



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 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 506,062 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:

Wilson Administration and Legislature Pressure Developers into Participating in NCCP Coastal Sage Scrub Pilot Program. On April 20, U.S. Fish and Wildlife Service (USFWS) officials released data indicating that over 2,100 acres of prime gnatcatcher coastal sage scrub habitat in southern California had been leveled by developers since August 1991. This news enraged environmentalists and some DFG biologists, who characterized Governor Wilson's new Natural Community Conservation Planning (NCCP) program as "pathetic" and "toothless," and contradicted repeated statements made by Resources Agency Secretary Douglas Wheeler, who stated that only 600 acres had been lost. The greatest losses occurred in San Diego County, where about 1,200 acres were bulldozed for 14 projects. About 600 acres had active gnatcatcher nests, according to Fred Roberts, a USFWS biologist stationed in Carlsbad, who added that 100% of the area bulldozed outside San Diego County contained nesting sites. Developers' spokesperson Jim Whelan announced that this level of habitat destruction showed "restraint and balance" by the development industry.

This development in the NCCP saga confirmed the worst fears experienced by environmentalists last August, when Michael Mantell, Undersecretary for the Resources Agency, persuaded FGC to refuse to list the gnatcatcher as an endangered species under the California Endangered Species Act (CESA)—contrary to the recommendation of DFG biologists—in order to give the Governor's NCCP a chance. At that time, the NCCP program—under which developers, environmentalists, and DFG may voluntarily enter into agreements to set aside habitat areas to "protect and perpetuate natural wildlife diversity"—was still pending in the legislature as AB 2172 (Kelley). Mantell stated that implementa-

tion of the new, voluntary program would protect the gnatcatcher's habitat while still allowing development. He promised that if the program failed to meet its milestones, he would support a listing of the bird under CESA. [11:4 CRLR 181-82]

When AB 2172 was eventually enacted (Chapter 765, Statutes of 1991), the NCCP was heralded as a broad-based, forward-looking conservation plan that would facilitate protection of large areas of habitat before species become endangered, and simultaneously allow for "reasonable" development. The stated goal of the NCCP program is the "establishment of biologically defensible multi-species reserves designed to protect species and natural communities for the long term, accomplished by a cooperative public and private effort." As applied to the gnatcatcher, the plan was envisioned to require developers to agree not to develop land with coastal sage scrub habitat for 18 months, enough time for scientists to outline regional preserves linked with wildlife corridors to ensure the survival of the gnatcatcher and other coastal sage scrub species. Local government agencies would also scrutinize potential development during this period. At the end of the 18-month period, local jurisdictions would find some way to acquire the land needed for preserves.

In September, the Resources Agency established a work plan to implement an NCCP pilot program on the coastal sage scrub habitat of the gnatcatcher, which included the following goals: key landowners would "enroll" in the program by signing contracts to voluntarily set aside land for preserves, with the first contract to be signed in November and all other contracts to be signed by February 28; local governments would sign contracts to impose temporary controls on coastal sage scrub development; "strong disincentives" would be established to persuade developers, cities, and counties to participate; loss of habitat would be monitored, including using aerial surveillance, beginning in September, offenders would be prosecuted, and regulations would be changed to impose new "severe penalties"; developers building on coastal sage scrub would be required to compensate by restoring five times more acreage elsewhere and to set aside funds for maintaining this land as habitat; and the Agency would appoint a Scientific Review Panel (SRP) composed of five biologists. The SRP would review existing data, collect additional needed information, recommend a scientifically-based management system to protect the coastal sage scrub community and the species it



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supports, and designate significant natural areas for habitat or set boundaries for new preserves.

Prior to early May, however, few of these goals were met. The Agency established the SRP; it also created an advisory committee for the coastal sage scrub project, consisting of representatives from the Nature Conservancy, the Natural Resources Defense Council (NRDC), and the California Environmental Trust, as well as the Irvine Company, the Building Industry Association, Southwest Diversified, and several local governments. However, as of late March, no developer had enrolled in the program; instead, the February 28 deadline was extended to May 1. No city or county had signed up for the program; no "strong disincentives" ever materialized; no monitoring occurred; no bulldozers were prosecuted or penalized; and no habitat was set aside. By the end of February, NRDC resigned from the panel, expressing frustration that after five months no protections were in place or even proposed. (See *supra* report on NRDC for related discussion.) The Endangered Habitats League, a coalition of thirty environmental groups, petitioned USFWS for immediate protection of the gnatcatcher. The League argued that the NCCP was being used to circumvent an Endangered Species Act listing, and that only a listing would bring developers to the bargaining table.

During March, the *Los Angeles Times* published several articles detailing the shortcomings of the NCCP and its implementation by the Resources Agency. On March 12, Senate Natural Resources and Wildlife Committee Chair Dan McCorquodale warned the Agency that \$1.75 million in funding for the NCCP would be withheld unless the Wilson administration expedited its implementation of the program and convinced developers and local governments to participate.

In an April 7 speech to developers in southern California, Resources Secretary Wheeler urged companies to "bite the bullet" and enroll in the voluntary program, warning them that if NCCP fails, restrictions on development under the Endangered Species Act will be harsh, involuntary, and non-negotiable. Several days later, the Senate Committee on Natural Resources and Wildlife allocated \$1.5 million to NCCP, but conditioned the appropriation, over Wheeler's objection, on several terms: The Wilson administration must persuade developers to protect 70% of the gnatcatcher's shrinking habitat by June; more than half the cities in two southern California counties must join the NCCP and agree to assess damage to the

bird's habitat before they approve development proposals; and the state must set up a special enforcement unit to ensure that the habitat is protected.

