



REGULATORY AGENCY ACTION

transportation of oil and gas, require pipeline transportation of oil and gas unless such a method is determined not to be feasible or that the transportation would result in greater adverse environmental effects, and permit an alternative mode of transportation under specified circumstances. This bill is pending in the Senate inactive file.

SB 909 (Hart). Existing law authorizes the Commission, on an appeal, to approve, modify, or deny a proposed development. As amended May 1, this bill would additionally authorize the Commission to remand the matter to the local government or port governing body which took the action, if there is new information. This bill passed the Senate on May 9 and is pending in the Assembly Natural Resources Committee.

AB 10 (Hauser), which would prohibit the Commission from leasing, for oil and gas purposes, all state-owned tide and submerged lands situated in Mendocino County and Humboldt County not within a specified area, passed the Assembly on April 1 and is pending in the Senate Governmental Organization Committee.

AB 72 (Cortese), which, as amended May 20, would enact the California Heritage Lands Bonds Act of 1992, is pending in the Assembly Committee on Water, Parks and Wildlife.

LITIGATION:

On May 13, two months after the Coastal Commission voted to approve a coastal development permit for the controversial Batiquitos Lagoon Enhancement Project, the Sierra Club Legal Defense Fund and Buena Vista Audubon Society filed a petition for writ of mandate challenging the action by the Commission. Permit applicants and Real Parties in Interest in the suit, *Sierra Club v. California Coastal Commission*, No. 637550 (San Diego County Superior Court), are the City of Carlsbad, City of Los Angeles, Harbor Commission, Port of Los Angeles, and the Board of Harbor Commissioners for the Port of Los Angeles. The suit was considered inevitable after the Commission voted 6-5 to approve an alternative for the plan ("Alternative A") which Commission staff and resource agencies found to be violative of state restoration guidelines. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 151-53 for detailed background information on the Commission's decision and the proposed "enhancement project.")

Acting as private attorneys general, petitioners Sierra Club and Buena Vista Audubon allege that important public

policies have been ignored in the environmental review of the project. Petitioners claim the writ is necessary to guarantee appropriate review pursuant to the California Environmental Quality Act (CEQA), and to ensure enforcement of the provisions of the California Coastal Act which protect the functional integrity of existing wetlands. The suit alleges that the Commission acted unlawfully and in excess of its authority since substantial evidence is lacking to support its conclusion that the project, as approved, is in accord with CEQA. Citing multiple violations of CEQA (Public Resources Code sections 21000(g), 21001(d) and (g), 21002, 21002.1, and 21080.5(d)(2)(i)) and the Coastal Act (including Public Resources Code sections 30231, 30240, and 30233), petitioners claim that the approved project is not the least environmentally damaging feasible alternative, and contains substantially inadequate mitigation.

In addition to the CEQA and Coastal Act allegations, the petition charges that some of the commissioners (Commissioner David Malcolm, among others) received secret, unsolicited, *ex parte* communications urging approval of the "enhancement project" while the City's permit application was pending. Petitioners claim these communications conveyed purportedly factual information as well as opinions on the merits of the project and its conformity with the requirements of the Coastal Act. The representations were allegedly made by an agent of a local developer with property overlooking the Lagoon, and by representatives of public agencies, including real parties in interest Harbor Commission and the City of Los Angeles. Because these alleged *ex parte* communications came from "interested parties" while the Commission was considering the permit application, and were not made a part of the record, summarized, nor made available to the public for scrutiny, the petition alleges a violation of section 13522 *et seq.*, Title 14 of the CCR, the fair trial provisions of Code of Civil Procedure section 1094.5(b), and the whole record requirement of section 1094.5(c).

In the lawsuit filed by the San Francisco based-environmental group, Earth Island Institute Inc., against Southern California Edison (SCE), alleging violations of the federal Clean Water Act stemming from operations at the San Onofre Nuclear Power Plant, U.S. District Court Judge Rudi Brewster ruled on May 6 that the California Coastal Commission and the San Diego Regional Water Quality Control Board have six months to determine whether coolant-water discharges from the plant are vio-

lating the federal law and the plant's coastal permit. The Coastal Commission's Marine Review Committee previously concluded that the operation of the San Onofre plant kills tons of fish and kelp each year. Although the Water Resources Control Board has jurisdiction over violations of the federal Act, it is deferring action until the Coastal Commission acts. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 154; Vol. 11, No. 1 (Winter 1991) p. 135; and Vol. 9, No. 4 (Fall 1989) p. 115 for background information.)

