their owners; minimal public "assemblages" are permitted while rowdy conduct, fires, and littering are prohibited; and surfing and other "non-motorized, water-oriented recreational equipment" are expressly permitted. In order for the settlement to take effect, 75% of the 124 property owners, plus the federal government (which may have an ownership interest in the land upon which the seawall was built, thus precluding the Commission from approving the permit requested by the homeowners) and other state agencies involved in the lawsuits, must agree to it.

On March 3, the Fair Political Practices Commission (FPPC) fined former Coastal Commissioner Mark Nathanson $10,000 for failing to report more than $200,000 in bribes from prominent Hollywood figures in connection with coastal development permits they were seeking. Nathanson is currently serving a 57-month sentence in federal prison for extortion. *[14:1 CRLR 144; 13:4 CRLR 174–75; 13:1 CRLR 113]*

RECENT MEETINGS

At its January meeting, the Commission approved a plan to build the nation's first permanent marine wildlife rescue center specifically designed to protect California's fragile sea otter population and other birds and mammals injured in oil spills. As required by the Oil Spill Prevention and Response Act of 1990 *[10:4 CRLR 155]*, the Department of Fish and Game (DFG) will build the $5 million rescue and rehabilitation center on a site occupied by the Long Marine Lab at UC Santa Cruz.

At its February meeting, the Commission concurred with the federal consistency determination finding that a proposed wastewater treatment plant is consistent with the California Coastal Management Program. The proposed development consists of a 25 million gallon-per-day secondary wastewater treatment plant to be constructed at the San Diego-Tijuana International Border. The treated wastewater will be discharged by a tunneled ocean outfall extending from the plant to a point 3.5 miles offshore in 93 feet of ocean water. The purpose of the development is to protect public health, public beaches and parks, water quality, and the economy of the San Diego-Tijuana region by eliminating the dry-weather flow of untreated sewage from Tijuana, Baja California into the lower Tijuana River Valley in California. Flows of raw sewage crossing the international border from Mexico into the United States through the Tijuana River and its tributaries pose serious threats to public health in both countries and substantial pollution threats to the Tijuana River estuary. Except for minor temporary construction impacts, the Commission agreed that the project will not adversely affect public access to or recreational use of the shoreline, offshore waters, or upland recreational areas in the Tijuana River Valley; instead, the project should improve opportunities for water-oriented access and recreation once dry-weather flows of raw sewage are eliminated.

Also in February, the Commission approved construction of the Hubbs-Sea World marine fish hatchery and research facility adjacent to the Agua Hedionda Lagoon in the City of Carlsbad. The proposed project consists of a 20-foot-high, 20,300-square-foot research and aquaculture facility on a 10.4-acre site owned by San Diego Gas and Electric Company (SDG&E); SDG&E was required to donate the land as part of a CDP condition when SDG&E built the San Onofre Nuclear Generating Station. Hubbs-Sea World Research Institute is a nonprofit corporation that currently conducts its research in a facility adjacent to Sea World at Mission Bay in San Diego. Since 1984, the Institute and San Diego State University have been working jointly as a contractor to DFG's Ocean Resource Enhancement and Hatchery Program to evaluate the feasibility of culturing and releasing juvenile marine fish, principally white seabass, into the ocean. The proposed marine hatchery would replace the Mission Bay facility with a state-of-the-art facility capable of rearing up to 400,000 white seabass at a time. The goal of the project is to replenish depleted wild stocks of white seabass off the coast of southern California. The research is funded by DFG through revenues from sales of sport and commercial fishing licenses.

Also at its February meeting, the Board approved a three-year study that will examine and inventory the environment off the coast of Ventura and Los Angeles counties in the Channel Islands National Marine Sanctuary. The shoreline inventories are designed to provide a database for environmental damage assessment by establishing a record of pre-existing conditions at select sites to be used in the event of an emergency marine oil spill. The $600,000 study will be paid for by Chevron and other Point Arguello oil producers. The study began in March and will last until February 1997.

Also in February, the Commission rejected staff's recommendation and voted 11–0 to approve Hoag Hospital's plans to develop 20 acres around the hospital in the City of Newport Beach. The Hoag Hospital plan calls for development of 19.6 acres of the 20.4-acre lower campus to provide outpatient care facilities for same-day surgeries which do not require an overnight hospital stay. As a condition of CDP, Hoag Hospital agreed to enhance wetlands near UC Irvine in exchange for permission to dredge and fill the Cat-Tail Cove wetlands area, which is the habitat of more than 50 species of birds and animals, including the California gnatcatcher. On April 18, the League for Coastal Protection filed suit against the Commission in San Francisco Superior Court, alleging that approval of Hoag Hospital's CDP violates the Coastal Act, which is designed to protect and preserve wetlands. The lawsuit is pending at this writing.

On an 8–3 vote at its April meeting, the Commission rejected staff's recommendation and dismissed an appeal of a CDP issued to Paul Campbell by Monterey County; Campbell seeks to build a 7,625-square-foot, single-family custom home on a 2.8-acre lot along the Big Sur Coast. The appellants—which included the League of Women Voters of the Monterey Peninsula, the Ventana Chapter of the Sierra Club, the Monterey Peninsula Regional Park District, and Commissioners Gwyn and Giacomini—complained that Campbell's proposed home would be visible from State Scenic Highway 1 (Pacific Coast Highway) along the Big Sur Coast, thereby violating a zoning regulation. The zoning regulation requires that all new development in the Big Sur Coast LUP must be hidden from public view of Highway 1 in order to "maintain the illusion of wildness." The Commission agreed with Monterey County that Campbell's property is in the Otter Cove Exclusion Zone (which is exempt from the view restrictions), concluded there exists no substantial issue for appeal, and dismissed the appeal.