The long-awaited enrollments finally came in early May. Enrollees include San Diego County, the City of San Diego, Orange County, a major coalition of private Orange County developers, and a small scattering of San Diego developers. The landowners agreed to refrain from development for eighteen months and to fund scientific studies on the enrolled property. Cooperative commitments were also obtained from the U.S. Marine Corps' Camp Pendleton, Miramar Naval Air Station, and El Toro Marine Corps Air Station.

In addition, other efforts to protect gnatcatcher habitat have been undertaken. In March, the Wildlife Conservation Board, the acquisition arm of DFG, in conjunction with the Nature Conservancy, bought a 496-acre parcel of land near El Cajon. In mid-April, 70,000 acres of open space habitat were proposed for enrollment in an agreement between San Diego County, the City of Chula Vista, and private landholders, with approval granted by the San Diego County Board of Supervisors. Additionally, the Fieldstone Company agreed to set aside a large tract of its land as gnatcatcher habitat in the city of Carlsbad, not under the NCCP, but under the city's habitat management plan.

In the meantime, other legal avenues to protect the gnatcatcher habitat are being pursued. NRDC continues to press its lawsuit against FGC for its refusal to list the gnatcatcher as endangered under CESA (see *infra* LITIGATION). And USFWS is still collecting data on its September 1991 proposal to list the species as endangered under the federal Endangered Species Act. [11:4 CRLR 181-82] By law, USFWS must make a final decision on whether to list the gnatcatcher by September 17.

On May 1, FGC and DFG took their first step toward regulatory implementation of the NCCP program when they proposed to adopt new sections 629, 630(a)(22), and 665-67, Title 14 of the CCR. In section 629 (to be adopted by FGC), the Commission would authorize DFG to designate habitat protection zones (HPZ), defined as a state planning designation to inform certain entities of the location, range, and management requirements of certain species of fish, plants, and wildlife. Section 665 would be adopted by DFG, and would prescribe the procedures which the Department must follow in establishing an HPZ. Section 666 would provide that, with two exceptions, ac-

tivities which result in the adverse modification of an HPZ are presumed to have a significant effect on the environment, thus requiring compliance with the California Environmental Quality Act (CEQA). Section 667 would state that DFG shall use its existing authority to prevent the destruction of important habitat, including the use of mitigation and management agreements. Section 630(a)(22), to be adopted by FGC, would authorize FGC to prohibit, within designated ecological reserves, "the adverse modification of that habitat reasonably necessary to prevent the elimination of fish or wildlife species, to ensure that fish and wildlife species do not drop below self-perpetuating levels and to preserve for future generations viable populations of all plant and animal communities."

Following a May 15 public hearing on the proposed NCCP regulations, FGC and DFG decided to scrap the noticed regulations and rewrite them to focus on coastal sage scrub habitat only. As revised, FGC would adopt section 629, which would designate coastal sage scrub as sensitive, specialized habitat and would establish the Coastal Sage Scrub Habitat Protection Area. The Area would include coastal sage scrub habitat found at elevations of 3,500 feet and less in Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties. Section 629 would provide that proposed projects in the Area shall be reviewed by DFG pursuant to section 15206, Title 14 of the CCR (CEQA guidelines). The only exceptions to this requirement are those proposed actions which are determined by DFG to have a *de minimis* impact on coastal sage scrub habitat or when the proposed action will result in the modification of one-half acre or less of coastal sage scrub. Areas of coastal sage scrub within the Area which have been enrolled in the NCCP Program are also exempted from the proposed regulations because, through enrollment agreements, a similar level of review and protection is provided. Section 629 would expire on November 1, 1993, concurrent with the expiration of the NCCP Program.

FGC was expected to hold a public hearing on the revised proposal on July 15, and to consider adoption of section 629 at its August 7 meeting.

Status Update On Other Proposed California Endangered Species. About half of all potentially threatened or endangered plants and animals in the United States exist in California. As of October 1991, 236 California species were listed as endangered or threatened with extinction. Another 600 species are thought to qualify. [10:2/3 CRLR 1] The following is



an update on other recent actions taken by FGC and DFG with respect to declining species:

—Marbled Murrelet. Following a one-year candidacy period, FGC adopted DFG's recommendation to add the marbled murrelet to the California endangered species list in December 1991. [12:1 CRLR 165] The Commission submitted the rulemaking package on the regulatory proposal to the Office of Administrative Law (OAL) on January 3, but OAL disapproved the listing on February 6, on grounds that FGC failed to adequately summarize and respond to all public comments received. OAL specifically cited industry comments stating that the estimated decline of the bird was "speculative." FGC amended its rulemaking file, resubmitted it, and OAL approved it on March 12.

—Mojave Ground Squirrel. At its April 2 meeting in San Pedro, FGC accepted for consideration the Kern County Department of Planning and Development Services' petition to delist the Mojave ground squirrel as a threatened species, pursuant to sections 2074.2 and 2078 of the Fish and Game Code. Sitting with a full quorum, the sole dissenter to this decision was FGC President Everett McCracken. DFG had recommended rejection of the petition for incompleteness, that is, lacking sufficient scientific information. According to DFG, the petition included no scientific information on the squirrel's population trend, and the Mohave ground squirrel is designated as "declining" by USFWS, which is currently considering the species for protection under the federal Endangered Species Act. This delisting procedure will afford the squirrel one additional year of protection while population studies are conducted by DFG biologists. Pursuant to section 2074.6 of the Fish and Game Code, DFG is required to submit a written report within one year of the date of FGC's decision, indicating whether the petitioned action is warranted.