SCE and the Coastal Commission are presently negotiating an agreement which would require SCE to spend over \$30 million in mitigation efforts, including the construction of an artificial reef which would serve as a new marine habitat. At this writing, such an agreement still awaits approval by the Commission. Judge Brewster indicated that if the agencies do not come to a conclusion within the next six months, a trial will take place in early 1992 to determine whether the Clean Water Act has been violated.

FUTURE MEETINGS:

September 10-13 in Marina del Rey.
October 8-11 in Monterey.
November 12-15 in San Diego.
December 10-13 in Los Angeles.

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:

Governor Appoints New Commissioner. On May 1, Governor Pete Wilson appointed Frank R. Boren to fill one of the two vacancies on FGC. Mr. Boren brings impressive conservation, financial, and legal credentials to the FGC. From 1987 until 1990, Mr. Boren served as President of The Nature Conservancy; he also served as The Nature Conservancy's Western Regional Director for a five-month period in 1986, and served on its Board of Governors from 1974 to 1983. He is a member of the Board of Trustees of the Digit Fund, and a Conservation Fellow of the World Wildlife Fund. Mr. Boren served as Environmental Advisor to Wilson from January 1990 until his appointment to FGC. Mr. Boren is a director and consultant to Sand County Ventures, Inc. (described as "a socially responsible venture capital com-

pany"), and a partner in McNeil Enterprises, a real estate development company located in Sherman Oaks. In addition, he was with the Los Angeles law firm of Paul, Hastings, Janofsky & Walker from 1962-1980, and was a partner from 1968-1980.

Mammal Hunting Regulations Adopted. At its April 5 meeting in Sacramento, FGC heard continued public comment regarding its proposed 1991-92 mammal hunting and trapping regulations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 156 and Vol. 11, No. 1 (Winter 1991) p. 125 for background information.) Several hunters from northern California expressed concern over the number of deer tags proposed for the 1991-92 season. The hunters argued that the number of tags proposed is excessive for existing deer herds, which have been seriously impacted from years of drought and continued hunting; and contended that continued, vigorous hunting would cause permanent damage to California's deer population. DFG responded that its biologists had conducted population surveys of the deer herds in each hunting zone, and that the number of tags proposed is not excessive for the current population.

At its April 25 meeting in Sacramento, the Commission adopted the proposed hunting season regulations. Highlights of the regulations include the following: rules which defined mountain lions as big game were deleted, and those which provided for a sport hunting season for mountain lions were repealed; additional deer hunts were created for specialized hunters, including archery and muzzle-loading, and junior hunters; and the number of bighorn sheep tags was increased from six to eight and the hunting season was extended.

For the first time in four years, no challenges to DFG's hunt proposals or the environmental documents supporting them were filed by the June 5 deadline. Even the archery portion of the black bear hunt, which was struck down last year (see CRLR Vol. 10, No. 4 (Fall 1990) pp. 156-57 for background information), went unchallenged this year. FGC submitted its 1991-92 hunting regulations to the Office of Administrative Law (OAL) on May 28.

The Commission was also scheduled to adopt its 1991-92 nongame and furbearing mammal trapping regulations; however, these were held over so a second draft environmental document could be prepared and made available to the public for an additional comment period. This move came in response to vigorous opposition from trappers regarding the use of padded-jaw traps

statewide. Use of these traps is mandatory in the ranges of the endangered San Joaquin kit fox and Sierra Nevada red fox. DFG released the second draft environmental document for a 45-day comment period which ended on July 12; FGC was scheduled to hold another public hearing on the trapping regulations on August 2, and to adopt them on August 20.

Implementation of AB 3158. At its April 4 meeting, DFG was scheduled to permanently adopt new section 753.5, Title 14 of the CCR, to implement AB 3158 (Costa) (Chapter 1706, Statutes of 1990). AB 3158 requires DFG to impose and collect filing fees to defray the cost of managing and protecting fish and wildlife resources, including the cost of consulting with other public agencies, reviewing environmental documents submitted pursuant to the California Environmental Quality Act (CEQA), recommending mitigation, and other activities protecting those resources. The Commission adopted section 753.5 on an emergency basis at its January 1991 meeting. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 156 and Vol. 10, No. 4 (Fall 1990) p. 155 for background information on AB 3158 and proposed rule 753.5.)

