



(section 30318). Section 30304 of the Coastal Act allows regional commissioners to use an alternate commissioner "at the pleasure of the member who appointed him." Commissioner Malcolm, present at other meetings of the Commission that week, chose to allow his alternate to attend a meeting which included an agenda item in which his alternate had a professional, if not personal, stake. The results of this arrangement raise questions regarding the propriety of both the alternate selection scheme and the ability of local elected officials to vote on projects in which they have a professional stake.

LEGISLATION:

SB 2040 (Keene), as amended August 31, creates the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which requires the Governor to appoint an administrator for oil spill response who shall be a chief deputy director of the Department of Fish and Game; establish a state oil spill contingency plan pursuant to the California Emergency Services Act and, by January 1, 1993, amend that plan by adding a marine oil spill contingency planning section which provides for the best achievable protection of the cost and marine waters; and ensure that the state fully and adequately responds to all oil spills in marine waters. This bill was signed by the Governor on September 22 (Chapter 1248, Statutes of 1990).

AJR 74 (Peace) memorializes the Secretary of Transportation to require that double hulls be installed on all new tankers and those currently undergoing extensive repairs; and memorializes Congress to amend the Port and Tanker Safety Act to require double hulls or similar improvements to tanker design if the Secretary fails to act administratively, and to require specified steps to help prevent oil spills. This resolution was chaptered on July 12 (Chapter 68, Resolutions of 1990).

AJR 78 (Hauser), which memorializes the President and Congress to support and enact legislation designed to promote maritime safety and enhance oil spill prevention and emergency response in the operation of tankers and other vessels in coastal waters, was chaptered on July 12 (Chapter 69, Resolutions of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 177-78:

SB 1787 (Rosenthal), as amended August 28, would have specified the circumstances in which the Coastal Commission may enforce violations of the

Coastal Act or a local coastal plan within the jurisdiction of a local government, and would have authorized civil liability to be imposed on any person who performs or undertakes development in violation of the Act, or inconsistent with any permit previously issued by the Commission or other authorized entities. This bill was vetoed by the Governor on September 21.

SB 1788 (Rosenthal), as amended August 9, would have required the Commission to develop and implement a comprehensive enforcement program, including prescribed elements, to ensure that any development in the coastal zone is consistent with the Coastal Act, and to ensure compliance with permits and permit conditions issued by the Commission. This bill was vetoed by the Governor on September 21.

SB 2401 (Marks), as amended May 15, is an urgency appropriations bill which will continuously appropriate funds to the Department of Fish and Game for purposes of investigations and projects directly related to improving the state's command, control, communications, training and practice drills, mapping of sensitive fish and wildlife and their habitat, and assessment and evaluation of natural resources at risk from or damaged by oil spills. This bill was signed by the Governor on September 11 (Chapter 799, Statutes of 1990).

AB 3748 (Sher), as amended August 28, would have directed the Commission to prepare, in cooperation with various state, federal, regional, and local agencies and other institutions and organizations, specified studies relating to San Francisco Bay dredging for use in specified activities. This bill was vetoed by the Governor on September 30.

AB 36 (Hauser), which would have prohibited the State Lands Commission from leasing all state-owned tide and submerged lands situated in Mendocino and Humboldt counties for oil and gas purposes, was vetoed by the Governor on July 18.

AB 145 (Costa), which, as amended August 16, enacts the California Park, Recreation, and Wildlife Enhancement Act of 1990, became law without the Governor's signature on September 14 (Chapter 920, Statutes of 1990).

AB 1735 (Friedman) and *SB 1955 (McCorquodale)* were substantially amended and are no longer relevant to the Coastal Commission.

The following bills died in committee: *AB 2603 (Lempert)*, which would have enacted the Oil Spill Prevention, Abatement, and Removal Act, and would have required the Governor to establish a state oil spill contingency

plan; *AJR 22 (Farr)*, which would have memorialized the President and Congress to amend the Submerged Lands Act to extend the ocean boundaries of coastal states from three to twelve geographical miles offshore; *SB 718 (Rosenthal)*, which would have appropriated funds received by the state to a specified agency to ensure that offshore oil operations conform to federal and state air pollution requirements; *AB 1000 (Hayden)*, which would have required that the state Water Resources Control Board oversee the preparation of specific quality standards for ocean waters; and *SB 1499 (Roberti)*, which would have required the Commission to conduct a study of options for disposition of several low- and moderate-income housing units in Orange County.

