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## MAJOR PROJECTS

**Commission Considers Sacramento Ethanol Manufacturing and Power Cogeneration Plan Project.** On September 3, a Sacramento-based company filed an application for certification of a proposed combination powerplant and ethanol manufacturing plant to be sited on a 25-acre plot in northern Sacramento County. On November 4, the Commission approved the Executive Director's data adequacy recommendation regarding the application for certification. In other words, the application contained the requisite information specified in CEC's siting regulations. Also on November 4, Commissioners Richard Bilas and Charles Imbrecht were selected to make up the Commission's Siting Committee on the project; Imbrecht will preside over the Committee. Currently, the matter is in "discovery," with CEC staff gathering information needed for a thorough evaluation of the application. Typically, a preliminary staff assessment is completed within four to six months of the data adequacy approval.

**CEC Releases First Quarter Oil Report.** CEC's Quarterly Oil Report for the first quarter of 1992 revealed that the total amount of petroleum products supplied to California declined 6% from the first quarter of 1991 and 1% from the previous quarter. The major change in the first quarter was due to a decrease in leaded gasoline volumes, due to air quality regulations which prohibit retail sales of leaded gasoline in California after December 31, 1991.

California crude oil production declined by 4% from one year ago and by 2% from last quarter. The average price of internationally-traded crude oil decreased 12% from the previous quarter and 11.34% from 1991. All oil companies reported a decrease in revenues and net income. The revenue decrease ranged from 4-8% and net incomes fell at least 39%, with some companies experiencing significant losses. Oil companies cite persistent weaknesses in the U.S. economy and environmental restrictions for poor revenues.

**Commission Proposes to Update Rules Governing Practice and Procedure and Site Certification Process.** On December 4, the Commission published notice of its intent to amend section 1101 *et seq.*, Title 20 of the CCR, its rules of practice and procedure, and section 1701

*et seq.*, Title 20 of the CCR, its regulations governing the site certification process. At this writing, the regulatory package is scheduled for adoption at CEC's January 20 meeting in Sacramento.

The necessity for rule changes arises from the fact that the current generation of regulations dates from an era of large, utility-sponsored, oil, coal, and nuclear powerplant projects. The original regulations did not contemplate either small independent projects, many using alternative technologies, or the type of analyses now required under the California Environmental Quality Act. The proposed amendments reflect the evolution of electrical generating technology, increased environmental concerns, the growth of a non-utility electrical generating sector, and the Commission's desire to streamline the siting process.

The proposed regulations would amend CEC's existing rules of practice and procedure to clarify the roles of the presiding CEC member and the hearing officer in a siting case, as well as to provide more specific guidance regarding intervention, the submission of documents, and the formal record.

CEC's siting regulations would be amended to, among other things, update definitions pertaining to site certification, establish a procedure for Commission review of post-certification project changes, and clarify issues relating to informational hearings and the role of Native American governments in siting matters.

**CEC Adopts Regulatory Standards for Fenestration Product Certification.** On October 7, CEC approved new sections 10-111 and 10-112, Title 24 of the CCR, relating to certification and labeling of U-values (thermal conductivity ratings) for fenestration products (windows). [12:4 CRLR 200] The regulations have been submitted to the Building Standards Commission (BSC) for approval.

**Calstart Contract.** As previously reported, last May the Calstart consortium received federal funds to begin electric vehicle production in California, and concurrently received a \$2 million pledge from CEC. [12:4 CRLR 200] At this writing, no contract between CEC and Calstart has been signed.

## LEGISLATION

According to CEC officials, the Commission plans three major legislative efforts in 1993:

- In response to the newly-enacted National Energy Act (Pub. L. No. 102-486), CEC will propose a bill revising tax credits for low-emission vehicles.

- CEC also plans to propose a bill deleting an obsolete bio-mass program that has been unfunded since 1978.

- Finally, CEC plans to propose a bill that would implement new transportation-related research and development programs ("Opportunity Technologies") authorized in the state's 1992-93 budget.

At this writing, no authors have been named for any of the proposed bills.