However, following public comment at the April 4 meeting, the Department postponed action to permanently adopt section 753.5. The most controversial provisions of the proposed regulation are those which would charge more for a project for which a Negative Declaration is required (\$1,250) than projects for which an environmental impact report (EIR) is required (\$850); and which state that *de minimis* projects, as determined by lead agencies, are not subject to the fee requirement. Many witnesses expressed concern that a "*de minimis* project" is not adequately defined in the statute or the regulation; several bills are currently pending in the legislature to clarify that definition (see *infra* LEGISLATION).

Notwithstanding these objections, DFG adopted proposed section 753.5 at its May 16 meeting, and forwarded the rulemaking file to the Office of Administrative Law (OAL) on May 20.

Closure of Frenchman Reservoir. In November 1990, FGC adopted an emergency regulation closing Frenchman Reservoir in Plumas County to all fishing, because it has been illegally stocked with northern pike, a predatory fish which could threaten already-depleted stocks of native bass, trout, and salmon. At that time, the Commission also proposed to close the lake indefinitely, so DFG could chemically treat the lake to



rid it of northern pike. However, in December, Plumas County resident Harry Reeves filed suit and obtained a writ of mandate preventing DFG from chemically treating the reservoir before appropriate environmental impact studies were conducted and released for public comment. In settlement of that lawsuit, DFG agreed to prepare a subsequent environmental impact report (EIR) by March 4, with public circulation until April 4. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 155-56 and Vol. 11, No. 1 (Winter 1991) p. 126 for background information.)

At FGC's May 16 meeting, DFG reported that it had filed its final EIR for the chemical eradication of northern pike on May 6, but that it must wait for certain environmental and biological conditions to take place before applying rotenone to the lake. In accordance with the final EIR, chemical treatment cannot commence until the reservoir water temperature reaches 55 degrees Fahrenheit and the pike have completed spawning. Water temperature at Frenchman Reservoir was in the 40s at the May meeting, and the pike were still spawning. Once the spawning cycle is complete and the eggs are hatched, the maximum effectiveness of chemical treatment can be employed, according to DFG.

On April 18, OAL approved FGC's adoption of section 7.50(b)(68.5), which closes Frenchman Reservoir to fishing permanently (or until the regulation is repealed).

DFG Attempts to Shore Up Declining Striped Bass Population. In early May, DFG estimated that the number of legal-sized adult striped bass in California fell to a record low of about 500,000 fish in 1990, which represents a decline from about 800,000-1.2 million fish during the past decade and 1.6-1.9 million fish during the early 1970s. DFG believes the population decline has been caused primarily by a decline in the number of new fish reaching the legal size of 18 inches, rather than by an increase in the mortality of adult fish. DFG also believes that deterioration in habitat quality in the San Francisco Bay/Sacramento-San Joaquin Delta has been the principal cause of the decreased production of young bass. Adverse effects include toxicity from waste discharges and deterioration in the bass' food supply, partially caused by the accidental introduction of invertebrates in ship ballast water.

The principal problem, however, has been increased water diversions and decreased amounts of freshwater flowing seaward from the Delta. In essence,

the production of young bass has declined over the years in response to losses in increased water diversions by state and federal water projects, freshwater flows reduced due to water project operations and the recent extended drought, and the cumulative effects those changes have had on the number of adults and their egg production.

Increased losses of one- and two-year-old fish due to illegal fishing may also be contributing to the decline in recruitment of three-year-old striped bass. DFG wardens have noted an upsurge in illegal fishing targeted on these undersized (less than 18 inches) striped bass.

DFG says it has recently taken a number of steps to save the state's striped bass population. It has engaged in a concerted law enforcement effort to reduce illegal takes of both undersized and adult bass. It also convinced the Department of Water Resources (DWR) to finance a huge \$3.3 million restocking program during May, in which three million one-year-old stripers were planted in the Delta. DWR operates the huge State Water Project, which pumps vast quantities of water out of the south end of the Delta; the pumps are believed to be one of the major causes of the decline in the production of striped bass. DFG hopes that the yearlings, instead of the usual six-month-old fingerlings, will have a better chance of survival in the hostile Delta environment. The May 1991 restocking was the largest in a series of such efforts which have taken place annually since 1988.

