



allowed to continue tankering shipments (about one tanker trip per week) until January 1, 1996. After that date, Chevron and the other offshore oil producers near Santa Barbara (Texaco and Exxon) will have to ship the oil by pipeline. From a group of pipeline alternatives (including construction of a new pipeline), the oil producers have selected the existing All American Pipeline Company (AAPC); Commission staff reported that the implementation of the AAPC alternative would require connecting a final segment of pipeline to the refineries in Los Angeles. The oil producers are still analyzing the construction cost of this additional section of pipeline.

At its November 16 meeting in San Diego, the Commission voted 6-0 to adopt revised findings and conditions in support of its April 1993 approval of a permit for an 83-lot residential subdivision, a golf course, habitat preserves, parks, and trails in Rancho Palos Verdes. [13:2&3 CRLR 184] The major issue facing the Commission was the project's conformance with the provisions of the City of Rancho Palos Verdes' LCP and the public access and recreation policies of the Coastal Act. These issues were complicated by the presence of a threatened species, the California gnatcatcher, and extensive testimony regarding the history of public use of the property. The Commission heard evidence regarding the economic viability of the project, the design constraints of a championship-level public golf course, the extent of public rights on the property, and the value and location of the habitat on the property. In adopting its revised findings, the Commission also took note of the applicants' plans to provide public access and amenities, to restore twenty acres of vegetation on the adjoining county-owned Shoreline Park, protect existing public access on that park, and restore ten acres of a 95-acre publicly dedicated landslide area just inland of the coastal zone. Environmentalists at the meeting stated that the Commission approved the permit without fully examining the environmental and public access aspects that were part of the record.

At its November 18 meeting, the Commission approved a controversial coastal development permit, with special conditions, to establish a temporary 1.41-acre marine mammal reserve encompassing Seal Rock in La Jolla and the surrounding open waters extending easterly to the toe of the coastal bluffs, including a small part of Shell Beach. Commission staff recommended that the Commission deny the permit, contending that the proposed development interferes with the public's right of access to the sea; the Seal Rock

area does not qualify for ecological reserve status for harbor seals because they are neither endangered nor threatened and do not depend upon habitat of Seal Rock for their survival; and other less restrictive alternatives are available to discourage public disturbance of seals when they "haul out" onto the rock. However, based on expert testimony that the area may be a rookery and the public's presence may adversely impact seals during breeding season, the permit prohibits swimming, body surfing, snorkeling, scuba diving, tidepool viewing, and other recreational activities within the reserve area during a five-year period. Permit conditions require the City of San Diego to submit annual monitoring reports, including results of studies on the behavior and breeding habits of the harbor seals and whether a rookery exists within the limits of the proposed marine reserve; obtain approval from the State Lands Commission that the proposed five-year marine mammal reserve is consistent with applicable tide-lands grants and the public trust; and submit plans indicating the proposed reserve area does not include any sandy beach areas and is confined solely to open coastal waters and offshore areas.

At its November 19 meeting, the Commission conditionally approved the City of Dana Point's permit application to remove 44,000 tons of debris resulting from a February 1993 landslide that covered a 300-foot stretch of Pacific Coast Highway, and build a caisson retaining wall 300 feet long and 25 feet high to prevent additional landslide material from falling onto the highway. In addition to the highway blockage in Dana Point, the landslide also damaged five homes in San Clemente. Resolution of the problem thus involved two separate planning processes and jurisdictions. For the landslide portion within the City of Dana Point, the City issued a coastal development permit, which was subsequently appealed to the Coastal Commission. For the landslide portion within the City of San Clemente, the City of Dana Point applied directly to the Coastal Commission for a coastal development permit because the City of San Clemente does not have a certified LCP.