## FUTURE MEETINGS

CEC meets every other Wednesday in Sacramento.

## 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 hab-



itats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

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

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

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

## MAJOR PROJECTS

**Plight of the Gnatcatcher Remains Unresolved.** The following is a status update on various proceedings which will determine the fate of the California gnatcatcher, a four-inch-long, blue-gray songbird which makes its home in the rapidly disappearing coastal sagebrush of southern California. Following FGC's August 1991 refusal to list the bird as endangered under the California Endangered Species Act (CESA) due to Wilson administration pressure to give the Governor's new voluntary Natural Community Conservation Planning (NCCP) program a chance, other forces were brought to bear on the controversy. [12:4 CRLR 202-03; 12:2&3 CRLR 223-34; 11:4 CRLR 181-82]

• **FGC Implements State Court Ruling.** In *Natural Resources Defense Council v. California Fish and Game Commission*, No. 368042 (Aug. 27, 1992), Sacramento Superior Court Judge William Ridgeway found the Commission's reasons for denying the CESA listing to be inadequate, and remanded the issue to FGC for reconsideration. The court gave the agency 45 days to come up with ade-

quate reasons to support a decision either to accept the petition to list the California gnatcatcher or to reject it.

At its December 4 meeting in Eureka, FGC adopted new findings to supplement its previous findings supporting its decision that "the petition to list the California gnatcatcher does not provide sufficient information to indicate that the petitioned action may be warranted." In introductory comments, FGC noted that it "respectfully disagrees with the superior court's interpretation" of the statutory standard governing the Commission's decision in this matter, stating that the court's interpretation of that standard would "improperly deprive the FGC of the discretion entrusted to it by statute." However, FGC stated its belief that its findings satisfy both the statutory standard and the superior court's standard.

Basing its findings on its version of the statutory standard which petitioners must meet in order to persuade the Commission that listing "may be warranted," FGC first found that the petition does not adequately demonstrate that the degree or the immediacy of threat to the species is sufficient to warrant designation as a candidate species for endangered listing pursuant to section 2072.3 of the Fish and Game Code. Relying on a report by Michael Brandman Associates, FGC found that the petition and the evidence presented by petitioners to support it overstated and inaccurately portrayed the amount of historic coastal sage scrub lost to development, as well as the extent of current habitat. Instead, FGC preferred "the more comprehensive and detailed habitat and land use maps submitted by the Building Industry Association of Southern California[,]...which accurately demonstrate that some 354,000 acres of coastal sage scrub exist in Orange, San Diego and Riverside County [sic] within the gnatcatcher's range, and that 44% of the historical amount of coastal sage scrub mapped in 1930 still remains in California."

FGC also found that "only a very small percentage of the coastal sage scrub in Southern California would reasonably be expected to be developed in the near future," because the habitat is subject to the mitigation requirements of the California Environmental Quality Act (which FGC is a "lead agency" in administering), already committed in open space preservation areas, or dedicated to the NCCP program. Much of the remaining scrub, said FGC, is on undevelopable land with topographic and other constraints. Moreover, FGC refuted petitioners' allegation that development will lead to high levels of habitat fragmentation, citing Dr. Lee Jones' testi-

mony that scrub is no more fragmented than it was during the 1930s and that, for the most part, the remaining scrub still forms a series of "functionally related patches."

Second, FGC found that the petition does not contain sufficient scientific information relative to habitat requirements, territory size, or range, pursuant to section 2072.3. Petitioners, the Commission maintained, bear the initial burden of demonstrating a reasonable likelihood that southern California is a significant part of the range of the subspecies extending northward from Baja California, Mexico. Absent a comparison of the Baja population with that of southern California, FGC could not reasonably find that southern California is a "significant portion" of the gnatcatcher's range for purposes of determining whether candidacy status is warranted. Furthermore, FGC claimed that without clear identification of habitat, many elements of the petition are nearly impossible to evaluate. FGC based this finding on what it apparently perceived to be an "admission" by petitioner and ornithologist Dr. Jonathan Atwood. In June 1991, Dr. Atwood sought grant funding from the U.S. Fish and Wildlife Service (USFWS) to enable him to conduct habitat research related to the petition. FGC stated that "Dr. Atwood told the Service that there was a 'clear and urgent need' to obtain data showing the extent and distribution of coastal sage scrub habitat and on gnatcatcher populations in Baja, California [sic]." Citing testimony from other biologists who "concluded that in fact the majority of the [gnatcatcher's] range was historically in Baja, California [sic], not in Southern California," FGC concluded that petitioners' request for Baja California habitat research funding implies there is no credible data on the habitat distribution in Baja, thus rendering petitioners' conclusion that southern California is a significant portion of the range not credible.