FUTURE MEETINGS

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:
Robert R. Treanor
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The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policy-making board of the Department of Fish

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

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

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations, and protects land and water habitats. DFG manages over 570,000 acres of land, 5,000 lakes and reservoirs, 30,000 miles of streams and rivers, and 1,300 miles of coastline. Over 648 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians, and reptiles are under DFG's protection.

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

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

At this writing, the Commission is functioning with one vacancy, due to the January 1994 expiration of the term of Benjamin Biaggini.

MAJOR PROJECTS

Commission Lists Coho Salmon as Candidate Species. Granting a March 1993 petition from Santa Cruz County, FGC at its April 7 meeting agreed to list the coho salmon as a candidate for listing as a threatened species under the California Endangered Species Act (CESA), Fish and Game Code section 2050 *et seq.* The candidate listing triggers a one-year period during which DFG must study the species, document its population and the threats to its survival, and submit a report to the Commission recommending whether the petitioned action is warranted.

In related action, DFG has petitioned the Board of Forestry (BOF) to classify the coho salmon as a sensitive species under the Forest Practice Rules (FPR); this classification would entitle the salmon to specific protections from the impacts of timbercutting. In its petition, DFG listed the following reasons for its recommendation: (1) 31%–86% of streams in north coast counties no longer support their coho populations; (2) DFG and most fishery experts believe coho populations have experienced a dramatic and significant decline in the past 40 years; (3) the long-term decline of coho salmon populations parallels the deterioration of freshwater habitat caused by human disturbances; logging conducted pursuant to the FPR has induced damage to many coastal streams used by coho salmon and many of them have not fully recovered; this has been exacerbated by the construction of dams and competition from hatchery stocks; (4) oceanic and climatic conditions have been highly unfavorable for coho salmon; (5) ocean harvesting may have contributed to the continued decline and retarded recovery of coho salmon; and (6) critical habitat elements for coho salmon occur in coastal streams, larger river systems, and their tributaries in heavily timbered watersheds; these habitat elements are susceptible to the effects of timber harvesting and have been adversely impacted in most streams historically supporting coho populations. In response to DFG's petition, BOF has scheduled a public hearing on the proposed classification for its June meeting. (*See* agency report on BOF for related discussion.)

Continued Protection for Salmon. Both the state and federal governments have recently taken more action to restrict ocean salmon fishing off the coast of California and in California rivers. *[13:4 CRLR 177; 13:2&3 CRLR 189–90]*

On April 8, the Pacific Fishery Management Council (PFMC) recommended, and U.S. Secretary of Commerce Ron Brown subsequently adopted, a ban on salmon sport fishing in federal waters (from three to 200 miles offshore) off Washington state and imposed stringent limits on commercial and sport salmon fishing off California and Oregon. The entire west coast is closed to commercial coho and silver salmon fishing; extremely limited chinook salmon fishing is permitted off the northern California and southern Oregon coast. This action by PFMC represents the strictest limitations ever imposed on salmon fishing, and is due to steep declines in salmon populations for decades. On April 19, FGC adopted emergency amendments to section 182, Title 14 of the CCR; these amendments conform the Commission's commercial salmon fishing regulations, which are applicable in state ocean waters (zero to three miles offshore), with PFMC's federal regulations. These emergency amendments are effective for 120 days.

At its April 8 and April 28 meetings, FGC held a public hearing on its proposed amendments to section 27.80, Title 14 of the CCR, which would conform the Commission's salmon sport fishing regulations for state ocean waters to those of the PFMC. FGC approved the new restrictions on April 28, and the Office of Administrative Law (OAL) approved them on April 29.

And on May 10, FGC held a public hearing on proposed amendments to section 7.50, Title 14 of the CCR, which would amend FGC's in-river salmon sport fishing regulations. The Commission received public comment on several alternatives: (1) continuation of the regulations adopted for the 1993–94 season except that the quota for adult fall-run chinook would be reduced by varying degrees in several areas; (2) closure of the Klamath River system to all salmon fishing all year; or (3) restoration of the more liberal daily and weekly bag limits and possession limits which existed prior to the 1992–93 season. At this writing, FGC is scheduled to hold another public hearing on these proposed alternatives at its June 17 meeting.

Federal Protection for Desert Tortoise Habitat. In two actions this spring, the federal government took steps toward providing additional protection for the desert habitat of California's state rep-

tile—the desert tortoise—and other plant and animal species indigenous to the deserts of the southwest United States. After a two-year debate, FGC finally listed the desert tortoise as threatened under CESA in 1989; the tortoise's population has plummeted due to disease and predatory attacks by other animals and humans. *[9:4 CRLR 117; 9:3 CRLR 108; 9:2 CRLR 103]*

First, on February 7, the U.S. Fish and Wildlife Service (USFWS) announced its designation of 6.4 million acres of desert—most of it in California—as critical habitat for the desert tortoise. USFWS' move could make the designated area off-limits to activities ranging from cattle grazing and mining to construction of the controversial Ward Valley nuclear waste dump near Needles.

On April 13, the U.S. Senate approved the landmark California Desert Protection Act, which would create three national parks and 74 wilderness areas in California. The Senate version of this bill—which had been deadlocked for eight years due to opposition by then-U.S. Senator Pete Wilson and his appointed successor, John Seymour—would set aside 6.3 million acres of protected wilderness as federal parkland, and prohibit mining, grazing, and off-road vehicles on other desert lands. If passed by the House and signed by President Clinton (which is expected), the Act would be the largest public lands act ever enacted for the continental United States.

1994–95 Mammal Hunting and Trapping Regulations. Following public hearings on March 4 and April 8, FGC at its April 28 meeting adopted regulatory changes to Title 14 of the CCR which set season, bag, and possession limits, define areas of take, and prescribe the manner and means of taking during the 1994–95 mammal hunting and trapping seasons. Some of the major changes from last year's regulations include the following:

• Section 362 is being amended to add a fourth hunt zone for Nelson bighorn rams in the East Chocolate Mountains along the Colorado River in Imperial County, and increase the total number of Nelson bighorn ram tags available from 11 to 14.

