FISH AND GAME COMMISSION

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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.

On June 6, Governor Wilson appointed Richard Tobin Thieriot to the Commission. Thieriot is former publisher of the *San Francisco Chronicle* and served as president and chief executive officer of The Chronicle Publishing Company from 1977 to 1993. He has been chair of Parrott Investment Company since 1985. Thieriot is a member of Ducks Unlimited and the Rainforest Action Network, and has been active in wetland restoration projects in the Central Valley. Thieriot replaces Benjamin Biaggini, whose term expired in January.

On July 27, Commissioner Albert C. Taucher passed away at his home in Long Beach. Taucher served as FGC President three times during his 11-year tenure on the Commission. Although he resigned as FGC President in March *[14:2&3 CRLR 193]*, Taucher had planned to remain a member of the Commission until his second term expired on January 15. At this writing, his position on the Commission has not been filled.

MAJOR PROJECTS

1994–95 Commercial Herring Season Regulations. At its August 5 and 26 meetings, FGC received public comment on proposed amendments to sections 163 and 164, Title 14 of the CCR, which would establish herring fishing quotas by area and gear type, establish herring egg quotas, and make other changes for the 1994–95 commercial herring season.

The proposed amendments to section 163 establish herring fishing quotas by area and gear type, based on the most recent assessments of the size of the herring spawning populations in San Francisco and Tomales bays. Section 163 would provide for a 4,788-ton fishing quota in San Francisco Bay and an initial 250-ton fishing quota in Tomales Bay; eliminate all references to a commercial herring fishery in outer Bodega Bay; prohibit the simultaneous fishing of two herring permits by one individual; provide for a voluntary conversion from round haul gear to gill net gear, followed by a mandatory conversion after October 2, 1988, for all remaining round haul permits; provide the option of individual permit quotas for those round haul permittees who convert to "CH" gill net permits; and clarify subsection 163(b)(2) regarding round haul herring permits held in business partnerships by providing for continued participation in two gill net platoons for a round haul permit, held in partnership prior to August 1, 1994, voluntarily converted to a "CH" permit, and transferred to one of the partners.

The proposed amendments to section 164 establish a fishing quota of 8.5 tons of herring eggs for round haul permittees, 1.9 tons for gill net permittees, and 3.8 tons for permittees with "CH" permits; require permittees to notify DFG's designated contact prior to suspending kelp on a raft; prohibit the harvesting of herring eggs on kelp on the weekends at any time without exception; require that all portions of the kelp blade, including all trimmed-off portions, be included in the total weight of herring eggs on kelp; require that any landed herring eggs on kelp in excess of an established quota to be forfeited to DFG by signing an official release of property form; require permittees to notify DFG's designated contact 12 hours prior to the shipping or removal of bins or totes from the premises during specified hours; and clarify the regulatory language on the allowable number of rafts per permit.

Following discussion on August 26, FGC adopted the proposed regulations; at this writing, they have not yet been sent to the Office of Administrative Law (OAL) for review and approval.

1994–95 Migratory Waterfowl Hunting Regulations. At its August 26 meeting, FGC reviewed several alternative proposals to amend section 502, Title 14 of the CCR, to set the migratory waterfowl regulations for the 1994–95 season. Generally, the proposed regulatory changes lengthen or push back the opening of the second half of the split season in most areas and conform California regulations to federal law. DFG presented FGC with three options for the season, recommending the option to increase both the length of the season and the bag limits. DFG justified the increased bag limit by stating that the migratory waterfowl population could support it, and recommended the longer season in order to provide economic incentives to private landowners and managers to keep lands flooded longer, thereby providing habitat for other non-hunted waterfowl. FGC

adopted DFG's recommendation to increase the length of the season by ten days, and to increase the bag limit to five. The proposed regulations also establish a hunting season for cackling Canada geese throughout California, reopen hunting of white-fronted geese and adjust the duck and goose season dates in the Colorado River Zone, and lengthen the first half of the split season in northern California to encompass the Thanksgiving weekend, in order to preserve traditional family hunts.

Following discussion, FGC adopted the 1994–95 waterfowl regulations; at this writing, they have not yet been forwarded to OAL for review and approval.