Third, FGC noted that the petition seeks the listing of the California gnatcatcher "as the...species' northernmost subspecies," and found that the record is inadequate to support this conclusion in four respects: (1) testimony indicating subspeciation is still an open question among biologists; (2) since 1926, there have been at least three separate subspecies delineations, all of which contradict each other; (3) approximately 2.5 million of the three million gnatcatchers in Baja California, which FGC says were designated the same subspecies as the California gnatcatcher by Dr. Atwood in his 1988 study, were then reclassified as a separate subspecies in 1990; and (4) the American



Ornithologists' Union has neither officially addressed nor endorsed Dr. Atwood's current conclusions on the subspecies issue.

Last, FGC claimed that the petition does not adequately demonstrate the population trends of the species and does not adequately show a decline in bird numbers in recent years, pursuant to Fish and Game Code section 2072.3. FGC argued that CESA's requirements cannot be met simply by reporting on the status of a species or subspecies; rather, the petition must show evidence of a decreasing population trend. Based on the petition, FGC stated that it could not reasonably determine whether the population is declining, stable, or—as it interpreted the record—actually increasing, and therefore could not reasonably conclude that the gnatcatcher may be “in serious danger of becoming extinct” under the Act.

• **Federal Rulemaking to List the Gnatcatcher.** In late November, the outgoing Bush administration announced that it would again postpone a decision on whether to list the gnatcatcher as endangered under the federal Endangered Species Act, deferring the controversy to the incoming Clinton administration. USFWS missed its September 1992 deadline for announcing a listing decision due to developer pressure on the issue whether the California gnatcatcher actually is a subspecies distinct from varieties in central and southern Baja California, Mexico (*see supra*). At this writing, USFWS' decision is not expected until March 17.

In a related move, the Building Industry Association of Southern California and Orange County tollway officials filed a federal court lawsuit against USFWS on November 20, seeking to derail efforts to list the California gnatcatcher on grounds that the federal listing process has been secretive and unfair. The lawsuit alleges that any finding which might be made by USFWS that the California gnatcatcher and the Baja gnatcatcher are two distinct subspecies will be based on “secret information.” The Association seeks access to the raw scientific data of Dr. Atwood, which USFWS is allegedly considering. While most experts believe only 1,200–2,000 California gnatcatcher pairs remain, the builders contend that the three million birds in Baja are the identical subspecies.

The lawsuit is unusual (and probably nonjusticiable) because it comes before the wildlife agency has even rendered a decision whether to list the bird as endangered. Suits challenging an endangered species listing are normally filed after a decision is made, to give the court juris-

diction over the matter and render the controversy justiciable.

• **NCCP Program Update.** At FGC's December 3 meeting in Eureka, DFG announced it had finalized the 1992–93 fiscal year budget, staffing, and expenditure projections for the NCCP program. Funds from the environmental license plate fund, the general fund, federal funds, the U.S. Fish and Wildlife Foundation, Southern California Edison, Metropolitan Water District, and the Fieldstone Company total just over \$1 million for the year. This sum, however, is considered far short of the amount needed by DFG to provide adequate participation in the NCCP pilot project. Because of the budget shortfall, DFG will focus its efforts on implementing the NCCP in two (Orange and San Diego) of the five affected counties. DFG anticipates only minimal involvement in coastal sage scrub issues in Los Angeles, Riverside, and San Bernardino counties.