• Section 365, which provides for automatic closure of the bear season when 1,250 bears are reported taken, is being amended to increase the in-season closure mechanism from 1,250 to 1,500. According to DFG, the bear population has increased over the past three years to an average of over 20,250 and, as such, can (according to DFG) support the increased take.

• Section 265, which governs the use of dogs in mammal hunting, has been controversial ever since DFG Director Boyd Gibbons proposed a ban on the use of hounds in bear hunting in 1993. *[13:4 CRLR 178; 13:2&3 CRLR 189]* At its April 28 meeting, FGC considered a number of alternative proposals, including a prohibition on night hunting, pursuit, or training with dogs during the bear season in dog control zones; a requirement that dog handlers be permitted by DFG; and a prohibition on all use of dogs in the woods during the most reproductively sensitive times of the year. In the end, FGC's regulatory proposal continues to permit the use of dogs in bear hunting (except archery bear hunting). However, the Commission did agree to add new subsection (d) to section 265, which prohibits, effective July 1, 1995, the use of electronic dog retrieval collars containing functioning treeing switches (devices consisting of a mercury switch mechanism that results in a change in the transmitted signals when the dog raises its head to a treed animal) on dogs used in the take and pursuit of mammals; and prohibits electronic dog retrieval collars employing the use of global positioning system equipment (devices that utilize satellite transmissions) on dogs used in the take and pursuit of mammals.

• Section 367, concerning bear license tags, was amended to require any holder of a bear license tag who utilizes the services of a guide or guides to verify that the guide is in possession of a valid guide's license and place the guide's license number on the bear license in the space provided. FGC hopes this amendment will improve compliance with existing law regarding licensed guide activities and bear hunting.

• Section 478 currently provides for three bobcat trapping seasons for three zones, and one hunting season statewide. FGC plans to amend section 478 to eliminate the separate seasons and zones for trapping bobcat and create one trapping season from November 24 through January 31, and add 44 days to the bobcat hunting season (for a season of October 15 through February 28).

At this writing, these regulatory proposals are pending at OAL.

Commission Revises CESA Listing Procedures. Following a public hearing on January 4, the Commission adopted on April 8 proposed changes to section 670.1, Title 14 of the CCR, the procedural guidelines which govern the petition process for the listing of a species or subspecies under CESA.

Prior to these revisions, section 670.1 simply required a petitioner to complete FGC's authorized petition form and submit it to the Commission's Sacramento office; the regulation stated that the petition must contain all the information requested on the form and "sufficient scientific information pursuant to section 2072.3 of the Fish and Game Code," or it would be rejected as incomplete. According to FGC's notice of proposed rulemaking published in December 1993, section 670.1 lacked clarity in several areas, including the role of Commission staff in handling a petition; the need to publish notice of receipt of a petition; the requirement of sufficient information in a petition; the delisting process; the review period for DFG-initiated petitions; peer review of reports associated with the petition; whether the petition must include an adequate management plan for recovery of the species; timely submission of a statement of reasons for a proposed regulatory change; and the "uplisting" and "downlisting" of species.

Accordingly, FGC's proposed changes to section 670.1 would require petitions to be filed via the Commission's authorized form; a petition will be rejected and returned as incomplete within ten days of receipt if it is not on the required form or contains no information on any of the following petition components: population trend, range, distribution, abundance, life history, kind of habitat necessary for survival, factors affecting its ability to survive and reproduce, degree and immediacy of threat, impact of existing management efforts, suggestions for future management, availability and sources of information, and a detailed distribution map. If Commission staff receives a complete petition, staff will notify the Office of Administrative Law (OAL) of that fact for publication in the *California Regulatory Notice Register*; staff will notify OAL upon receipt of a DFG-initiated petition. The notice will contain the date and location of the Commission meeting at which the petition is scheduled for review.

Once a petition is deemed complete, DFG must analyze it to determine whether, based upon section 2072.3 of the Fish and Game Code, it provides "sufficient scientific information" on the components listed above and make a recommendation to the Commission; if FGC finds that it fails to meet the requirements of section 2072.3, it may reject the petition and notice of the rejection will be published in the *Notice Register*. If FGC finds that the petition contains sufficient information to indicate that the petitioned action is warranted, it will accept the petition for consideration, and notice of FGC's acceptance will be published in the *Notice Register*. If the petitioned action is to add a species to the threatened or endangered

species list, the notice will declare the species a "candidate" species.

FGC acceptance of a petition triggers a "status review period" by DFG, the results of which must be transmitted to FGC within twelve months of the date of publication of acceptance. Where an accepted petition has been initiated by DFG, at least 90 days must elapse between notice of acceptance and placement of the matter on FGC's agenda. Where an accepted petition is initiated by a member of the public, DFG must solicit existing data on the species from independent sources and comments on the petitioned action. DFG must include in its status report to FGC a list of the individuals and agencies who were given an opportunity to review the status report and their comments. FGC may direct DFG to seek peer review of DFG's status report and other reports submitted during the status review period. To implement Fish and Game Code section 2074.6, DFG must also include a preliminary identification of the habitat essential to the continued existence of the species and recommendations for management activities and other recommendations for recovery of the species. Finally, DFG must include an initial statement of reasons for the regulatory change which is required to list a species, including an assessment of the potential for adverse economic impact when listing, delisting, or change in status is recommended.

Upon consideration of DFG's report by FGC, the Commission must list a species if it determines that its continued existence is in serious danger or is threatened by any one or any combination of the following factors: present or threatened modification or destruction of its habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities. Amended section 670.1 would permit the Commission to delist a species if it determines that the species is no longer threatened by one or any combination of the above-listed factors; however, a threatened or endangered species petitioned for delisting will retain its listed status throughout the delisting process and for 30 days following the FGC's determination that delisting is warranted (to allow for OAL review).