Also in mid-May, DFG attempted to orchestrate a so-called "fish flush" experiment—a massive release of water from Sacramento Valley reservoirs. DFG proposed to buy 40,000 acre-feet of water at a cost of \$5 million. Under the proposal, the release of the water would be timed carefully with an increase in spawning due to expected warm weather; the surge of water was intended to keep bass eggs and larvae floating in the Sacramento River and headed toward the Delta. DFG acknowledged that the proposed experiment was a gamble—that it might do nothing to help the striped bass and that it might actually harm other species, including salmon and steelhead trout.

Arguing that DFG had not properly studied the "fish flush" and its potential effect on other fish in the American, Yuba and Feather rivers, the California Sportfishing Protection Alliance sued DFG on May 14 to prevent the experiment, and won a temporary restraining order the following day. On May 17, DFG abandoned the proposal, because

its biologists agreed that inconsistent weather patterns precluded the hoped-for surge in spawning; thus, any release of water could not be as effective as anticipated.

Civil Penalty Regulations Disapproved. On April 18, OAL rejected FGC's adoption of sections 747 and 748, Title 14 of the CCR, which would set guidelines for the imposition of civil penalties for the unlawful sale or possession of birds, mammals, amphibians, reptiles, fish, insects, or plants taken in violation of applicable statutes and regulations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 156 for background information.) OAL found that the rule-making record failed to comply with the necessity and reference standards of Government Code section 11349.1, that DFG inadequately summarized and responded to all public comments registered during the comment period, and that the Department failed to comply with the Administrative Procedure Act in other technical respects. DFG plans to correct these deficiencies and resubmit this rulemaking file.

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

-At its April 4 and April 25 meetings, DFG held a public hearing on its proposed adoption of section 699.5, regarding fee increases for streambed alteration agreement processing. Prior to January 1, 1991, DFG was authorized to charge a fee to recover one-half of its costs of investigating and processing streambed alteration agreements; however, AB 3158 (Costa) (Chapter 1706, Statutes of 1990) amended Fish and Game Code section 1607 to permit DFG to recover its total costs, not to exceed \$2,400. New section 699.5 would effectively double existing fees. DFG adopted the new section at FGC's May 16 meeting, and submitted the rulemaking file to OAL on June 1.

-At its April 4 meeting, FGC authorized staff to publish notice of its intent to amend section 27.65, to authorize the filleting of California halibut aboard vessels at sea. This move came in response to a November 1990 request from the Sportfishing Association of California, which resulted in an FGC order that DFG investigate the relationship between total length and fillet length. Also, the issue of prohibiting the filleting of all other flatfish in conjunction with authorizing the filleting of California halibut needed to be considered in order to prevent potential enforcement problems. (See CRLR Vol. 11, No. 1



(Winter 1991) p. 127 for background information.)

DFG completed its study in March, and recommended that filleting of California halibut be authorized and that a minimum fillet length of 16.75 inches, with the skin on, be established in ocean waters between the U.S.-Mexico border and a line extending due west from Point Arena in Mendocino County. The fillet length of 16.75 inches would allow fishers to obtain legal size fillets from all California halibut larger than 25 inches in total length, while helping to assure that whole fish shorter than the legal minimum length of 22 inches will not be retained and filleted by anglers. In conjunction with authorizing the filleting of California halibut, DFG recommended that the filleting of other species of flatfish (Pacific and Greenland halibut, tonguefish, turbot, flounder, sole, and sand dab) be prohibited off California, to prevent the take and filleting of undersized California and Pacific halibut as "other" flatfish.

FGC scheduled a June 28 public hearing on the proposed amendments to section 27.65.