The information agenda at FGC's December 3 meeting also stated that USFWS biologists have been able to substantiate additional losses of coastal sage scrub habitat since the reported loss of 2,100 acres last April. [12:2&3 CRLR 233] A Resources Agency-established Habitat Monitoring Committee, composed of representatives from DFG, USFWS, the development community, and environmental groups and created to document the status of coastal sage scrub habitat and the California gnatcatcher population, is trying to document whether the additional habitat loss is due to legally permitted activity or illegal clearing.

Meanwhile, the voluntary enrollment of land in the NCCP program continues. On October 28, the Metropolitan Water District signed a Multispecies Habitat Conservation Plan with USFWS, DFG, and Riverside County. The multispecies habitat plan constitutes an approved NCCP covering 20,000 acres in southwestern Riverside County, including the Domenigoni Valley, the Shipley Reserve, and Lake Skinner. Of the 15,000 acres of wildlife habitat and open space within the area, almost 9,000 acres are dedicated as a multispecies reserve. Included among species to be protected are the California gnatcatcher and Stephens' kangaroo rat. DFG believes this agreement satisfies state and federal requirements for habitat protection and represents the kind of cooperative multispecies planning efforts that the NCCP program is designed to facilitate.

The Riverside County Board of Supervisors recently decided to enroll county lands in the NCCP program. This action follows similar decisions by Orange and

San Diego counties which, with Riverside, represent the largest concentrations of coastal sage scrub in the NCCP study area. Riverside County also signed a memorandum of understanding for multispecies habitat conservation with the Western County Council of Governments and the Riverside County Habitat Conservation Agency.

As of FGC's December meeting, a total of 67 city and/or county jurisdictions and private landowners/managers had enrolled land in the NCCP program. Currently, about 210,000 acres of known coastal sage scrub habitat is enrolled in the program.

• **Annual Endangered Species Act Report Released.** The California Endangered Species Act requires DFG to prepare an annual report summarizing the status of all state-listed endangered, threatened, and candidate species for use by FGC, the legislature, and the Governor. In October, DFG announced the release of its 1991 Annual Report.

As of 1991, 282 species—72 animals and 210 plants—are listed as threatened or endangered. In spite of the protections for both declining species and their habitats afforded by the statute, the report discloses that 70% of the state's listed species are still declining in number, signaling a further degradation in the health of California ecosystems and casting doubt on the effectiveness of the CESA listing procedure to protect species in peril. (Hundreds of other species which warrant listing have not even been considered by DFG or FGC due to the sheer length, complexity, and cost of the listing process.) California is a biologically rich area with about 1,700 species of vertebrate animals and almost 5,200 native plants. Yet, human population growth and land development, agricultural expansion and livestock grazing, water projects, competition from introduced, non-native species (including the predatory red fox), the government's failure to properly resource DFG's endangered species program, and FGC's traditional hostility to the statute have all played a role in the decline of California's native species. [10:2&3 CRLR 1]

One bright spot during 1991 was the continued success of the captive breeding program for California condors. The total condor population has grown to 52 from 27 in 1987 when the program began. Also, least tern, bald eagle, and lightfooted clapper rail populations continued to respond positively to active management programs administered by DFG. The number of known breeding pairs of peregrine falcons in California reached 111 in 1991,



compared to 70 in 1985. In addition, two plant species, the Tiburon mariposa lily and the Humboldt milk vetch, showed population increases. DFG is also involved in active management programs for the Morro Bay kangaroo rat and winter-run Sacramento River chinook salmon.

**Status Update on Other Declining California Species.** At FGC's November 6 meeting, DFG presented the results of its five-year review of three listed species pursuant to section 2077 of the Fish and Game Code.

- **Guadalupe Fur Seal.** DFG recommended that this species retain its threatened status. The population of Guadalupe fur seal (*Arctocephalus townsendi*) has been recovering slowly from near extinction brought about by commercial hunting until the taking of marine mammals was banned by federal law in 1972. However, the total population remains significantly below its known peak, occupying only a small proportion of its historic range, mainly in Mexico and north to the Channel Islands off Santa Barbara.

