by one or more of the following: (1) invalidation of the federal listing; (3) modification of the Endangered Species Act which negatively impacts the listing; or (3) ineffectiveness of the NCCP program in protecting the California gnatcatcher.

At its August 4 meeting, FGC adopted a formal statement of findings and a list of the conditions under which it will reconsider the petition for emergency or accelerated action.

LEGISLATION

SB 131 (Maddy), AB 137 (Olberg), AB 428 (Olberg), SB 1120 (Costa), and SB 1177 (Killea) are bills to reform—and generally relax—the California Endangered Species Act, which sets forth the procedures FGC must use in listing plant and animal species as endangered or threatened. Under CESA, listed species are entitled to statutory protection from activities which threaten them or their habitat; the statute sets forth penalties for its violation. As in 1994 [14:4 CRLR 173-74], no bills seeking to overhaul CESA were successful in 1995.

• **SB 131 (Maddy)**, as amended May 5, would repeal CESA and replace it with a new act that changes the listing and recovery process; the bill would also repeal the Native Plant Protection Act. SB 131 would modify in numerous ways the state's commitment to conserve, protect, restore, and enhance threatened and endangered species and their habitat. Among other things, the bill would "decouple" a species from its habitat (for purposes of protection); delist all endangered and threatened species on January 1, 2001, unless DFG produces clear and convincing evidence to FGC that continued listing is warranted; and establish a new listing process which includes an economic impact analysis subject to publication and comment. SB 131



was rejected by the Senate Committee on Natural Resources and Wildlife on May 9, but reconsideration was granted. [S. NRW]

• **AB 137 (Olberg)**. CESA provides for listing of endangered species and threatened species by FGC, and provides procedures 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 economic 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 (EIR) is required to be prepared to remove a species from the list of endangered or threatened species unless an EIR 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." [S. NRW]

• **AB 428 (Olberg)**. CESA 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," "kind of habitat necessary for species survival," "land which may provide habitat essential to the continued existence of the species," "habitat that may be essential to the continued existence of the species," and "habitat 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. [A. WP&W]

• **SB 1120 (Costa)**, as amended August 21, would provide that the accidental take of a candidate, threatened, or endangered species which results from an inadvertent or ordinary negligent act that occurs during an otherwise lawful activity is exempt from criminal prosecution or the imposition of a fine. The bill would require the take of any of the above-mentioned species, if known, to be reported to DFG as soon as practicable, and the remains of the species to be taken to DFG personnel upon their request. SB 1120 would also state legislative findings that certain ongoing, routine activities provide a benefit to wildlife and have a small potential for causing adverse impacts on candidate, threatened, or endangered species. [A. Inactive File]

• **SB 1177 (Killea)**, as amended May 26, would authorize DFG to issue permits to public and private entities for the incidental take of a candidate, threatened, or endangered species under the following conditions: the proposed take is incidental to an otherwise lawful activity or project; the applicant has demonstrated to DFG that the take is unavoidable, including a written explanation of alternatives that were considered; the proposed project or activity has been reviewed by DFG and DFG determines that it will not jeopardize the continued existence of the species; and the permit includes measures to conserve the species and is consistent with the legislature's declared policies of CESA.

Among other things, this bill would also authorize DFG to impose a fee for the issuance of an incidental take permit; require DFG to work with other public agencies and public utilities to develop long-term, incidental take agreements and best management practices for general maintenance

and emergency repair that meet the terms specified above; require DFG to consult with county agricultural commissioners and with other agricultural experts to encourage best management practices that, when possible, will provide that continuing, routine agricultural activities and practices can be carried out with as little direct regulatory control as possible; and require DFG to adopt regulations and guidelines for the issuance of incidental take permits. [A. WPW]

SB 1258 (Johannessen), as amended June 15, clarifies that the accidental killing of animals (especially deer) by hitting them with a motor vehicle being lawfully operated on a road or highway is not a "taking" under CESA. This bill was signed by the Governor on October 9 (Chapter 694, Statutes of 1995).