Also at its November meeting, the Commission considered a petition for rulemaking filed by San Diego resident Charles Hill. The petition asked the Commission to adopt regulations which would prohibit the discharge of toxic substances or waste from storage tanks at energy facilities (e.g., gas stations) within the coastal zone, require the Commission to assess damage to the coastal zone caused by leaking storage tanks, and calculate the

liability owed to the state of California by leaking storage tank owners who have declared bankruptcy. The Commission denied Hill's petition, simultaneously asserting that it lacks authority to adopt the proposed regulations because the discharge of liquid waste that will or could affect the quality of the surface or underground water resources of the state is primarily within the jurisdiction of the Water Resources Control Board, and that the proposed regulations would duplicate existing Coastal Commission authority already contained in the Coastal Act and the Commission's regulations. The Commission also stated that it lacks the financial resources necessary to administer the proposed regulations.

At its December 16 meeting, the Commission postponed a final ruling on a proposed project to build a state-of-the-art seawall to protect six blufftop homes in Encinitas, saying it wanted more property owners involved and a more comprehensive plan developed to protect both the upper and lower portions of the 100-foot-high bluff. Although the Commission and its planning staff acknowledged the needs of property owners to protect their homes, they expressed reluctance to approve discontinuous walls with several end points, which can do more damage to a bluff than having no seawall at all.

■ FUTURE MEETINGS

May 10-13 in Los Angeles.

June 7-10 in Monterey.

July 12-15 in Huntington Beach.

August 9-12 in Long Beach.

September 13-16 in Eureka.

FISH AND GAME COMMISSION

Executive Director:

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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.

MAJOR PROJECTS

Federal Government Endorses NCCP Program. In what he characterized as an "historic" and "extraordinary" step, U.S. Secretary of the Interior Bruce Babbitt on

December 8 formally endorsed the Wilson administration's Natural Communities Conservation Planning (NCCP) pilot project, which is being implemented by DFG in conjunction with local jurisdictions and the federal government to preserve the coastal sage scrub (CSS) habitat of the California gnatcatcher. [13:4 CRLR 188; 13:2&3 CRLR 188]

The NCCP program (which is codified at Fish and Game Code section 2800 *et seq.*) is designed to be a voluntary, negotiated, consensus-driven alternative to the sometimes harsh consequences of the listing of a species as endangered or threatened under the federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA). The goals of the program are to encourage long-term local and regional land use planning which avoids the precipitous declines in species' populations which result in ESA/CESA listings, establish habitat reserves which promote the preservation and proliferation of entire ecosystems (instead of just one declining species), and permit reasonable development on non-enrolled lands by participating landowners. Both the state and federal governments have expressed hope that the NCCP concept—which appears to be succeeding in the CSS context—can be applied to other environment-vs.-economy issues, including the ongoing struggles to save the northern spotted owl in the Pacific Northwest (*see below*) and declining fish populations in California's San Francisco Bay/Sacramento-San Joaquin Delta Estuary (*see agency report on WATER RESOURCES CONTROL BOARD for related discussion*).

In March 1993, the federal government officially listed the California gnatcatcher as a threatened species, thus asserting federal jurisdiction over the bird, its habitat, and activities which would harm either, and technically triggering the prohibitions and protections of the ESA. During his December news conference, Secretary Babbitt announced Interior's adoption of Rule 4(d), which essentially creates an exemption to the ESA for southern California landowners who have enrolled CSS lands and are participating in the NCCP program. The exemption will permit participating landowners to develop certain CSS lands without violating the ESA, so long as they comply with the NCCP program's Planning and Conservation Guidelines (which are incorporated into Rule 4(d), and which currently restrict development to 5% of southern California CSS lands) and the program continues to meet with federal approval. Developers who do not participate in the NCCP program are fully subject to the ESA.

The federal government's adoption of the rule reflects a new "partnership" between the state and federal governments on sensitive environmental issues. Babbitt called the NCCP program "a precedent-setting experiment" and stated, "The alternative is a train wreck that results in stalemate and no development, and ten years of litigation like we've had in the forests of the Pacific Northwest."

In other NCCP program news, 33 local jurisdictions and 39 major private landowners have enrolled over one million CSS acres in the NCCP program as of December 15. At this writing, DFG's NCCP staff is monitoring the mitigation measures being discussed by the local, state, and federal governments in response to the wildfires which scorched southern California in late October and early November; approximately 20,000 CSS acres were burned in the fires. DFG's input is essential to ensure that CSS habitat lands are not negatively impacted by short- or long-term mitigation actions; activities such as seeding and vegetation management could significantly affect the development of conservation reserves under the NCCP program.

