



## REGULATORY AGENCY ACTION

that amount therefrom to CEC for implementation of the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program; **SB 2062 (Leslie)**, which would have decreased from 30% to 20% the percentage of revenues received and deposited in the Geothermal Resources Development Account that would be available for expenditure by CEC as grants or loans to local jurisdictions or private entities; **SB 1216 (Rosenthal)**, which would have enacted the Energy Security and Clean Fuels Act of 1992 and authorized, for purposes of financing a specified energy security and clean fuels program, the issuance of bonds in the amount of \$100 million; **AB 920 (Hayden)**, which would have required CEC, if funds are appropriated, to develop and deliver to the appropriate policy committees of the legislature by May 1, 1994, a plan to reduce greenhouse gas emissions; **AB 1064 (Sher)**, which would have required CEC to include in its biennial report recommendations relative to practicable and cost-effective conservation and energy efficiency improvements for investor-owned and publicly-owned utilities; and **AB 1586 (Moore)**, which would have required CEC, on or before January 1, 1993, to certify home energy conservation rating systems and procedures that calculate energy and utility bill savings to be expected from conservation measures.

### ■ FUTURE MEETINGS

CEC meets every other Wednesday in Sacramento.

### FISH AND GAME COMMISSION

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**T**he 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, set-

ting license fees for fish and game taking, listing endangered and threatened species, granting permits to conduct otherwise prohibited activities (*e.g.*, scientific taking of protected species for research), and acquiring and maintaining lands needed for habitat conservation. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

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

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

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations, and protects land and water habitats. DFG manages 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.

On August 19, the Senate confirmed Governor Wilson's appointment of developer Gus Owen to a six-year term on FGC. At this writing, candidates are being interviewed for the position left vacant by

the May resignation of former FGC President Everett McCracken. [12:2&3 CRLR 236] FGC hopes to have a replacement by its December meeting.

### ■ MAJOR PROJECTS

#### Gnatcatcher Follies Continue.

FGC's treatment of the tiny California gnatcatcher, a four-inch-long, blue-gray songbird which makes its home in the rapidly disappearing coastal sagebrush of southern California, has engendered considerable controversy and thrust the Commission into numerous legal and political battles in a variety of fora. In the year since FGC refused to list the bird as endangered under the California Endangered Species Act (CESA), the Commission has become embroiled in state court litigation against the Natural Resources Defense Council (NRDC); federal rulemaking to list the bird as endangered under CESA's federal counterpart statute; executive branch pressure on developers to voluntarily enroll lands in Governor Wilson's alternative to the sometimes inflexible results of a CESA listing, the Natural Community Conservation Planning (NCCP) program; legislative branch pressure to strengthen the NCCP program through the budget process; and state rulemaking to establish a coastal sage scrub habitat protection area. [12:2&3 CRLR 26-27, 233-34; 11:4 CRLR 181-82] Following is a status update on the various legal proceedings involving the California gnatcatcher:

• **State Court Litigation.** On August 27 in *NRDC v. California Fish and Game Commission*, No. 368042, Sacramento County Superior Court Judge William R. Ridgeway held that FGC failed to cite sufficient evidence to support its decision to reject NRDC's petition to list the gnatcatcher as endangered under CESA. The court ruled that FGC may not reject a petition if it contains "relevant and credible evidence which, considered with other evidence before the commission, a reasonable mind might accept as adequate to support a conclusion that listing was necessary." The court said it was left to "speculate" as to how FGC arrived at the six general and conclusory reasons it cited for denying the petition, and ordered the Commission to reconsider its decision.

Both NRDC and several development interests which intervened in the case claimed victory. NRDC senior attorney Joel Reynolds said the ruling is important because it is the first time a court has interpreted CESA and articulated a legal standard to guide the Commission in evaluating petitions for listing; NRDC also feels that the ruling brings the gnatcatcher one step closer to protection (*see*



*supra* report on NRDC for related discussion). The developers countered that the court could have ruled—but did not—that the ten-volume administrative record was so overwhelming that it had no choice but to order FGC to declare the bird endangered. At this writing, FGC has not yet agendaed its court-ordered reconsideration of NRDC's petition.

• **Federal Rulemaking to List the Gnatcatcher.** On September 17, the U.S. Fish and Wildlife Service (USFWS) announced its intent to postpone a decision on NRDC's petition to list the gnatcatcher under the federal Endangered Species Act (ESA) for up to six months. USFWS said a scientific question remains: whether the California gnatcatcher constitutes a subspecies distinct from varieties in central and southern Baja California. A top USFWS official said that people within the agency believe the bird is a distinct subspecies, but decided after much internal debate to obtain the concurrence of the American Ornithologists' Union (AOU). Burt Monroe, chair of the AOU committee that defines subspecies, said that the AOU has advised USFWS in recent years of its determination that the California gnatcatcher is distinct. On September 18, the *Los Angeles Times* reported that an influential group of Orange County and San Diego County developers opposed to the listing raised the subspecies question and requested the extension of time.

NRDC's Joel Reynolds characterized the decision as based on nothing but politics. Environmentalists charged that the White House pressured USFWS to delay the decision until after the November presidential election. On September 22, NRDC called the delay illegal and filed notice of its intention to sue USFWS. The ESA allows an extension of a listing decision only when there is a "substantial disagreement regarding the sufficiency or accuracy" of the scientific data about the species.

Environmentalists warn that the plight of the gnatcatcher is a sign that the entire ecosystem of southern California is in peril. Developers counter that the millions of dollars of projects and associated jobs at stake are sorely needed in southern California's sagging economy. With stakes so high, they argue, it is necessary to make certain the science is correct.

On September 23, AOU's Monroe reconfirmed to USFWS his committee's prior opinion that the California gnatcatcher is indeed a distinct subspecies. The developers' argument is based on the opinion of a Utah biological consultant hired by the Chevron Land Company and has no scientific validity, Monroe said.

USFWS responded with an estimate that its decision would not be made before late November.