Deer Farming Regulations. On August 26, FGC held a public hearing on its proposal to add section 676 and amend sections 671 and 671.1, Title 14 of the CCR; these sections currently prohibit the importation, transportation, and possession of animals in the order Artiodactyla, which includes members of the family Cervidae. Pursuant to the existing regulations, individuals wanting to conduct deer farming for sale of meat and live animals must possess a detrimental species permit and a domesticated game breeders license. However, these permits and licenses are not intended for a commercial deer farming operation.

Thus, proposed section 676 would provide for the importation of fallow deer for deer farming purposes. Only fallow deer may be used, because—according to FGC—they are less prone to escape and seem to be more resistant to diseases and parasites than other exotic cervids, thereby reducing the likelihood of establishing themselves in the wild or transmitting diseases to native cervids. Section 676 would require a fallow deer farming permit rather than a detrimental species permit or a domesticated game breeders license; deer farming permits would be valid for a period of one year, beginning in January 1995. The section also requires an annual inspection at a fee of $50 (if an inspection requires more than two hours or additional inspections are required to verify compliance, an additional $25 per hour shall be charged); authorizes fallow deer farms to sell meat and parts thereof to persons without or outside California and specifies the conditions under which live animals may be sold; requires disease testing on all fallow deer imported into California and all animals on fully certified deer farms; specifies that a fallow deer farmer wishing to import fallow deer into California must first obtain an importation permit; specifies two levels of certification (full and partial) for permittees to maintain disease testing standards for their herds; sets forth specific facility and maintenance requirements designed to minimize the possibility of fallow deer escaping to the wild or of native cervids jumping into and out of deer farms; and specifies that any person holding a fallow deer farming permit shall allow DFG employees to enter his/her premises upon request to inspect facilities, equipment and animals possessed by the permittee, or to inspect records required by these or federal regulations relating to deer farming.

At the August 26 hearing, deer farmers argued that the proposed fees are too expensive; that the regulations are unnecessary since there is no evidence of animals escaping or transmitting disease to native species; and that fallow deer should be considered livestock and, accordingly, regulated by the California Department of Food and Agriculture (CDFA) rather than by DFG. Commission staff replied that there is recent evidence in California and in other western states of fallow deer escaping to the wild and transmitting disease or competing directly with native wildlife. FGC members discussed the possibility of permitting CDFA to regulate the deer farming industry, but DFG staff explained that the two agencies are already working together and recommended that, since fallow deer are not considered domesticated livestock, the species should remain under the jurisdiction of FGC/DFG.

At this writing, FGC is scheduled to hold another hearing on its proposed deer farming regulations on October 7.

Logbook Records Required for Longline Far Offshore Fishery. On June 17 and August 5, FGC held public hearings on its proposal to adopt section 191, Title 14 of the CCR, to require logbook records for longlines in the far offshore fishery. Under existing law, a person who takes fish in a far offshore fishery outside the U.S. Exclusive Economic Zone (EEZ) (greater than 200 miles from California's coast) may land that fish in California if the fish may be otherwise legally imported into the state and the person's vessel is registered. While FGC is authorized to require owners and operators of commercial fishing vessels to keep and submit records of fishing activities, it does not presently require a person landing fish in California from a far offshore fishery to keep and submit such records.

Section 191 requires owners and operators of a vessel landing fish in California that were taken with longlines in the far offshore fishery outside the EEZ to complete and submit records of all longline fishing activities and catches on Form DFG 191. Completed logs must be mailed to DFG within five days of ending each longline trip.

Following its August 5 hearing, FGC adopted section 191; OAL approved the new regulation on September 14.