OAL Rejects FGC's Delisting of Mohave Ground Squirrel. On November 3, the Office of Administrative Law (OAL) rejected FGC's proposed amendment to section 670.5, Title 14 of the CCR, which would have removed the Mohave ground squirrel from the list of threatened species under CESA. [13:4 CRLR 176] OAL disapproved FGC's unprecedented decision to delist because its final statement of reasons failed to include a summary of and response to all comments submitted to the Commission during the public comment period. Thus, the squirrel will remain listed as threatened until FGC corrects the deficiencies in its rulemaking record.

Although the Commission received numerous comments at public hearings and during the comment periods opposing the removal of the squirrel from the threatened list, the final statement of reasons prepared by FGC lumped all comments opposing the proposed delisting together and summarized them as follows: "Recommendation to retain the Mohave ground squirrel as a listed species." FGC's response to these comments was a conclusory paragraph stating that the petition to delist provided "sufficient information to indicate that the continued existence of the Mohave ground squirrel is no longer threatened, nor is it likely to become an endangered species in the foreseeable future." FGC's final statement included findings explaining its action, but did not address specific challenges raised in the



comments. Government Code section 11346.7(b)(3) requires the final statement of reasons to include a summary of each objection or recommendation made during the comment period, along with an explanation of why FGC made no change in response to the comment. Because FGC failed to specifically respond to the comments made, OAL rejected the proposed regulatory change.

The reprieve for the squirrel may only be temporary, as FGC has 120 days in which to cure the deficiencies and resubmit the rulemaking file to OAL. In the meantime, *Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.*, No. 953860, is still pending in San Francisco Superior Court; the action brought by five environmental groups challenges FGC's authority to grant Kern County's petition to delist the squirrel, contending that it fails to contain the information required by CESA; FGC violated the procedure for delisting set forth in CESA; and FGC violated the California Environmental Quality Act (CEQA) by failing to prepare an environmental impact report, an initial study, or a negative declaration. [13:4 CRLR 176]

Timber Firms Seek Delisting of Northern Spotted Owl. The California timber industry is taking notice of FGC's attempt to delist the Mohave ground squirrel by seeking to eliminate federal threatened-species protection for the northern spotted owl. [10:4 CRLR 157-58] On October 6, the timber industry petitioned the U.S. Fish and Wildlife Service (USFWS) to delist the northern spotted owl from the list of threatened species under the ESA in California, leaving it protected in Oregon and Washington. USFWS, which has one year to make a decision, has never granted a request to remove an animal from federal protection. However, some biologists at the agency believe that the owls and the old-growth forests they inhabit are in better shape in northern California than in the other two states. Whether the spotted owls are strong enough to survive without government protection of their habitat remains to be seen.

Creation of Four New Marine Ecological Reserves. At its November 5 meeting, FGC unanimously approved the addition of section 630.5 to Title 14 of the CCR, which establishes four new marine ecological reserves under Proposition 132, the Marine Resources Protection Act of 1990. [13:4 CRLR 178] Proposition 132 requires FGC to create the new reserves by January 1, 1994. The four reserves are roughly two square miles in size and will be located at or near King Range (Punta Gorda) off Humboldt County; off

Big Creek in Monterey County; off Vandenberg Air Force Base in Santa Barbara County; and off Big Sycamore Canyon in Ventura County. OAL approved new section 630.5 on December 31.

In Opinion No. 92-302 (July 22, 1992), the Attorney General found that Proposition 132 restricts activity in the new marine reserves to scientific research, to the exclusion of all other human activities. [12:4 CRLR 205] FGC is authorized to approve grants to colleges, universities, and other *bonafide* research organizations after January 1, 1995, to conduct research in the reserves.