• **Executive and Legislative Branches Tangle over NCCP.** Last May, Governor Wilson and Resources Agency Secretary Douglas Wheeler finally succeeded in persuading several developers and local governments to "voluntarily" enroll lands in the NCCP; only terse warnings from the executive branch convinced the landowners that the consequences of voluntary participation in the NCCP might be less harsh than a state or federal listing of the gnatcatcher as endangered.

However, several environmental groups and legislators have become increasingly dissatisfied with the NCCP, largely because it contains no interim controls on development during the habitat protection planning phase (*see supra* reports on NATIONAL AUDUBON SOCIETY and PLANNING AND CONSERVATION LEAGUE for related discussion). At the end of the summer, an unprecedented coalition of developers and environmentalists came together in support of SB 1248 (McCorquodale), which would have provided \$1.5 million in funding for the NCCP and required more stringent oversight of development projects affecting coastal sage scrub. However, the bill was defeated at the end of the session by a cavil of agricultural, timber, and oil interests. Ultimately, only \$362,000 was appropriated for the NCCP in the last-minute budget scramble. Environmentalists do not consider this amount sufficient for the NCCP to maintain any semblance of credibility.

• **FGC Rulemaking to Protect Habitat.** On July 27 and August 7, FGC received public testimony concerning proposed new section 629, Title 14 of the CCR, which would establish a Coastal Sage Scrub Habitat Protection Area. [12:2&3 CRLR 234] Subsequently, however, FGC announced its withdrawal of the rulemaking proposal at the request of the Resources Agency. The rule would have provided heightened review under California Environmental Quality Act (CEQA) guidelines of all non-*de minimis* projects in coastal sage scrub habitat unless the land is enrolled in the NCCP. A sector of the southern California development industry opposed to the NCCP testified at the hearings that the only purpose of the proposed regulation is to coerce them into enrolling lands in the NCCP. The Resources Agency reported to FGC that consideration of proposed section 629 should be postponed indefinitely due to substantial enrollment of lands in the NCCP.

## California Salmon Status Report.

Released at FGC's August 27 meeting, DFG's latest report on recovery efforts for the Sacramento River winter-run chinook salmon describes the continuing problems suffered by that species. FGC listed the winter-run chinook salmon as endangered in May 1989. [11:4 CRLR 182; 9:3 CRLR 108]

### • Red Bluff Diversion Dam (RBDD).

A total of 205 winter-run chinook were counted this year, compared to 191 fish last year, resulting in a 1992 estimate of 1,180 fish. This count gives FGC cautious optimism about salmon recovery efforts. However, DFG warns that this count should not be considered a trend since the total number of adults returning for the next two years could remain very low since they will be the offspring of the two lowest spawning populations on record. Moreover, the reason for this population increase may be that this class of fish is the first to benefit from the cool water releases at Shasta Dam. DFG also cautions that the current El Niño conditions in the Pacific Ocean could further reduce future counts.

The gates at RBDD are scheduled to be raised on November 1 this year, one month earlier than in previous years. It is hoped this action will result in fewer juvenile fish being lost to predation by squaw fish at the base of the dam. The long-term solution to RBDD's fish passage problems will either be the construction of larger fish ladders or the replacement of the dam with a pumping plant. Although more expensive, the latter option is supported by DFG and other fishery resource agencies, but faces some local opposition. As an interim measure, and to evaluate the efficiency of a pump and its impact on fish, the Bureau of Reclamation is planning to install a pilot pumping plant with a capacity of 500 cubic feet per second by October 1993.

• **Temperature Control at Shasta Dam.** Because of insufficient cold water reserves, DFG's 1992 temperature control operations were able to protect only the upper 30 miles of the 60-mile winter-run spawning and incubation area. DFG estimated that 90% of 1992 spawning would occur in this upper 30-mile area because the RBDD gates were raised during the adult migration period. Based on 1992 data to date, approximately 93% of total 1992 production is predicted to have safe incubation temperatures through September, compared to 82% last year.

Water temperature at the time three runs of salmon eggs are incubating in the river is greatly affected by the release of stored warm water from June through November. In order to mitigate this problem, DFG has recommended to the state



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Water Resources Control Board that minimum pool requirements be set for the Trinity and Shasta reservoirs in order to maintain acceptable river temperatures for incubation.

• **Squawfish Control at RBDD.** USFWS conducts periodic electrofishing of squawfish below the RBDD, and stores fish samples for future analysis to determine if they are contaminated with dioxin or dibenzofuran; no commercial fishery for squawfish will be permitted until these analyses are conducted. Private and governmental sources are being solicited for this labwork since there is no funding currently available for the project.

• **Spring Creek: Iron Mountain Mine.** This complex of underground cavities, strip mines, waste piles, and fractured bedrock creates acid-forming reactions and subsequent leaching that produces the largest discharge of hazardous materials in the nation. Last winter the discharge of acid and metals increased due to late winter storms; even though the emergency lime neutralization plant capacity was increased by 10%, it could only treat about one-fourth of the peak effluent. The overflow of this untreated water threatened to cause a potential fish kill when it spilled into the Spring Creek Debris Dam; approximately 100,000 acre-feet of clean water from Shasta Reservoir were released to dilute this toxic waste.

Due to a critically low water supply and the immediate threat to winter-run salmon, the U.S. Environmental Protection Agency (EPA) has issued an emergency order, effective this winter, mandating the installation of a treatment plant for the most concentrated discharge from Iron Mountain. Long-term plans for pollution control include a neutralization plant or plugging and flooding of the mine combined with neutralization treatment. In September, EPA was expected to publish a decision on the remedy it has chosen to pursue; at this writing, the selection has not been reported.

• **Spawning Gravel Restoration.** Two winter-run salmon nests were observed this season on one of six gravel restoration sites. USFWS reported that because of a lack of high flows, there has been little gravel dispersal. Therefore, no additional gravel has been placed in the Sacramento River this year.

