



ability to identify and track unpermitted activity, repeat violators, and violations of permit conditions. These activities are currently handled via cumbersome paperwork, which hinders staff from effectively resolving all cases. The project will be developed in 1991, with implementation and on-line training for staff projected for September 1991.

#### FUTURE MEETINGS:

April 9-12 in Montecito.  
 May 7-10 in San Diego.  
 June 11-14 in San Francisco.  
 July 16-19 in Huntington Beach.  
 August 13-16 in Eureka.  
 September 10-13 in Marina del Rey.  
 October 8-11 in Monterey.

#### DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli  
 (916) 445-3531

The Department of Fish and Game (DFG), created pursuant to Fish and Game Code section 700 *et seq.*, manages California's fish and wildlife resources (both animal and plant). Created in 1951 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.

The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of 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.* These regulations concern the taking and possession of birds, mammals, amphibians, reptiles, and fish. Each member is appointed to a six-year term. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

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:

*1990-91 Mammal Hunting and Trapping Regulations Adopted.* At its November 9 meeting, FGC adopted sections 461-79, Title 14 of the CCR. These regulations relate to the hunting and trapping of six furbearing mammals (mink, gray fox, raccoon, beaver, badger, and muskrat) and seven nongame mammals (bobcat, coyote, opossum, striped and spotted skunks, long-tailed weasel, and ermine). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 154 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 180 for background information.) DFG's third environmental document on the proposed regulations reflected the need for improved traps in the ranges of two endangered species—the Sierra Nevada red fox and the San Joaquin kit fox. Thus, FGC adopted emergency amendments to section 465.5 requiring immediate compliance with improved trap requirements in the two ranges.

Sections 353 and 354, which regulate black bear hunting with firearms, were upheld by the Sacramento County Superior Court and approved by the Office of Administrative Law (OAL) on October 15. Section 366, which regulated black bear hunting with archery equipment, was repealed on October 15 pursuant to court order. (See *infra* LITIGATION; see also CRLR Vol. 10, No. 4 (Fall 1990) pp. 154 and 156 for background information.)

Sections 251.5, 265, and 402, Title 14 of the CCR, which pertain to mountain lion hunting and pursuit, are in the pro-

cess of being amended or repealed by FGC pursuant to Proposition 117. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 180 for background information.) Written comments on these proposed regulatory changes were due by February 1.

*Office of Oil Spill Prevention and Response Created.* Pursuant to SB 2040 (Keene) (Chapter 1248, Statutes of 1990), DFG's new Office of Oil Spill Prevention and Response (OSPR) is responsible for establishing a state oil spill contingency plan to prevent and respond to oil spills. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) The legislation provides a \$100 million fund to administer the program and respond to oil spills in the ocean off California. A tax assessed on the transport of oil provides \$50 million of the funding for OSPR (see *infra* LEGISLATION), and an additional \$50 million is available to OSPR through bonds.

The legislation requires the Governor to appoint an Administrator for OSPR, and vests the Administrator with responsibility for directing the prevention, removal, mitigation, and clean-up with regard to any oil spill off the coast of California. He/she is charged with studying the methods used to respond to an oil spill, including the use and effects of dispersants, incineration, and bioremediation on oil, the physical environment, and wildlife. The Administrator is also authorized to adopt regulations to promote safety in oil transportation. Currently, Ed Willis, DFG's Assistant Director of Administration for the last eight years, is OSPR's acting Deputy Administrator. He is in the process of setting up the procedures and organization of the new office.

There are two sections within OSPR: prevention and response. The prevention section, which will be composed of biologists, chemists, engineers, law enforcement personnel, and DFG employees, will inspect marine facilities, draft regulations to govern oil transport, establish laboratories for oil and chemical analysis, and establish a wildlife rehabilitation facility. Because of the state's size, satellite stations and contracts with private industry may be used to rescue and treat wildlife. In the response section, a staff of biologists, law enforcement personnel, and DFG employees will respond to oil spills with planned mitigation measures, including the dispersal of oil and the rescue of "oiled" wildlife.