FUTURE MEETINGS:

January 9-12 in Marina del Ray.
February 13-16 in San Francisco.
March 13-16 in Marina del Ray.
April 10-13 in San Diego.

DEPARTMENT OF FISH AND GAME

Director: *Pete Bontadelli*
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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. 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:

New FGC Executive Secretary Appointed. Since FGC's June firing of longtime Executive Secretary Harold Cribbs (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 180 for background information), former Assistant Secretary Robert Treanor served as Acting Executive Secretary. At its August 30 meeting, FGC appointed Treanor to the Executive Secretary post. The Commission said it had received two applications for the position, but preferred to remain with someone who is "close to the sensitive issues" and who has a proven track record with FGC.

The Commission then recessed into closed session and appointed former FGC Regulations Coordinator Ronald J. Pelzman as Assistant Secretary. Commissioner Taucher recommended salary increases for both Treanor and Pelzman, to "bring them up to speed" with others in similar positions.

FGC Refuses to List Delta Smelt as Threatened Species. At its August 1989 meeting, the Commission designated the Delta Smelt as a "candidate" for listing as a threatened or endangered species pursuant to the California Endangered Species Act (CESA). At its August 30, 1990 meeting—with local news crews present, a positive recommendation for

listing from DFG, and two and one-half hours of public comment (both for and against), the Commission, in a 4-1 vote, refused to list the Delta Smelt as a threatened species on grounds of "lack of information." Commissioner Biaggini was the lone nay vote.

Commissioner Taucher stipulated that studies should start immediately; if new information is found, the Commission may grant an emergency listing to the Delta Smelt. The Commission took this same approach with the Sacramento River winter-run chinook salmon, which it finally listed in May 1989 after allowing the population to dwindle to 600. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 1-15 (see especially note 54); Vol. 9, No. 3 (Summer 1989) p. 109; and Vol. 7, No. 4 (Fall 1987) p. 94 for background information.)

DFG's report stated that since 1983, there has been a uniformly low population of Delta Smelt, in a species which usually has great fluctuation in numbers. DFG is unsure of the cause of decline and must undertake further studies to determine it. Before the Commission's vote, the Supervising Deputy Attorney General reminded the Commission that under CESA, the Commission should base its decision strictly on the biological data presented, rather than the impact of the listing on third parties.

1990 Mammal Hunting and Trapping Regulations. At its August 31 meeting, FGC postponed final adoption of sections 461-79, Title 14 of the CCR, the trapping provisions of its Mammal Hunting and Trapping Regulations, until its November 9 meeting. DFG is preparing its third environmental report to reflect public concerns about the types of traps approved for use. The revised document was to be available for public review from September 24 to October 24. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 180 for background information.)

Sections 365 and 366 of the Mammal Hunting and Trapping Regulations, which regulate black bear hunting, were challenged in litigation brought by the Fund for Animals. Section 366, which defines the archery-only hunting season for black bears, was set aside by an August 8 court order; section 365, which regulates hunting of black bear with firearms, was scheduled for a court hearing on October 3 (see *infra* LITIGATION). Additionally, on August 6, the Office of Administrative Law (OAL) rejected the black bear hunting regulations, on grounds that they failed to comply with the clarity standard in Government Code section 11349.1, and because

FGC failed to adhere to the procedural requirements of the Administrative Procedure Act.

The sections of the Mammal Hunting and Trapping Regulations which regulate mountain lion hunting are being amended or repealed pursuant to the June 1990 passage of Proposition 117. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 180 for background information.)

Migratory Game Bird Hunting Regulations. At its August 31 meeting, FGC heard public comments on its proposed migratory game bird (waterfowl) hunting regulations, sections 502-510, Title 14 of the CCR. Dan Chapin, a representative of the California Waterfowl Association, proposed the creation of a new hunting zone by splitting an area known as the "Balance of State" zone. The proposal would split the zone along Interstate 80 into North I-80 and South I-80, allowing an earlier season for the zone with marsh and grasslands, and a later season for the Delta/Sacramento Valley zone.