• **Restriction on In-River Harvest of Winter-Run Chinook Salmon.** Last spring, to provide protection for adult winter-run salmon, FGC adopted emergency regulations applicable from January 1 through August 15 for areas of the Sacramento River. New gear restrictions prohibit any lure with a total length

over two and one-quarter inches, excluding hooks, and also prohibit netting or other removal of salmon from the water. DFG is also increasing its enforcement efforts, including the posting of warning signs. An illegal take of a threatened or endangered species could result in a \$10,000 fine; however, no one has been fined to date.

• **Experimental Captive Broodstock Program.** Since fall 1991, an ad hoc committee comprised of representatives from commercial and sport fishing groups, the National Marine Fisheries Service (NMFS), USFWS, DFG, and the University of California has been developing a captive breeding program for winter-run chinook salmon. The program's objectives are to provide insurance against extinction and/or irretrievable genetic loss; provide a source of gametes for the Coleman National Fish Hatchery Program; supplement the naturally spawning population; provide an egg and fry source for experimental physical and water quality studies; and ensure a maximum number of future options for the recovery of the species.

While it appears that sufficient funding has been acquired for initial program transport, equipment, and staffing in 1992, funding is still lacking for the 1992 genetics program and for all aspects of subsequent years of this program.

• **Development of Winter-Run Salmon Propagation Program at Coleman National Fish Hatchery.** Fifteen male and fourteen female winter-run salmon were captured for the 1992 hatchery program; thirteen of each survived to maturity and were spawned. Approximately 54,000 eggs were taken. DFG is pleased to report the hatching rate is about 80%.

• **San Francisco Bay Contaminant/Toxicity Study.** In May 1992, NMFS began a three-year contaminant study of juvenile fish to determine the degree to which they are exposed to toxic chemicals from dredging during their transit through the Bay. During the next two years, the focus of the study will be on immunological suppression and growth inhibition.

• **Review of Federal Endangered Species Status.** On June 19, NMFS published a proposed federal rule that the winter-run salmon be reclassified from merely threatened to endangered status. NMFS decided this status upgrade may be necessary after receiving petitions from the American Fisheries Society, California-Nevada Chapter. NMFS has one year from the date of publication of this proposed rule to make a final ruling.

• **Footnote on Fall-Run at RBDD.** The

August 1992 count of 1,828 fall-run chinook salmon was only one-fifth the number of fish counted by August last year (8,676). DFG hopes that this run is simply delayed and that the count will pick up in October, traditionally the highest harvest month. Due to concern about the low numbers, DFG considered, but rejected, possible emergency action to close the fisheries. By the time an emergency action could have been submitted to and approved by the Office of Administrative Law (OAL), it would have been too late to save a significant number of fish. FGC stated that it is too early to panic, but warned that the statistics are alarming.

After hearing the salmon report at the August meeting, Commissioner Frank Boren expressed concern that FGC remain aware of and available to help solve the salmon crisis. He encouraged the public to understand the urgency of this problem and challenged FGC to take a proactive role in getting the public politically active. FGC President Benjamin Biaggini stated that the Commission is energized and expressed his hope that lobbying and letters from the community would continue. FGC Executive Director Robert Treanor suggested that DFG's October salmon report contain a list of recommendations that FGC could implement. Commissioner Gus Owen suggested that staff draft an FGC letter expressing concern, but not a position, on the water temperature issue, to be sent to appropriate members of the legislature.

**Status Update on Other Declining California Species.** The following is an update on other recent actions taken by FGC and DFG with respect to declining species:

• **San Mateo Woolly Sunflower, White-Rayd Pentachaeta, and Marin Dwarf Flax.** Following a one year candidacy period, the FGC, at its June 18 meeting in Bishop, agreed 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. All three species are highly localized California endemic plants, restricted to serpentine-influenced habitats in the San Francisco Bay Area. The sunflower is found in only one known site in the world—along a two-and-one-half mile stretch of road in San Mateo County. Its survival is threatened by roadside maintenance, recreational development, and erosion. The pentachaeta, once found in a dozen sites, now remains in one small, fragmented, and degraded site. Even though the flax remains in fifteen



sites in Marin, San Mateo, and San Francisco counties, only one of these sites is actively managed to benefit the species. Its remaining population is threatened by urbanization, proposed recreational development, and the encroachment of non-native plants.

After receiving no comments from the public on these proposed amendments, FGC, at its August 28 meeting, adopted proposed amendments to section 670.2, Title 14 of the CCR, to reflect the newly-protected status of these three species. At this writing, this regulatory package is awaiting approval by OAL.

• **Vail Lake Ceanothus.** At its June meeting, FGC determined that the Vail Lake ceanothus (*Ceanothus ophiophilus*) warrants candidate status as an endangered species. An extremely narrow endemic species, this recently discovered plant is found in a single population in western Riverside County. Listing was suggested because DFG does not consider the landowner's proposal for a 60-acre preserve adequate to address the species' need for protection from wildfires caused by trespassers. However, negotiations concerning preserve design are encouraged during the candidacy period. Within one year of the date of FGC's finding, DFG must submit a written report, pursuant to section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted.

• **California Vervain.** At its August 6 meeting in San Rafael, FGC accepted Patrick Stone's petition to list the California vervain (*Verbena californica*) as a candidate species for threatened status, pursuant to section 2074.2 of the Fish and Game Code. Restricted to moist areas, this plant is found only in a three-mile belt of the Sierra's foothills, and exists in a fragile and exceedingly limited habitat. Until recently, the remoteness of this area was enough to protect the plant. However, without some form of state protection and resulting community awareness, a combination of residential development, mining, and off-road vehicle use will degrade this unique habitat. Within one year of the date of FGC's finding, DFG must submit a written report on whether this action is warranted.

**Update on the Office of Oil Spill Prevention and Response.** On August 3 at Avila Beach, Unocal Oil spilled 150 barrels of crude oil while transporting it via underground pipe from the San Joaquin Valley to its tank farm above Avila Beach, on sacred Chumash Indian grounds. At the time of the spill, a group of Chumash elders was planning to perform a religious ceremony at the site. The

elders, blocked from their sacred grounds for one day without explanation, redirected their efforts to blessing the dead wildlife, which included endangered brown pelicans and sea otter.