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 Mammal Hunting and Trapping Regulations***. On July 13, OAL approved FGC's adoption of its 1994–95 mammal hunting trapping regulations; these regulatory changes 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. *[14:2&3 CRLR 187]*

• ***Wildlife Rehabilitation and Care Standards***. On August 8, OAL approved FGC's repeal of section 251.5 and addition of section 679, Title 14 of the CCR. New section 679 is a separate section dedicated to wildlife rehabilitation standards and permits; it adds nongame mammals and furbearers and reptiles and amphibians to the categories of wildlife that may be authorized for rehabilitation under a rehabilitation permit. *[14:2&3 CRLR 188]*

• ***Revised CESA Listing Procedures***. On August 29, OAL approved FGC's amendments to section 670.1, Title 14 of the CCR, which significantly change the procedural guidelines governing the petition process for the listing of a species under the California Endangered Species Act (CESA). *[14:2&3 CRLR 187–88]*

• ***Commercial Salmon Fishing in State Ocean Waters***. On July 8, DFG published notice of its intent to formally adopt its April 19 emergency amendments to section 182, Title 14 of the CCR, until April 30, 1995. These amendments conform the Commission's commercial salmon fishing regulations, which are applicable in state ocean waters (zero to three miles offshore), with the federal regulations of the Pacific Fishery Management Council (PFMC), which apply in federal waters from three to 200 miles offshore. PFMC's regulations, adopted on April 8, closed the entire West Coast to salmon sport fishing and severely restricted commercial salmon fishing. *[14:2&3 CRLR 186]* Following a public hearing on August 22, DFG adopted the proposed regulatory change. On September 7, OAL approved section 182.

• ***In-River Sport Salmon Fishing Restrictions***. On May 10 and June 17, FGC held public hearings on proposed amendments to section 7.50, Title 14 of the CCR, its in-river salmon sport fishing regula-

tions. *[14:2&3 CRLR 186]* Approved by FGC on June 17, the amendments restrict sport salmon fishing in the Klamath and Trinity rivers; also affected are Salmon River, Scott River, Shasta River, Shovel Creek, and their tributaries. OAL approved these regulatory changes on August 31.

Challenge to Suction Dredge Regulations Rejected. On May 27, OAL approved DFG's adoption of new sections 228 and 228.5, Title 14 of the CCR. The new regulations regulate "suction dredging" (also called "vacuum dredging"), which is the use of a suction system to remove and return material at the bottom of a stream, river, or lake for the extraction of minerals. The regulations implement Fish and Game Code section 5653, which was enacted in 1961 to prevent harm to fish populations caused by the use of suction equipment by so-called "weekend gold miners." Suction dredging occurs most frequently in cold waters which support salmon, steelhead, or trout. DFG formally promulgated the regulations to replace previously issued policies which had not been adopted through the Administrative Procedure Act rulemaking process and did not have the force of law.

Among other things, the new regulations require any person who operates the intake nozzle of suction dredging equipment to obtain a permit from DFG; generally restrict the size of the suction dredge nozzle to six inches (an eight-inch nozzle may be used in specified waters); and provide for the limited use of a winch to move large boulders and other material in streambeds. The regulations prohibit damage to or removal of riparian vegetation, dredging into streambanks, moving anchored logs or root wads, impeding fish passage, diverting the flow of a river or stream, or importing earth into the water. The seasons established for dredging generally reflect the need to protect streambeds during the time that fish are spawning and their eggs and fry remain in the gravel. The regulations also close some waters entirely to suction dredging; these waters contain species of special concern or have fish spawning year-round.

While the Department's suction dredging regulations were pending at OAL, David Allen James, Chair of the Forest Preservation Society of Southern California, petitioned DFG to repeal them. James claimed that the 1961 bill was intended to permit DFG only to regulate suction equipment (not persons using that equipment) in the northern part of the state, and that DFG "has overreached its statutory authority and violated the clear intent" of section 5653 by purporting to "require *persons* engaged in gold mining to obtain a permit to *authorize their mining activities* before dredging in streams located in the *southern portion* of the State" (emphasis original). James suggested alternative regulations which would require DFG to inspect suction dredging equipment and issue the equipment a validation sticker good for the life of the equipment; restrict DFG to issuing validation stickers to equipment used in northern California only; open all rivers, streams, and lakes in the southern part of the state to unrestricted suction dredging (with limited authority for DFG intervention through "special and emergency orders"); substantially decrease DFG's suction dredging permit, registration, and validation fees; and require DFG to pay reclamation payments to miners for their extraction of environmentally harmful metals (*e.g.*, lead and mercury) from the streams, rivers, and lakes of California.