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. [S. NRW]

SB 28 (Leslie), AB 87 (Cortese), AB 117 (Knowles), and AB 1362 (Knowles) would each effect a change in the California Wildlife Protection Act of 1990, which was enacted by the voters as Proposition 117 on June 5, 1990. Among other things, the Act made the mountain lion a specially protected mammal that may not be taken, injured, possessed, transported, imported, or sold. Violation of that prohibition is currently a misdemeanor unless it is shown that, in taking or injuring a mountain lion, an individual was acting in self-defense or in the defense of others. The Act authorizes DFG to remove or take, or authorize an appropriate local agency with public safety responsibility to remove or take, any mountain lion when it is perceived to



be an imminent threat to public health or safety, or pursuant to a permit issued to a person by DFG when the person's livestock or property is being destroyed or damaged by a mountain lion. The Act also prohibits the legislature from changing the special protection status of that mammal except by a 4/5 vote of the membership of both houses, and even then the change must be consistent with the purposes of the Act. The Act is intended to protect mountain lions, but the increasing mountain lion population and two fatalities caused by mountain lion attacks in 1994 have caused a reaction against it in the form of new legislation that would amend or repeal the Act in order to deal with the perceived problem. [14:2&3 CRLR 189-90]

• **SB 28 (Leslie)**, as amended September 14, would have authorized the legislature to amend or repeal provisions of that Act that regulate the taking, injury, possession, transporting, importing, or sale of the mountain lion by a majority vote of the membership of both houses of the legislature.

Existing law authorizes FGC to adopt regulations that supersede statutory provisions for not more than twelve months from the effective date, but the Act exempts the regulation of mountain lions from that provision of law. This bill would have removed that exemption and would have required FGC to regulate mountain lions in accordance with certain specified provisions of existing law and would have required DFG to carry out the regulations of FGC and manage those mammals in the same manner as it carries out other regulations of FGC and manages mammals that are not rare, endangered, or threatened. The bill would have required DFG, pursuant to those regulations, to prepare, submit to FGC for approval, and implement a mountain lion management plan that promotes health and safety protection and protection for property and other wildlife species and that implements the general policy of the state to encourage the preservation, conservation, and maintenance of wildlife resources under the jurisdiction and influence of the state.

SB 28 was signed by the Governor on October 12 (Chapter 779, Statutes of 1995); however, it required the approval of the voters before it could take effect. The bill's provisions were included in Proposition 197 on the November ballot; the measure was defeated by the voters.

• **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, 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 or 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. [A. WP&W]

• **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. 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—repeal the provisions of Proposition 117 granting special protection to mountain lions and restore the law relating to mountain lions to that existing before enactment of the California Wildlife Protection Act of 1990. [A. WP&W]

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 September 1, requires 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, and prohibits DFG from entering into that compact without further authorization by statute.

Under existing law, no hunting license may be issued, with prescribed exceptions, unless the applicant demonstrates that he/she has met specified requirements, including (A) evidence that he/she has held a hunting license issued in a prior year by this state or (B) presentation of a certificate of completion of a course in hunter safety in this or another state with an affixed California hunter safety instruction validation stamp. This bill adds another alternative: evidence that an applicant holds a current hunting license issued by another state or province. The bill also changes the alternative described in (B) to add the presentation of a certificate of successful completion of a hunter safety course in another province and to eliminate the requirement that a California hunter safety instruction stamp be affixed to the certificate of completion of a hunter safety course in another state or province.

Existing law regulates the use of troll and set lines for purposes of commercial fishing. This bill prohibits, until January 1, 1999, the use of more than 150 hooks on a vessel or more than fifteen hooks on a line when fishing under the permit in Fish and Game Districts 6, 7, and 10, except as specified. The bill specifies the buoying and marking requirements for fishing lines not attached to a vessel.

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 mainline shore. That former law limited the effective time periods of the prohibition to the periods 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. This bill reenacts that provision, effective until January 1, 1999.