—Tricolored Blackbird. At its March 5 meeting, FGC decided to list the tricolored blackbird (*Agelaius tricolor*) as a candidate for the endangered species list, as defined by section 2068 of the Fish and Game Code. The FGC vote in February on the bird had been deadlocked. The bird is similar in size to the common red-winged blackbird, and lives in the ever-decreasing wetlands of California. According to USFWS, the tricolored blackbird has declined in numbers from 250,000 breeding adults to 35,000 within the past twenty years. UC Davis ecologists estimated a population in excess of 1 million in the

1930s. USFWS estimates the rate of population decline at 10% per year, concluding that unless the tricolored blackbird is listed as endangered, it has a high probability of becoming "California's Passenger Pigeon."

—Sonoma Sunshine. At its January 10 meeting, FGC amended section 670.2, Title 14 of the CCR, to list the Sonoma sunshine (*Blennosperma bakeri*) as an endangered plant. The Sonoma sunshine is a highly localized California endemic plant restricted to vernal pool habitat in the Sonoma Valley and the Santa Rosa Plains of Sonoma County. The Sonoma sunshine was designated as a candidate species at FGC's August 1990 meeting and, after the one-year review period, DFG recommended listing. At its August 1991 meeting, FGC made a finding that the Sonoma sunshine warranted listing as an endangered plant. The regulatory package was submitted to OAL and approved on April 7.

California Salmon Status Report.

Released February 24, DFG's latest salmon status report reiterates the fact that California salmon populations have been decimated over the past five years. Two species of salmon, chinook and coho, account for the vast majority of California's salmon resources. Annual landings of chinook and coho salmon from recreational and commercial fishing have declined from over one million in 1987 to only half that amount in 1991. The February report lists the following species as of particular concern: winter-run chinook salmon of the upper Sacramento River; spring-run chinook salmon of the upper Sacramento River and the Klamath Basins; the San Joaquin fall-run chinook salmon; and the coastal populations of the coho salmon. Of critical concern is the winter-run chinook salmon, a California endangered species and federally-listed threatened species that now numbers less than 200 fish. [11:4 CRLR 182]

As have numerous previous reports, the February status report notes several factors which have contributed to the decline of the salmon. These sources include heavy metal leaching from Iron Mountain Mine, Red Bluff Diversion Dam fish passage problems, lack of multilevel water temperature control at Shasta Dam, and the cumulative effects of urbanization, water management, and perpetual drought conditions. Based on present water supply forecasts, DFG states that it is "highly probable" that California's salmon populations will decline further.

In an effort to restore, and in some cases to save, California's salmon popula-

tions, DFG is presently undertaking the following actions: habitat restoration and mitigation for past losses resulting from water development; habitat protection and negotiations with water development agencies for minimum/optimum flow releases below dams; toxins monitoring and abatement; harvest regulation; endangered species consultation processes under CESA; hatchery and cooperative rearing projects to produce salmon; cooperative projects with public groups and private landowners to protect and restore the fishery habitat; and litigation in situations where none of the aforementioned remedies has been effective (see *infra* LITIGATION).

The report concludes by stating that chinook salmon have a high reproductive capacity and are able to rebound quickly. Problems with the Sacramento-San Joaquin Delta still exist and require a multifaceted solution. Both the state and federal endangered species acts have had a significant influence on long-term solutions and DFG believes measures designed to protect the winter-run chinook salmon will benefit other races of salmon as well.

1992 Recreational Salmon Ocean Fishing Severely Restricted on an Emergency Basis. Faced with drastically declining counts of salmon in California, FGC met on April 16 in Sacramento to consider the emergency closure of the salmon sport fishing season during 1992. The Commission scheduled the daylong hearing to receive a broad range of opinions, recommendations, and options. Despite widespread acknowledgement that the decline in the anadromous fish stock is largely the result of a legacy of lopsided water allocation to agriculture with little thought to the ecological damage created, and the Commission's express statement that sport fishers are not the cause of declining salmon populations, the effect of the proposed action would place the cost of last-minute protection squarely on sport fishers. FGC's hearing followed the April 10 emergency restriction of the 1992 commercial salmon fishing season by the federal Pacific Fishery Management Council (PFMC). The PFMC's decision limited this year's commercial salmon harvest to half of last year's low levels and extended by about 100 miles the stretch of Pacific Ocean barred to commercial fishing. The key concern is that the fall chinook salmon runs in the Klamath and Sacramento Rivers—the source of most salmon caught off California's coast—are continuing to decline. DFG research shows 1991 counts of fall-run chinook salmon returning to the Sacramento River basin at less than 110,000 spawning



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adults, nearly 10% below the predicted level of 121,000, and 36% less than the ten-year average of 170,000 fish. The commercial fishery took fewer than 300,000 chinook salmon off California during 1991, one of the smallest catch totals ever recorded.

On the day of the FGC meeting, a group of fishers held a press conference in front of the Resources Building in Sacramento. Holding signs proclaiming, among other things, "Wilson and Seymour are selling us out to big agribusiness," "Reform Federal Water Policy," and "Save our Salmon," the fishers protested the federal government's water policy which allocates 90% of Central Valley Project (CVP) water to agribusiness, diverting that water from lakes and rivers and destroying California's fishery with its dams and pumps. The fishers told stories of economic disaster to their livelihoods, the decline of coastal fishing communities, and the continued destruction of a resource that once seemed inexhaustible. They cited a California Institute for Rural Studies publication analyzing water usage from the CVP, which found that ten irrigation districts use one-third of CVP water, and confirmed that large growers are receiving most of this taxpayer-funded water. Fifteen percent of these farms received 65% of the water, and they average 1,048 acres, or 7.2 times the state average.

Compounding the inequitable water allocation between agribusiness and fish are the effects of the water diversions themselves, which have largely contributed to the reduction of upper Sacramento River spawning habitat upon which 60% of California's salmon depends—from 6,000 miles to just 300 miles. The four runs of salmon collectively have dropped from nearly 400,000 per year to about 50,000; steelhead have all but disappeared in the Delta; and striped bass are down 90% in the Delta and Bay.