The proposed regulatory amendments also permit a threatened species to be uplisted to endangered status "if its continued existence throughout all or a significant portion of its range is in serious danger by any one or any combination" of the factors listed above; and an endangered species may be downlisted to threatened status "if it is no longer in serious danger of becoming extinct and special protection and management are required because of continued threats to its existence by any one or any combination" of the factors listed above.

At this writing, the rulemaking file on FGC's amendments to section 670.1 has not yet been submitted to OAL for review.

Wildlife Rehabilitation and Care Standards. On April 8 and May 10, FGC held public hearings on its proposed amendments to section 251.5 and addition of section 679, Title 14 of the CCR. Under existing section 251.5, DFG may authorize the issuance of permits for temporary possession of game birds, nongame birds, and game mammals for treatment of injury and disease; the existing regulation specifies rehabilitation permit restrictions and excludes the public from wildlife rehabilitation activities unless zoos and other educational institutions do not have the facilities to adequately provide the needed care.

Collectively, these proposed regulatory changes would establish a separate section dedicated to wildlife rehabilitation and add nongame mammals and furbearers, reptiles, and amphibians to the categories of wildlife that may be authorized for rehabilitation under a rehabilitation permit. Among other things, new section 679 would establish minimum standards for wildlife rehabilitation facilities in a Wildlife Rehabilitation and Care Standards manual; clarify and emphasize the prohibition on picking up big game mammals; specifically require compliance with Department of Health Services rabies control regulations; protect the public and enhance the care of wildlife by requiring compliance with Government Code provisions pertaining to required training to work with wildlife under oil and other toxic substance contamination conditions; specify that rehabilitation facilities are responsible for financial costs and other liabilities; prohibit relocation of live-trapped nuisance wildlife unless authorized by DFG; specify the need to notify DFG if an animal has died from disease; require the banding, tagging, or otherwise marking of rehabilitated raptors and mammals with DFG-provided bands or tags before the animal is released; and require appropriate recordkeeping and clarify the need to make those records available to the Department.

The Commission adopted these regulatory changes on May 10; at this writing, staff is preparing the rulemaking file 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:

• ***1994–95 Sport Fishing Season Regulations***. On March 7, OAL approved FGC's sport fishing regulations for the 1994–95 season. *[14:1 CRLR 147]*

• ***Ban on Recreational Take of White Shark***. Following a hearing at its January meeting, FGC adopted new section 28.06 and amended 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). *[14:1 CRLR 147; 13:4 CRLR 180]* OAL approved these regulatory changes as part of FGC's sport fishing regulatory package on March 7.

• ***FGC Delists Mohave Ground Squirrel***. Following OAL's November 1993 rejection of its 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 *[14:1 CRLR 146–47]*, the Commission revised and resubmitted the rulemaking file on the proposed action to OAL. On April 20, OAL approved the regulatory change, to become effective on May 20.

OAL's approval of the regulatory change is not dispositive of the squirrel's fate, however; several environmental groups have already filed suit contesting FGC's attempt to delist the Mohave ground squirrel (*see* LITIGATION).

• ***Riparian Brush Rabbit Added to Endangered List***. Following public hearings at its January 4 and March 4 meetings, FGC agreed to add the riparian brush rabbit to the list of endangered species in section 670.5, Title 14 of the CCR. DFG first identified the riparian brush rabbit, whose distribution is the lower San Joaquin River area, as a potentially endangered species in 1985; FGC listed the rabbit as a candidate species in December 1992 at the request of the Department of Parks and Recreation. *[13:1 CRLR 119]* OAL approved this change on April 29.

• ***Commercial Sea Urchin Fishing Permits***. Following public hearings at its February and March meetings, FGC adopted proposed amendments to section 120.7, Title 14 of the CCR, which pertains to commercial sea urchin fishing permits. The regulatory changes 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; 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 Gerstle Cove closed sea urchin fishing area in Sonoma County. OAL approved these changes on March 30.

• ***Display of Fishing Licenses Now Required.*** Following a public hearing at its January meeting, FGC amended 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. *[14:1 CRLR 148]* OAL approved this change on February 15.

• ***Special Permit for Temporary Possession of Mammals to Train Dogs.*** On January 17, OAL approved FGC's amendment to section 251.5, Title 14 of the CCR, which 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 amendment requires 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. *[14:1 CRLR 148; 13:4 CRLR 178]*

• ***Additional Identification on Hunting and Fishing License Applications.*** On March 3, OAL approved FGC's 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. *[14:1 CRLR 148; 13:4 CRLR 177–78]*

• ***Commission Bans Zebra Mussels in California.*** On March 7, OAL approved FGC's amendment to section 671, Title 14 of the CCR, which adds zebra mussels to the existing list of species which may not be lawfully imported, possessed, or transported alive in California. *[14:1 CRLR 148; 13:4 CRLR 178]*

LEGISLATION

SB 1549 (Hart), SB 1621 (McCorquodale), SB 2091 (Maddy), AB 3052 (Bustamante), and **SB 1352 (Kelley)** would all amend the California Endangered Species Act and the procedure which governs FGC's listing of endangered and threatened species, which are then entitled to statutory protection from activities which threaten them or their habitat.