1994-95 Sport Fishing Season Regulations. At its December meeting, FGC adopted its sport fishing regulations for the 1994-95 season. Among others, the changes to last year's regulations include the following:

-Section 5.00, Title 14 of the CCR, will be amended to provide that no black bass may be taken on the lower Colorado River under 13 inches, and impose a bag limit of six fish. On Ruth Lake, the new bag limit is two black bass with a minimum size of 15 inches. On Letts Lake, the 12-inch minimum size limit has been removed, but the five-fish bag limit remains the same. Lower Otay Lake will now have a 15-inch minimum on largemouth bass. Fish Slough will now be open to year-round black bass fishing. Minimum size restrictions at the Plaskett Meadow Lakes will be removed.

-An amendment to section 5.30 will institute a 25-fish bag limit on crappie taken in Black Butte Lake and Lake Britton.

-Changes to section 5.75 impose a bag limit of ten striped bass taken in Castaic, Silverwood, and Pyramid lakes, in order to protect native populations of black bass in these lakes.

-Amendments to sections 7.00(a)(5) and 7.00(c)(4) will limit fishers to a maximum of two trout and/or salmon, only one of which may exceed 22 inches in length, in rivers and streams flowing directly to the ocean north of San Francisco.

-Changes to sections 7.00(b)(4) and 7.50(b)(67)(B) will establish a two-trout limit for all waters of the Fall River Valley. This will combat the current problem of different limits on lakes that are part of the Valley and can be accessed by boat without leaving the water. Enforcement difficulties have been encountered as anglers claim they caught the fish in question in a lake with a higher bag limit.

-New section 7.50(b)(86)(C) would open a section of the Upper Kern River to winter angling on a catch-and-release basis, using barbless hooks. Further, new section 7.50(b)(86)(D) will impose a two-

fish, ten-inch limit on rainbow trout taken in the Upper Kern River.

-Changes to section 7.50(b)(117)(B) will place a no-fish limit on rainbow trout taken from the Merced River from the Yosemite Park boundary to the Foresta Bridge. However, under new section 7.50(b)(117)(C), the Merced River from the Foresta Bridge downstream to Lake McClure will be open to winter angling with a two-trout limit. Section 7.50(b)(156) will reduce the daily bag limit from three fish to one and ban barbed hooks on the Sacramento River between Keswick Dam and the Deschutes Bridge.

-Amendments to section 28.80 will allow the take of certain types of fish (herring, Pacific staghorn sculpin, shiner surfperch, surfsmelt, and anchovies) with baited hoop nets no greater than 36 inches in diameter, and add topsmelt to the list of fish that may be taken by net.

At this writing, FGC staff is preparing the rulemaking file on the 1994-95 sport fishing regulations for submission to OAL.

Ban on Recreational Take of White Shark. Also at its December meeting, FGC held a public hearing on its proposal to add section 28.06 and amend sections 27.60 and 28.95, Title 14 of the CCR, to prohibit the recreational take of white shark after January 1, in compliance with AB 522 (Hauser) (Chapter 1174, Statutes of 1993). [13:4 CRLR 180] White sharks are apex predators (at the top of the food chain) which often feed on seals and sea lions in areas where these marine mammals concentrate. White sharks are not considered abundant in coastal waters, and are thought to be vulnerable to overharvest in localized areas frequented by seals and sea lions. The proposed regulations will amend FGC's sport fishing regulations to specify that no white shark may be taken under authority of a sport fishing license after January 1, 1994. At this writing, FGC is scheduled to hold an additional hearing on the proposed regulatory changes on January 4.

Commercial Sea Urchin Fishing Permits. On December 24, FGC published notice of its intent to amend section 120.7, Title 14 of the CCR, which sets forth the classes of various permits, permit qualifications, permit renewal and issuance requirements and duration, and other matters pertaining to the revocable, non-transferable permit needed to take sea urchin for commercial purposes under Fish and Game Code section 9054. The proposed regulatory changes will:

-eliminate the sea urchin apprentice permit and upgrade all existing sea urchin apprentice permit holders to diver status;



—create a new, unrestricted, low-cost sea urchin crew-member permit, which may be used to provide proof of initial qualifying experience for persons wishing to enter the drawing for any new sea urchin diving permits which annually may become available;

—establish a goal of 300 total sea urchin permits, and a ratio of one new permit for each ten nonrenewed permits until the goal is reached, when the ratio will be one-to-one;

—limit the time for appeal of denial of permit issuance to one year following the close of the last permit year in which the appellant held a valid sea urchin permit;

—eliminate the trigger for the red sea urchin fishery closure during the second full week of each month from May through September; and

—clarify the boundaries of the Gerstle Cove closed sea urchin fishing area in Sonoma County.