During FGC's April 16 meeting, David Behar of the Bay Institute of San Francisco alleged that the Department of Water Resources' negligence had resulted in the killing of up to 32% of the winter-run smolts in early April. These are the offspring of the remaining 191 winter-run chinook salmon, which the state has spent millions to preserve. [11:4 CRLR 182] Pumps run by the state Department of Water Resources are blamed for 90% of smolt kills, while the nearby pumps run by the federal Bureau of Reclamation account for the rest. Although government biologists knew for weeks that the endangered salmon were being killed in the giant Delta pumps, nothing was done until

after most of the fish had gone downstream and enough water was pumped south to fill a major reservoir. According to Randy Brown, environmental chief of the state Department of Water Resources, who received a daily fish tally, "We all kind of dropped the ball."

At the April 16 hearing, the Commission received testimony only, deferring action to its April 23 and future meetings. On April 23, FGC—in apparent agreement with the PFMC's recommendations—adopted an emergency amendment to section 27.80, Title 14 of the CCR, restricting ocean sport fishing for salmon in state waters from the shore to three miles out; OAL approved this amendment on May 4. Also on an emergency basis, FGC repealed existing section 182 and adopted new section 182, Title 14 of the CCR, significantly reducing commercial king salmon take north of Point San Pedro, reducing the commercial silver salmon take, and reducing hooking mortality on sublegal, non-retainable salmon. OAL approved this emergency action on April 30. These actions bring state and federal regulations affecting the commercial salmon industry into conformance. Decisions on proposed emergency regulations to restrict inriver salmon sport fishing were deferred to FGC's June 19 meeting.

FGC President Resigns Amid Controversy Over CVP Reform. On May 8, FGC President Everett McCracken Jr. announced his resignation from the Commission. The announcement came only eight days after McCracken sent a nonpartisan letter to Representative George Miller, Chair of the U.S. House of Representatives' Committee on Interior and Insular Affairs and an advocate of CVP reform, urging that "Congress reauthorize the Central Valley Project to include fish and wildlife conservation among the purposes to which the Project water may be applied." Some environmentalists claim that the letter sparked criticism from Governor Wilson which led to McCracken's resignation, and speculation continues despite McCracken's denial that a meeting with the Governor took place. The issue of CVP reform continues to be hotly contested in California and in Congress, with fishers and agricultural interests on opposing sides. (See *supra* reports on ENVIRONMENTAL DEFENSE FUND and NATURAL RESOURCES DEFENSE COUNCIL for related discussion.)

1992 Fishery Recovery Plan for the Upper Sacramento River. In July 1991, 19,000 gallons of metam sodium spilled into the upper Sacramento River, killing

virtually all gill-breathing organisms over nearly 40 river miles. [11:4 CRLR 153, 164] In response to this disaster, DFG released a fishery recovery plan on March 3. The plan has two major focuses: (1) to protect the environment and recovering biota of the Sacramento River and its tributaries between Box Canyon Dam and Shasta Lake, and (2) to evaluate experimental management options that have a potential for accelerating the recovery of the river's fishery resources.

DFG is the lead agency responsible for the river's recovery and is working with other state and federal agencies to that end. Under the federal Comprehensive Environmental Response, Compensation and Liability Act and the Clean Water Act, DFG has prepared a Natural Resource Damage Assessment (NRDA) plan and is currently carrying out that plan.

DFG's Upper Sacramento River Fishery Management Plan (USRFMP) is not a substitute for but rather a supplement to the NRDA plan, designed to promote experimental recovery of the river's aquatic resources. During the drafting of the USRFMP, DFG received 45 public comments relating to possible alternatives for river recovery. Of the 45 commenters, 31 supported DFG's plan, four recommended a "no action" natural recovery plan, and ten commenters, representing economic interests and those responsible for the spill, recommended an immediate extensive catchable trout planting program. The general environmental protection goals of the USRFMP include:

- recommendation of highly protective conditions relating to streambed alteration notifications pursuant to sections 1601, 1603, and 1606 of the Fish and Game Code;

- recommending to FGC that fishing prohibitions continue in the Sacramento River and its tributaries between Shasta Lake and Box Canyon Dam;

- continued prohibition of suction dredge mining in the Sacramento River and its tributaries between Shasta Lake and Box Canyon Dam;

- recommendation of protective measures to relevant agencies with respect to land use activities that produce sediments in the affected portions of the river;

- close examination of federal hydropower projects that affect the river and recommendation of appropriate protections; and

- delaying in-river catchable trout planting while increasing trout planting in off-river areas.

As part of the experimental recovery plan, DFG proposes to implement the following specific actions:



-taking eggs from wild rainbow trout for artificial spawning and planting the resulting progeny in the affected area of the river;

-relocating some maturing adult rainbow trout to the affected area of the river; and

-conducting a nongame fish population assessment to determine the need for a fish barrier in the river above Shasta Lake in order to provide balanced river recovery.

In conclusion, DFG recommended a cautious approach to river recovery in order to avoid potential adverse impacts that accelerated recovery actions could have on the river's ecosystem.

1992-93 Mammal Hunting and Trapping Regulations. At its April 23 meeting, FGC adopted its 1992-93 mammal hunting and trapping regulations. The following are significant changes from last year's rules:

-Under section 251.4, Title 14 of the CCR, mountain lion tagging will be required for possession of any mountain lion, part, or product; the permit fee is \$5. This section does not authorize the take of any mountain lion.

-Under section 265, the use of dogs while hunting or for dog training is prohibited during the archery season for deer or bear; prohibited for the take of elk, bighorn sheep, and antelope; prohibited for the pursuit of mountain lions, unless under a depredation permit; and permitted for hunting and training in specified zones and times.

