



REGULATORY AGENCY ACTION

ments of land use plans and implementing ordinances that will provide the basis for issuing coastal use permits after the LCP is approved by the local government and the Commission.

Current practice has involved incorporation into grant contracts with local governments a requirement for quarterly progress reports. Several Commissioners expressed frustration that, despite this requirement, LCPs are being completed at a very slow pace. As a result, the Commission is required to deal directly with permit applications which would otherwise be handled locally. The possibility of completion within one year as a new precondition for approval of LCP grants was discussed. But inasmuch as rulemaking on this subject had not been included in the meeting agenda, the discussion was suspended and the Commission staff was directed to examine the problem in light of the concerns expressed.

At the December 13 meeting, Commission staff returned an amended recommendation on LCP grants. The original recommendation of approval on the grant applications of ten local governments had been reduced to four. Of the four, three were local governments in regions that generate a large load of permit applications. These governments also have reason to believe that their LCP work will be completed within one year (Mendocino County, City of Los Angeles, and City of Santa Monica). The other grant recipient is a city newly included in the coastal zone by its annexation of approximately fifty acres of land. This city (Guadalupe) has generated no permit applications to date, but will require a relatively short time to complete its LCP.

Also at the December 13 meeting in San Francisco, the Commission's Executive Director presented a report on the status of its budget for fiscal year 1989-90. The report included the Commission's plans to meet a \$651,000 (11%) cut in its annual budget, which resulted from the breakdown of negotiations between legislators and the Governor to reallocate some Commission funds in the 1989 Budget Restoration Bill. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 22 for background information.) Inflation and unforeseeable expenses, such as a number of workers' compensation and employee transportation claims following the October 17 San Francisco Bay area earthquake, have made the Governor's budget cuts

even more damaging. Measures to meet the Commission's budget crisis include severe restrictions on staff travel, office and support personnel expenditures, holding staff positions vacant, and restriction of workshops and seminars.

Also on December 13, the Commission was offered a brief report of the environmental impact of the October 17 Loma Prieta earthquake. While damage resulting from the quake is currently estimated at \$8 billion, long-term environmental damage such as damage to underground water systems and shoreline landslide controls may not be fully known for years.

On December 14, the Commission held public hearings regarding its draft of the Outer Continental shelf Compendium of Coastal Commission Decisions under the federal Consistency Provisions, Phase I, Outer Continental Shelf Oil and Gas Related Onshore Facilities, of July 31, 1989. The document summarizes the Commission's decisions over the last five years regarding offshore and related onshore energy projects.

Also on December 14, the Commission received a preliminary report on the issues evolving from the Exxon Valdez oil disaster which occurred in Alaska last March. The report focused on potential prevention measures in California, as well as local communities' ability to respond to a similar accident. In addition, the report made specific recommendations, including the exploration of alternative fuels and the increased protection of marine wildlife.

The report was submitted in conjunction with a workshop held by the Commission on the implications of the Alaskan oil spill for California. Comments were received from representatives of the State of Alaska, the U.S. Coast Guard, the National Oceanic and Atmospheric Administration, DFG, and the Sea World Research Institute. Like the report, the workshop focused on the lessons to be learned in California from the disaster in Alaska. The workshop was intended as part of a series, but due to recent budget cuts, no follow-up workshop has been scheduled.

Also in December, the Commission expressed its opposition to a proposal by the National Marine Fisheries Service in Seattle to move approximately sixty sea lions from Washington to the Channel Islands National Park off the coast of Santa Barbara. The Commission's objection is based on its determination

that the proposal is inconsistent with the state's coastal plan and on concerns that the move would have an adverse impact on fisheries in that area.

Testimony before the Commission by representatives of the California Gillnetters Association suggested that the displaced animals would disrupt fishing operations by destroying netted fish, and that the move would be ineffectual because the animals would return to Washington as they have after previous moves.

The federal proposal is a response to complaints by Washington fishers that the sea lions are severely depleting the salmon and steelhead populations by preventing adult fish from reaching their spawning grounds. Washington officials have tried without success to drive the sea lions out of the area surrounding the fish ladders at the Ballard Locks in Seattle. Their methods have included the use of firecrackers, rubber bullets, and other forms of harassment. A report issued by the Washington state Wildlife Department favors the federal relocation plan as the only alternative to the "lethal removal alternative." That option is not preferred, according to the report, because it would result in strong opposition from some segments of the public. Last year, Washington officials trapped 39 sea lions and released them near the mouth of the Columbia River, about 200 miles from the capture point. Thirteen of the animals returned to the locks in an average of fifteen days.