- **Sierra Nevada Red Fox.** DFG also recommended that this species retain its threatened status. The most recent survey of the Sierra Nevada red fox (*Vulpes vulpes necator*) indicated a small, possibly declining population. Though probably never a very common species, its high-elevation habitats are under increasing threat from logging activities, livestock grazing, and recreational activities. This situation, coupled with an urgent need for data regarding current habitat condition and population trends, is the basis for retaining the classification. In addition, proposed control of non-native red foxes in the lowlands of California may also impact the species.

- **Coachella Valley Fringe-toed Lizard.** DFG recommended that this species retain its endangered status. Even though habitat has been set aside and is being enhanced, the Coachella Valley fringe-toed lizard (*Uma inornata*) remains endangered due to the extended drought. Preliminary data indicate a decrease in lizard numbers. Proposed projects for flood control, groundwater pumping, and a car raceway could also have detrimental impacts on this species.

- **Tricolored Blackbird.** At its November 6 meeting in San Diego, FGC found that the Yolo County Audubon Society's petition to list the tricolored blackbird (*Agelaius tricolor*) is not warranted. [12:2&3 CRLR 235] Although concern still exists about the population status of the blackbird, recent surveys indicate a larger population than was originally estimated in the petition to list the species as

endangered. The additional data prompted Yolo Audubon to withdraw its petition.

DFG informed FGC, however, that the species should remain a California Bird Species of Special Concern because it is largely endemic to the state and appears dependent on a relatively few number of sites located on lands over which DFG has no direct management control. A Tricolored Blackbird Working Group will continue to work with DFG to develop a management strategy for the species via a memorandum of understanding that would include provisions to inform landowners about the bird, its plight, how they can consider its habitat needs, whom to contact if birds are discovered, and the necessary steps to ensure protection of breeding colonies on private lands. The Working Group will also establish research and management priorities and provide management prescriptions for certain state and federal lands.

- **San Mateo Woolly Sunflower, White-Rayd Pentachaeta, and Marin Dwarf Flax.** On December 1, the Office of Administrative Law (OAL) approved FGC's amendments to section 670.2, Title 14 of the CCR, to list the San Mateo woolly sunflower (*Eriophyllum latilobum*) and the white-rayed pentachaeta (*Pentachaeta bellidiflora*) as endangered species, and the Marin dwarf flax (*Hesperolinon congestum*) as a threatened species. [12:4 CRLR 204-05]

- **Riparian Brush Rabbit.** At its December 4 meeting in Eureka, FGC accepted a petition from the California Department of Parks and Recreation to list the riparian brush rabbit (*Sylvilagus bachmani riparius*) as a candidate species for threatened status. The only remaining population of these rabbits exists at Caswell Memorial State Park, a 104.5-hectare unit of the state parks system located along the Stanislaus River in the San Joaquin Valley. Riparian brush rabbits have been extirpated from more than 90% of their historical range by the establishment of flood control dams and levees, and ensuing agricultural development, grazing, and housing development. A single catastrophic event, such as extreme flooding, wildfire, or epidemic disease, may cause this species to become extinct.

Moreover, the relatively low fecundity of the brush rabbits, its dependence on nearly continuous shrub cover, and its poor agility make it competitively inferior to the desert cottontail also associated with riparian communities. Other threats include the use of rodenticides; predation by coyotes, gray foxes, red foxes, long-tailed weasels, feral cats and dogs, hawks, and owls; and brush and litter removal for

mosquito abatement and fire control. The parks system has developed a resource management plan to address the situation. Within one year of the date of FGC's finding, DFG must submit a written report on whether the listing action is warranted.

- **Petition Seeks Federal Protection for Delta Fish Habitat.** On November 5, eight environmental groups asked USFWS to protect the longfin smelt and Sacramento splittail, two fish that once were among the Sacramento-San Joaquin Delta's most abundant. The petition is unusual because it seeks protection not only for those two species but for their entire habitat—the brackish zone where the Sacramento and San Joaquin rivers run into the Pacific Ocean.