The accident, even though small by industry standards, took over a month to clean up. The spill is unusual because it involved oil leaking from a land source into the ocean, rather than the more common ocean leak that washes onto the shoreline. Inexperience with this type of spill caused crews to use initially the wrong combination of clean-up vessels. William Gengler, spokesman for DFG's Office of Oil Spill Prevention and Response (OSPR), reported that they had learned from this incident, and that it will provide a blueprint for landbased ocean spill response in the future.

On May 28-29, OSPR held public hearings to consider the adoption of new sections 852.60-852.65, Title 14 of the CCR, pertaining to grants to local governments for oil spill contingency plan development. [12:2&3 CRLR 237] At this writing, the proposed regulations are being modified and OSPR expects to publish the modified version for an additional 15-day comment period.

**Attorney General's Opinions.** In July, Attorney General Dan Lungren issued two opinions affecting FGC and DFG. The first opinion, No. 92-303 filed on July 7, was requested by Assemblymember Pat Nolan. Applying section 9 of Article XVI of the state constitution in accord with the natural and ordinary meaning of its words, the AG found that the constitution does not allow fish and game fines deposited in a county's fish and wildlife propagation fund to be transferred to the state's general fund.

The second opinion, No. 92-302 filed on July 22, was requested by FGC. Proposition 132, the Marine Resources Protection Act, was approved by the voters in November 1990. [11:1 CRLR 126] Among other things, it adds Article XB, Sections 14 and 15, to the constitution, declaring that prior to January 1, 1994, FGC must establish four new ecological reserves in ocean waters along the mainland coast. The surface area of these reserves must be at least two square miles, and must be restricted to "scientific research relating to the management and enhancement of marine resources." Based on the constitution's unambiguous language and the clear intent stated in the voter pamphlets, the AG opined that the use of these reserves must be restricted to scientific research to the exclusion of all other human activities.

This latter opinion has proven very

controversial. DFG has received numerous phone calls and letters, particularly from sport fishing groups, and statewide hearings have been held on the matter. A Marine Advisory Committee has been created to examine approximately eight aspects of this issue, and to draft recommendations. DFG is currently reviewing public input, and is preparing environmental documents to be submitted to FGC during the summer of 1993. FGC hearings will probably occur during August through October 1993.

**Amendments to Salmon, Steelhead, and Sturgeon Fishing Regulations.** FGC was scheduled to hold a hearing at its November 6 meeting to consider 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. The proposed amendments were discussed at the Commission's August 28 meeting.

Section 1.74 would be amended to comply with AB 2187 (Tanner) (Chapter 1037, Statutes of 1991) by establishing a steelhead trout nontransferable catch report-restoration card analogous to the existing salmon catch report punch card required for ocean fishing north of Point Delgada or in Klamath River waters. 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, or upon moving to another catch area, the angler must record the total number of steelhead caught and released in the appropriate column. The proposed changes also would reduce the size of the salmon card, but provide a supplemental card. AB 2187 requires the steelhead card to be sold for \$3.00; expenditure of revenue is limited to administering the card program and monitoring, restoring, or enhancing steelhead trout resources. Anglers are not required to return the card to DFG, but a random sample of fishers will be chosen and contacted by DFG to provide catch and angling information.

Proposed amendments to sections 2.10, 5.80, and 27.90 would alter existing hook and lure specifications, and eliminate a previously adopted increase in minimum size limit for sturgeon.

The proposed amendments to section 7.50 would 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. Lagunitas Creek is regarded as an important potential coho salmon and steelhead



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stream. Recent loss of suitable flows following construction of Marin County's Peters Dam is the probable cause of the depletion of these anadromous species. Coho salmon populations on the central coast have declined seriously, and Waddell and Scott creeks are thought to be the only anadromous waters in Santa Cruz County supporting native runs of this fish. Steelhead fishing will be limited to barbless hooks.

**Hunting Regulations for Migratory Waterfowl and Other Game Birds.** Over the summer months, the Commission approved a series of amendments to section 502, Title 14 of the CCR, its hunting regulations regarding migratory waterfowl and other game birds. These amendments were submitted to OAL on September 25.

- In the Northeastern Zone, the proposed regulatory changes would increase bag and possession limits to two per day and four in possession for white-fronted geese. FGC justifies the liberalization by estimates that the population increased 155% between 1985 and 1992.

- The proposed regulations would eliminate District 22, and its special provisions affording protection for low levels of Canada geese, within the Southern California Zone. FGC justifies this change by increased population estimates, from a low of 29,200 in 1972 to about 101,400 in 1992, and findings that other states have liberalized Canada goose hunting regulations.

- The temporary Southern San Joaquin Valley Zone, created to allow flexibility in setting seasons in response to drought conditions, would be made permanent under the proposed regulations.

- The proposed regulations for the Colorado River Zone would provide for a 107-day duck (including mergansers), American coot, and common moorhen fall-conry season concurrent with the duck season and extending to February 20.

Section 509, Title 14 of the CCR, was also amended this summer to adopt and incorporate the federal Migratory Bird Treaty Act as amended in 1992 in Part 10, subparts A and B, and Part 20, Title 50 of the Code of Federal Regulations. These amendments were also submitted to OAL on September 25.

Section 485, Title 14 of the CCR, was amended this summer to provide that American crows may be taken statewide beginning the first Saturday in December and extending for 124 consecutive days. This liberalization provides sport hunters with additional winter and spring hunting opportunities when many other game seasons are closed. Sections 303 and 500,

Title 14 of the CCR, were also amended to alter the hunting seasons and permits allowed for sage grouse and band-tailed pigeons. Changes to these three sections were approved by OAL on September 29.