This bill makes it a criminal offense with specified punishment to knowingly unlawfully take, for commercial purposes, a mammal, bird, amphibian, reptile, fish, or any other species in violation of the Fish and Game Code with specified exclusions. The bill also makes it a criminal offense with specified punishment to knowingly unlawfully possess for commercial pur-

poses any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer, the pelt of a furbearing 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 also makes it a criminal offense with specified punishment for specified persons to knowingly unlawfully sell in violation of the Fish and Game Code for commercial purposes or to unlawfully possess with intent to sell in violation of the Fish and Game Code any part of, or product made from, unlawfully taken wildlife.

Existing law provides for the suspension or revocation of licenses, permits, or other entitlements to take fish or wildlife upon conviction of violations of the Fish and Game Code. This bill prohibits, in addition to any other penalty prescribed by law, any person convicted of a violation of an offense described above relating to taking of wildlife, as defined, 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 requires 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 by the court, and prohibits the person from applying for 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 during the period of the prohibition. The bill defines the term "commercial purposes" for those purposes. The bill also, in addition to any other penalty prescribed by law, prohibits 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 requires any license, permit, license tag or stamp, or other entitlement to take or possess fish for any purpose other than for commercial purposes that has previously been issued to that person to be immediately revoked, and prohibits the person from applying for any license, permit, license tag or stamp, or other entitlement to take or possess fish for any purpose other than for commercial purposes during the period of the prohibition.

The bill expressly provides that these entitlement revocation provisions do not apply to any person who is licensed to take fish or wildlife for commercial purposes and do not supersede or otherwise affect

any other provision of the Fish and Game Code or regulations adopted pursuant to that Code relating to issuing, suspending, or revoking licenses or other entitlements to take, possess, buy, or sell wildlife or fish for commercial purposes. This bill was signed by the Governor on October 12 (Chapter 827, Statutes of 1995).

AB 666 (Hauser). Under existing law, with specified exceptions, commercial fishing licenses or permits for which there is a renewal application deadline may be renewed after that deadline if a specified penalty is paid and the renewal is received within 30 days of the deadline. As amended September 5, this bill instead permits that late renewal if the specified penalty is paid and the renewal is received on or before the last day of the next month immediately following the deadline.

Existing law, which is to become inoperative on April 1, 1998, and repealed on January 1, 1999, 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. This bill defines various terms for purposes of those provisions, and authorizes 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; made specified landings from a vessel owned or operated by him or 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 crab in this state, and that person intended to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995. Under specified conditions, the bill also authorizes a person who does not own a vessel, has not sold or transferred a vessel, and has made specified landings to obtain a nontransferable permit to use a vessel meeting specified conditions that is purchased or contracted for construction on or before April 1, 1996. The bill also changes the financial hardship qualifications for a Dungeness crab vessel permit.

The bill also prohibits any vessel, licensed or permitted to take, possess, or land Dungeness crab in another state for commercial purposes and whose port of registration is in another state, to take or land Dungeness crab in District 10 after December 1 of any year if any delay in the opening of the commercial Dungeness crab fishing season after December 1 has been ordered in that state or states for which the vessel has been issued a license or permit for the taking and landing of Dungeness crab.



Existing law requires DFG to provide annual notice of statutory or regulatory changes to crab permittees, as specified. This bill repeals that provision.

Existing law authorizes the taking of specified groups or species of marine life for marine aquaria pet trade purposes under a marine aquaria collector's permit, including sharks less than eighteen inches total length. However, specified groups or species are, notwithstanding that permit, prohibited from being taken or possessed for commercial purposes, including brown smoothhound sharks. This bill prohibits the taking of brown smoothhound sharks for commercial purposes that are less than eighteen inches in a whole condition or dressed with head and tail removed. This bill was signed by the Governor on October 16 (Chapter 947, Statutes of 1995).