*Regulations Proposed to Protect Sacramento River Winter-Run Chinook Salmon.* Based on recommendations made by the National Marine Fisheries Service, the Pacific Fishery Manage-



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ment Council recently adopted major changes in ocean salmon sport fishing regulations. Pursuant to those changes, FGC has proposed amendments to section 27.80, Title 14 of the CCR, to provide added protection for the Sacramento River winter-run chinook salmon, which has been declared endangered by FGC and threatened by the federal government. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 154-55; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 1-15; and Vol. 9, No. 4 (Fall 1989) p. 119 for background information.) These amendments would delay the opening of the ocean salmon fishing season, reduce the total number of days of open season, and enlarge the block closure area off the Golden Gate Bridge. They would also reduce the period of closure within the San Francisco Bay and block closure area by about one month. Written comments on these proposed regulatory changes were due by February 1.

**Wetland Mitigation Banks.** For several years, the Department has been discussing the establishment of guide lines for the creation and use of "wetland mitigation banks." Although DFG policy requires it to strongly discourage development in or conversion of wetlands and oppose those actions which would result in a net loss of either wetland acreage or wetland habitat values, DFG recognizes that it is not always possible to avoid impacting wetland habitat and that onsite mitigation is sometimes infeasible or undesirable from a biological perspective. A "wetland mitigation bank" is publicly or privately owned nonwetland habitat which has been converted to wetland habitat for the express purpose of providing mitigation credits to offset the adverse impacts to wetlands from approved projects elsewhere. Thus, developers who are permitted to build in or near a wetlands area may purchase a sufficient amount of area in a wetland mitigation bank to offset the damage to the wetlands affected by their development.

At its November meeting, FGC received public comment on DFG's draft guidelines for the establishment and use of wetland mitigation banks. The guidelines define relevant terms; set forth criteria for the establishment of a wetland mitigation bank and the responsibilities of DFG in approving and monitoring the site of a bank; set forth general conditions under which DFG may approve the use of a bank as opposed to onsite mitigation; and establish requirements which must be complied with when a mitigation bank is used to offset project impacts to wetlands.

Several witnesses questioned the propriety of draft guidelines which require the mitigation bank to be no more than 40 aerial miles from the project site, and which require the project proponents to purchase twice as much wetlands area from the bank as they are impacting with their development. Opponents to the concept argued that one should not be permitted to destroy a natural habitat and "replace" it elsewhere with an artificial creation which has no guarantee of replicating the same biological ecosystem. Representatives of the sand and gravel industry expressed full support for the idea, as that industry creates wetlands when digging for sand and gravel. However, these witnesses expressed a desire for separate, less stringent guidelines for the approval of wetland mitigation banks created by that industry.

FGC will discuss this matter further at future meetings, after further modification of the draft guidelines and consultation with the federal government.

**Proposition 132 Passes.** To the delight of environmentalists and sport fishers, Proposition 132 passed with 55% of the vote at the November 1990 election. The initiative bans the use of gill and trammel nets within three miles of the California coast south of Point Arguello. It also reaffirms an existing ban on the use of these nets along the northern California coast which was due to expire. Commercial fishers will be reimbursed for lost profits when their permits are turned in between July 1, 1993 and January 1, 1994. The ban will not become completely effective until January 1, 1994.

In the past, the commercial fishing industry had lobbied successfully against most legislation to ban the use of gill nets. Assemblymember Doris Allen, a longtime opponent of these nets, led the campaign to place Proposition 132 on the ballot. With the passage of the initiative, the commercial fishing industry is currently weighing its options, which include a lawsuit to test the constitutionality of the measure, or finding an alternative method of fishing. Allen is concerned that commercial fishers will begin using another form of gear which will be equally destructive.