DFG has never received a petition to list the longfin smelt or the Sacramento splittail, but has considered several petitions to list the Delta smelt. In 1989, this fish was granted candidate species by FGC, but—at the end of the review period in August 1990—FGC decided not to list the fish on grounds of "lack of information." [12:1 CRLR 165; 11:1 CRLR 126; 10:4 CRLR 154] FGC did, however, direct DFG to work with the Water Resources Control Board and receives annual status reports from DFG on the Delta smelt. Moreover, FGC made a commitment to reconsider the fish's status if there is any change in data; at this writing, the Commission has scheduled reconsideration of the matter for its February meeting.

All three fish species share a narrow range in the Delta and are sensitive to changes in freshwater flows. The state and federal water project pumps that send water to southern California farms and cities are blamed not only for trapping the fish, but for shrinking their spawning grounds and food supplies. Green sturgeon, white catfish, fall-run chinook salmon, and other fish soon may be candidates for the endangered list. For this reason, the petition to USFWS recommends the agency designate a "critical habitat" for the fish. Moreover, the smelt and splittail habitats overlap that of the winter-run chinook salmon, already listed as endangered by FGC.

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

- **Trout Fishing Restrictions on Sacramento River to Protect Winter-Run Chinook Salmon.** On October 22, OAL approved FGC's emergency adoption of section 2.03, Title 14 of the CCR, which places special restrictions on trout fishing along a salmon-critical portion of the Sacramento River (from Deschutes Bridge



upstream to 650 feet below Keswick Dam) between January 1 and August 15. The intent of the regulation is to eliminate incidental hooking and killing of winter-run chinook salmon. Salmon fishing is already prohibited in this stretch of the Sacramento River. At this writing, FGC is scheduled to hold a public hearing on the permanent adoption of this regulatory change at its January 5 meeting.

• **Chinook Salmon Ocean Sport Fishing Season Restrictions.** On November 23, OAL approved amendments to section 27.80, Title 14 of the CCR, conforming state regulations to federal regulatory changes designed to protect fall-run chinook salmon by restricting ocean salmon fishing seasons and methods of take. [12:4 CRLR 206]

• **Hunting Regulations for Migratory Waterfowl and Other Game Birds.** On November 5, OAL approved FGC's amendments to sections 502 and 509, Title 14 of the CCR. Section 509 is amended to conform existing regulations relating to migratory waterfowl with amendments to the 1992 federal Migratory Bird Treaty Act; amended section 502 liberalizes and alters hunting regulations regarding migratory waterfowl and other game birds. [12:4 CRLR 206]

• **Maritime Aquaria Receiver's License Fee.** AB 2261 (Felando) (Chapter 742, Statutes of 1992) requires DFG to establish an annual fee for a "maritime aquaria receiver's license," costing not less than \$500 nor more than \$1,000. [12:4 CRLR 207] Since the license year is set to begin January 1, establishment of the fee required emergency rulemaking. DFG submitted new section 188, Title 14 of the CCR, setting the fee at \$1,000, to OAL in November; OAL approved the emergency rule on December 7.

According to DFG, any person who is required to have a marine aquaria collector's permit and sells live marine organisms indigenous to California, and those persons who purchase or receive live marine species indigenous to California for commercial purposes, must obtain a nontransferable license after December 31. Although the maximum number of licenses expected to be issued during 1993 and subsequent years is projected to be no more than 20, DFG estimated that administrative costs will approximate \$24,000 annually. Thus, the maximum license fee allowable under AB 2261 will not quite cover program costs.

At this writing, FGC is scheduled to hold a public hearing on the permanent adoption of section 188 at its January 4 meeting in Palm Springs.