AB 25 (Hauser). Existing law requires any person landing groundfish for commercial purposes subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act to keep a copy of the landing receipt on board the fishing vessel for thirty days following the date of landing. These provisions became inoperative on April 1, 1995 and, as of January 1, 1996, will be repealed. As amended July 27, this bill instead requires any person landing groundfish subject to these federal regulations to keep a copy of the landing receipt on board the fishing vessel throughout, and for fifteen days following, each period for which cumulative landings by individual vessels are limited. In addition, the bill deletes the inoperative and repeal dates of this law, thereby extending the operation of the provisions indefinitely.

Existing law authorizes the DFG Director 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. This bill deletes those conditions on the authority of the Director to order the delay in the opening of the commercial Dungeness crab fishery. The bill instead requires 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 authorizes the entity that is approved by DFG to

conduct an 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 requires the entity conducting a testing program to fund the testing program as a condition of approval of the program. This bill was signed by the Governor on October 9 (Chapter 753, Statutes of 1995).

AB 718 (Hauser). Under existing law, until March 1, 1996, a person landing sea urchins for commercial purposes is required to pay (A) a landing tax of one-half cent for each pound, or fraction thereof, of sea urchins landed that is used to fund a sea urchin enhancement program, and (B) an additional landing tax that is used to make a grant of \$400,000 in installments to a nonprofit organization of sea urchin divers to establish a communications network among the divers, to establish an education program on the conservation and utilization of sea urchins, and to convene statewide conferences for members of the industry. As amended August 21, this bill extends the collection of the portion of the landing tax described in (A) to March 1, 2001, increases it to one cent for each pound or fraction thereof landed, and terminates the collection of the portion described in (B) on January 1, 1996.

Existing law provides for the Director's Sea Urchin Advisory Committee composed of various members from northern and southern California. This bill deletes the residence requirements for the processor representatives of the Advisory Committee and specifies residence and permit qualifications for the diver representatives of the advisory committee. The bill provides for selection of alternates by the diver representatives, with the approval of the DFG Director, who may act in that representative's absence, and specifies residence qualifications of those alternate representatives. This bill was signed by the Governor on October 4 (Chapter 615, Statutes of 1995).

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 July 10, this bill, with a specified exception, makes it unlawful to sell, purchase, deliver for commercial purposes, or possess on any registered commercial fishing vessel, any shark fins, tails, or portions thereof that have been removed from the carcass of a shark.

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 fourteen inches and more than eight inches in stretched mesh, and prescribes the season when those nets may be used for that purpose. This bill authorizes the use of drift gill nets, under a general gill net permit with a mesh size smaller than eight inches in stretched mesh and twine 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 authorizes the incidental taking of not more than two thresher sharks and two shortfin mako sharks for possession and sale. The bill specifies the conditions for that incidental taking. This bill was signed by the Governor on August 3 (Chapter 371, Statutes of 1995).

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 amended August 28, this bill redefines 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 authorizes 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 deletes the requirement for clearance and declaration of the location of the catch on reentry to the U.S. Customs. The bill instead requires 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.

Existing law authorizes the taking of 350 tons of sardines for live bait purposes during any calendar year and authorizes DFG to increase that quota under specified conditions. This bill instead permits sardines to be taken for live bait purposes at any time.

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 repeals that provision.

Existing law permits the taking of, among other species, rock crab and California sheephead incidentally in a lobster



trap, and the taking of California sheephead incidentally in a crab trap being used to take rock crab in Fish and Game Districts 19 and 118.5, and any other species taken incidentally is required to be released. This bill instead permits the incidental taking of crab, other than Dungeness crab, in a lobster trap and deletes the authority to take California sheephead in a lobster trap or in a crab trap in those districts.

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. Notwithstanding that general trap permit requirement, this bill requires persons who take finfish with traps for commercial purposes in waters south of Point Arguello to obtain a finfish trap permit. The bill sets the fee for the permit at \$110.