**Closure of Frenchman Reservoir.** At its November 9 meeting, the Commission took emergency action to close Frenchman Reservoir in Plumas County to all fishing. Although it is a popular trout lake, it has been illegally stocked with northern pike. Northern pike is not native to California waters and has not been stocked by any governmental agency. It also tends to be very predatory and threatens other fish species. DFG is con-

cerned that the northern pike will spread to waters containing salmon (especially those of the Central Valley), and also hopes to discourage the illegal stocking of northern pike other waters. Fishers have already made good on threats to introduce the northern pike into other waters; more than one has been found in streams in Nevada, with hook marks, indicating they had been transported from another location.

The Commission subsequently published notice of its intent to permanently close Frenchman Reservoir until northern pike are eradicated from the reservoir, through its adoption of section 7.50(b)(69), Title 14 of the CCR. The Commission entertained public testimony on December 6, and final adoption was scheduled for February 1.

**Delta Smelt.** In accordance with FGC's August 30 request to continue studies on the status of the Delta Smelt, DFG has prepared a budget change proposal seeking funding for research on the decline of this species. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 154 for background information.) DFG has asked for \$700,000 to augment present samplings and studies, and to conduct research into histological and morphological factors to determine whether pollution or starvation could be causing the population decline. The augmented sampling was due to begin in January.

**FGC Rulemaking.** Following is a status update on some of the Commission's rulemaking proceedings over the past several months:

-Emergency Ban on White Croaker Taking Extended. On September 24, the Office of Administrative Law (OAL) extended the duration of FGC's emergency adoption of section 104, Title 14 of the CCR, for another 120-day period. The permanent adoption of section 104, which was originally adopted on an emergency basis on May 29 and prohibits commercial fishers from taking white croaker off the Palos Verdes Peninsula, was the subject of an August 2 public hearing. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) However, FGC was unable to respond to the deluge of public comment received, and was forced to readopt section 104 on an emergency basis for an additional 120-day period.

-Hunter Safety Training Equivalency. On October 18, OAL approved FGC's amendment to section 710, Title 14 of the CCR, which makes the option of taking a hunter safety equivalent test available to nonresidents as well as residents applying for a hunting license. This amendment implements changes to Fish and Game Code section 3050 which



became effective on January 1, 1990. OAL had previously rejected FGC's adoption of the amendment to section 710 on an emergency basis, finding that DFG's potential loss of hunting license revenues (if nonresidents are not permitted to take the hunter safety equivalent test) is not a sufficient basis for an emergency regulation.

-Animal Harassment Regulation Approved. On November 14, OAL approved FGC's adoption of section 251.1, Title 14 of the CCR, which prohibits the intentional harassment, herding, or driving of game and nongame birds and mammals or furbearers. At its August 31 meeting, the Commission had postponed consideration of this proposed regulation due to opposition from the aquaculture industry. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) FGC subsequently modified the proposal to exempt that industry from the prohibition.

-Waterfowl Hunting Regulations. Following discussion of public comments at its October and November meetings, FGC approved its 1991 migratory game bird (waterfowl) hunting season regulations. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 154 for background information.) OAL approved these regulatory changes on November 15.

#### LEGISLATION:

*SB 7 (Keene)*, as amended December 4, amends the Lempert-Keene-Seastrand Oil Spill Prevention and Recovery Act (see CRLR Vol. 10, No. 4 (Fall 1990) p. 153 for background information) to require, until July 1, 1991, every person owning crude oil or petroleum products, at the time they are received at a marine terminal within the state or outside the state, to pay a fee for oil prevention and administration for each barrel of oil received that has travelled through state waters. The owner of the oil, rather than the marine terminal operator, is required to pay the fee upon arrival at the terminal. The bill also requires every operator of a pipeline to pay a similar fee for every barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through state waters. This urgency bill was passed by the legislature and signed by the Governor on December 13 (Chapter 10, Statutes of 1991).