At this writing, FGC is scheduled to hold public hearings on these proposed regulatory changes at its February and March meetings.

Commission to Require Display of Fishing Licenses. On November 12, FGC published notice of its intent to amend section 700, Title 14 of the CCR, to require anglers to display their fishing licenses while fishing, so that the license is unobstructed from view. FGC hopes this regulation will improve compliance with the license requirement. According to FGC, noncompliance with the state's fishing license requirement costs DFG \$4.1 to \$14.3 million annually; 13%–45% of California anglers fish without purchasing a license. If license compliance in California is increased by only 6.5%, DFG will realize approximately \$2.1 million annually from this proposal. At this writing, FGC is scheduled to hold a public hearing on this proposal at its January meeting.

Update on Other Regulatory Changes. The following is a status update on other regulatory changes proposed and/or adopted by FGC in recent months:

• **Delta Smelt Listed as Threatened.** On November 9, OAL approved FGC's amendment to section 670.5, Title 14 of the CCR, which lists the Delta smelt as a threatened species under CESA. [13:4 CRLR 178; 13:2&3 CRLR 177, 189]

• **Special Permit for Temporary Possession of Mammals to Train Dogs.** Last August, FGC adopted a proposed amendment to section 251.5, Title 14 of the CCR, which currently authorizes DFG to issue a permit to capture and temporarily possess a live nongame, furbearing mammal for dog training and other purposes. Mammals possessed under such a permit must

be released in good condition in the area they were trapped. The proposed change would require DFG to issue such a permit when it determines that the activities which temporarily uses the mammal will not pose a threat to the public welfare or the wildlife resource and the activity will be conducted in a humane manner to the captured mammal. [13:4 CRLR 178] At this writing, the rulemaking file on this proposed change is still pending at OAL.

• **Commercial Herring Fishery Season.** On October 28, OAL approved FGC's amendments to sections 163 and 164, Title 14 of the CCR, which establish rules and quotas for the 1993–94 commercial herring fishing season. [13:4 CRLR 177]

• **1993–94 Migratory Waterfowl Season Regulations.** On November 4, OAL approved FGC's amendments to sections 502, 507.1, 509, and 600.4, Title 14 of the CCR; this regulatory action establishes rules and dates for the 1993–94 migratory waterfowl season in California. [13:4 CRLR 177]

• **Additional Identification on Hunting and Fishing License Applications.** At its October 8 meeting, FGC approved a proposed amendment to section 705, Title 14 of the CCR, to require applicants to disclose their driver's license or identification card number on hunting and fishing license applications; this information would also appear on the license itself. [13:4 CRLR 177–78] At this writing, staff is completing the rulemaking file on the proposed amendment for submission to OAL.

• **Commission to Ban Zebra Mussels in California.** At its November 5 meeting, FGC adopted a proposed amendment to section 671, Title 14 of the CCR, to add zebra mussels to the existing list of species which may not be lawfully imported, possessed, or transported alive in California. This prolific mussel, which has spread rapidly throughout the Great Lakes, has fouled municipal electric power generation and industrial water intake facilities, disrupted food webs and ecosystems, and interfered with sport and commercial fishing, navigation, recreational boating, beach use, and irrigation throughout the area of infestation. [13:4 CRLR 178] At this writing, staff is completing the rulemaking file on the proposed amendment for submission to OAL.