-Under section 354's archery equipment and crossbow rules, the nocking or fitting of any arrow to a bow string while in or on any vehicle is prohibited.

-FGC's deer hunting regulations (section 360) provide for the collapsing of zones B-1 through B-6 into a single zone B; the creation of some new zone areas including junior hunt zones to promote hunting for youngsters; and minor zone boundary modifications, tag quotas, and season changes.

-Section 362, which provides for the hunting of bighorn sheep, creates a new third zone in the Clark and Kingston Mountain Ranges, and increases the number of total tags from eight to twelve.

-Section 363, regarding antelope hunting, provides for the creation of a special auction tag to raise funds for DFG similar to the special auction tag for Nelson bighorn sheep.

-Section 368 creates a tag system for wild pig hunting.

-Section 465.5, regarding the use of traps, provides that anchor chains attached to padded traps must have a double swivel

mechanism, one swivel where the chain attaches to the center of the trap and another swivel at any point along the chain.

FGC expected to submit this rulemaking package to OAL at the end of May.

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

-On April 10, the Administrator of the Office of Oil Spill Prevention and Response (OSPR) published notice of his intent to adopt sections 852.60-852.65, Title 14 of the CCR. OSPR was created within DFG pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990). [11:4 CRLR 184-85] The proposed new regulations would pertain to grants to eligible local governments to develop, update, or revise local oil spill contingency plan elements of hazardous materials area plans required pursuant to section 25503 of the Health and Safety Code. Public hearings were scheduled for May 28 and 29.

-On May 22, OAL approved sections 790-797, permanent financial responsibility regulations for OSPR. [12:1 CRLR 167]

-At its February 7 meeting, FGC adopted sections 185, 185.5, 200.12, 200.31, and 690, reptile captive propagation regulations. These regulations authorize the captive propagation and sale of domesticated native reptiles including kingsnakes, gopher snakes, and rosy boas, and provide for the humane treatment of these animals. [12:1 CRLR 166] This rulemaking package was approved by OAL on April 23.

-At its February 6 meeting, FGC adopted amendments to section 699.5, which increase DFG's fee schedule for processing streambed and lake alteration agreements. [11:4 CRLR 185] This rulemaking package was approved by OAL on April 14.

-On February 26, OAL approved FGC's regulatory changes to sections 671-671.5, Title 14 of the CCR, which set forth minimum standards for humane care and treatment of wild animals and establish guidelines and qualifications for the issuance of permits to import, transport, and possess wild animals. [12:1 CRLR 167]

-At its January meeting, FGC amended section 190, Title 14 of the CCR, to allow DFG to revoke or suspend the commercial passenger fishing vessel license or permit of any person who fails to keep and submit required fishing activity records. [12:1 CRLR 166] At this

writing, this regulatory change has not yet been submitted to OAL.

-As a carry-over item from its December 6 meeting, FGC at its January 10 meeting adopted the 1992-94 sport fishing regulations. The carry-over was necessary to accommodate a 15-day public review period required by modifications made to the proposed regulations. The modifications to the regulations include a two-fish bag limit at Haywee Reservoir; an exemption of Red Lake from the increased bag limit for brook trout; and a change in section 5.87, Title 14 of the CCR, regarding tail clipping by ocean fishers. This rulemaking package was submitted to OAL on January 28, and approved by OAL on March 12.

LEGISLATION:

AB 2341 (Felando). Existing law prohibits the use of drift gill nets to take shark or swordfish in ocean waters within 75 nautical miles from the mainland coastline from May 1 to July 14, inclusive; during the period when the fishery is not closed, a permit from DFG is required for that taking. As introduced January 16, this bill would instead make that prohibition apply from May 1 to August 14, inclusive. [S. NR&W]

AB 2343 (Felando), as amended May 7, would, six months after the legislature makes a specified appropriation, create the California Marine Fisheries Management Council within DFG, consisting of nine members; the Commission would be required to prepare a fishery management plan with respect to each fishery, subject to specified approval of the DFG Director. [A. Floor]

AB 2455 (Baker), as introduced February 3, would authorize DFG to operate hatchery facilities to conduct research on striped bass and to seek reimbursements for these services. [S. NR&W]

AB 2604 (Cortese), as amended March 19, would require that, if a license tag to take antelope, elk, or Nelson bighorn rams, as specified, is sold at an auction or otherwise by a nonprofit organization, the selection of the seller shall be determined by public drawing, and would prohibit a nonprofit organization or chapter of a nonprofit organization from submitting more than one application to sell a hunting license tag for any single species. This bill would also require DFG, on or before May 1, 1993, to establish written policies and procedures relating to the application process and the award of hunting license tags for fundraising purposes. [S. NR&W]

AB 2654 (Tanner). Existing law prohibits any project for construction by, or on behalf of, a state or local government-



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tal agency or a public utility that will divert, obstruct, or change the natural flow or the bed, channel, or bank of a waterway designated by DFG unless the project incorporates modifications agreed to by DFG and the governmental agency or public utility. As amended April 23, this bill would additionally require the incorporation into any project for such construction of modifications if the project would result in the disposal or deposit of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by DFG. [A. Floor]

AB 2261 (Felando), as amended May 7, would define the term "slurp gun" for purposes of regulation of commercial fishing in specified ocean waters.