• ***SB 1549 (Hart)***, as amended May 16, would—among other things—specify findings relating to the need for additional legal and economic incentives to private property owners to conserve and protect habitat; define key terms in the CESA, including "environmentally sensitive habitat," "jeopardy," "management," "natural area," "primary habitat conservation parcel," "recovery plan," "state responsible agency," "take agreement," and "take"; require DFG to consider any species that has been listed by the federal government as threatened or endangered for submission to FGC for listing under CESA; allow any person to request a scientific peer review of any FGC decision to approve a listing, take agreement, recovery plan, or habitat conservation plan; specify an incidental take process which requires the proposed take agreement to comply with policies and mandates of the federal ESA, and any recovery plan or habitat management plan that has been developed; and require any state agency which is considering a permit application which will impact a listed species to consult with DFG to avoid jeopardy to that species.

SB 1549 also specifies an optional process of habitat planning by allowing the formation of Habitat Conservation Agencies composed of local government, resource conservation districts, other interested public entities, and DFG representatives. This bill specifies the authority, process, mandatory content, and guidelines for a Habitat Conservation Plan, and provides a process for the take of protected species during routine agriculture and flood control activities. This bill is supported by numerous environmental groups. *[S. Appr]*

• ***SB 1621 (McCorquodale)***, as amended May 16, would establish the Temporary Habitat Registry Program as part of a Habitat Conservation Plan created pursuant to SB 1549 above, for the purpose of allowing owners and operators of untended farmland to enroll the land in a temporary registry to be maintained by resource conservation districts, which are nonprofit organizations comprised primarily of local landowners and others who volunteer to assist conservation programs in their community. Once untended farmland is enrolled in the Program, DFG would be forbidden from including any endangered, threatened, or candidate species found on the farmland on any biological survey, and prohibit DFG from including the land in any recovery plan. SB 1621 would require the Department of Conservation to coordinate the activities of each resource conservation district with respect to the Program and to develop guidelines to assist resource conservation districts in implementing the Program. *[S. Appr]*

• ***SB 2091 (Maddy)***, as amended April 13, is still a spot bill which is expected to be amended to substantially modify CESA. Currently, it would merge the provisions of law governing native plant protection with CESA by designating that plants listed as endangered or rare under the native plant protection law are endangered or threatened species of native plants. *[S. Appr]*

• ***AB 3052 (Bustamante)***, as amended April 26, would amend the California Endangered Species Act by requiring FGC to allocate all public or private resources available to it for the purposes of conservation of endangered species and threatened species in accordance with specified priorities. The bill would 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. The bill would 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. The bill would require scientific peer review upon request; require DFG to prepare a recovery and delisting plan for the species if its recommendation is that the petitioned action is warranted, unless DFG determines that the plan is not necessary; authorize FGC, as an alternative to listing, to recommend the federal listing of a species; and require DFG and FGC to accept and consider independent studies or other assessments of any species that is the subject of a petition. *[A. W&M]*

• ***SB 1352 (Kelley)***, as introduced January 31, would allow the inclusion of members of the local community in the advisory committee overseeing a Natural Communities Conservation Plan (NCCP) (*see* LITIGATION). *[S. Appr]*

SB 2013 (Leslie), as introduced February 25, would provide that, notwithstanding any other provision of law, the state of California is not immune from liability for injuries or property damages caused by a mountain lion where those injuries or damages were more likely to occur because of the implementation of Proposition 117, which—according to the author—has resulted in a 200–300% increase in the state mountain lion population. Proposition 117, which was passed by the voters in June 1990 *[10:2&3 CRLR 180]*, bans trophy hunting of mountain lions and makes it a misdemeanor to take or injure a mountain lion except under specified circumstances. This bill was rejected by the Senate Judiciary Committee on April 19; however, reconsideration was granted after a northern California woman who was jogging on a rugged foothills trail in Senator

Leslie's district was attacked and killed by a mountain lion on April 24. Senator Leslie believes this legislation is necessary to call attention to some of the problems he says have been caused by Proposition 117. *[S. NR&W]*

AB 3337 (Hauser). Existing law, until January 1, 1995, prohibits a person from landing Dungeness crab for commercial purposes except under a Dungeness crab permit that is valid from April 1 to March 31, inclusive, of the following year; and prescribes the conditions for issuing and renewing the permits. As introduced February 24, this bill would extend the operation of that law to April 1, 1995. Commencing April 1, 1995, this bill would prohibit a person from landing Dungeness crab from a vessel unless a Dungeness crab vessel permit has been issued for that vessel. The vessel permit would be valid from April 1 to March 31, inclusive, of the following year, unless revoked by FGC. The bill would establish the qualifications for the permit, and require DFG to issue the permits at a fee which covers all reasonable and necessary costs for administering the permit program, not to exceed $100. The bill would provide for the transfer of the permits to another person upon sale of the vessel, to a permanent replacement vessel owned by the permitholder under specified conditions, and to a temporary replacement vessel for 6 months upon written approval of DFG for specified reasons.

The bill would also establish a Dungeness Crab Permit Review Panel composed of specified persons to hear applications for Dungeness crab vessel permits under specified conditions. The panel would be required to report to the legislature on or before June 30, 1997, on the status of the Dungeness crab fishery. *[S. NR&W]*

SB 1478 (Beverly). Existing law, which is to be repealed January 1, 1995, prohibits taking shark and swordfish for commercial purposes with drift gill nets except under a drift gill net shark and swordfish permit south of Point Arguello or under a limited entry experimental swordfish permit. The requirements for renewal of either of those two permits are specified, including holding that permit in the previous year. Existing law also prescribes the conditions and equipment limitations for fishing under the permits. As amended March 17, this bill would limit issuance of drift gill net shark and swordfish permits under specified conditions to persons who held that permit in the previous year or to persons who held a limited entry experimental swordfish permit, as specified; continue the existing law beyond January 1, 1995, and would delete the provision that specifies that a permit is not required to take sharks or swordfish north of Point Arguello; delete the provisions permitting a person who has not possessed a permit in a prior year from obtaining a permit in a subsequent year and deletes the limitation on the number of permits available for the new entrants; change the amount of spare net permitted aboard a vessel from 80 fathoms (480 feet) to 100 fathoms (600 feet) and delete the required revocation of the gill net permit and the commercial fishing license of the permittee upon conviction of falsely swearing that swordfish or thresher shark landed from May 1 to August 14, inclusive, has been taken more than 75 nautical miles from the mainland coastline; and delete a specified area between Dana Point in Orange County, Catalina Island, and Point Mugu in Ventura County from the areas closed to the use of drift gill nets under the permits between July 15 and August 14. *[A. WP&W]*

SB 1485 (Leslie). Existing law authorizes a court to issue inspection warrants for, among other things, inspections of locations where fish, amphibia, or aquatic plants are held or stored for aquaculture purposes. As introduced February 15, this bill would also authorize a court to issue inspection warrants for the examination of dams, fishways, or conduits for fish passage or screening.