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 less than 22 inches in total length or less than the minimum weight if taken incidentally in commercial fishing. This bill limits that incidental possession at any time to halibut taken with a gill net, trammel net, or trawl net while commercial fishing. This bill was signed by the Governor on October 4 (Chapter 619, Statutes of 1995).

AB 77 (Morrow), as amended August 24, prohibits the taking or possession of garibaldi for commercial purposes until February 1, 1999, unless a study, the methodology of which is approved by DFG, shows a less than significant impact on the population of the garibaldi resource from that taking, and thereafter permits that taking or possession only under a marine aquaria collector's permit from October 31 to February 1, inclusive. This bill also declares the garibaldi as the official state marine fish.

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, as specified. This bill continues that existing law beyond January 1, 2000, by deleting that date. This bill was signed by the Governor on October 16 (Chapter 948, Statutes of 1995).

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. As amended September 12, this bill authorizes 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. The bill prohibits the additional nonfederal funds from being deposited in the Commercial Salmon Stamp Account unless the person or entity providing the funds specifically designates in writing, prior to or at the time of transmittal of the funds to DFG, that the funds are intended solely for deposit to that account. The bill requires funds received by DFG that are not designated at the time of receipt as being intended solely for deposit to the Commercial Salmon Stamp Account to be deposited in the Fish and Game Preservation Fund. This bill was signed by the Governor on October 12 (Chapter 828, Statutes of 1995).

AB 474 (Hauser), as amended April 6, would—commencing April 1, 1996—prohibit any person from taking, possessing on a vessel, or landing from a commercial fishing vessel any pink shrimp for commercial purposes, unless the owner of the vessel has a pink shrimp vessel permit of one of two types issued by the DFG pursuant to the bill. The bill would also provide for a single delivery license to be issued for a fee of \$100 which would authorize landing pink shrimp without a vessel permit. The bill would limit the issuance of pink shrimp vessel permits; provide for annual 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 1737 (Katz), as amended June 15, 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 from a specified federal marine mammal inventory maintained pursuant to the federal Marine Mammal

Protection Act of 1972 that is administratively designated as the National Marine Fisheries Service's marine mammal inventory report. The bill would require DFG to maintain a current inventory of the 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, attorneys' fees, and expert witness fees in those actions. [A. WP&W]

AB 527 (Woods). Under existing law, fallow deer are wild game mammals subject to regulation by FGC; pursuant to that authority, FGC has adopted regulations governing the raising of fallow deer in captivity for commercial purposes under a permit issued by DFG. [15:1 CRLR 149] As introduced February 17, this bill would provide that fallow deer are not game mammals but are domestic animals subject to the jurisdiction of the Secretary of Food and Agriculture, and would provide that neither DFG nor FGC have jurisdiction over activities relating thereto. The bill would also include fallow deer in the provisions of law relating to domestic animals for purposes of recovering strays, marking and branding, meat inspection, and the use of the meat. The bill would also authorize the Secretary of Food and Agriculture to adopt regulations to implement the husbandry of fallow deer as domesticated animals and the regulation of fallow deer farms as necessary to protect the public health and welfare. [A. Floor]

SB 39 (Thompson). Under existing law, the Wildlife Conservation Board is required to authorize the acquisition of



land, rights in land, water, and water rights necessary to carry out that law and may authorize that acquisition by DFG. Existing law provides that the State Coastal Conservancy is the repository of lands pursuant to the California Coastal Act of 1976 and authorizes the Conservancy to acquire real property or interests in real property for purposes of that Act. As amended July 7, this bill would authorize the Board and the Conservancy to use funds available to them for the purpose of acquiring the South Spit of Humboldt Bay, as described in the bill. The bill would permit the Conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County to prepare a management plan for that area and to submit the plan to the legislature on or before June 30, 1997. [A. Appr]

SB 55 (Kopp), as amended March 2, would allow domestic ferrets to be imported for, and owned as, pets without a permit from the Department of Health Services 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 administered in accordance with the recommendations of the vaccine manufacturer and if the ferret is spayed or neutered. [S. NR&W]