Existing law, operative January 1, 1993, requires a person engaging in business for profit involving fish or aquaculture products to be licensed by DFG. That law excepts from the requirement for a fish receiver's license, among others, a person who sells fish that he/she has taken to the ultimate consumer or who only transports fish, as specified. This bill would also except persons who engage in collecting, receiving, or selling only non-native live marine specimens, as specified, from the requirement that they obtain a fish receiver's license. [S. NR&W]

AB 2822 (Cortese). Existing law requires any person who engages in raising, importing, or keeping in captivity any domesticated game birds or domesticated game mammals which normally exist in the wild to obtain a domesticated game breeder's license from DFG, with specified exceptions; for those provisions, the term "domesticated game mammals" includes mountain lions. This bill would delete those domesticated game breeder provisions relating to mountain lions and the provisions relating to class 3 licenses for game breeding activities involving only mountain lions. [S. NR&W]

AB 2823 (Cortese). Existing law declares the policy of the state relating to the conservation and maintenance of wildlife resources of the state. This bill would include the preservation of wildlife resources in that declaration. [S. NR&W]

AB 2876 (Speier), as amended May 14, would require DFG to prepare and present a report to the legislature on or before July 1, 1993, on the status of habitat types in California and the activities DFG is taking to preserve and protect habitat; DFG would also be required to make recommendations for programs the state should undertake to preserve and protect habitat types, and any additional research

necessary to achieve habitat protection. The bill would appropriate \$30,000 from the California Environmental License Plate Fund to DFG to prepare and present the report. [A. W&M]

AB 2924 (Hauser), as amended March 23, would require a permit for the use of drift lines to take shortfin mako (bonito) sharks or blue sharks for commercial purposes. [S. NR&W]

AB 2958 (Kelley). Under existing law, DFG has established advisory committees on various subjects within its jurisdiction. As introduced February 19, this bill would prohibit any statewide advisory committee established administratively by DFG from continuing in existence for more than three years unless expressly provided otherwise by statute. This bill would also require the DFG Director to appoint four advisory committees, and would require DFG to provide assistance to the advisory committees from its existing resources. [S. NR&W]

AB 3010 (Costa). Existing law requires DFG to annually adjust its filing fee which defrays the costs of managing and protecting fish and wildlife trust resources. As introduced February 19, this bill would require the adjusted fee to be rounded to the nearest \$5. [S. NR&W]

AB 3076 (Allen), as amended April 30, would declare that the California Environmental Quality Act (CEQA) is intended to assist in identifying feasible alternatives and feasible mitigation measures. The bill would also require lead agencies to conduct a search among state and local agencies for long-range plans affecting environmental factors in order to identify and evaluate the feasibility of mitigation measures and alternatives to a project.

CEQA requires a state lead agency to consult with and obtain findings from DFG in preparing an environmental impact report, as to the impact of the project on endangered or threatened species. This bill would exempt from that requirement projects in urbanized areas, as defined. [A. NatRes]

AB 3145 (Campbell), as introduced February 20, would rename DFG the Department of Fish and Wildlife. [S. NR&W]

AB 3190 (Hauser), as amended April 9, would require DFG to conduct an assessment of the nearshore commercial hook and line fisheries to make specified determinations and to report its findings and recommendations for the management of the fisheries to the legislature on or before January 1, 1995. [S. NR&W]

AB 3191 (Hauser). Under existing law, abalone may be taken for commercial purposes in specified districts. However,

if the DFG Director makes a written finding that the further taking of abalone will endanger the resource in an area, the Director may close that area or any part of that area to the taking of abalone for commercial purposes until such time as the Director determines that the taking will no longer endanger the resource. As amended March 23, this bill would eliminate the authority of the DFG Director to take that action with respect to that portion of District 10 south of Point Lobos. [S. NR&W]

AB 3193 (Hauser), as amended April 21, would require DFG to issue sea urchin diving permits to persons who held sea urchin diving permits prior to January 1, 1993, under specified conditions. [A. Floor]

AB 3196 (Hauser), as amended April 21, would require the DFG Director to establish the Office of Legal Counsel in DFG, and would provide for legal representation by that legal counsel and, except in the case of a conflict in representation, would require the Attorney General to represent DFG in litigation. [A. Floor]

AB 3207 (Campbell). Existing law makes it a misdemeanor to place or plant, or cause to be placed or planted, any live fish, any fresh or saltwater animal, or any aquatic plant in any waters of the state without first submitting it for inspection to and securing the written permission of DFG. As amended April 2, this bill would require DFG to adopt specified guidelines as the policy of this state in order to prevent the introduction and spread of aquatic nuisance species into any river, estuary, bay, or coastal area through the exchange of ballast water of vessels prior to entering those waters. [S. NR&W]

AB 3291 (Cortese). Existing law authorizes DFG to audit, or require a county to audit, expenditures by the county from its fish and wildlife propagation fund in order to determine compliance with requirements for allocation of funds received by the county derived from penalties for violations of the Fish and Game Code. As amended April 1, this bill would authorize DFG to audit, or require the county to audit, revenues deposited in the fund from those penalties. [A. W&M]

AB 3292 (Cortese). Existing law authorizes DFG to accept a credit card charge as a method of payment of fees for licenses, certificates, permits, license tags, applications for license tags and stamps, license stamps, area passes, permits, and punch cards. As amended April 2, this bill would remove the restriction on the payments for which DFG may accept credit card charges, and instead authorize acceptance of credit card charges by DFG for any payment.