• **Amendments to Salmon, Steelhead,**

**and Sturgeon Fishing Regulations.** At its November 6 meeting, FGC approved proposed amendments to sections 1.74, 2.10, 5.80, 7.50, and 27.90, Title 14 of the CCR, concerning various salmon, steelhead, and sturgeon fishing regulations. Section 1.74, as amended, establishes a steelhead trout nontransferable catch report-restoration card. Month, day, and location code must be entered before fishing. Upon catching a steelhead, the angler must immediately use ink to indicate in the appropriate location on the card if the fish is being kept. At the end of the day, the angler must record the total number of steelhead caught and released in the appropriate column. Anglers are not required to return the cards to DFG, but a random sample of fishers will be chosen and contacted by DFG to provide catch and angling information. The amendments to sections 2.10, 5.80, and 27.90 alter existing hook and lure specifications, and eliminate a previously adopted increase in minimum size limit for sturgeon. The amendments to section 7.50 close all fishing on the Lagunitas Creek in Marin County, and close salmon fishing on the lower Waddell and Scott creeks and all fishing on the Carmel River in Santa Cruz County. [12:4 CRLR 205-06] OAL approved these regulatory changes on December 22.

• **Additional State Ecological Reserves.** At this writing, FGC has scheduled a January 5 hearing to discuss proposed amendments to section 630, Title 14 of the CCR. Section 630 currently lists 70 habitat areas as state ecological reserves that protect "resource values" while permitting compatible public uses of the areas. The proposed regulatory changes would designate thirteen additional areas as state ecological reserves. At present, these properties—owned by the state—are undesignated. The proposed changes will implement DFG's authority to protect wildlife habitat values, and will regulate public use and authorize certain departmental management activities.

• **Additions Proposed to List Four Prohibited Species.** On December 18, FGC published notice of its intent to amend section 671 and add section 671.7, Title 14 of the CCR, to add certain exotic aquatic species to the prohibited species list, and provide for a new permit for aquaculture of prohibited species. The importation and transportation of live exotic aquatic animals into and within California can cause these exotics to be released into waters of the state where they do not already exist. Introduction of a new species risks harm to existing fish and wildlife resources through predation, competition, and other ecological interactions.

FGC's existing regulations provide limited control over importation and transportation activities by requiring that importers of live aquatic animals have approved importation permits. These regulations, however, are difficult to enforce because it is difficult to apprehend unpermitted importers in the act of importation, and laws are not strict for nonprohibited species. The proposed action will facilitate the regulation of importation, transportation, and possession of several species by adding them to section 671, which specifically prohibits the possession of the animals included therein without specific permits issued by DFG. The reticulate Gila monster (*Heloderma suspectum suspectum*) is also proposed to be added to the list to stop illicit trade in the animal reported by the Arizona Game and Fish Department. The proposed action further adds new section 671.7, which provides for a new permit allowing possession of prohibited animals for aquaculture.

At this writing, FGC is scheduled to hold a public hearing on these proposed regulatory changes on February 5.

• **Validity Date of Sport Fishing License.** At its November 6 meeting, FGC approved an amendment to section 705, Title 14 of the CCR, requiring one-day sport fishing licenses to show clearly the date of validity. [12:4 CRLR 207] At this writing, the rulemaking file on this proposed regulatory change is pending at OAL.

■ **"Dial-a-License" Service Begins for California Fishers.** In late December, DFG announced that—for the first time—it will accept phone orders for fishing licenses. According to DFG's License and Revenue Branch, fishers may call the Sacramento license office at (916) 739-4140 Monday through Friday from 8:00 a.m. to 5:00 p.m. Fishing licenses may be charged to credit cards.

## LEGISLATION

**AB 14 (Hauser).** Existing law specifically authorizes DFG to expend up to \$800,000 of the Fisheries Restoration Account to acquire heavy equipment and \$2 million to complete watershed assessments and fisheries restoration planning in coastal waterways. As introduced December 7, this bill would delete this express authorization, and instead include the completion of watershed assessments and fisheries restoration planning within the general authorization for DFG to expend funds for various projects.