FGC pointed out to Mr. Chapin that if a new zone is created, it will be in effect for the next five years, and any change in zoning would result in changes in the opening and closing dates of the season in those zones. Any change in zoning would take effect next year. FGC instructed DFG and the California Waterfowl Association to work together to revise the language of the regulations to maintain private landowner incentives, and to draft a proposal to split the Balance of State zone into two zones.

The proposed regulations include a delay in the start of the waterfowl season in southern California by two weeks (from October 13 to October 27). FGC moved to adopt the waterfowl regulations, subject to DFG's preparation of a revised environmental document available for public review and comment until September 26. At its October 4 meeting, the Commission was scheduled to consider certification of the final environmental document and adoption of the waterfowl hunting regulations.

Annual Status Report of the Sacramento Winter-Run Chinook Salmon. During the Commission's August 31 meeting, DFG presented a report on the status of the endangered winter-run chinook salmon. This year, an estimated 441 adult fish comprised the winter-run chinook salmon population; this estimate represents a 19% decline from DFG's spawning estimate. After many years of debate and delay, FGC finally listed the winter-run salmon as endangered in May 1989. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 1-15; Vol. 9,



No. 4 (Fall 1989) p. 119; and Vol. 9, No. 3 (Summer 1989) p. 108 for background information.)

DFG's report contained an update on implementation of the ten points contained in its agreement with three fishery agencies and the U.S. Bureau of Reclamation. For example, the Coleman National Fish Hatchery has initiated a hatchery propagation program for the restoration of the winter-run salmon. During the 1990 run, Coleman took 14 fish from which one pair spawned, yielding 5,000 eggs; a total of 1,500 fry survived. DFG believes the high mortality rate of the brood fish is the result of the stresses of trapping combined with fungus, disease, and hemorrhaging caused by inoculations.

DFG reported that the Red Bluff Diversion Dam is blocking or delaying adult salmon from returning to their spawning grounds. However, during the 1990 run, the dam gates were opened between December 1 and April 1. Thus, an estimated 89.6% of the spawning took place above the dam. Normally, the water temperature below the dam is only suitable for egg survival one year in six; therefore, any spawning below the dam is expected to contribute nothing towards increasing the population.

DFG believes water diversions are contributing to a high mortality rate for juveniles. There are over 300 unscreened diversions in the Sacramento River and Delta which can capture downstream juveniles and prevent them from reaching the ocean. In May, a fish screen was installed at the Tehama-Colusa canal, which should improve migratory fish survival rates. Next year, DFG may capture juveniles and take them to the hatchery for release when mature.

There were no problems this year with pollution from Spring Creek; in 1987, lethal levels of pollutants from Spring Creek were measured by DFG personnel. A problem could arise through excessive rainfall which could fill up the debris dam and cause overflow. Currently, the EPA is reviewing alternatives for source control, which include the complete capping of Iron Mountain, groundwater interception, and tunnel plugging.

DFG is implementing its program to restore the salmon spawning grounds. It placed 20,000 cubic yards of gravel in the upper Sacramento River; another 75,000 cubic yards are scheduled to be put in the river beginning in the fall of 1990.

Beginning in 1990, FGC closed the Sacramento River to salmon fishing from Bend Bridge to the Carquinez Bridge from January 15 to July 15, and

extended the period of closure to August 1 for the area above Bend. The Commission also closed San Francisco Bay and five miles of ocean beyond the Golden Gate Bridge to ocean sport fishing for chinook.

DFG also stated that warm water temperatures are impacting its efforts to restore the population. This year, 30% of the run was subjected to adverse water temperatures. DFG predicts the winter-run population will remain low in 1991, but should increase in 1992.

Adoption of Animal Harassment Regulation Postponed. During FGC's August 31 meeting, a representative of the aquaculture industry objected to the language of proposed new section 251.1, Title 14 of the CCR, as placing an undue burden on that industry. Section 251.1, a part of the Mammal Hunting and Trapping Regulations, was separated from the main body of the regulations for a 45-day public comment period. The language would prohibit the harassment, herding, or driving of game and non-game birds and mammals or furbearers, except as authorized by regulations of the Commission or the Fish and Game Code. The aquaculture industry argued that this language imposes an additional application process on members of that industry before they may obtain permission to drive off birds or mammals. Techniques used by the aquaculture industry to drive off birds include scarecrows, motor vehicles, and pyrotechnics. FGC postponed its consideration of the proposed regulation to permit DFG to work with representatives of the aquaculture industry to revise the regulatory language.