LEGISLATION:

SB 495 (Johnston). AB 3158 (Costa) (Chapter 1706, Statutes of 1990) permits DFG to impose and collect a filing fee to cover its costs of reviewing projects subject to CEQA, including projects which the lead or certified regulatory program agency finds to be *de minimis* in their effect on the environment. (See *supra* MAJOR PROJECTS.) As amended April 22, this bill would exempt a project found by the lead or certified regulatory agency to be *de minimis* in its effect on the environment from payment of the filing fee. This bill passed the Senate on May 16 and is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 463 (McCorquodale), as amended May 22, would enact the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1991, making legislative findings and declarations relating to the significance of wetlands and the importance of encouraging wetlands preservation and augmentation by the private sector. It would authorize DFG, until January 1, 2010, with the approval of FGC, to qualify mitigation bank sites, as defined, in the Sacramento-San Joaquin Valley, to provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands under specified federal permits. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 126 for background information on this issue.)

The bill would authorize DFG to credit wetlands created in a bank site for wetlands lost in a qualifying urban area, as defined, through actions by a federal permittee, and would provide for payments by that federal permittee to the operator of the created wetlands under a specified procedure. The bill would require an operator of a bank site, if it is a public entity, to annually pay to the county in which the property is located an amount equal to property taxes and to pay specified assessments. This bill was passed by the Senate on May 30 and is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1811 (Isenberg), as introduced March 8, would require DFG to conduct a survey of state-owned wetlands and nonwetlands suitable for restoration which are larger than 100 acres in the Sacramento Valley and the San Joaquin Valley; DFG would be required to submit a report on the survey to the legislature and the Governor by June 30, 1992. This bill is pending in the Assembly Ways and Means Committee.

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

AB 1409 (Lempert), as amended May 8, would enact the Oil Spill Response, Prevention, and Administrative Fees Law, prescribing the procedures for collection of fees by the State Board of Equalization to finance the Lempert-Keene-Seastrand Oil Spill Prevention and Response, which (among other things) created the Office of Oil Spill Prevention and Response within DFG. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 125 and Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) This bill is pending in the Assembly Ways and Means Committee.

SB 1013 (Thompson), as amended April 25, would prohibit DFG from issuing or renewing a permit for the operation of an alligator farm if the alligators are kept for the use of their meat or hides. This bill passed the Senate on May 23 and is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1 (Allen), as amended May 13, would codify Proposition 132, the Marine Resources Protection Act of 1990, in the Fish and Game Code. That initiative established the Marine Resources Protection Zone, and completely prohibits the use of gill and trammel nets in the Zone after January 1, 1994. Until then, gill and trammel nets may only be used in the Zone pursuant to a nontransferable permit issued by DFG. The initiative also specifies that, after January 1, 1993, a person who holds a gill net permit may surrender it to DFG and receive compensation based on the average ex vessel value of the fish (other than rockfish) landed by that person within the Zone during 1983-87. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 126 for background information.) This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1339 (Cannella), as introduced March 7, would reenact prior law which permitted the DFG Director to designate not more than two days in each year as free sportfishing days during which residents and nonresidents could, without having a sportfishing license and without the payment of any fee, exercise the privileges of a holder of a sportfishing license. This urgency bill passed the Assembly on May 2 and is pending on the Senate floor.

AB 1361 (Cortese). Fish and Game Code section 219 generally provides that regulations adopted by FGC may supersede any section of the Fish and Game Code. As introduced March 7, this bill would repeal that provision. This bill is pending on the Assembly floor.

AB 1386 (Cortese). Under existing law, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by DFG, or use any material from the streambeds, without first notifying DFG of the activity. A violation of this provision is a misdemeanor, punishable by (among other things) a maximum fine of \$1,000. It is also unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any petroleum, acid, coal or oil tar, among other specified substances. A violation of this provision is a misdemeanor, punishable by (among other things) a maximum fine of \$2,000. As amended May 13, this bill would make persons who violate these provisions subject to a civil penalty of not more than \$25,000 for each violation. This bill is pending in the Assembly Ways and Means Committee.

AB 1364 (Cortese), as amended April 23, would prohibit any change in the



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point of diversion, place of use, or purpose of use to individually or cumulatively cause the flow in any stream, river, or watercourse to drop below that flow needed to protect biologically sustainable populations of fish and wildlife. This bill would require all determinations of fact and all recommendations made pursuant to its provisions to be made by DFG. The bill, however, would not apply to any stream, river, or watercourse unless the Director of Water Resources determines that the year will or may be a dry or critically dry year. This bill is pending in the Assembly Ways and Means Committee.