The failure of last year's relocation effort led the fisheries service to propose moving the animals to the Channel Islands, where the existing sea lion population is estimated to be as high as 70,000. A spokesman for the Coastal Commission conceded that the Fisheries Service has the authority to override its objection. The Commission has not, however, ruled out legal action to stop the relocation.

FUTURE MEETINGS:

To be announced.

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.*, man-



ages California's fish and wildlife resources. 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 Fish and Game Code section 101 *et seq.*, is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation. 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:

Little Hoover Commission Releases Critical Report. In January, the Commission on California State Government Organization and Economy ("Little Hoover Commission") released a report harshly criticizing both FGC and DFG. Following a yearlong study and two public hearings, the Little Hoover Commission found that FGC is unnecessarily dominated by hunters and sportspeople; DFG/FGC are internally crippled due to conflicting legislative mandates; DFG is ineffective in negotiating with sister agencies; FGC has failed to adequately supervise DFG; and DFG has failed to properly manage its regional offices. (*See supra* agency report on LITTLE HOOVER COMMISSION for detailed summary of this report.) At this writing, neither DFG nor FGC have formally responded to the report.

Commission to Review Large Increase in Mountain Lion Pursuit Permits. At the January 8 meeting of the Fish and Game Commission, Bill Yeates, a lobbyist for the Mountain Lion Coalition, reported a large increase in the number of permits issued by the Department for the purpose of pursuing mountain lions. This increase has been noted since a San Francisco Superior Court judge disallowed the planned 1987 and 1988 mountain lion hunting seasons. (*See infra* LITIGATION; *see also* CRLR Vol. 9, No. 4 (Fall 1989) p. 119; Vol. 9, No. 1 (Winter 1989) p. 92; and Vol. 8, No. 4 (Fall 1988) p. 106 for background information.)

A pursuit permit allows the holder to pursue and tree the lions with the aid of dogs, and to engage in "recreational activity" such as photography. However, due to the increase in the number of these permits issued recently, the Mountain Lion Preservation Foundation and other concerned members of the public believe these permits are just a cover for hunting permits. Lion poaching has increased in recent years; pursuit permits only make poaching easier and—due to the number of permits being issued—enforcement more difficult.

At the January meeting, a DFG representative stated that the pursuit permits and the pursuit of lions itself are "benign" activities, and the Commission need not worry about them. FGC, however, acknowledged the chronological proximity between the ban on hunting permits and the increase in pursuit per-

mits, and said it will discuss possible regulatory action to control this problem at its February 5 meeting in Sacramento. The Mountain Lion Preservation Foundation is in the process of drafting proposed regulatory changes, and may petition FGC to adopt them in the near future.

Caging and Care Regulations. During the summer of 1989, FGC held public hearings on proposed changes to sections 671-671.6, Title 14 of the CCR, which relate to the importation, transportation, and possession of wild animals. DFG's Committee on Care and Treatment of Wild Animals had recommended revision of these regulations, which the Committee found to be confusing to the public, difficult to enforce, and ineffective in affording proper care and treatment of wild animals.

At its August 1989 meeting, following the receipt of numerous public comments on the proposed regulatory changes, FGC adopted the amendments, which provide for general and special categories of permits and fees, provide basic guidelines for the humane care and treatment of animals, incorporate federal regulations related to the general care of animals, establish specific caging and enclosure requirements, and establish requirements related to the transportation of animals.

After Commission staff responded to 72 public comments, the rulemaking file on the proposed regulatory changes was submitted to the Office of Administrative Law (OAL) for review and approval. OAL reviewed the regulations, but found that they must also be reviewed by the Building Standards Commission. That Commission has decided to hold its own hearing on the regulatory changes, a process which could take four additional months. Assemblymember Sam Farr, who has authored legislation for DFG in the past, plans to seek an Attorney General's Opinion on whether the regulatory changes must be reviewed by the Building Standards Commission.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 118-19:

AB 178 (Floyd) would specifically direct FGC to rewrite its sport fishing and hunting regulations in simple English, and would state that the regulatory changes made pursuant to this bill are exempt from the regulatory program



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requirements of the California Environmental Quality Act (CEQA). This bill is pending in the Senate Committee on Natural Resources and Wildlife.