LEGISLATION

SB 492 (Kelley). Existing law authorizes the DFG Director to appoint committees to advise the Director on humane care of wild animals, cats other than house cats, specified research projects, ocean fishing

enhancement projects, sea urchin studies, abalone restoration and enhancement programs, gill and trammel net use, aquaculture diseases, aquaculture industry matters, and interagency matters relating to aquaculture. As introduced February 25, this bill would require the Director, instead, to appoint four advisory committees for the purpose of reviewing and advising DFG regarding policy and program activities, as specified. The members of the advisory committees would serve without compensation but would be paid their reasonable and necessary expenses incurred as a result of attending meetings of the advisory committees. The bill would also require the Marine and Anadromous Fisheries Advisory Committee, established under the bill, instead of the Commercial Salmon Trollers Advisory Committee, to recommend programs and a budget for expenditures from the Commercial Salmon Stamp Account; require a subcommittee of that Advisory Committee to serve as the Salmon Fishing Review Board; and require the Director to consult with industry representatives, academic scientists and other public agencies, instead of the Aquaculture Disease Committee, before recommending regulations to FGC for specified disease control purposes.

Existing law prohibits financing a research project from the Ocean Fishery Research and Hatchery Account unless it is approved by both the Director and a majority of the members of the Ocean Resources Enhancement and Hatchery Advisory Panel. This bill would terminate the existence of that Panel and prohibit the financing of a research project from that account unless funds have been appropriated by the legislature for the project.

Existing law, until January 1, 1994, provides for the issuance of lifetime sportfishing and sportsperson's licenses for specified fees. This bill would continue those existing laws beyond January 1, 1994, by deleting the repeal date. The bill would require DFG to establish the fees for subsequent years in an amount not to exceed the adjustment based on Department costs, as prescribed.

Existing law authorizes DFG to issue licenses, license stamps, punch cards, and license tags through authorized license agents. Existing law prohibits the license agent from collecting less from the license applicant than the fee prescribed in the Fish and Game Code or regulations adopted thereunder. This bill would, instead, prohibit the license agent from collecting less from the license applicant than 10% of the fee prescribed in the Fish and Game Code or regulations adopted thereunder. [S. NR & W]



SB 824 (Hayden). Under the Z'berg-Nejedly Forest Practice Act of 1973, a person is prohibited from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the California Department of Forestry and Fire Protection (CDF) and reviewed by the CDF Director to determine if the plan is in conformance with the Act and the rules and regulations of the state Board of Forestry. Upon receipt of the plan, CDF is required to place the plan, or a true copy, in a file available for public inspection in the county in which timber operations are proposed under the plan, and to transmit a copy of the plan to DFG, the appropriate California regional water quality control board (RWQCB), the county planning agency, and, if within its jurisdiction, the Tahoe Regional Planning Agency, and to invite, consider, and respond in writing to any comments received from those agencies. As amended April 12, this bill would require the Board of Forestry to adopt any mitigation measures that are proposed by DFG or a RWQCB unless CDF demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources.

Under the Act, the Board of Forestry is required to adopt forest practice rules and regulations. This bill would require the Board to review recommendations for any rule changes that are submitted to it by DFG and a RWQCB at least twice each calendar year and to act on those recommendations within 120 days. *[S. NR&W]*

SB 825 (Hayden), as amended April 12, would require all timber harvests within ancient forests to be conducted in a manner that maintains a canopy structure similar to that existing prior to harvest, that maintains at least 60% of the overstory canopy closure, and which provides corridors and connectivity for wildlife which meet criteria developed by DFG. *[S. NR&W]*

SB 380 (Hayden). Under existing law, all mammals occurring naturally in California that are not game mammals, fully protected mammals, or fur-bearing mammals, are nongame mammals, and may not be taken or possessed except as provided in the Fish and Game Code or regulations adopted under that Code. Bobcats are nongame mammals. Under those regulations, a license tag or trapping license is required to take bobcats, except that depredating bobcats may be taken at any time. As introduced February 23, this bill would designate bobcats as a specially protected mammal and prohibit their taking, injury, possession, or sale. The bill would allow DFG to issue a permit to take bobcats that

are causing injury, damage, or destruction to livestock or other property or to issue a permit confirming the taking of a bobcat under specified conditions. *[S. NR&W]*