LITIGATION

On June 29, the U.S. Supreme Court issued a 6-3 decision in *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, ___ U.S. ___, 115 S.Ct. 2407, reversing the D.C. Circuit's invalidation of regulations promulgated by the Secretary of the Interior which interpret significant habitat degradation as falling within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. [15:1 CRLR 152; 14:4 CRLR 177; 14:2&3 CRLR 192] The Court found that the text of the ESA provides three reasons for concluding that the Secretary's interpretation was reasonable: (1) the ordinary understanding of the word "harm" includes habitat modification that results in actual injury or death to members of an endangered or threatened species; (2) ESA's broad purpose in providing comprehensive protection for endangered and threatened species supports the Secretary's decision; and (3) a 1982 amendment to 16 U.S.C. section 1539(a)(1)(B) suggests that Congress understood ESA section 9 to prohibit indirect as well as deliberate takings.

On June 9, Judge Jeffery Gunther ruled in favor of plaintiff and against DFG in *Mills v. California Department of Fish*

and Game, No. 529928 (Sacramento County Superior Court). In this matter, plaintiff Mills challenged the validity of Fish and Game Code section 711.4, which established within DFG a program to charge fees for its review of certain environmental documents prepared pursuant to the California Environmental Quality Act (CEQA); section 711.4 was added by AB 3158 (Costa) (Chapter 1706, Statutes of 1990). Mills also challenged section 753.5, Title 14 of the CCR, the regulation DFG adopted to implement the statute. [11:2 CRLR 156; 10:4 CRLR 155] Mills alleged that the fees created by AB 3158 are taxes, and that they are unconstitutional because they must be enacted by a two-thirds vote and they were not. After trial, Judge Gunther ruled in Mills' favor, and DFG settled the suit by agreeing to refund certain fees, pay Mills' attorneys' fees and costs, and seek repeal of Fish and Game Code section 711.4 and section 753.5, Title 14 of the CCR.

On June 6, a coalition of thirteen environmental groups filed suit against Governor Wilson and DFG in *Planning and Conservation League v. Department of Fish and Game*, No. 970119 (San Francisco Superior Court), challenging DFG's adoption of an incidental take permit which effectively suspends the California Endangered Species Act whenever an "emergency" occurs or is declared. Although ostensibly adopted to help farmers recover from severe winter rains, the waiver lasts for five years. [15:2&3 CRLR 163-64] The environmentalists claim that the Fish and Game Code does not authorize DFG to exempt emergency activities from CESA; DFG's finding that the permit is not inconsistent with CESA must be the subject of an administrative hearing (which was not held); the five-year term of the permit exceeds any conceivable "emergency"; the permit violates DFG's stewardship responsibilities under the public trust doctrine; and the permit is not exempt from CEQA, thus requiring DFG to prepare an environmental impact report before issuing the permit. At this writing, the case has been argued and is pending before Judge William Cahill.

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 CEQA, such that an environmental impact report is required. [14:4 CRLR 177]

FUTURE MEETINGS

February 1-2 in Long Beach.
March 7-8 in Redding.
April 4-5 in Sacramento.
May 7 in Sacramento.
June 20-21 in Bridgeport.
August 1-2 in Santa Barbara.
October 3-4 in San Diego.

BOARD OF FORESTRY

Executive Officer:
Dean Cromwell
(916) 653-8007

The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973, Public Resources Code (PRC) section 4511 *et seq.* The Board, established in PRC section 730 *et seq.*, serves to protect California's timber resources and to promote responsible timber harvesting. The Board adopts the Forest Practice Rules (FPR), codified in Division 1.5, Title 14 of the California Code of Regulations (CCR), and provides the California Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Nicole Clay, Jane M. Dunlap, Robert C. Heald, Bonnie Neely (Vice-Chair), and Richard Rogers.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and William E. Snyder.

Range Livestock Industry: Robert J. Kersteins (Chair).

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.