AB 196 (Allen) would make it unlawful, except as specifically authorized by the Fish and Game Code or regulations thereunder, to pursue, drive, herd, or harass any bird or animal, with prescribed exceptions. This bill is pending in the Assembly Ways and Means Committee.

AB 371 (Condit), which would exempt any resident 62 years of age or older from the requirements for a sport fishing license, is pending in the Assembly Ways and Means Committee.

SB 211 (Nielsen) would allow any disabled state or local peace officer or firefighter with a 70% or more occupation-connected disability to receive a sport fishing license for \$2 upon proof of the disability. This bill is pending in the Senate Appropriations Committee's suspense file.

SB 212 (Nielsen), which would allow any resident 65 years of age or older whose income does not exceed specified amounts and any disabled peace officer or firefighter to obtain a hunting license for a fee of \$2, is pending in the Senate Appropriations Committee's suspense file.

AB 2126 (Felando), which would authorize the transfer of a drift gill net shark and swordfish permit to specified persons under specified conditions, is pending in the Senate inactive file.

AB 1 (Allen), as amended January 8, would have established the Marine Protection Resources Zone around the Channel Islands, would have prohibited the use of gill nets and trammel nets in the Zone on and after January 1, 1993, except under certain circumstances, and would have required the Department to seek comments from both commercial and recreational fishing representatives in order to develop a program that is not only effective and efficient, but also consistent with designated provisions of existing law dealing with the conservation, maintenance, and utilization of living resources in California's waters. This bill died in committee.

AB 2232 (Bradley) would have established a license and permit program regarding the possession of live wild animals, and would have set forth shelter and transportation requirements for live wild animals, except birds. This bill died in committee.

AB 197 (Allen) would have provided

for unspecified fines for persons who unlawfully export, import, transport, sell, possess, receive, acquire, or purchase any bird, mammal, amphibian, reptile, fish, or any listed endangered or threatened species in violation of the Fish and Game Code. This bill died in committee.

AB 860 (Katz) would have returned the mountain lion to specially protected status, and would have provided for the issuance of special permits by the DFG to take mountain lions which have injured or destroyed livestock or damaged property. Although this bill died in committee, many of its provisions are contained in Proposition 117, the California Wildlife Protection Act. Proposition 117 is sponsored by a coalition of opponents of mountain lion hunting, including Assemblymember Lloyd Connelly, the Planning and Conservation League, and the Mountain Lion Preservation Foundation. The wildlife measure, which will appear on the June 1990 ballot, would prohibit sport hunting of mountain lions but would retain present laws that allow the animals to be killed if they attack domestic stock or pets, or are dangerous to humans. Initiative proponents expect opposition to the hunting ban to come from hunting groups and the National Rifle Association.

The initiative would also create a habitat conservation fund to administer \$30 million per year for protection of habitat of endangered species, including deer, mountain lions, and oak trees. These provisions are expected to be opposed by the California Cattlemen's Association and the California Farm Bureau.

According to the Planning and Conservation League, of the \$30 million spent annually pursuant to this initiative, \$15 million could come from the unallocated Proposition 99 Cigarette and Tobacco Products Surtax Fund, and the rest from the Environmental License Plate Fund, state rare and endangered species accounts, Wildlife Conservation Fund, and conservation and wildlife bonds. The funds would be distributed to the California Tahoe Conservancy, state Department of Parks and Recreation, Wildlife Conservation Board, Coastal Conservancy, Santa Monica Mountains Conservancy, state parks, and various local agencies.

AB 2196 (Campbell) would have exempted FGC from certain provisions of the Administrative Procedure Act when conducting a rulemaking proceed-

ing on a petition to list a species as endangered or threatened. This bill died in committee.

AB 2497 (Connelly) would have created the California Riparian Habitat Protection and Restoration Program within DFG, under which the Department would be required to establish and implement specified projects. This bill died in committee.

LITIGATION:

On October 17, in *Mountain Lion Coalition, et al. v. California Fish and Game Commission*, No. A043404, the First District Court of Appeal upheld San Francisco Superior Court Judge Lucy Kelly McCabe's issuance of a writ of mandate suspending the fall 1988 mountain lion hunting season approved by FGC on April 8, 1988. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 119; Vol. 9, No. 1 (Winter 1988) p. 92; and Vol. 8, No. 4 (Fall 1988) p. 106 for background information.)