On June 1, DFG denied James' petition, stating that James' proposed regulations are inconsistent with and unauthorized by section 5653, which states: "Before any person uses any vacuum or suction dredge equipment in any river, stream or lake of this state, the person shall submit an application for a permit for a dredge to the department, specifying the type and size of equipment to be used and other information as the department may require....If the department determines that the operation will not be deleterious to fish, it shall issue a permit to the applicant." Thus, DFG argued that the statute expressly authorizes it to regulate suction dredging in all areas of the state, and precludes it from issuing a suction dredge permit unless it first finds that the dredging operation will not be harmful to fish. DFG also argued that James' proposed regulations would violate the California Environmental Quality Act (CEQA) in that they would result in a significant adverse impact on the environment. In this regard, DFG noted that FGC prepared and adopted an environmental impact report (EIR) prior to adopting its new regulations; the EIR "analyzes the impacts of suction dredging and concludes that there would be substantial environmental impacts from suction dredging if no regulations were in place. Thus, adverse environmental impact would occur south of Fresno under the proposed regulations." DFG also noted that adoption of James' regulations would result in a substantial fiscal impact by increasing costs and decreasing revenues.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2&3 (Spring/Summer 1994) at pages 189–92:

SB 1549 (McCorquodale), SB 1621 (McCorquodale), SB 2091 (Maddy), and **AB 3052 (Bustamante)** was a package of bills referred to a conference committee in order to hammer out amendments to CESA 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. Among other things, the bills attempted to ease the severe penalties imposed by CESA for "incidental take" (accidental harm) of a declining species. Despite earlier cooperation between the interests involved to move the package through the legislature, last-minute concerns arose over a provision in SB 1621 requiring incidental take permittees to "conserve" a species in return for incidentally killing protected animals or plants. Business interests argued that requiring measures to "conserve" the species as a condition of incidental take imposes a higher standard on state incidental take permit approval than under federal law. As a result of the conflict, all of the bills either failed passage or died.

• ***SB 1549 (McCorquodale)***, as amended August 26, would have prohibited the imposition of penalties for the de minimis taking of candidate, threatened, or endangered species resulting from inadvertent or negligent acts, as determined by DFG, that occur in the ordinary course of otherwise lawful activities, and required any known take of those species to be reported to DFG as soon as practicable and all remains of the species taken to be provided to DFG upon request. SB 1549 would also have provided that, notwithstanding any other provision of law, it is not unlawful to take an individual of any of those species pursuant to an entitlement that authorizes incidental take of any of those species and that was entered into, granted, or issued by DFG pursuant to CESA and by the U.S. Fish and Wildlife Service pursuant to the federal Endangered Species Act. This bill died on the Senate floor on August 31.

• ***SB 1621 (McCorquodale)***, as amended August 26, would have added a new section to the Fish and Game Code establishing statutory standards for "incidental take" permits issued by DFG. Under the bill, DFG could issue an incidental take permit for candidate, threatened, or endangered species if: (1) the proposed take is incidental to an otherwise lawful activity; (2) the applicant provides an explanation why alternatives to the take are not being proposed; (3) the activity has been reviewed by DFG and DFG deter-

mines the project will not jeopardize the continued existence of the affected species; and (4) take permits shall include measures to conserve the species and shall be consistent with the policies of the CESA. Of particular importance to Senator McCorquodale was a provision requiring DFG to work with county agricultural commissioners and other agricultural experts to encourage best management practices to provide that routine agricultural practices (which frequently involve incidental take) can be carried out with as little direct regulatory control as possible. The bill would also have required DFG to adopt regulations governing the issuance of incidental take permits and prepare an annual report with a list and description of all incidental take permits issued. This bill failed passage on the Senate floor on August 31.