AB 1557 (Wyman), as amended May 8, would require FGC to determine whether its regulations or regulatory actions—particularly those which result in the listing of a species as endangered or threatened under the California Endangered Species Act (CESA)—would result in a taking of private property subject to the provisions of the California Constitution or the United States Constitution governing eminent domain. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 1 for extensive background information on this issue.) This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 157-58:

SB 403 (L. Greene), as amended April 30, would (among other things) require DFG to publish a notice in the *California Regulatory Notice Register* of the receipt of a petition, or the commencement of an evaluation, to add a species to or remove a species from the list of endangered species or the list of threatened species pursuant to CESA, and would specify the information required to be in the notice. This bill passed the Senate on May 16 and is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 796 (Rogers), as introduced March 7, would specify that AB 3158 filing fees (see *supra* MAJOR PROJECTS) are to be calculated in an amount necessary to defray the cost to DFG of providing the particular service, and would also prohibit the inclusion of any surcharge or amount intended to permit DFG to establish a reserve. This bill was rejected by the Senate Committee on Natural Resources and Wildlife on April 30; however, the Committee granted the bill reconsideration.

AB 2030 (Allen), as introduced March 8, would require AB 3158 filing fees to be proportional to the cost incurred by DFG in reviewing environ-

mental documents for projects which have a significant impact on trust resources of the Department; the bill would also delete the requirement that a fee be paid for projects for which a negative declaration is prepared. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 203 (Farr), as amended May 7, would require the Administrator of the Office of Oil Spill Prevention and Response within DFG to establish rescue and rehabilitation stations by January 1, 1993, and to consult with the specified agencies by January 1, 1992. This urgency bill is pending in the Assembly Ways and Means Committee.

AB 353 (Hauser), as amended April 15, would require FGC to designate additional fish spawning or rearing waterways that it finds necessary to protect fishlife. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 355 (Hauser), as introduced January 29, would authorize DFG to order the party responsible for the deposit of any petroleum or petroleum product into the waters of this state to repair and restore all loss or impairment of fishlife, shellfish, and their habitat, and require DFG to adopt regulations to carry out the bill by June 30, 1992. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 977 (Mountjoy), as amended May 6, would permit FGC to authorize sport hunting of mature Nelson bighorn rams without regard to area. This bill would also increase from one to three the permissible number of license tags to be issued each year to take a Nelson bighorn ram and would require DFG, not less than every other year, to designate a nonprofit organization organized pursuant to the laws of this state, or the California chapter of a nonprofit organization organized pursuant to the laws of another state, as the seller of these tags. This bill is pending in the Assembly Ways and Means Committee.

AB 1389 (Cortese), as amended April 25, would require FGC to direct DFG to annually authorize not more than one antelope tag for the purpose of raising funds for programs and projects to benefit antelope. That tag could be sold at auction or by other method, and would not be subject to the \$55 fee limitation. This bill is pending on the Assembly floor.

AB 1641 (Sher), as amended May 24, would enact the Fish, Wildlife, and Endangered Species Habitat Conservation and Enhancement Bond Act of 1991. This bill is pending in the Assem-

bly Committee on Banking, Finance and Bonded Indebtedness.

AB 2172 (Kelley), as amended April 25, would authorize DFG to enter into agreements with other public agencies and private interests to prepare and implement a habitat conservation plan in specified counties in southern California; require DFG to adopt guidelines for the development and implementation of habitat conservation plans; and require DFG to determine the amount of its reasonable costs incurred in preparing planning guidelines and in performing other tasks in connection with the habitat conservation plans. This bill is pending on the Assembly floor.

ACR 35 (Wyman), as introduced March 14, would request DFG to seek funding to conduct a study to determine the status of the Mohave ground squirrel. This resolution is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 51 (Felando), as amended March 4, 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), which, as amended May 20, would enact the California Heritage Lands Bond Act of 1992, is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 89 (Felando), as amended April 22, would require any person taking sea cucumbers and hagfishes for commercial purposes to obtain a permit to do so from DFG. This bill passed the Assembly on May 29 and is pending in the Senate Committee on Natural Resources and Wildlife.

AB 145 (Harvey), as amended March 20, would increase from \$100 to \$250 the minimum fine for an initial violation of willful interference with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place, and increase the minimum fine for a subsequent violation to \$500. This bill passed the Assembly on May 2 and is pending in the Senate Judiciary Committee.