Taking of White Croaker Prohibited Off Palos Verdes Peninsula. On May 29, the Commission approved an emergency regulatory action adding section 104 to Title 14 of the CCR, which prohibits commercial fishers from taking white croaker off the Palos Verdes Peninsula. FGC took the action in response to a recommendation by the Department of Health Services (DHS) to protect the public from the potential health risk of consuming white croaker with elevated levels of DDT and PCBs. Emergency regulations are effective for 120 days, and section 104 was scheduled to expire on September 29. Thus, also on May 29, the Commission commenced rulemaking to adopt the regulation permanently, and set a public hearing for August 2 in Monterey.

At the August 2 hearing, the Commission received extensive public comment from three law firms objecting to DHS' health risk assessment. Because of the Commission's need to respond to the

public comments, it could not adopt section 104 as a permanent regulation; thus, it readopted the section as an emergency regulation pending its completion of the normal rulemaking process. This action ensures that commercial fishing of white croaker will not be resumed off the Palos Verdes Peninsula during the pendency of the rulemaking proceeding.

LEGISLATION:

AB 3158 (Costa), as amended August 30, requires DFG to establish and collect filing fees for departmental actions relating to projects subject to the California Environmental Quality Act (CEQA) in specified amounts, and requires those fees for projects on federal land unless explicitly preempted by federal law. This bill also revises the exemptions from the requirement for commercial hunting club licenses; changes the fees for one-day licenses to take fish; increases the application fees for state water bottom leases from \$100 to \$500; and establishes a fee for stream flow identification to be paid by persons applying for licenses, permits, transfers, extensions, or changes in use or point of diversion if there is a diversion of water from waterways where fish reside, as specified. This bill was signed by the Governor on September 30 (Chapter 1706, Statutes of 1990).

SB 2040 (Keene), as amended August 31, creates the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which requires the Governor to appoint an administrator for oil spill response who shall be a chief deputy director of DFG; establish a state oil spill contingency plan pursuant to the California Emergency Services Act and, by January 1, 1993, amend that plan by adding a marine oil spill contingency planning section which provides for the best achievable protection of the cost and marine waters; and ensure that the state fully and adequately responds to all oil spills in marine waters. This bill was signed by the Governor on September 22 (Chapter 1248, Statutes of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 181-83:

AB 3159 (Costa), as amended August 29, would have renamed DFG as the Department of Fish and Wildlife and would have prohibited changing indicia, as specified, of the name of the Department unless funds are appropriated therefor from funds other than the Fish and Game Preservation Fund. This bill was vetoed by the Governor on September 30.



REGULATORY AGENCY ACTION

AB 3160 (Costa), as amended July 27, would have required DFG to perform the duties presently delegated to FGC relating to setting of fees and determining the form of the authorizations issued under the Fish and Game Code and to hearing appeals from denials, revocation, and suspension actions relating to those authorizations. This bill was vetoed by the Governor on September 22.

ACA 51 (Campbell) proposed to rename FGC as the Fish and Wildlife Commission; increase the number of FGC members to nine; reduce the term of office to four years; and specify the qualifications and methods of appointment of the members of the new commission. This bill failed passage from the Assembly on August 21.

AB 3419 (Woodruff), as amended August 20, requires that a specified notice be given to adjacent landowners before the purchase of land by the Wildlife Conservation Board in DFG. This bill was signed by the Governor on September 24 (Chapter 1287, Statutes of 1990).

AB 2849 (Hauser), as amended August 29, authorizes DFG to grant funds for fish and wildlife habitat preservation, restoration, and enhancement to nonprofit entities when DFG makes specified findings. This bill was signed by the Governor on September 29 (Chapter 1425, Statutes of 1990).

AB 3200 (Polanco), as amended July 2, expressly requires FGC to annually determine whether to continue, repeal, or amend regulations establishing hunting seasons for black bears, and to include consideration of specified factors in making that determination. This bill also requires FGC to comply with specified notice and hearing requirements before enacting a regulation authorizing a special hunting season for black bears for the purpose of curtailing property damage in any specified area. This bill was signed by the Governor on September 10 (Chapter 687, Statutes of 1990).