• ***SB 2091 (Maddy)***, as amended July 1, would have added legislative intent language to the effect that the public interest in conservation, protection, and enhancement of fish, wildlife, and plants is best served by educating and informing the public about conservation, protection, and enhancement; that public lands should be used to the maximum extent feasible to conserve these species or, where infeasible, to acquire habitat for these species; and that it is state policy to encourage early multijurisdictional, multiple-species conservation planning, such as the Wilson administration's existing Natural Communities Conservation Planning (NCCP) program (*see* LITIGATION). It would have authorized DFG to enter into agreements with private landowners to preserve, protect, and enhance species growing on private property; revised the procedures for petitioning FGC to list or remove from the list any species that meets specified criteria; made it unlawful for a person to cause jeopardy to the continued existence of listed species by adversely modifying the habitat of the species without the approval of DFG; and enacted the Agricultural Lands Sensitive Species Conservation Planning Act, pursuant to which the legislature would declare that it is the policy of the state to provide incentives for the involvement of agricultural landowners in protecting sensitive species. This bill died on the Senate floor on August 31.

• ***AB 3052 (Bustamante)***, as amended July 4, would have required all FGC notices and agendas to be published in "plain English"; required petitions for listing a species under CESA to include locations where the species was found as a result of surveys, and the name and telephone number of the individuals who performed the surveys; required an increased level of notification during DFG's petition review process, and wider distribution of DFG's report and recommendation regarding the validity of the petitioned action; required FGC to give a 14-day written notice to the petitioner of the time and location of any public hearing on the proposed petition; required FGC to adopt regulations establishing independent peer review of scientific information and methodology submitted to FGC or DFG; authorized FGC to contract for peer review, and authorized FGC and DFG to seek public or private funding for the review process; authorized judicial review and enforcement of any finding of FGC regarding listing or delisting of a species, if filed within 60 days of FGC's decision; and authorized DFG to bring an action to restrain a violation of a permit, agreement, or memorandum of understanding under CESA. This bill failed passage on the Senate floor on August 31.

SB 1352 (Kelley), as introduced January 31, allows the inclusion of members of the local community in the advisory committee overseeing an NCCP. This bill was signed by the Governor on July 15 (Chapter 220, Statutes of 1994).

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 amended August 19, this bill prohibits, commencing April 1, 1995, and until April 1, 1998, a person from landing Dungeness crab for commercial purposes from a vessel unless a Dungeness crab vessel permit has been issued for that vessel to the vessel owner. The vessel permit is valid from April 1 to March 31, inclusive, of the following year, unless revoked by FGC. The bill establishes the qualifications for the permit, and DFG is required to issue the permit for a fee established to pay all reasonable and necessary costs for administering the permit program, not to exceed a specified amount. The bill provides, until April 1, 1998, for the transfer of the permits to another person upon sale of the vessel, to a replacement vessel owned by the permitholder under specified conditions, or to a temporary replacement vessel for six months upon written approval of DFG for specified reasons and provides for fees for those transfers. The bill also prohibits a vessel from being used to take and land crab for both commercial and sport purposes in the same day; and requires the DFG Director to convene a Dungeness crab review panel composed of specified persons to review applications for Dungeness crab vessel permits and transfers of those permits under specified conditions. This bill was signed by the Governor on September 28 (Chapter 973, Statutes of 1994).

SB 1478 (Beverly), as amended June 27, combines and simplifies statutes governing the drift gill net shark and swordfish fishery and experimental swordfish fishery, creating one drift gill net shark and swordfish fishery with a single limited-entry permit.

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. Existing constitutional law also prohibits the use of gill nets in specified ocean waters. This bill expressly makes the taking of shark and swordfish under the above-described permit subject to the constitutional restriction, and limits the 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; continues the existing law beyond January 1, 1995, and deletes the provision that specifies that a permit is not required to take sharks or swordfish north of Point Arguello; deletes 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; changes the amount of spare net permitted aboard a vessel from 80 fathoms (480 feet) to 100 fathoms (600 feet) and deletes 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 deletes 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. This bill was signed by the Governor on September 6 (Chapter 439, Statutes of 1994).

AB 3011 (Alpert). Existing law establishes the California Ocean Resources En-

hancement 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 instead sets 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 also sets the fees at $25 for a stamp to be affixed to a commercial fishing license in order to land white sea bass commercially. This bill was signed by the Governor on August 26 (Chapter 369, Statutes of 1994).

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 also exempts 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. This bill was signed by the Governor on September 6 (Chapter 433, Statutes of 1994).