AB 1390 (Epple). Existing law authorizes FGC to limit the number of permits that may be issued to take sea urchins. Existing law provides for a fee of \$250 for a sea urchin permit until April 1, 1993, and \$330 thereafter. As introduced March 3, this bill would, under specified conditions, permit the holder of a sea urchin diver permit to designate an assistant with the approval of the DFG Director. The bill would authorize the assistant to take or assist in the taking of sea urchin when the assistant is in the presence of the permittee; provide for a review of the approval of the assistant every three years; provide for revocation, suspension, or other action related to the sea urchin permit if the assistant commits specified violations; require the payment of a fee by the assistant in the same amount as for a permittee; and require the assistant to carry proof of payment whenever conducting activities pursuant to the bill. *[S. NR&W]*

AB 899 (Costa). AB 3158 (Costa) (Chapter 1706, Statutes of 1990) requires DFG to establish and collect filing fees to cover Departmental costs of reviewing environmental documents relating to projects subject to CEQA in specified amounts, and requires those fees for projects on federal lands unless explicitly preempted by federal law. *[11:2 CRLR 156; 10:4 CRLR 155]* The law permits DFG to collect \$850 for reviewing EIRs and functional equivalent programs, \$1,250 for negative declarations, and \$850 for specified water applications. Proponents of this bill argue that these fees are excessive. As amended August 18, this bill would repeal those provisions on the date that another statute becomes operative which provides revenues in an amount sufficient to support these environmental activities, or January 1, 1996, whichever is earlier. The bill would additionally require DFG to prepare and submit to the legislature and the Governor on or before October 1, 1994, a report addressing specified aspects of the environmental programs of the Department. *[S. NR&W]*

SB 67 (Petris). Under existing law, it is unlawful to use dogs to hunt, pursue, or molest bears generally, except under a depredation permit issued by DFG or during certain open seasons. As amended February 12, this bill would additionally prohibit the use of dogs to hunt, pursue, or take black bears, except black bears taken pursuant to a depredation permit, pursuant to a depredation management plan adopted by FGC, or by federal or state

officers in the conduct of official business. *[13:4 CRLR 178; 13:2&3 CRLR 189]* *[S. NR&W]*

AB 1222 (Cortese). The California Wildlife Protection Act of 1990 creates the Habitat Conservation Fund, which is required to be used for, among other purposes, the acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing anadromous salmonids and trout resources. The Act generally requires a four-fifths vote of the legislature for amendment, which amendment is required to be consistent with and further the purposes of the Act. As amended July 15, this bill would include the purchase of water to augment streamflows as a means of acquisition, restoration, or enhancement.

Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and wildlife resources. Existing law requires the DFG Director, in consultation with specified persons, to prepare proposed streamflow requirements for each stream or watercourse for which minimum flow levels need to be established to protect stream-related fish and wildlife resources. Existing law authorizes the state Water Resources Control Board (WRCB) to approve any change associated with a water transfer, as specified, only if WRCB finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. The bill would require WRCB to establish and maintain a Registry of Instream Flow Reservations and Dedications to list all instream reservations and dedications; require WRCB to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the Registry; and require the DFG Director, in developing the requirements for each stream or watercourse, and WRCB, in making a finding whether a water transfer will unreasonably affect fish, wildlife, or other instream beneficial uses, to take into account the sufficiency of streamflow for each stream or watercourse as reflected in the Registry. *[S. Appr]*

AB 1367 (Cortese). Under existing law, DFG is required to issue reduced fee hunting licenses to disabled veterans for a fee of \$2, adjusted as specified. As amended April 12, this bill would change that fee to \$3, adjusted as specified.

Existing law defines upland game bird species for purposes of the Fish and Game Code. This bill would delete desert quail, sage hens, varieties of California and



mountain quail, and varieties of partridges from that definition and would include blue grouse in that definition.