**Sea Urchin Regulations.** A decade ago, sea urchins were overgrazing the kelp beds off La Jolla and Point Loma. DFG authorized quick lime poisoning until the early 1980s. Today, the success of urchin abatement, coupled with a growing demand for urchins for sushi, presents a new problem—not enough urchins. On July 7, OAL approved FGC's amendments to sections 120.7 and 123, Title 14 of the CCR, which reduces the open season for taking red sea urchins and increases the minimum permissible size shell diameter in southern California. Fear of depleting southern California's urchin beds and a subsequent reduction in the annual \$80 million Japanese export market led FGC to limit the number of fishing days and raise the minimum size for harvesting urchins to three and one-quarter inches.

Industry members believe these strict regulations are necessary to maintain sustainable urchin populations, thereby protecting fishers' long-range interests. However, some feel that the new regulations may diminish diver safety because the reduction in the number of open days gives divers incentive to work in bad weather they previously would have avoided.

**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:

- **1992-93 Mammal Hunting Regulations.** On July 8, OAL approved FGC's adoption of new section 251.4 and amendments to sections 265, 353-354, 360-364, 364.5, 367-368, and 371, Title 14 of the CCR. This regulatory action adopts permit and tagging requirements for the possession (not taking) of mountain lions (section 251.4), and amends existing regulations for the taking of deer, elk, tule elk, bighorn sheep, pronghorn antelope, bear, and wild pig. Most of the amendments deal with changing boundary lines, seasons, number of tags allowed, and use and training of dogs for pursuit or take of mammals. [12:2&3 CRLR 237]

- **1992-93 Mammal Trapping Regulations.** On September 4, OAL approved FGC's amendments to section 465.5, Title 14 of the CCR, which, among other things, allow the use of otherwise prohibited unpadded leg-hold traps outside the designated Sierra Nevada red fox and San Joaquin kit fox protection zones, and of conibear-type and snare traps

within the fox protection zones as long as the traps are fully submerged. [12:2&3 CRLR 237]

- **Sea Cucumbers.** On September 14, OAL approved FGC's amendment to section 120.3, Title 14 of the CCR, conforming provisions regarding the incidental take of sea cucumbers while trawling for prawns with newly-enacted section 8396 of the Fish and Game Code by requiring a permit to so take or possess a sea cucumber.

- **Fishing Activity Log.** On September 11, OAL approved FGC's amendment to section 190, Title 14 of the CCR, which allows 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]

- **Commercial Fishing Permits.** On September 9, OAL approved amendments to regulatory sections 148 and 231, changing the permit year for commercial take of Pacific mackerel to April 1 through March 31 of each year, and changing the permit year for the sport-caught fish processor permit to January 1 through December 31.

- **Salmon Sport Fishing Closures.** On September 2, OAL approved amendments to section 7.50, Title 14 of the CCR, imposing special sport fishing closures on the Klamath River within 500 feet of the mouths of the Salmon, Shasta, and Scott rivers, instituting barbless hook requirements between August 1 and December 31, and reducing possession limits and take of salmon in both the Klamath and Trinity rivers. The changes also extend downstream the ban on salmon fishing on portions of the Merced, Stanislaus, Tuolumne, and San Joaquin rivers. Fall-run chinook salmon declined to critically low levels in 1991-92 (see *supra* MAJOR PROJECTS).

- **Chinook Salmon Ocean Sport Fishing Season Restrictions.** On June 8, FGC circulated notice of its intent to amend section 27.80, Title 14 of the CCR, to conform state regulations governing state ocean waters (zero to three miles out) to federal (NMFS) regulation changes for U.S. waters (3-200 miles). The regulatory changes are designed to protect fall-run chinook salmon by restricting ocean salmon fishing seasons and methods of take. Similar emergency regulations took effect in May. [12:2&3 CRLR 236] FGC approved the permanent regulations at its August 7 meeting, and was scheduled to submit them to OAL in early October.

- **Commercial King and Silver Salmon Ocean Fishing Take Limits.** On July 31, OAL approved amendments to section 182, Title 14 of the CCR, to conform



regulations governing fishing in state ocean waters to new federal regulations limiting the commercial king and silver salmon take in designated areas, closing the area from Point Arena to the Oregon border to all commercial salmon fishing, requiring barbless hooks, and providing for possession and landing of frozen salmon in a head-off condition. These permanent regulations supplant similar emergency regulations that took effect in May. [12:2&3 CRLR 236]

## • *Salmon Tail Fin Cutting Relaxed.*

On September 14, OAL approved amendments to section 5.87, Title 14 of the CCR, relaxing existing regulations that require salmon tail fins to be immediately cut off on board boats in ocean waters when taken through a commercial license. Salmon may now be possessed without clipped tails so long as fishing continues and lines are in the water. Tails must be clipped prior to the boat getting under way after fishing ceases.

## • *Eastman Lake Opened to Fishing.*

On July 14, OAL approved amendments to sections 3.00 and 7.50, Title 14 of the CCR, opening the west shoreline of Eastman Lake in Madera and Mariposa counties to sport fishing during daylight hours.

• *Validity Date of Sport Fishing License.* FGC was scheduled to hold a public hearing on November 6 to consider a proposed amendment to section 705, Title 14 of the CCR, requiring one-day sport fishing licenses (which are valid for both ocean and non-ocean fishing) to clearly show the date of validity.

## ■ LEGISLATION

**AB 1365 (Baker)** would have enacted the Wetlands Mitigation Bank Act of 1992 and authorized DFG, until January 1, 2010, to qualify wetland mitigation bank sites in inland areas; provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands; and credit wetlands created in a bank site for those wetlands lost in qualifying urban areas. This bill was vetoed by the Governor on September 30.

**AB 2912 (Mays)** imposes a uniform oil spill response fee at an amount not exceeding a specified sum during any period that the Oil Spill Response Trust Fund contains less than the designated amount, as set by the Administrator of DFG's Oil Spill Prevention and Response Program, in consultation with the State Board of Equalization; the bill requires that the fee be not less than a specified sum unless the Administrator finds that the assessment of a lesser fee will cause the

Fund to reach the designated amount within four months. This bill was signed by the Governor on September 30 (Chapter 1312, Statutes of 1992).