SB 2113 (Committee on Natural Resources and Wildlife), as amended June 21, deletes an existing requirement that license tags issued by DFG be consecutively numbered; increases the fee for a duplicate sport fishing or hunting license from $3 to $5; increases the fee for a reduced fee hunting or sport fishing license from $2 to $4; and deletes an existing two-day limitation on free sport fishing permits for groups of mentally or physically 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 excludes from that definition land on which rice is produced that provides significant wetland habitat value.

Existing law requires vessels used in commercial fishing operations to be registered with DFG. The registration requirements were recast, amended, and renumbered by certain statutes enacted in 1992. This bill conforms other provisions of law to those changes.

Existing law provides for the licensing of pheasant clubs and game bird clubs to provide hunting for domestically propagated pheasants and game birds. That existing law provides for the division of the state into two zones with differing requirements applicable in each zone and provides for applications, permits to hunt on club property, open seasons, quotas, license fees and regulations, inspection fees for bird inspection, and other matters. This bill deletes those provisions and authorizes the licensing of game bird clubs under regulations adopted by FGC. These provisions of the bill become operative on July 1, 1995.

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 makes that license valid from January 1 to December 31, inclusive, or if issued after the beginning of that term, for the remainder thereof.

Existing law requires a person applying for a commercial salmon vessel permit to satisfy one of several alternative requirements in order to obtain that permit. One of those alternative requirements is that the applicant obtain a commercial fishing salmon stamp and pay the fees prescribed for the stamp if the applicant is required to obtain the stamp pursuant to other specified provisions of law. This bill deletes the cross-reference to the other specified provisions of law. This bill was signed by the Governor on September 25 (Chapter 849, Statutes of 1994).

AB 2874 (Snyder). The California Endangered Species Act 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 amended August 25, this bill makes a technical change in those exceptions.

Under the Surface Mining and Reclamation Act of 1975, a person is prohibited, with specified exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from the lead agency, as defined. This bill exempts a surface mining operation, if it has been issued a permit pursuant to the Act, is in compliance with the permit with regard to matters relating to plants, and is in compliance with any memorandum of understanding with DFG, from criminal prosecution pursuant to the Fish and Game Code for any take of a threatened or endangered plant species that is incidental to the surface mining operation. The bill also requires DFG to notify the surface mining operator within fourteen days of any plant species on the private property of the operator that is added to the list of threatened or endangered species or that is newly discovered on the property. The bill requires DFG to issue reasonable and feasible interim management measures, and requires the operator and DFG to develop and finalize a reasonable memorandum of understanding to protect the newly added or discovered plant species. The bill requires the interim management measures and the final memorandum of understanding, to the extent feasible, to avoid interference with ongoing surface mining operations.

The bill requires the surface mining operator to pay to DFG the actual costs incurred by the Department in preparing and finalizing the interim management measures and the memorandum of understanding for newly discovered or added species. The bill requires these fees to be deposited in the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund. This bill was signed by the Governor on September 30 (Chapter 1148, Statutes of 1994).

SB 492 (Kelley). The Wildlife Conservation Law of 1947 authorizes the Wildlife Conservation Board within DFG to investigate, study, and determine the areas in the state that are suitable for various purposes relating to wildlife and to determine what areas, lands, or rights in lands or waters should be acquired by the state in order to effectuate a coordinated and balanced program resulting in the maximum restoration of wildlife in the state and in the maximum recreational advantages to the people of the state. Existing law requires the Board to authorize the acquisitions under specified conditions. Existing law authorizes DFG, when authorized by the Board, to apply for and accept federal grants and receive gifts, donations, and other financial support from public or private sources for specified purposes. Funds received from those sources are required to be deposited in the Wildlife Restoration Fund. Existing law authorizes the Board to authorize DFG to lease, sell, exchange, or otherwise transfer real property, any interest in real property, or option acquired pursuant to that law, and requires the proceeds from those sources to be deposited in the Wildlife Restoration Fund. As amended August 26, this bill provides that the net proceeds of the sale or other disposition of real property used as a fish hatchery that has been

acquired by or is under the jurisdiction of the Board or DFG, either in easement or in fee, shall be deposited in the Wildlife Restoration Fund or the Fish and Game Preservation Fund, as determined by the Board, and makes those proceeds available for specified purposes.