Existing law requires a person who takes a deer to punch out the date of the kill on the license tag, attach part of the tag to the deer, keep it attached until fifteen days after the open season, and send the other part of the tag immediately to DFG after it has been countersigned. This bill would instead require the person to clearly indicate the date of the kill in the manner specified by DFG, attach one part to the deer, countersigned as specified, keep it attached until fifteen days after the open season, and immediately send the other part of the tag to DFG. [A. W&M]

SB 658 (Deddeh). Existing law requires that, after a petition is accepted by FGC for consideration of a species for listing as a threatened species or as an endangered species, the status of the candidate species on the petition be reviewed by DFG. Existing law requires DFG to provide a written report to FGC, and the Commission is required to schedule the petition for final consideration. As amended May 19, this bill would, until January 1, 1998, require FGC to direct DFG to conduct a collaborative phase during a species candidacy period upon request of a directly affected party, as described. That phase would require a working group, as described, to review specified items relating to the candidate species. The bill would, until January 1, 1998, require DFG to commence the preparation of, and make progress toward completion of, a recovery plan of specified content for the species proposed for listing during the period of candidacy and before final action by FGC. [S. Appr]

AB 778 (Harvey). Existing law requires that every person over the age of 16 years obtain a fishing license in order to take fish in this state for any purpose other than profit. For certain fish, a license stamp is also required. As introduced February 24, this bill would limit that requirement to persons over the age of 16 and under the age of 70. The bill would also exempt persons 70 years of age or more from any license tag or stamp otherwise required to take fish, reptiles, or amphibia. The bill would require a person who is 70 years of age or more to show proof of age to a peace officer on demand when taking fish, reptiles, or amphibia. [A. W&M]

LITIGATION

On October 13 in *Natural Resources Defense Council v. Patterson*, No. 88-1658LKK (E.D. Cal.), U.S. District Court Judge Lawrence Karlton denied the Bureau of Reclamation's motion to dismiss a

five-year-old action brought by NRDC and other environmental organizations, clearing the way for further proceedings in the matter. The suit seeks to compel the federal government, as owner of the Central Valley Project and the Friant Dam on the San Joaquin River, to comply with provisions of the California Fish and Game Code requiring dam owners to maintain fish populations below a dam "in good condition." When the Friant Dam was completed in 1942, nearly all of the San Joaquin River's flow was diverted down two canals for agricultural use, decimating the River's population of spring-run chinook salmon. NRDC brought the lawsuit when the government attempted to renew the long-term water diversion contracts in the late 1980s. In its motion to dismiss the matter, the government argued that the issues raised in the lawsuit were rendered moot and preempted by Congress' passage of the Central Valley Project Improvement Act in 1992. [13:1 CRLR 108-09] Judge Karlton disagreed, holding that the relevant state and federal laws are compatible: "The goals of both statutes are similar...[E]ach seek to protect, restore and enhance fish, wildlife and associated habitats in the Central Valley." NRDC now intends to ask Judge Karlton to order the Bureau to release aqueduct water into the San Joaquin River for fish and wildlife.

RECENT MEETINGS

At its December meeting, FGC again received testimony on DFG's controversial May 1993 decision to eradicate over 300 feral ducks found in Venice canals, as well as 200 more ducks in Chula Vista and at the Franklin Reservoir in the Santa Monica Mountains. The ducks were killed in an effort to halt the spread of viral enteritis, a disease commonly fatal to ducks; DFG hoped to stop the spread of this disease to migratory waterfowl that use the Pacific flyway. The Pacific flyway is used by more than three million migratory waterfowl, and is the source of the migratory waterfowl that are hunted in California.

Dr. Gary Pearson, formerly a veterinarian with the U.S. Fish and Wildlife Service and now in private practice in North Dakota, told the Commission that killing exposed resident ducks is not the way to protect migratory ducks. Dr. Pearson stated that migratory waterfowl have almost certainly been exposed to the disease and have likely built up an immunity to it. According to Dr. Pearson, killing exposed ducks simply replaces birds which may have developed an immunity to the disease with vulnerable newcomers.

FGC took no action in response to this testimony, but promised to study the papers presented by those in opposition to the current eradication policy.

FUTURE MEETINGS

April 28 in Sacramento.
May 9-10 in Yreka.
June 16-17 in Bridgeport.
August 4-5 in San Luis Obispo.
August 25-26 in South Lake Tahoe.
October 6-7 in Palm Springs.
November 3-4 in Monterey.
December 1-2 in Eureka.

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: Franklin L. "Woody" Barnes, James W. Culver, Robert C. Heald, Bonnie Neely, and Richard Rogers.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and Joseph Russ IV.

Range Livestock Industry: Robert J. Kerstiens (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