Existing law declares that the status of a person as a DFG employee, agent, or licensee does not confer any special right or privilege to knowingly enter private land without the consent of the property owner, a search warrant, or an inspection warrant, except as specified. This bill would, additionally, exempt inspection of boats, markets, stores, and other buildings, except dwellings, and all receptacles and packages held for transportation by a common carrier for purposes related to importation of animals or commercial fishing. The bill would also, notwithstanding that declaration in existing law, permit employees, agents, or licensees of DFG to enter private land for the purpose of examining dams, fishways, and water conduits for specified purposes, but only if the activities are conducted during regular business hours and after 24-hour notice to the affected landowner. *[S. Floor]*

SB 2114 (Committee on Natural Resources and Wildlife). Existing law declares that the status of a person as an employee, agent, or licensee of DFG does not confer special rights or privileges to knowingly enter private land without consent or a warrant, with an exception for Departmental personnel accompanying a sworn peace officer if necessary for law enforcement purposes. As introduced February 28, this bill would, instead, except Departmental personnel, agents, or licensees authorized by a sworn peace officer if necessary for law enforcement purposes. *[S. Jud]*

AB 3011 (Alpert). Existing law establishes the California Ocean Resources Enhancement and Hatchery Program for the purpose of basic and applied research on the artificial propagation, rearing, stocking, and distribution of marine fish. Under the program, until January 1, 2003, a person taking fish from ocean waters south of Point Arguello is required to have an ocean fishing enhancement stamp affixed to his/her sport fishing license. The fee for a stamp to be affixed to a sport fishing or sport ocean fishing license stamp is $1; the fee for a stamp to be affixed to a commercial passenger fishing boat license is $10; and the revenue from the stamp fees is available upon appropriation solely for the purposes of the program. As amended April 5, this bill would instead set the fees at $2.50 for a stamp to be affixed to an annual sport fishing or sport ocean fishing license, 50 cents for a stamp to be affixed to a one-day sport fishing or sport ocean fin fishing license, and $25 for a stamp to be affixed to a commercial passenger fishing boat license. The bill would also set the fees at $25 for a stamp to be affixed to a commercial fishing license in order to land white sea bass commercially. *[S. NR&W]*

SB 1398 (Lewis). Existing law requires every person over the age of 16 years who takes any fish, reptile, or amphibia for any purpose other than for profit to have a fishing license on his/her person or in his or her immediate possession or where otherwise specifically required to be kept when engaged in carrying out any activity authorized by the license. As introduced February 7, this bill would prohibit FGC or DFG from requiring the fishing license to be visibly displayed on the person while the licensee is engaged in fishing (*see* MAJOR PROJECTS). *[S. Appr]*

AB 2838 (Harvey). Existing law provides that sport fishing or sport ocean fishing licenses are generally valid for a period of one calendar year or, if obtained after the beginning of the year, for the balance thereof. As introduced February 14, this bill would instead make those annual licenses valid for one year from the date of issue. *[A. W&M]*

AB 3529 (Hauser). Existing law requires the payment of a filing fee by project applicants and public agencies subject to the California Environmental Quality Act (CEQA) and excepts certain projects

from that fee, including projects that are de minimis in their effect on fish and wildlife. As amended May 11, this bill would also exempt from those fees any project that is undertaken by DFG, the costs of which are payable from specified sources, and that is implemented through a contract with a nonprofit entity or a local government agency. *[A. W&M]*

SB 2133 (Committee on Natural Resources and Wildlife), as amended April 28, would delete a requirement that license tags issued by DFG be consecutively numbered; increase the fee for duplicate sport fishing or hunting licenses from $3 to $5, increase the fee for reduced fee hunting or sport fishing licenses from $2 to $4, and would provide for their adjustment annually by a specified inflation index; and require DFG to issue not more than 20,000 free sport fishing licenses to mentally handicapped persons.

The Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993 defines the terms "bank site" and "mitigation bank site" for purposes of that Act. This bill would exclude from that definition land on which rice is produced that provides significant wetland habitat value.

Existing law makes a license to harvest kelp or other aquatic plants issued by DFG valid for a term of one year from the date of issuance. This bill would make that license valid from January 1 to December 31, inclusive, or if issued after the beginning of that term, for the remainder thereof. *[A. WP&W]*

AB 2874 (Snyder). Existing law prohibits importing, exporting, taking, possessing, purchasing, or selling an endangered species or a threatened species or any part or product thereof, with specified exceptions. As introduced February 17, this bill would also except from that prohibition the incidental taking of plants by a person when that person is engaged in a lawfully permitted activity on private property. *[S. NR&W]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 148–50:

SB 492 (Kelley). Existing law provides that any notice or other written communication required to be sent to a person pursuant to the Fish and Game Code or regulations adopted pursuant thereto is sufficient if sent by certified mail to the last address that the person furnished to DFG. As amended April 25, this bill would provide that the notice is sufficient if sent by first-class mail to that address.

Existing law, which is to be repealed on January 1, 1995, delegates to FGC the power to regulate sport fishing and the taking of specified mammals and resident game birds. This bill would continue that existing law to January 1, 2000.