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. This bill provides 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 continues 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 makes those provisions applicable to the taking of Dungeness crab, makes those provisions relating to Dungeness crab inoperative on April 1, 1997, and repeals them on January 1, 1998. The bill makes the other provisions inoperative on April 1, 1998, and repeals them on January 1, 1999.

The bill also requires 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, the bill makes the permit requirements for taking hagfish for commercial purposes operative for the following permit year commencing the next April 1. The bill requires 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 repeals that authorization to take prawns or shrimp with those traps at any time and changes 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 also makes those penalties apply to a violation of a regulation requiring a license to be displayed, but provides that a person may not be charged or convicted of both offenses for the same act.

Under existing law, to obtain a permit to take sea cucumbers for commercial purposes, a person is required to prove landings of sea cucumbers in the period of January 1, 1988, to June 30, 1991. To renew a permit, the person is required to have had a permit in the previous permit year. This bill authorizes a person to appeal the denial of a sea cucumber permit under those provisions to the Director on or before April 1, 1995, if the person can demonstrate to DFG's satisfaction that he/she had a vessel and trawl gear capable of fishing for sea cucumbers under a purchase contract, construction, or conversion between January 1, 1992, and May 1, 1992, and who otherwise was unable to meet the minimum landing requirements. The bill specifies the form and the proof of the facts required to be included in the appeal.

Existing law prohibits the possession of more than 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, when fishing for pink shrimp (Pandalus jordani), except for Pacific whiting, shortbelly rockfish, and arrowtooth flounder which may be taken in any amount. This bill instead provides that under these circumstances, Pacific whiting, shortbelly rockfish, and arrowtooth flounder may be taken in any amount not to exceed federal regulations.

Existing law provides that not more than 150 pounds of California halibut or Pacific halibut shall be possessed or landed when fishing under a trawl net permit issued in accordance with specified provisions of law. This bill excludes Pacific halibut from that authorization.

Existing law prohibits the possession of more than 1,000 pounds of incidentally taken fish when fishing for ridgeback prawn and spotted prawn for commercial purposes under a permit, except for sea cucumbers that may be taken in any amount. This bill deletes that exception for sea cucumbers.

Under existing law, DFG may authorize one or more persons to substitute for a Dungeness crab permittee and to land Dungeness crab under the authority of the permit from one or more vessels for which the permittee is the registered owner. This bill instead provides that, upon notification to DFG, the permittee may authorize another person to substitute for the permittee and to land Dungeness crab under the authority of the permit. The bill requires the notice to be made by certified mail to a DFG office specified by the Department, and to contain all the information required by DFG. This bill was signed by the Governor on September 27 (Chapter 935, Statutes of 1994).

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 requires 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, and deletes the requirement that it be done immediately. This bill was signed by the Governor on July 20 (Chapter 248, Statutes of 1994).

AB 1222 (Cortese). 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 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. As amended August 25, this bill would have required WRCB to prepare and maintain a registry of instream flow reservations and dedications; required the Board 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 whether an entry accurately reflects the judicial or administrative action or the contract which creates or affects an instream flow dedication or reservation; and appropriated $125,000 from the California Environmental License Plate Fund to WRCB to carry out its duties in connection with the preparation and maintenance of the registry. On September 24, Governor Wilson vetoed this bill; according to Wilson, the objective of the bill has merit, but the Environmental License Plate Fund is fully subscribed so that there are no funds available for the appropriation in the bill. Wilson also opined that the cost estimates for developing and maintaining the registry greatly exceed the level of the appropriation in the bill.

The following bills died in committee: **SB 2013 (Leslie)**, which would have provided 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; **SB 1485 (Leslie)**, which would have authorized a court to issue inspection warrants for the examination of dams, fishways, or conduits for fish passage or screening; **SB 2114 (Committee on Natural Resources and Wildlife)**, which would have excepted, from existing law which 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, Department personnel, agents, or licensees authorized by a sworn peace officer if necessary for law enforcement purposes; **SB 1398 (Lewis)**, which would have prohibited FGC or DFG from requiring a fishing license to be visibly displayed on the person while the licensee is engaged in fishing; **AB 2838 (Harvey)**, which would have provided that sport fishing or sport ocean fishing licenses are generally valid for one year from the date of issue; and **AB 899 (Costa)**, which would have—among other things—required 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.