This bill would also require the suspension of a person's hunting privileges if the person is convicted of a safety or sportsmanship violation of the Fish and Game Code, as specified. The bill would prohibit termination of the suspension until the person successfully completes a course of instruction in hunter safety and submits proof of that completion to DFG or, if the person has had a prior suspension, two years, whichever is longer. [*S. NR&W*]

AB 3421 (Mountjoy). Existing law prohibits the sale or purchase of any bird or mammal or part thereof except as provided in the Fish and Game Code; existing law excepts from that prohibition domestically raised game birds and the skin or hide of deer lawfully taken. This bill would limit that prohibition to species of birds or mammals found in the wild in California. This bill would also except from that prohibition the sale or purchase of the inedible parts of domestically raised game birds, shed antlers, or antlers from domestically reared animals that have been manufactured or cut for manufacture, and products or handicraft items made from furbearing mammals or non-game mammals taken under a trapping license. [*A. WP&W*]

AJR 80 (Jones) would memorialize the President and the Congress to adopt specified amendments during the reauthorization of the federal Endangered Species Act. [*A. WP&W*]

SB 1248 (Committee on Natural Resources and Wildlife) would make it unlawful to alter, convert, or modify habitat identified by DFG as essential to the continued viability of any species located within an area designated by DFG as a significant natural area, and declare that any act that is injurious to or interferes with the wildlife resources is a public nuisance. This bill would also provide that any violation of the Fish and Game Code that results in the loss of identified species or their habitat constitutes a misdemeanor. This bill would also authorize DFG to retain or appoint legal counsel to prosecute civil actions, and authorize DFG to abate all conditions and activities which threaten to, or have resulted in, the loss of any threatened or endangered species. [*A. inactive file*]

SB 1568 (Hart). Existing law provides for the regulation of aquaculture by FGC and leasing of state water bottoms to any person by the Commission for aquaculture. As introduced February 19, this bill would exempt aquaculture production from those provisions of the Fish and Game Code relating to commercial fishing, harvesting, processing, and market-

ing of fish. [*S. Appr*]

SB 1332 (Hill), as amended May 5, would make it unlawful for any person to possess, transport, import, export, propagate, purchase, sell, or transfer any mammal, as specified, for the purposes of maiming, injuring, or killing the mammal for gain, amusement, or sport. The bill would also prohibit a buyer of a listed mammal from reselling it to a person who intends to maim, injure, or kill that mammal for such purposes. [*S. Floor*]

SB 1345 (Committee on Senate Natural Resources and Wildlife), as amended March 17, would, notwithstanding any other provision of law, impose penalty fees for renewal of a commercial fishing license or permit that is received by DFG up to 30 days after the renewal deadline, and would require appeal to FGC for renewal. This bill would also continue until January 1, 1994, existing law which prohibits the use of gill nets and trammel nets of less than six-inch mesh in specified portions of districts 18, 19, and 118, and the use of less than eight-inch mesh in specified portions of district 18. [*A. WP&W*]

SB 1964 (Thompson). Existing law provides for the propagation, conservation, and utilization of fish and wildlife resources on private wildlife management areas. The license for the wildlife management of private lands is valid for three calendar years, and the regulations of FGC for the operations under a wildlife management plan may supersede any provision of the Fish and Game Code. As amended April 6, this bill would provide instead for the licensing of habitat enhancement and management areas and would include habitat in the declaration of the policy of the state to encourage propagation, utilization, and conservation of fish and wildlife resources on private land. [*A. WP&W*]

SB 2036 (Keene). The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act provides that there is an Administrator for oil spill response appointed by the Governor who is a chief deputy director of DFG. As introduced February 21, this bill would require the Office of the Administrator to be within the Resources Agency and delete the requirement that the Administrator be a chief deputy director of DFG. [*S. GO*]

SB 2050 (McCorquodale), as amended March 19, would—among other things—require any person who takes or possesses fish for commercial purposes or engages in the business of aquaculture under the authority of a license, permit, or other authorization, to have in his/her immediate possession, while taking or pos-

sessing fish, a photographic identification card or device and would require that person to present that identification to an officer of DFG on demand for the purpose of determining whether that authorization to fish was issued to that person. [*S. Appr*]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 167-68:

AB 641 (Hauser), as amended January 9, would—among other things—require DFG to recommend standards of protection to protect and restore wildlife resources and beneficial uses of water during the review period for any timber harvesting plan or long-term timber management plan. (See *infra* agency report on BOARD OF FORESTRY for related discussion.) [*S. inactive file*]

SB 495 (Johnston) would exempt a project found by the lead or certified regulatory agency to be *de minimis* in its effect on the environment from payment of the AB 3158 filing fee. [*11:4 CRLR 185*] [*A. WP&W*]

SB 463 (McCorquodale) would authorize DFG, until January 1, 2010 and with the approval of FGC, to qualify mitigation bank sites, as defined, in the Sacramento-San Joaquin Valley, to provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands under specified federal permits. [*11:1 CRLR 126*] [*S. Floor*]

AB 751 (Hauser) would declare it the policy of the state and DFG to permit and promote nonprofit salmon release and return operations operated by licensed commercial salmon fishers for the purpose of enhancing California's salmon populations and increasing the salmon harvest by commercial and recreational fishers. The bill would require DFG to cooperate with fishing organizations in the siting and establishment of those operations, and to regulate the operations as necessary to ensure the protection of natural spawning stocks of native salmon. [*S. Appr*]

AB 1 (Allen), as amended May 4, would—among other things—codify Proposition 132, the Marine Resources Protection Act of 1990, in the Fish and Game Code. That initiative established the Marine Resources Protection Zone, and completely prohibits the use of gill and trammel nets in the Zone after January 1, 1994. [*S. Floor*]

AB 1641 (Sher), as amended January 29, would enact a framework for the Fish, Wildlife, and Endangered Species Habitat Conservation and Enhancement Bond Act of 1991. [*S. NR&W*]

ACR 35 (Wyman) would request DFG



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to seek funding to conduct a review and evaluation to determine the status of the Mohave ground squirrel. [A. WP&W]

AB 51 (Felando), as amended April 22, would, six months after the legislature makes a specified appropriation, create the California Marine Fisheries Management Council within DFG. [S. NR&W]

AB 72 (Cortese), as amended January 29, would enact a framework for the California Heritage Lands Bond Act of 1992. [S. NR&W]