AB 2848 (Hauser), as amended August 22, authorizes the issuance of license tags for the taking of antelope, elk, and Nelson bighorn sheep, and permits FGC to establish a nonrefundable application fee in an amount sufficient to pay the costs of processing applications and issuing licenses, tags, certificates, permits, reservations, and other documents. This bill was signed by the Governor on September 30 (Chapter 1620, Statutes of 1990).

AB 2603 (Lempert), as amended August 29, would have enacted the Oil Spill Prevention, Abatement, and

Removal Act, and would have required the Governor to establish a state oil spill contingency plan pursuant to the California Emergency Services Act. Although this bill died on the Assembly floor, many of its provisions were incorporated into SB 2040 (Keene) (*see supra*).

SB 1569 (Keene) was substantially amended on August 31 and is no longer relevant to DFG.

AB 3675 (Farr), as amended June 12, provides that FGC's regulations relating to the construction, fixtures, and other minimum caging standards, adopted by FGC for the confinement of live wild animals, are not building standards which are subject to approval of the State Building Standards Commission. This bill was signed by the Governor on September 10 (Chapter 743, Statutes of 1990).

SB 2563 (Mello), as amended August 20, revises those areas of Districts 17 and 18 for which the use of gill nets and trammel nets is prohibited, and revises those areas of those districts for which persons are required to comply with notification and monitoring requirements. This bill was signed by the Governor on September 13 (Chapter 884, Statutes of 1990).

SB 1760 (Green) prohibits fishing more than 1,250 fathoms (7,500 feet) of gill net or trammel net per day, in combination, from any vessel for rockfish or lingcod in ocean waters. This bill was signed by the Governor on September 11 (Chapter 780, Statutes of 1990).

AB 2126 (Felando), as amended August 29, increases specified fees and taxes imposed by DFG; authorizes DFG to suspend or revoke commercial fishing and fish business licenses for specified violations; deletes provisions providing for the issuance of a commercial fish business license which authorizes a person to engage in all of the activities for which various specialty licenses are issued; and requires a person to obtain a specialty license for each of the categories of activity in which he/she is engaged, with specified exceptions. This bill was signed by the Governor on September 30 (Chapter 1703, Statutes of 1990).

The following bills died in committee: *AB 2195 (Campbell)*, which would have extended the immunity of landowners for civil damages for injury to employees or contractors of any state agency under specified conditions; *ACA 52 (Mountjoy)*, which would have required each of the FGC members who is appointed on or after November 7, 1990, for a full term to be a resident of one of the five fish and game districts from which there is no member; *SB*

2840 (McCorquodale), which would have transferred all of the powers and duties of FGC to a new Fish and Wildlife Commission composed of twelve members who would serve four-year terms; *AB 3704 (Hauser)*, which would have required DFG to appoint legal counsel within DFG; *AB 4327 (Isenberg)*, which would have codified the legislature's intent that the state increase wetlands acreage by 50% by the year 2000, and required the Secretary of the Resources Agency to perform a study containing specified information relating to wetlands; *AB 2285 (Peace)*, which would have included bears within the class of animals that a possessor of land may protect from injury by dogs; *AB 4153 (Harvey)*, which would have authorized a peace officer to take a person into custody upon arrest for the intentional interference with lawful shooting, hunting, fishing, falconry, or trapping, if the peace officer reasonably believes that the offense will continue or resume, or that the safety of persons or property is imminently endangered by the release of the person arrested; *SB 2052 (Nielsen)*, which would have required FGC's regulations relating to the taking of mammals in licensed wildlife management areas to be consistent with regulations which would apply to the land if it were not included in the wildlife management area; *SB 2300 (Keene)*, which would have authorized the DFG Director to establish a program to control predation where squawfish are known to cause significant damage to the salmon and steelhead fisheries; *SB 2530 (Marks)*, which would have prohibited the alteration of wetlands, except pursuant to a permit issued by DFG; and *AB 178 (Floyd)*, which would have specifically directed FGC to rewrite its sport fishing and hunting regulations in simple English, and would have stated that the regulatory changes made pursuant to this bill are exempt from the regulatory program requirements of CEQA.