AB 172 (Felando), as amended April 29, would (among other things) require the one-time compensation payable to persons surrendering permits to use a gill or trammel net to DFG pursuant to Proposition 132 to include the average



annual ex vessel value of the fish (other than rockfish) landed by the permittee within the Marine Resources Protection Zone during the years 1983-87, inclusive. This bill would also authorize a one-time compensation for rockfish fishers based on a specified formula, if the courts determine that the Marine Resources Protection Zone extends into federal waters (*see infra* LITIGATION). This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

LITIGATION:

DFG has recently been sued and countersued over its interpretation of Proposition 132, the Marine Resources Protection Act of 1990 approved by the voters at the November 1990 election. In February, the Committee to Ban Gill Nets, Dolphin Connection, Earth Island Institute, Assemblymember Doris Allen, and Leo Cronin petitioned the Alameda County Superior Court for a writ of mandate commanding DFG to enforce Proposition 132, which bans the use of gill and trammel nets, out to 200 miles offshore (instead of the three-mile limit enforced by DFG). This case was dismissed by stipulation on March 5, after DFG agreed to enforce the initiative out to 200 miles. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 158 and Vol. 11, No. 1 (Winter 1991) p. 126 for background information.)

However, on March 15, DFG was sued in *Vietnamese Fisherman Association of America, et al. v. California Department of Fish and Game, et al.*, No. C910778-DLJ, in the U.S. District Court for the Northern District of California. In this case, plaintiffs claim that DFG's interpretation of Proposition 132 conflicts with and is preempted by federal law, and that the state is forbidden from enforcing its laws in the area between three and 200 miles offshore. Following the March 18 issuance of a temporary restraining order, the court issued a preliminary injunction on April 1 prohibiting DFG from enforcing Proposition 132 beyond the three-mile state waters limit. At this writing, this case is on hold while the Pacific Fishery Management Council holds hearings on the issue. The Committee to Ban Gill Nets and Assemblymember Allen have intervened in this case in support of DFG.

RECENT MEETINGS:

At its April 4 meeting, FGC approved the renewal of the memorandum of understanding (MOU) between DFG and the Bighorn Institute. To date, no settlement has been reached in the law-

suit between Bighorn Ventures (a California limited partnership which is financed in part by Safeco Insurance, and which seeks to build hundreds of homes and a golf course next to Bighorn Institute) and Bighorn Institute (a non-profit organization which conducts a research, recovery, and release program intended to increase the bighorn sheep population in California). After Bighorn Institute expressed concerns over the proposed residential development (which resulted in Ventures' having to prepare an environmental impact report), Bighorn Ventures retaliated by initiating a costly and protracted suit based on alleged CEQA violations. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 158 for background information.)

FUTURE MEETINGS:

August 29-30 in Long Beach.
October 1-3 in Redding.
October 31-November 1 in San Diego.
December 5-6 in Sacramento.

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 safety standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Franklin L. "Woody" Barnes (Acting Chair), Robert J. Kerstiens, and Elizabeth Penaat.

Forest Products Industry: 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:

Dwindling Membership Threatens Board's Ability to Act. At this writing, Governor Wilson has yet to fill any of the three vacancies on the Board (two public member positions and one forest products industry member), leaving the Board with only six members. This is significant because under PRC section 736, five members of the Board constitute a quorum, and five members must agree in order to adopt any regulatory package.

Board Considers Emergency Regulations to Protect the Marbled Murrelet. Since January 1991, CDF has disapproved at least three THPs which involved the habitat of the marbled murrelet. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 162 and Vol. 11, No. 1 (Winter 1991) p. 129 for background information.) Concern for the murrelet, a seabird which feeds at the ocean but nests in seaside old-growth forests, has been expressed by the state Department of Fish and Game (DFG) and the U.S. Department of the Interior (DOI) since 1978; both agencies have been petitioned to list the species as threatened and, in February 1991, DFG told DOI that the murrelet meets the five criteria set forth for listing a species under the federal Endangered Species Act.

At its May 8 meeting, the Board considered the adoption of emergency regulations to protect the habitat of the marbled murrelet. Section 895.1, Title 14 of