*AB 51 (Felando)*, as introduced December 3, would require DFG to conduct a study of existing marine resource management activities and impacts, make recommendations on activities to

maintain and increase the abundance of these resources, and report the results of the study and its recommendations to the Governor and the legislature by January 1, 1993. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

*AB 72 (Cortese)*, as introduced December 3, would enact the California Park, Recreation, and Wildlife Enhancement Act of 1992, which would authorize the issuance of bonds in an amount of \$928 million for purposes of financing a specified program for the acquisition, development, rehabilitation, or restoration of real property for wildlife, park, beach, recreation, coastal, historic, and museum purposes. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

*AB 89 (Felando)*, as introduced December 4, would prohibit the taking of sea cucumbers and hagfishes for sport or commercial purposes until DFG determines that the harvest of these resources can be conducted without adversely impacting the state's policy with respect to ocean resources. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

*AB 145 (Harvey)*, as introduced December 13, would increase from \$100 to \$500 the minimum fine for 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, where the person is convicted of the violation and the offense occurred within two years of another separate violation of the same provision which resulted in a conviction. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

*AB 172 (Felando)*, as introduced December 21, would prohibit the taking of any species of marine fish for sport or commercial purposes until DFG determines that the harvest of these resources can be conducted without adversely impacting the state's ability to meet certain policies and objectives relating to the conservation, maintenance, and utilization of policy with respect to ocean resources. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

#### LITIGATION:

On October 3 in *Fund for Animals, et al. v. California Fish and Game Commission*, No. 361662 (Sacramento County Superior Court), Judge Cecily Bond ruled in favor of FGC and upheld the firearms portion of its black bear hunting regulations, sections 353 and 354, Title 14 of the CCR. Hunting season for black

bear began on October 12. The court found the environmental document prepared by DFG in support of hunting black bear with firearms to be adequate. At its October 4 meeting, FGC amended sections 353 and 354 to reflect the court's decision. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 28 and 156-57; Vol. 9, No. 4 (Fall 1989) p. 119; and Vol. 9, No. 1 (Winter 1989) p. 92 for background information on this issue.)

#### RECENT MEETINGS:

At its October meeting, FGC took no action on a request by William Little for a permit to import alligators into the state for aquaculture purposes. The permit would allow Mr. Little to import alligators and alligator eggs from stock indigenous to the southern region of the United States (*alligator mississippiensis*) and raise the alligators for meat and hide. Mr. Little did not answer questions concerning how the alligators would be slaughtered, or how they would be controlled and recaptured if they escaped. Representatives of animal protection groups, including the Los Angeles SPCA and Fund for Animals, opposed the permit. FGC remanded the drafting of permit terms and conditions to DFG, which will work in conjunction with Mr. Little to address public concerns. FGC will review the permit before final approval, and must amend section 671, Title 14 of the CCR, to allow importation of alligators into California for aquaculture purposes.

At FGC's November meeting, the Sportfishing Association of California (SAC) reappeared before the Commission to request that caught halibut greater than 30 inches be allowed to be filleted on the boat, in order to save room in boat holding areas. SAC had made a similar request in August 1989 and the Commission asked DFG to study the matter. The legal size for a halibut is 22 inches; a fish over 30 inches yields a fillet of about 20 inches. The Commission approved the proposal, and an amendment to section 27.65, Title 14 of the CCR, is forthcoming. DFG will continue to study this issue during the 45-day public comment period on the proposed rule.

In response to FGC's request that DFG look into the use of DFG lands for licensed pheasant hunting clubs, DFG reported at FGC's November meeting that four sites in northern California and five sites in southern California are being considered. Grizzly Island Wildlife Area and Thermalito Forebay of the Oroville Wildlife Area are the best prospects in the northern part of the state. As for southern California, Hidden



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Valley Wildlife Area, Lake Henshaw of Vista Irrigation District, and the Wister and Finney-Ramer Units of the Imperial Wildlife Area hold the best possibilities. DFG plans to continue exploring these areas and the establishment of licensed pheasant clubs on them.

Tricia Campbell appeared before the Commission at its November meeting to present a status report on the capuchin monkey which she and her husband are raising as part of the Simian Aids for the Disabled Program. Last year, FGC approved this program—the first of its kind in California—to allow the Campbells to raise the monkey on a trial basis. Campbell reported great success with the monkey, and stated that it is “like another member of the family.” The Commission approved the Campbells’ request to keep the monkey until it is ready to train at four years of age.