Judge McCabe had previously invalidated FGC's approval of regulations initiating a mountain lion hunt in 1987, on grounds that FGC and DFG had failed to conduct an adequate analysis of the cumulative environmental impacts of such a hunt, pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq.* One month after Judge McCabe's October 1987 order suspending the fall 1987 hunt, FGC returned with a four-page cumulative impacts analysis, which concluded that the mountain lion hunt would have no adverse impacts on the mountain lion population as a whole, nor would it have a measurable negative impact on the mountain lion's habitat or other property or animals.

In a January 1988 ruling, Judge McCabe ruled that FGC's four-page attempt was inadequate, and specifically ordered that the 1987 hunt could not proceed until and unless FGC/DFG submitted a cumulative impacts analysis which met the following requirements: (1) it must not be conclusionary, but should be based on specific scientific and empirical evidence; (2) it must include data generated from meaningful research on the short-term and long-term impacts of the 1987 wildfires in California; (3) it should assume that a mountain lion hunt will be approved for several successive seasons, and thus include an analysis of "the potential of repeated hunting to cause genetic isolation, genetic depression, and damage to



the social structure of individual populations and the statewide population;" and (4) it should acknowledge and discuss the potential of the hunt to impact animals and populations on various federal lands. Judge McCabe further ordered that any revised cumulative impacts analysis must be published for public comment, and required DFG/FGC to summarize and respond to all comments.

DFG/FGC did not challenge Judge McCabe's January 1988 ruling; instead, it abandoned the 1987 hunt and published notice of its intent to adopt regulations permitting a fall 1988 mountain lion hunt. It adopted those regulations in April 1988, and shortly thereafter filed a declaratory relief action in Sacramento Superior Court, in an attempt to preclude petitioners from challenging the 1988 hunt before Judge McCabe. However, Judge McCabe retained jurisdiction and undertook review of petitioners' challenge to the 1988 hunt regulations. She examined FGC's new draft cumulative impacts analysis; found that it failed to adequately address, or address at all, several of the points that were specified in and required by the court's earlier order; and invalidated the proposed 1988 hunt.

On appeal, DFG/FGC sought review of their environmental review process against the requirements of CEQA and its guidelines, as opposed to the requirements of Judge McCabe. The court of appeal declined to find error in Judge McCabe's ruling, and upheld it. The First District found that, "[g]iven the unambiguous nature of the court's order," DFG/FGC's cumulative impacts analysis was "woefully inadequate." Rather than squarely addressing the elements required by Judge McCabe, the appellate court found that DFG/FGC "chose to circulate a document that simply swept the serious criticisms of this project under the rug." Because DFG/FGC were under a duty imposed by Judge McCabe's order to circulate a draft analysis for public comment which contained a complete review of certain issues, and failed to do so, the appellate court held that DFG/FGC "abused their discretion by not proceeding in a manner required by law," and upheld the trial court's order.

DFG/FGC petitioned the California Supreme Court to review the First District's decision, and requested that the appellate court's opinion be depublished. The Supreme Court denied both requests.

On July 27 in *Fund for Animals, et al. v. California Fish and Game Commission*, No. 361662 (Sacramento Superior Court), Judge Cecily Bond ruled in favor of the petitioners and cancelled the 1989 black bear hunt scheduled to begin in August. Once again, the court's decision was based on the inadequacy of the Department's environmental impact report. FGC vowed to appeal the ruling; however, no appeal has been filed and the legal deadline has passed. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 119 and Vol. 9, No. 3 (Summer 1989) p. 111 for background information.)

RECENT MEETINGS:

At its December 1 meeting, FGC was scheduled to consider six petitions to list various plants as either endangered or threatened, under the California Endangered Species Act. Commissioner Albert Taucher moved that the Commission require the petitioners to present detailed recovery plans for each of the species before FGC would consider the species for listing. Commissioner Everett McCracken questioned whether FGC is authorized to impose such a requirement, which does not exist in the Endangered Species Act. Audience members responded with a resounding "no", to which FGC Executive Secretary Harold Cribbs agreed. All six petitions were subsequently granted; the Commission ordered DFG to prepare the recovery plans.

At its December 21 meeting, FGC finally adopted its 1990-92 sport fishing regulations, which had been the subject of several public hearings throughout the fall of 1989. Included in these regulations are restrictions on ocean and in-river salmon fishing, in furtherance of the ten-point salmon recovery plan adopted last fall. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 119 for background information.)

FUTURE MEETINGS:

May 17-18 in San Luis Obispo.
June 28-29 in South Lake Tahoe.

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 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: Harold Walt (chair), Carlton Yee, 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 Forest Practice Act (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.