LITIGATION

In a 16-page decision, San Francisco Superior Court Judge Thomas J. Mellon, Jr. invalidated FGC's unprecedented delisting of the Mohave ground squirrel from the state's threatened species list under CESA in ***Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.***, No. 953860 (July 19, 1994).

At the request of Kern County officials, FGC took the unusual action on a 4–0 vote at its May 1993 meeting, and thereafter ratified the action at its June 1993 meeting, published findings in support of the delisting on July 2, 1993, held a final public hearing on the matter on August 27, 1993, and formally adopted a regulatory amendment to section 670.5, Title 14 of the CCR, removing the squirrel from the threatened list. The court action, brought by five environmental groups, contended that Kern County's petition to delist failed to contain the information required by CESA; FGC violated the procedure for delisting set forth in CESA and failed to apply the proper standards for listing and delisting; and FGC violated CEQA by failing to prepare an EIR, an initial study, or a negative declaration. *[13:4 CRLR 176; 13:2&3 CRLR 188-89]*

In his ruling, Judge Mellon addressed and rejected each of petitioners' arguments under CESA, finding that Kern County's petition was adequate (even though it failed to contain any information on the population trend of the squirrel), the Commission was entitled to consider an outside consultant's report produced by Kern County even though it was not submitted until 16 days before the Commission's May 1993 meeting, the Commission did not err in focusing on the present state of the squirrel and whether the species should be listed (instead of delisted), and there was substantial evidence in the record to support the Commission's decision to delist.

However, Judge Mellon ruled in favor of petitioners on their CEQA claim. The court found that the action to remove the squirrel from the CESA threatened list is a "project" under CEQA, thus subject to the EIR requirement unless some exemption is available. Judge Mellon then rejected FGC's three claimed exemptions under PRC sections 15061(b)(3) ("where it can been seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment") and sections 15307 and 15308 (both of which apply to actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of a natural resource or the environment). Thus, Judge Mellon issued a writ of mandate requiring FGC to set aside its delisting decision.

On June 16 in ***Endangered Species Committee of the Building Industry of Southern California v. Babbitt***, 852 F.Supp. 32, U.S. District Judge Stanley Sporkin granted the federal government's motion for reconsideration and relisted the California gnatcatcher as a threatened species under the federal Endangered Species Act (ESA). That listing placed the bird within federal jurisdiction and enabled the federal government to officially recognize the Wilson administration's NCCP pilot project as a legal alternative to the ESA in preserving the coastal sage scrub 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 a single 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 the building industry's challenge to the government's action, Judge Sporkin initially 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. *[14:2&3 CRLR 192]* Alarmed that Judge Sporkin's May 2 decision jeopardized the legal underpinnings of the NCCP program, the Clinton administration moved for reconsideration, promising to obtain and release the disputed information for a public comment period if the court would relist the gnatcatcher pending completion of the rulemaking process. Judge Sporkin agreed and vacated his earlier decision, noting that "the listing of the [gnatcatcher] was part of a larger scheme of interlinking federal, state, and local efforts to protect a fragile ecosystem...."

On August 12, the D.C. Circuit Court of Appeals denied the Clinton administration's petition for rehearing and its suggestion for rehearing en banc in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, 17 F.3d 1463 (Mar. 11, 1994), in which the appellate court ruled that significant habitat degradation is not within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. *[14:2&3 CRLR 192]* The D.C. Circuit's decision conflicts directly with the Ninth Circuit's decision in *Palilla v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988), thus setting up possible U.S. Supreme Court review.

FUTURE MEETINGS

October 6–7 in Palm Springs.
November 3–4 in Monterey.
December 1–2 in Eureka.
January 4–5, 1995 in San Diego (tentative).
February 2–3, 1995 in Santa Barbara (tentative.)
March 2–3, 1995 in Ukiah (tentative).

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 har-