Existing law, which is to be repealed on January 1, 1995, provides for the issuance of permits to land Dungeness crab, take sea cucumbers, or take hagfish for commercial purposes for specified fees. This bill would make those provisions inoperative on April 1, 1998, and would repeal them on January 1, 1999.

The bill would also require DFG to determine by September 1 of each year the total landings of hagfish in the year ending the previous June 30 from the landing receipts submitted by hagfish fishers and, if the total landings in that previous year were more than 250,000 pounds, make the permit requirements for taking hagfish for commercial purposes operative for the following permit year commencing the next April 1. The bill would require DFG to notify commercial fishers of the permit requirements if they become operative.

Existing law authorizes the taking of prawns or shrimp with prawn or shrimp traps at any time, and provides that, south of Point Conception to the southerly boundary of Ventura County, prawns or shrimp may be taken with those traps only in waters 50 fathoms or greater in depth. This bill would repeal that authorization to take prawns or shrimp with those traps at any time and change the range where prawns or shrimp may be taken with those traps only in waters 50 fathoms or greater in depth to the range from Point Conception to the Mexican border.

Under existing law, a violation of the prohibition on taking fish for purposes other than profit without obtaining a license and having the license in possession is an infraction with specified penalties. This bill would also make those penalties apply to a violation of FAC's regulation requiring the license to be displayed (*see* MAJOR PROJECTS). *[A. WP&W]*

AB 1390 (Epple). Existing law requires a person who kills a deer, among other things, to immediately fill out both parts of the deer license tag, punch out clearly the date of the kill, attach one part to the deer, and send one part of the tag to DFG immediately after it has been countersigned. As amended April 4, this bill would require the person to, instead, mark the date of the kill on the tag and send that one part of the tag be sent to DFG, but would delete the requirement that it be done immediately. *[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, 1993, 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 DFG. *[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, 1993, 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]*

The following bills died in committee: **SB 824 (Hayden)**, which would have required the Board of Forestry to adopt any mitigation measures that are proposed by DFG or a regional water quality control board to a timber harvesting plan, except as specified; **SB 825 (Hayden)**, which would have required all timber harvests within ancient forests to be conducted in a manner that maintains a canopy structure similar to that existing prior to harvest, maintains at least 60% of the overstory canopy closure, and provides corridors and connectivity for wildlife which meet criteria developed by DFG; **SB 380 (Hayden)**, which would have prohibited the taking of any bobcat for profit; **SB 67 (Petris)**, which would have required DFG to conduct a field study of the black bear population in this state and imposed a moratorium on hunting black bears with dogs until the study is completed; **AB 1367 (Cortese)**, which would have raised the fee for hunting licenses for disabled veterans from $2 to $3, and deleted desert quail, sage hens, varieties of California and mountain quail, and varieties of partridges from the definition of upland game bird species for purposes of the Fish and Game Code; **SB 658 (Deddeh)**, which would have, until January 1, 1998, required FGC to direct DFG to conduct a "collaborative phase" during a species candidacy period upon request of a directly affected party; and **AB 778 (Harvey)**, which would have exempted persons 70 years of age or more from any license tag or stamp otherwise required to take fish, reptiles, or amphibia.

LITIGATION

During the spring, the federal courts issued two decisions which may prove to be setbacks for the Clinton administration's approach to natural resources conservation. Of primary concern to a major federal-state-local habitat conservation effort being coordinated by DFG is U.S. District Judge Stanley Sporkin's May 2 decision invalidating the federal government's March 1993 listing of the California gnatcatcher as a threatened species under the federal Endangered Species Act (ESA). *[13:2&3 CRLR 188]* That listing placed the bird within federal jurisdiction and enabled the federal government to officially recognize the Wilson administration's Natural Communities Conservation Planning (NCCP) pilot project as a legal alternative to the ESA in preserving the coastal sage scrub (CSS) habitat of the California gnatcatcher. The goals of the NCCP 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. *[14:1 CRLR 146, 13:4 CRLR 188; 13:2&3 CRLR 188]*

In ***Endangered Species Committee of the Building Industry of Southern California v. Babbitt***, No. 92-2610SS (D.D.C.), Judge Sporkin invalidated the listing of the gnatcatcher on procedural grounds, agreeing with developers that the U.S. Department of the Interior violated procedural law governing the federal rulemaking process when it failed to make public the raw data used by Massachusetts ornithologist Jonathan Atwood upon which it relied in its rulemaking proceeding to list the gnatcatcher. To the extent that it removes one of the legal underpinnings of the NCCP, Judge Sporkin's decision could prove disastrous to an effort which has been widely viewed as successful. However, environmentalists hope this setback is temporary; Interior could choose to release the Atwood data, reopen the public comment period on the proposed listing, and relist the bird within a matter of months. In mid-May, Interior Secretary Bruce Babbitt announced plans to ask Judge Sporkin to leave the gnatcatcher on the threatened list pending completion of the rulemaking procedure; if the judge rejects the idea, Babbitt indicated that Interior may adopt an emergency regulation adding the gnatcatcher to the list and/or formally appeal Judge Sporkin's decision.

In a departure from what was thought to be settled law, the U.S. Court of Appeals for the District of Columbia Circuit issued a controversial 2–1 ruling in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, 17 F.3d 1463 (Mar. 11, 1994), in which it found that significant habitat degradation is not among the activities prohibited by the ESA.