LITIGATION:

On August 8, in *Fund for Animals, et al. v. California Fish and Game Commission*, No. 361662, Sacramento Superior Court Judge Cecily Bond ruled in favor of petitioners and cancelled the archery portion of black bear hunt scheduled to begin in September 1990. The second half of the action was scheduled for October 3, when Fund for Animals was to challenge the adequacy of the environmental document prepared by the DFG in support of hunting black bear with firearms. This action is an extension of the litigation between the same parties last year, when Fund for Animals



was successful in reversing the Commission's decision to schedule a black bear hunt in 1989. (See *supra* report on FUND FOR ANIMALS; see also CRLR Vol. 9, No. 4 (Fall 1989) p. 119 and Vol 9, No. 1 (Winter 1989) p. 92 for background information.)

RECENT MEETINGS:

At its August 2 meeting, FGC refused to renew the U.S. Fish and Wildlife Service's permit to translocate sea otters to San Nicolas Island. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 115-16 and Vol. 9, No. 3 (Summer 1989) p. 108 for background information.) The Commission found the translocation of the otters unsuccessful; of the 103 sea otters relocated, 10 died, 18 have returned to the colony, and 46 are unaccounted for.

At FGC's August 31 meeting in Sacramento, former Commissioner Norman B. Livermore suggested that FGC contract to have a history of its activities written. In light of the recent budget cuts, Mr. Livermore stated he has dedicated the salary he received while he was a Commissioner to the project, and suggested that other former and current Commissioners do the same to help defray the costs of the project. Commissioner Taucher commented that a formal written history "would be a good thing, especially with so much flack we're getting right now." FGC asked that more information be gathered on the proposal, and invited Mr. Livermore to return to a future meeting to further discuss the matter.

FUTURE MEETINGS:

January 7-8 in Palm Springs.

January 31-February 1 in Long Beach.

February 28-March 1 in Redding.

April 4-5 in Sacramento.

May 16-17 in Fresno.

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 Adopts Emergency Regulations to Protect the Northern Spotted Owl. On July 23, the U.S. Fish and Wildlife Service (USFWS) declared the Northern Spotted Owl a threatened species throughout its range, including varied lands in California. The federal Endangered Species Act (ESA) prohibits any activities (e.g., timber harvesting) which would result in the "taking" of a threatened species. Under the ESA, the term "take" is broadly defined to mean harass, harm, pursue, hunt, shoot, wound, kill, capture, collect, or attempt

to engage in such conduct (16 U.S.C. § 1532(19)).

Also on July 23, the Board responded to the USFWS listing by adopting emergency regulations that will maintain the current viability and distribution of the owl while the Board, in conjunction with other state agencies, prepares a habitat conservation plan (HCP) and accompanying environmental documentation to address protection of the owl on state and private lands in California. Specifically, the Board adopted new sections 898.2(f), 919.9, 939.9, 919.10, and 939.10, and amended existing sections 895.1, 919.6(d)(1), and 939.6(d)(1), Title 14 of the CCR.

The purpose of the rule changes was to prevent CDF from approving THPs or otherwise authorizing timber operations which constitute an unlawful "taking" of the owl, while at the same time enabling it to fulfill its duties under PRC section 4551. That section requires the Board to assure the continuous growing and harvesting of commercial forests; thus, the emergency rules were necessary to enable CDF and the Board of review and grant THPs which are in compliance with ESA and the California Environmental Quality Act (CEQA). The Board was primarily concerned with preventing timber operations which would harm or harass the owl by actually killing or injuring an individual through habitat modification or through timber operations which significantly impair or disrupt essential behavioral patterns such as breeding, feeding, or sheltering. The Board also believed that its failure to adopt emergency protective regulations would subject it, CDF, and THP submitters to liability for noncompliance with the ESA or CEQA.

The emergency regulations were also designed to produce an integrated state approach to protect the owl, and requires the cooperation of the California Department of Fish and Game (DFG). DFG has had a cooperative agreement with USFWS since November 10, 1978, which provides that DFG "agrees not to engage in, or issue a permit authorizing, the taking of a resident federally listed endangered or threatened species." The participation of DFG is an integral aspect of THP review. Given the owl's unique biological need, DFG has assumed the task of evaluating the effects of all proposed timber operations on the owl. The Board's emergency regulations outline the special information which must now be gathered from the THP submitter in order to facilitate both DFG's interagency responsibilities with USFWS as well as the interdisciplinary THP review process.