**AB 3173 (Lempert)** requires that the regulations and guidelines governing the adequacy of oil spill contingency plans ensure that each contingency plan specifies an agent for service of process in California; permits money in the Oil Spill Prevention and Administration Fund to be used to respond to an imminent threat of a spill; and prohibits the cumulative amount of any expenditure for that purpose to exceed a specific amount in any fiscal year unless the Administrator receives approval by the Department of Finance. This bill was signed by the Governor on September 30 (Chapter 1313, Statutes of 1992).

**SB 742 (Mello)** requires an application for a commercial fishing license to contain a statement of the applicant's gender, and requires any person who takes or possesses fish for commercial purposes, or engages in aquaculture under the authorization of a license, permit, or other authority, to have in his/her immediate possession a driver's license or identification card. This bill was signed by the Governor on September 26 (Chapter 936, Statutes of 1992).

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 237-40:

**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. This bill instead makes that prohibition apply from May 1 to August 14, inclusive. This bill was signed by the Governor on July 29 (Chapter 389, Statutes of 1992).

**AB 2455 (Baker)** authorizes DFG to operate hatchery facilities to conduct research on striped bass and other fish and to seek reimbursements for these services. This bill was signed by the Governor on September 12 (Chapter 641, Statutes of 1992).

**AB 2604 (Cortese)** requires—until January 1, 1996—that, if more than one license tag to take antelope, elk, or Nelson bighorn rams is sold at auction or otherwise by a nonprofit organization, the selection of one of the sellers shall be determined by drawing. This bill also requires 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. This bill was signed by the Governor on September 28 (Chapter 1094, Statutes of 1992).

**AB 2654 (Tanner).** Existing law prohibits any project for construction by, or on behalf of, a state or local governmental 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. This bill additionally requires the incorporation into any project for such construction of modifications agreed to by DFG and the governmental agency or public utility 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. This bill was signed by the Governor on September 12 (Chapter 646, Statutes of 1992).

**AB 2261 (Felando).** Existing law, operative January 1, 1993, requires a person engaged 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 also excepts persons who engage in collecting, receiving, or selling only nonnative live marine specimens, as specified, from the requirement that they obtain a fish receiver's license. This bill also requires persons engaging in the business of receiving marine organisms from marine aquaria collectors to obtain a marine aquaria receiver's license from DFG for a fee, established by the Department, of not less than \$500 or more than \$1,000. This bill, which also defines the term "slurp gun" for purposes of the Fish and Game Code, was signed by the Governor on September 17 (Chapter 742, Statutes of 1992).

**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 deletes 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. This bill was signed





## REGULATORY AGENCY ACTION

by the Governor on July 18 (Chapter 244, Statutes of 1992).

**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 includes the preservation of wildlife resources in that declaration. This bill became law without the Governor's signature on July 21 (Chapter 279, Statutes of 1992).

**AB 3010 (Costa).** Existing law requires DFG to impose and collect a filing fee in specified amounts to defray the costs of managing and protecting fish and wildlife trust resources; existing law requires DFG to annually adjust the fee. Among other things, this bill deletes the requirement for the annual fee adjustment and exempts from those fees projects found by the lead or certified regulatory agency to be *de minimis* in their effect on fish and wildlife. This bill was signed by the Governor on September 18 (Chapter 761, Statutes of 1992).

**AB 3145 (Campbell).** Existing law authorizes persons to designate \$1 of the money otherwise due from income tax refunds for donations to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund, to be used for specified purposes. This bill provides that the administrative overhead assessment on that portion of the funds deposited in that account expended through contracts shall not exceed 15%. This bill was signed by the Governor on September 12 (Chapter 658, Statutes of 1992).

**AB 3190 (Hauser)** requires 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. This bill also prohibits the use of set lines, vertical fishing lines, or troll lines for purposes of taking fish for commercial purposes in Fish and Game Districts 7 or 10 within one nautical mile of the nearest point of land on the mainland shore from sunset on Friday to sunset on the following Sunday or from sunset of the day before a state-recognized legal holiday until sunset on that holiday. This bill was signed by the Governor on September 12 (Chapter 660, Statutes of 1992).

**AB 3207 (Campbell)** requires 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 bal-

last water of vessels prior to entering those waters. This bill was signed by the Governor on September 21 (Chapter 840, Statutes of 1992).

**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. This bill removes the restriction on the payments for which DFG may accept credit card charges, and instead authorizes acceptance of credit card charges by DFG for any payment. This bill was signed by the Governor on September 26 (Chapter 1005, Statutes of 1992).

**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 limits that prohibition to species of birds or mammals found in the wild in California. This bill also excepts 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 nongame mammals taken under a trapping license. This bill was signed by the Governor on July 18 (Chapter 255, Statutes of 1992).

**SB 1332 (Hill)** makes it unlawful for any person to possess, transport, import, export, propagate, purchase, sell, or transfer any live mammal, as specified, for the purposes of maiming, injuring, or killing the mammal for gain, amusement, or sport. The bill also prohibits a buyer of a listed live mammal from reselling it to a person who intends to maim, injure, or kill that mammal for such purposes. This bill was signed by the Governor on September 22 (Chapter 888, Statutes of 1992).

**SB 1345 (Committee on Natural Resources and Wildlife)** would have—among other things—provided that, unless otherwise specifically required by the Fish and Game Code, public employees or their agents are not required to be licensed or certified to conduct fish and wildlife management activities required for the preservation, conservation, and enhancement of natural resources; deleted existing law which requires DFG to prepare and submit quarterly financial reports to the legislature until the loans to the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund from that fund are repaid with

interest; and continued indefinitely existing law, which otherwise is to be repealed on January 1, 1993, which specifies that Nelson bighorn sheep are game mammals for purposes of sport hunting. This bill was vetoed by the Governor on September 30.