The ESA makes it a crime for any person to "take" a species listed as endangered under the Act, and defines the term "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." In 50 C.F.R. Part 17.3, USFWS further defined the term "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." In a lawsuit filed by a coalition of Oregon citizens and timber companies, the D.C. Circuit invalidated that portion of section 17.3, finding that the broad term "harm" may not be administratively defined to include habitat modification because of its inclusion with nine other verbs which all "contemplate the perpetrator's direct application of force against the animal taken." In so ruling, the D.C. Circuit reversed its own opinion issued less than one year earlier, 1 F.3d 1 (D.C. Cir. 1993), disagreed with the Ninth Circuit's published decision in *Palila v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988), and rejected USFWS' arguments that its definition of "harm" is authorized by the ESA as originally enacted in 1973 and was ratified by Congress in its 1982 amendments to the Act.

In dissent, Chief Judge Abner Mikva chastised the majority for failing to apply the correct standard of review under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), erroneously placing the burden of proving "reasonableness" on the agency, and "substitut[ing] its own favored reading of the Endangered Species Act for that of the agency." USFWS officials in California note that *Palila* is still applicable here; in mid-April, the Clinton administration announced plans to appeal the ruling.

Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al., No. 953860, is still pending in San Francisco Superior Court. This action was brought by five environmental groups challenging FGC's authority to grant Kern County's petition to delist the Mohave ground squirrel (*see* MAJOR PROJECTS), contending that the petition 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 by failing to prepare an environmental impact report, an initial study, or a negative declaration. *[13:4 CRLR 176]*

RECENT MEETINGS

At its January meeting, FGC voted to reopen the Upper Sacramento River to limited fishing and to stock a six-mile stretch with hatchery fish. This area of the Sacramento River has been closed to fishing since July 1991, when a Southern Pacific Railroad train derailment dumped 20,000 gallons of toxic metam sodium into the river and killed every living organism in or on the river for 45 miles. *[11:4 CRLR 164, 204–05]* Under the proposal approved by FGC, fishers will be

allowed to take up to five fish per day between April and November along a six-mile stretch of the river which is easily accessible; that stretch will be stocked with 18,000 half-pound fish during the fishing season. Southern Pacific—which has been arguing for months that the river has recovered sufficiently to support extensive stocking and fishing—criticized FGC's action as insufficient; some environmentalists and angling advocates criticized it as premature and unnecessarily threatening to native wild trout populations which are struggling to recover; and local business and tourism entrepreneurs welcomed it as some relief to the area's beleaguered economy.

At FGC's March meeting, Commission President Albert C. Taucher announced his resignation as FGC President; however, Taucher indicated he would remain a member of the Commission until his second six-year term expires on January 15, 1995. Commission Vice-President Frank Boren was chosen to succeed Taucher as FGC President, and Commissioner Gus Owen was elected as Vice-President.

FUTURE MEETINGS

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: Nicole Clay, James W. Culver, Robert C. Heald, Bonnie Neely (Vice-Chair), and Richard Rogers.

Forest Products Industry: Keith Chambers, Thomas C. Nelson, and Tharon O'Dell.

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.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of CDF, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

MAJOR PROJECTS

Board to Ease Protections for Northern Spotted Owl Habitat. Four years after it imposed stringent regulations protecting the old-growth forest habitat of the northern spotted owl (NSO), the Board—in conjunction with the federal government—has begun rulemaking proceedings to ease those protections.

On July 23, 1990, the U.S. Fish and Wildlife Service (USFWS) listed the NSO as threatened under the federal Endangered Species Act (ESA). As required by federal and state law, the Board immediately adopted regulations to prevent the take of the NSO due to CDF-permitted timber management activities on state and private lands in California. The Board is required to ensure that no take of NSO occurs due to the harvesting of the old-growth habitat of the NSO under a THP approved by CDF or the Board; USFWS regulations define the term "take" very broadly, to include any activity (or an attempt to engage in such activity) which harms or harasses the listed species or its habitat (although this definition has been called into question in a recent federal case—*see* LITIGATION). The Board's rules directly protect the NSO primarily by requiring biological surveys to detect the presence of the owl within the boundaries of a proposed THP; if the NSO is detected, timber harvesting is restricted. *[10:4 CRLR 157]* In addition, various other provisions of the Board's Forest Practice Rules provide protection for owl habitat and populations, including rules regarding watercourse and lake protection zones (WLPZ), cumulative effects assessment, the "sensitive species" listing process, and protection for wildlife "species of special concern."

In December 1993, the federal government announced its intent to develop special rules under section 4(d) of the ESA to deal with restrictions on timber harvesting on private and state lands in Washington, Oregon, and northern California. According to the Board, one of the goals of the special rules is to acknowledge California's efforts to protect the NSO. Under the proposal, USFWS proposes to lift the existing federal prohibitions against incidental take of the NSO in California. Timber harvest activities conducted in accordance with the Board's FPR would be freed from complying with separate federal procedures. The Board and other California agencies have submitted comments on USFWS' proposal, and the federal agency is in the process of finalizing its regulatory changes at this writing.

In preparation for these rule changes, the Board conducted two rulemaking proceedings throughout the spring and early summer in connection with the NSO.

• ***Three-Zone Rule for Protection of the NSO.*** On March 18, the Board published notice of its intent to amend sections 895, 898.2(d), 919, 919.1 (939.1, 959.1), 919.4 (939.4, 959.4), 912 (932, 952), 912.9 (932.9, 952.9), 913.6 (933.6, 953.6), 914 (934, 954), 915 (935, 955), 916.3 (936.3, 956.3), 916.4 (936.4, 956.4), Title 14 of the CCR, its existing NSO protection regulations, and adopt new section 919.8, Title 14 of the CCR. These proposed regulatory changes are based on suggestions made by the Resources Agency and the Department of Fish and Game (DFG) in a document entitled *Proposal for Northern Spotted Owl Habitat Conservation Rules for Private Forestlands in California*, which was discussed at the Board's March 2 meeting.

Under the Board's current NSO rules, every THP, nonindustrial timber management plan (NTMP), conversion permit, spotted owl resource plan, or major amendment thereof must contain protec-