Existing law requires persons who purchase or receive live marine species indigenous to California for commercial purposes from, among others, a licensed com-



mercial fisher who takes specified organisms or a registered aquaculturist, to obtain a marine aquaria receiver's permit from DFG. This bill would delete the requirement that such persons obtain a marine aquaria receiver's permit, and would recast the provision authorizing DFG to establish the fee for that license. This bill would also delete existing law which prohibits taking or possessing specified groups or species of marine plants for commercial purposes. [A. WP&W]

## RECENT MEETINGS

At its October 2 meeting, FGC heard arguments by commercial fishers regarding the alleged failure of a five-year-old federal program to save the threatened California sea otter by establishing a colony of otters on San Nicolas Island in Ventura County. Since the program began in 1987, 139 otters have been taken to San Nicolas from the Monterey area in hopes they would thrive in a colony on the remote island. Of those, about half have made their way back to the main colony in the Monterey area. Another eleven have died, and many others are unaccounted for. [11:1 CRLR 122-23; 9:4 CRLR 115-16; 9:3 CRLR 108-09] Wildlife scientists and members of the Sea Otter Recovery Team, a group of experts assembled from across the nation, say recapturing the remaining animals would be difficult and stressful on both otters and the divers needed for recapture. As it stands now, sea otters are found within a 220-mile range along the coastline, from Point Año Nuevo south to Pismo Beach, but most are concentrated off the Monterey County coast.

The commercial fishers complained that when the sea otters leave San Nicolas Island and swim back to places like Morro Bay, they decimate the shellfish population, particularly sea urchins and abalone. The revenue generated by the commercial sea urchin fishery alone is \$80 million annually, sufficient to motivate commercial fishers to ask FGC to do something to control the sea otter population.

James Estes, a fish and wildlife research biologist and member of the recovery team, believes biologists should leave the animals on San Nicolas for the time being and monitor the small colony for growth. However, federal scientists plan to recommend that the 2,000 otters off Monterey be permitted to roam the entire coastline. The commercial fishing industry and FGC have expressed concern that such a change could adversely impact abalone and sea urchin fisheries. Commissioner Albert Taucher, a critic of the sea otter program, commented, "I do not know how to [solve the problem], but I

consider the program a failure and I think everyone involved should come back to the table."

At its October 2 meeting, FGC voted unanimously to reject a proposed experimental longline program that would have permitted commercial fishers to deploy between 30 and 50 miles of monofilament line with thousands of baited hooks to target swordfish and tuna. A spirited debate between commercial longliners and United Anglers, a sport fishers organization, took place as to the impact the longlines would have on other fisheries. United Anglers contended that use of longlines would greatly impact swordfish, shark, and striped marlin fisheries. The two species of major concern to United Anglers are blue shark and striped marlin, which have been allocated by the legislature to recreational anglers. In addition, United Anglers maintained that the sportfishing industry brings into California over \$100 million annually for marlin alone, and there is no evidence of any similar economic benefit from hooking marlin with longlines. United Anglers also argued that only a few commercial boat owners would benefit from the permits, while the great majority of the sport fishers and operators would be adversely affected.

At FGC's November 5 meeting, members of the California Aquaculture Association reported on this developing industry. Aquaculture involves the farming of fish, shellfish, and aquatic plants, supplementing commercial catches to meet market demand. Aquaculture represents a \$30 million statewide industry, although few of the farming operations in California are more than ten years old. Product output is expected to double in the 1990s, providing new business opportunities in both farming and associated networks of supply, processing, distribution, sales, and marketing. DFG has responsibility for industry and species regulation, licensing and tracking farm production data, and producing a reference manual for public use. California's aquaculture success, with DFG playing a leading role, counters a national trend to avoid placing regulatory bodies in a leadership position.

## FUTURE MEETINGS

June 17-18 in Bridgeport.

August 5-6 in Crescent City.

## 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: Terry Barlin Gorton (Chair), Franklin L. "Woody" Barnes (Vice-Chair), Robert Heald, and James W. Culver. At this writing, one public member position is vacant.

Forest Products Industry: Mike A. Anderson, Joseph Russ IV, and Thomas C. Nelson.

Range Livestock Industry: Robert J. Kerstiens.

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