**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. This bill provides instead for the licensing by DFG, after approval of FGC, of wildlife habitat enhancement and management areas and includes habitat in the declaration of the policy of the state to encourage propagation, utilization, and conservation of fish and wildlife resources on private land. This bill also prohibits the closure of public access roads to the public as a result of licensing a wildlife habitat enhancement and management area or implementing a wildlife habitat enhancement and management plan. This bill was signed by the Governor on September 21 (Chapter 818, Statutes of 1992).

**SB 463 (McCorquodale)** would have authorized, until January 1, 2010, DFG 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. This bill was vetoed by the Governor on September 30.

**AB 751 (Hauser)** declares it the policy of the state and DFG to permit and promote nonprofit salmon release and return operations operated by, or on behalf of, 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 requires DFG to cooperate with fishing organizations in the siting and establishment of those operations to ensure the protection of natural spawning stocks of native salmon. This bill was signed by the Governor on September 26 (Chapter 984, Statutes of 1992).

**AB 1 (Allen),** among other things, codifies 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. This bill was signed by the Governor on June 18 (Chapter 94, Statutes of 1992).

The following bills died in committee: **AB 2343 (Felando)**, which would have created, upon a specified appropriation by the legislature, the California Marine Fisheries Management Council within DFG; **AB 2876 (Speier)**, which would have required DFG to present a report to the legislature on the status of habitat types in California and the activities DFG is taking to preserve and protect habitat; **AB 2924 (Hauser)**, which would have required a permit for the use of drift lines to take shortfin mako (bonito) sharks or blue sharks for commercial purposes; **AB 2958 (Kelley)**, which would have prohibited any statewide advisory committee established administratively by DFG from continuing in existence for more than three years unless expressly provided otherwise by statute; **AB 3076 (Allen)**, which would have declared that CEQA is intended to assist in identifying feasible alternatives and feasible mitigation measures, and required 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; **AB 3191 (Hauser)**, which would have eliminated the authority of the DFG Director to close any area in District 10 south of Point Lobos to the taking of abalone for commercial purposes; **AB 3193 (Hauser)**, which would have required DFG to issue sea urchin diving permits to persons who held sea urchin diving permits prior to January 1, 1993, under specified conditions; **AB 3196 (Hauser)**, which would have required the DFG Director to establish the Office of Legal Counsel in DFG, provided for legal representation by that legal counsel and, except in the case of a conflict in representation, required the Attorney General to represent DFG in litigation; **AB 3291 (Cortese)**, which would have authorized DFG to audit, or require a county to audit, revenues deposited in its fish and wildlife propagation fund from specified penalties; **AJR 80 (Jones)**, which would have memorialized the President and the Congress to adopt specified amendments during the reauthorization of the federal Endangered Species Act; **SB 1248 (McCorquodale)**, which would have made it unlawful to alter, convert, or modify habitat identified by DFG as essential to the continued viability of any species located with an area designated by DFG as a significant natural area, and declared that any act that is injurious to or interferes with the

wildlife resources is a public nuisance; **SB 1568 (Hart)**, which would have exempted aquaculture production from specified provisions of the Fish and Game Code relating to commercial fishing, harvesting, processing, and marketing of fish; **SB 2036 (Keene)**, which would have required that the Office of the Administrator of the Oil Spill Prevention and Response program be within the Resources Agency and deleted the requirement that the Administrator be a chief deputy director of DFG; **SB 2050 (McCorquodale)**, which would have—among other things—required 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 possessing fish, a photographic identification card or device for presentation to an officer of DFG on demand, for the purpose of determining whether that authorization to fish was issued to that person; **AB 641 (Hauser)**, which would have—among other things—required 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; **SB 495 (Johnston)**, which would have exempted 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; **AB 1641 (Sher)**, which would have enacted a framework for the Fish, Wildlife, and Endangered Species Habitat Conservation and Enhancement Bond Act of 1991; **ACR 35 (Wyman)**, which would have requested DFG to seek funding to conduct a review and evaluation to determine the status of the Mohave ground squirrel; **AB 51 (Felando)**, which would have created, upon a specified appropriation by the legislature, the California Marine Fisheries Management Council within DFG; **AB 72 (Cortese)**, which would have enacted a framework for the California Heritage Lands Bond Act of 1992; and **AB 145 (Harvey)**, which would have increased 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 increased the minimum fine for a subsequent violation to \$500.

## LITIGATION

In *Natural Resources Defense Council v. California Fish and Game Commis-*

*sion*, No. 368042 (Aug. 27, 1992), Sacramento County Superior Court Judge William R. Ridgeway found insufficient FGC's reasons for rejecting NRDC's petition to list the California gnatcatcher as endangered under the California Endangered Species Act (CESA), and ordered FGC to reconsider its decision (*see supra* MAJOR PROJECTS).

In another case interpreting CESA, the Third District Court of Appeal reversed the trial court's decision denying DFG's motion for injunctive relief in *California Department of Fish and Game v. Anderson-Cottonwood Irrigation District (ACID)*, No. 108224 (Aug. 24, 1992). The court held that section 2080 of the Fish and Game Code, which proscribes the "taking" of endangered species, applies not only to deliberate takings through hunting and fishing but also to incidental killing of fish resulting from lawful practices such as irrigation activities. Fry are drawn into ACID's irrigation pumps and killed by the pump blades or by passing through the conveyance canals to ultimate death in agricultural fields. [12:2&3 CRLR 240; 12:1 CRLR 169-69]

The court rejected ACID's argument that since it is not a hunter or fisher, it does not have the requisite intent envisioned by CESA. ACID also argued unsuccessfully that subjecting it to CESA's constraints imposes strict liability on agricultural diversions contrary to legislative intent. The court responded that CESA makes clear that its intent is to protect fish, not to punish fishers; therefore, it is inconceivable that a statutory scheme, the purpose of which is to protect natural resources, should be construed to allow the wholesale killing of endangered species simply because the method does not involve hunting or fishing. According to section 2080, the term "take" means hunt, pursue, catch, capture, or kill. Because ACID does not deny that it acquired "possession" of the fish diverted by the pumps, ACID's possession alone was sufficient to draw ACID into CESA's net. Moreover, the court agreed with DFG that since section 1908 expressly provides that the definition of "take" includes takings of rare and endangered native plants, and since people do not hunt or fish for plants, takings cannot be limited to hunting- and fishing-related activities.