Helping Hands/Simian Aids for the Disabled is a Boston program run by Dr. M.J. Willard. Dr. Willard had previously requested that she be allowed to implement the Helping Hands program in California, but FGC denied this request until the Campbells’ pilot program is completed. The monkeys are raised in homes until they are four years old, and then are sent to the Boston facility to be trained more thoroughly. Once trained, the monkeys are placed with disabled persons to help them around the house with daily activities such as opening cupboards, turning appliances on and off, retrieving dropped items, and dressing. The training costs about \$6,900 per monkey. Capuchin monkeys, which are found in Central and South America, are not taken from the wild but are captive bred. Some of the monkeys used in the Helping Hands program come from a breeding colony sponsored by Disney World.

At its December meeting, FGC accepted a land grant from The Nature Conservancy, a nonprofit corporation from Washington, D.C., for land in Tulare County. The Desert Tortoise Preserve Committee also recently granted land to the Department to serve as a protection area of the desert tortoise.

### FUTURE MEETINGS:

April 4-5 in Sacramento.  
May 16-17 in Fresno.  
June 27-28 in Alturas.

### BOARD OF FORESTRY

*Executive Officer: Dean Cromwell*  
(916) 445-2921

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 section 4511 *et seq.*). The Board is established in Public Resources Code (PRC) section 730 *et seq.*; its regulations are codified in Division 1.5, Title 14 of the California Code of Regulations (CCR). The Board serves to protect California's timber resources and to promote responsible timber harvesting. Also, the Board writes forest practice rules and provides the Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board members are:

Public: Carlton Yee (Acting Chair), Robert J. Kerstiens, Franklin L. “Woody” Barnes, and Elizabeth Penaat.

Forest Products Industry: Roy D. Berridge, Mike A. Anderson, and Joseph Russ IV.

Range Livestock Industry: Jack Shannon.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of the Department of Forestry, federal, state, and local agencies, educational institutions, public interest organizations, and

private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

### MAJOR PROJECTS:

*Board Readopts Emergency Regulations to Protect Northern Spotted Owl.* On November 7, the Board readopted emergency regulations it hopes will fairly balance the interests of the logging industry and protection of the threatened northern spotted owl. The Board had intended to adopt permanent regulations at its October 9 meeting; however, due to overwhelming public comment received during the preceding four months and the need for numerous changes in the proposed regulations, the Board was unable to adopt a satisfactory permanent rule package. To continue protection of the owl until agreement is reached on key issues, such as the need for a state biologist and the role of the CDF Director in determining conditions under which there has been a “take,” the Board readopted its emergency regulations, which are effective until March 28. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 157-58 for background information.)

*Adoption of Non-Industrial Timber Management Regulations.* On October 10, the Board held a public hearing to discuss proposed amendments to section 895 and 895.1, and the adoption of new sections 1090-1090.27, Title 14 of the CCR. The Board is required to adopt regulations to implement SB 1566 (Keene) (Chapter 1290, Statutes of 1989), which established an alternative to the THP for non-industrial forest landowners (less than 2,500 acres). The new regulations will allow non-industrial forest landowners to perform several possible timber operations under one long-term harvest plan. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 159-60 for background information on these proposed regulatory changes.)

Public comment at the hearing was predominantly supportive of the proposed regulatory changes, as they will reduce costs to small landowners and encourage better forest management. Following a 15-day comment period commencing on October 16, the Board adopted these modified regulations on November 7, and hoped to submit the rulemaking package to the Office of Administrative Law (OAL) by December 28.

*Adoption of Fire Safe Regulations.* On October 10, the Board held a public hearing to discuss the proposed adoption of fire safe regulations, sections 1270-1276.04, Title 14 of the CCR. The proposed regulations are in response to SB 1075 (Rogers) (Chapter 995, Statutes of