AB 145 (Harvey) would increase from \$100 to \$250 the minimum fine for an initial violation of willful interference with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place, and increase the minimum fine for a subsequent violation to \$500. [S. Jud]

The following bills died in committee: **AB 2030 (Allen)**, which would have required AB 3158 filing fees to be proportional to the cost incurred by DFG in reviewing environmental documents for projects which have a significant impact on the environment; **SB 796 (Rogers)**, which would have provided that AB 3158 filing fees are to be calculated in an amount necessary to defray the cost to DFG of providing the particular service, and would also prohibit the inclusion of any surcharge or amount intended to permit DFG to establish a reserve; **AB 172 (Felando)**, which would have—among other things—required the one-time compensation payable to persons surrendering permits to use a gill or trammel net to DFG pursuant to Proposition 132 to include the average annual ex vessel value of the fish (other than rockfish) landed by the permittee within the Marine Resources Protection Zone during the years 1983–87, inclusive; **AB 1364 (Cortese)**, which would have prohibited any change in the point of diversion, place of use, or purpose of use to individually or cumulatively cause the flow in any stream, river, or watercourse to drop below that flow needed to protect biologically sustainable populations of fish and wildlife; **AB 1557 (Wyman)**, which would have required FGC to determine whether its regulations or regulatory actions—particularly those which result in the listing of a species as endangered or threatened under CESA—would result in a taking of private property subject to the provisions of the California Constitution or the U.S. Constitution governing eminent domain; **AB 353 (Hauser)**, which would have required FGC to designate additional fish spawning or rearing waterways that it finds necessary to protect fish-life; and **AB 355 (Hauser)**, which would

have authorized DFG to order the party responsible for the deposit of any petroleum or petroleum product into the waters of this state to repair and restore all loss or impairment of fishlife, shellfish, and their habitat, and required DFG to adopt regulations to carry out the bill by June 30, 1992.

LITIGATION:

In January, U.S. District Judge David Levi granted the government's motion for a preliminary injunction in *United States v. Glenn-Colusa Irrigation District* (GCID), No. CV-S-91-1074 (E.D. Cal.). The court made it clear that the language of the federal Endangered Species Act—which prohibits the taking of a species listed as endangered and defines the term "take" to include kill, harm, and trap (even if incidentally)—left it no choice but to enjoin operation of GCID's pumping station between July 15 and November 30 in the absence of measures to protect endangered salmon. [12:1 CRLR 168]

On March 18, four days of settlement negotiations resulted in a joint stipulation and order setting forth the terms under which GCID can continue pumping water for one year. The agreement sets maximum water flows GCID will be allowed to pump in the hope that reduced flows will enable greater numbers of salmon to survive. GCID agreed to several additional alterations in its operations, including dredging its inlet channel to enable water to be pumped out of the river at a lower velocity, and providing bypass flows to help fish trapped in the intake system to swim free. To facilitate a longer-term solution, GCID agreed to make a good faith effort to secure congressional aid through partial funding of new state-of-the-art fish screens and to begin setting aside funds to cover the district's share of costs. The lawsuit remains pending and the success of the district's efforts will be evaluated in one year.

After losing its bid for a preliminary injunction to shut down the Anderson-Cottonwood Irrigation District's (ACID's) Bonneyview Water Diversion Facility, which kills salmon by diverting water from the Sacramento River south of Redding, DFG appealed to the Third District Court of Appeal. [12:1 CRLR 168–69] During the spring, briefs were submitted in *California Department of Fish and Game v. Anderson-Cottonwood Irrigation District*, No. 108224, and the case now awaits the court's decision whether to order oral argument.

Oral argument was held on May 8 in *Natural Resources Defense Council v. California Fish and Game Commission*,

No. 368042. [12:1 CRLR 169] NRDC's suit alleges that FGC's refusal to list the gnatcatcher as endangered or threatened was arbitrary and capricious and an abuse of discretion now awaits the court's decision.

RECENT MEETINGS:

At its April 2 meeting, FGC announced its policy to designate certain state lakes and reservoirs as trophy black bass waters. The trophy bass standards are 10 lbs. for largemouth bass, 6 lbs. for smallmouth bass, and 6 lbs. for spotted bass. Areas designated as trophy black bass waters must meet the following criteria: public angler accessibility and waters capable of producing trophy-sized bass.

Under its new program, FGC hopes to designate one lake/reservoir in each of the DFG's five management regions as trophy black bass waters; require DFG to manage these designated waters and provide five-year management plans; provide formal letters of recognition to anglers who catch trophy-sized black bass; and encourage anglers to catch and release black bass in the trophy waters.

FGC has designated the following as trophy black bass waters: Castaic Lake, Los Angeles County (largemouth bass); Clear Lake, Lake County (largemouth bass); Isabella Lake, Kern County (largemouth bass); Oroville Lake, Butte County (smallmouth and spotted bass); and Trinity Lake, Trinity County (smallmouth bass).

At its May 14 meeting, FGC renewed its memorandum of understanding with the Bighorn Institute, a nonprofit organization established in the early 1980s to monitor and conduct research to promote the health of the Peninsular bighorn sheep population in the Santa Rosa Mountains of Riverside County near Palm Desert. The MOU, which has been largely successful, allows the Bighorn Institute to assist DFG in protecting, maintaining, and restoring bighorn sheep populations in California. [11:3 CRLR 171; 11:2 CRLR 158]

The 1992 memorandum of understanding includes a notice of exemption from CEQA. Further, the 1992 agreement contains proposed changes that call for the designation of a new DFG project leader and a prohibition on captive breeding in 1992.

FUTURE MEETINGS:

August 6–7 in San Rafael.

August 27–28 in South Lake Tahoe.