The court reminded ACID of previous holdings that an irrigation district's right to divert water carries with it an implied duty to protect fish. The court emphasized that ACID will not be enjoined from conducting its operations, only from conducting them in a manner that violates this implied duty. At this time, a new fish





screen has been installed at ACID's Bonneyview pump station and appears to be operating at the required performance level.

On July 13, the eve of the first anniversary of the metam sodium spill that killed all wildlife along a 45-mile stretch of the upper Sacramento River, Attorney General Dan Lungren filed a lawsuit against Southern Pacific Railroad to recover millions of dollars of clean-up costs. The state has already spent \$2 million on clean-up, but DFG estimates its total expenditures alone will reach the \$3 million mark. [12:2&3 CRLR 14, 216, 236-37]

Southern Pacific officials complained that the suit is unnecessary since the company has agreed to pay all appropriate costs for the spill. The suit also seeks to recover damages from AMVAC Chemical Company of California, manufacturer of the metam sodium, and General American Transportation Corporation of New York, owner and maker of the tank car carrying the pesticide. (See *supra* agency report on WATER RESOURCES CONTROL BOARD for related discussion.)

Decimation of the fish population prompted DFG to ban fishing in the river this past summer. DFG also declined to stock the river with hatchery-raised trout, despite pleas from local officials whose towns are suffering from the resultant drop in tourism. Typically, DFG puts 27,000 fish in this stretch of the Sacramento River; this year marks the first time in 50 years that trout have not been introduced. DFG feared that stocking the river with hatchery fish would upset the delicate balance of insects, predators, and wildlife in areas rendered sterile by the spill.

The Sierra Club Legal Defense Fund, representing a coalition of environmentalists and fishers, filed suit against the federal government in U.S. District Court for the Eastern District of California on September 10. Pursuant to the federal Endangered Species and Clean Water acts, as well as the state Fish and Game Code, the coalition contends that illegal water policies are killing already low salmon populations in the Sacramento River. The coalition is seeking to force the Bureau of Reclamation to hold additional water in Shasta and Trinity lakes to protect salmon spawning. It is alleged that the Bureau has mismanaged federal Central Valley Project water during the California drought over the last six years by deliberately depleting cold-water reserves in Shasta Lake. The coalition claims that too much water was delivered to big dairy, beef, and cotton operations on the west side of the San Joaquin Valley, thereby

contributing to the disruption in salmon spawning.

## RECENT MEETINGS

At FGC's August 28 meeting, N. Gregory Taylor of the Metropolitan Water District (MWD) gave a presentation on mitigation banking. [11:1 CRLR 126] Taylor stated that the three current goals of mitigation banking are to set aside threatened areas, establish a process which is readily available to accept land into the program, and avoid confrontations over proposed development projects. Taylor enumerated several important elements of successful mitigation banking strategy. First and foremost is the significance of cooperation and partnership among involved parties. Currently, mitigation banking "wish lists" exceed available state funding, thereby making consolidation of efforts among parties more attractive. Also, he stressed that efforts should be made to accept parcels of land of almost any size, since much of the land acquired for a mitigation bank comes in smaller parcels that over time accumulate to become part of a greater unit deserving of large parcel protection.

As an example of successful collaborative efforts, Taylor cited how six parties cooperated in the acquisition of the Santa Rosa Plateau, a 3,835-acre area near Murietta, for \$35.4 million. The parties involved were a wildlife conservation group, The Nature Conservancy, Metropolitan Water District, Riverside County Parks and Operations, USFWS, and DFG. Another example of partnership is the Shipley Reserve, named after Dr. Roy E. Shipley from whom it was purchased. Here, five parties worked together during the summer of 1991 to acquire 2,460 acres of habitat necessary to keep the Kangaroo Rat program alive. This \$10 million acquisition was vital because it provides a spine of land connecting two reservoir sites containing abundant wildlife and plants.

Taylor suggested that a mitigation bank acquire only those parcels with demonstrated suitability in order to spend limited available funds in the most useful manner. He commended the Tahoe Conservancy, whose goal is maintaining the clarity of Lake Tahoe, for its land management successes due to a well-contemplated, long-range approach. On the other hand, he cited a project in the Santa Monica mountains as an example of how a good idea can be unsuccessful in practice if it lacks a suitable plan.

At the meeting, the role of DFG in mitigation banking was clarified. Its responsibilities require it to provide field

staff for examination of parcels, attorneys for negotiations of final agreements, and tracking staff for endowments. FGC President Biaggini suggested that banking funds be rolled over quickly in order to acquire more land sooner and to enable the program to become a self-sufficient entity. Commissioner Boren suggested that the acquisition of easements may enhance the current program.

At FGC's August 28 meeting, Commissioner Owen questioned the viability of the CESA listing procedure. [10:2&3 CRLR 1] In response, it was suggested that the procedure serves a public function by bringing attention to the issues and focusing local interests and agency energies in carrying out efforts to secure habitat. Commissioner Boren challenged FGC to become more knowledgeable in scientific analysis and suggested that it may be useful to implement an annual review of currently listed species to better determine if listing actually accomplishes what it is designed to do.

Shel Meyer, president of the NorCal Fishing Guides and Sportsman Association, spoke about the futility of the listing procedure as it is currently being implemented, especially in relation to the salmon issue. Meyer suggested the imposition of a time limit for population recovery and increased cooperation with other boards, including the Water Resources Control Board. He likened the salmon egg situation to agriculture: If it is illogical to cut down a seedling one-quarter of the way through its growth, it is equally illogical to kill up to 92% of some salmon run eggs by introducing warm water into the Sacramento River and lowering its flows, thereby destroying the developing salmon (see *supra* "California Salmon Status Report").

## FUTURE MEETINGS

January 5 in Palm Springs.  
February 4-5 in Long Beach.  
March 4-5 in Redding.

## 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