



refusal to permit oil and gas development on Santa Cruz Island was upheld by the Second District Court of Appeal. Santa Barbara County had submitted an LCP for its jurisdiction which included oil, gas, and residential development on Santa Cruz Island. The island is in the Channel Islands National Park, and has been designated a marine sanctuary by the federal government due to its extraordinary collection of marine mammals, fishery resources, and endangered birds. The island is divided among the Gherini Ranch, the Santa Cruz Island Company Ranch, and an ecological preserve.

The county's plan would have allowed the ranches to be subdivided into 320-acre "ranchettes" and would have permitted energy development. The Commission rejected this part of the plan, stating that no hydrocarbon development would be permitted, and allowing residential development only on no more than 2% of the island's gross area. The Gherinis' suit challenged the Commission's authority and sought damages for inverse condemnation. The trial court upheld the Commission and found that the action was not an unconstitutional taking or damaging of the property. The appellate court affirmed, holding that the Commission did not abuse its discretion in finding that the risk of harm to the environment outweighed any need for development.

*Jonathan Club v. California Coastal Commission.* On October 12, the U.S. Supreme Court declined to review a California court decision that upheld that authority of the Commission to condition its grant of a beachfront development permit on the Club's agreement not to discriminate in its membership policies. In 1985, the Commission refused to grant the Club a permit to develop land it leased from the state unless the Club provided a written statement that it would not discriminate against women and minorities. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 105-06 for background information.) The Club contended that such a provision was outside the Commission's authority. The California courts upheld the Commission's authority, and the U.S. Supreme Court denied review for a lack of a substantial federal question.

In *Hartley, et al. v. Coastal Commission*, No. 567753 (Orange County Superior Court), plaintiffs filed suit seeking a writ of mandate to require the release of their Orange County residential property from affordable housing resale controls. The controls were imposed by the Commission due to a 1977-82 provision

in the Coastal Act requiring the Commission to provide and maintain affordable housing in the coastal zone. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 103-04 for background information.) The Commission, unable to manage the units due to lack of funding and expertise, released some homeowners from the conditions in February 1988 before being informed that such a release might involve giving away public funds. The plaintiffs seek such a release due to their inability to find buyers who qualify under the still-valid restrictions.

#### FUTURE MEETINGS:

April 11-14 in San Diego.

### DEPARTMENT OF FISH AND GAME

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The Department of Fish and Game (DFG) 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) is the policy-making 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.

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 100 million acres of land, 5,000 lakes, 30,000 miles of streams and rivers and 1,100 miles of coastline. Over 1,100 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:

*Regulatory Changes for Upcoming 1989-90 Hunting Seasons.* The Fish and Game Commission recently accepted recommendations for changes relative to game mammal, furbearer, and non-game mammal regulations for the 1989-90 hunting seasons.

The DFG was scheduled to announce its proposed regulation changes and all written and oral recommendations it received from the public on February 9, and to hold a preliminary public hearing on all proposals for change on March 3 in Redding. At that time, the Commission also received comments on environmental documents associated with the proposed regulatory changes. These environmental impact documents have become increasingly important in judicial determinations on the propriety of mammal hunts. Recent suits brought by conservation groups have successfully prevented tule elk and mountain lion hunts that would have been allowed under DFG regulations approved by the Office of Administrative Law (OAL). The courts were dissatisfied with the preparation of the environmental documents in the rulemaking record. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 106 for background information.)

At its March 3 hearing, the FGC was scheduled to announce its intention to adopt 1989-90 hunting season regulations. Written comments on the proposed regulations and the associated environmental documents must be received at the FGC office by March 27, in order for the Commission to review them prior to a final April 7 hearing.

*Other Regulatory Changes.* Following is a description of other rulemaking in which the FGC is currently involved:

-At its October and November meetings, the Commission entertained comments on its proposal to amend section



120.7, Title 14 of the CCR, regarding the issuance of sea urchin permits. Over the course of the hearings, the FGC's originally proposed language—which would replace the current moratorium on the further issuance of new sea urchin permits with a permanent limited entry system, prohibit the taking of red sea urchins between 1-½ and 3 inches in diameter, and modify the sea urchin fishing season closure periods—was amended in several respects. The amended regulation prohibits the possession of sea urchins by all commercially registered vessels during closed periods, adds a second area closed to commercial fishing for sea urchins, prohibits diving from a sea urchin vessel except under a sea urchin permit, and provides a grace period for commercially registered vessels transporting sea urchins to port immediately after imposition of the weekly closure. The Commission adopted these proposed changes on November 10; OAL subsequently approved them and they became effective on March 8.

-In November, the Commission adopted an amendment to section 6.15, Title 14 of the CCR, allowing limited sport fishing areas in San Diego's Murray Lake. This lake is presently closed to such activities. This regulatory amendment is currently awaiting approval by OAL.

-At its December meeting, the Commission held a hearing on its proposal to amend section 237(c)(7), Title 14 of the CCR, to bring state regulations on marking requirements for aquaculture lease sites into conformance with international regulations recently approved by the International Association of Light-house Authorities. These amendments were approved by the Commission on December 2; at this writing, the rule-making package is being prepared for submission to OAL.

-Also in December, the Commission adopted numerous proposed revisions to section 601, Title 14 of the CCR, which provides for the administration of the Private Lands Wildlife Management Area Program. These amendments were approved by OAL and became effective on February 10.

-In December and January, the FGC was scheduled to hold hearings on its proposal to amend section 12.60 and add section 12.61, Title 14 of the CCR, to impose a 20-inch maximum size limit on steelhead (rainbow trout) in the Sacramento River between Keswick Dam and the mouth of the Feather River, due to the dramatic decline in the steelhead run on the upper Sacramento River.

-Also in January, the Commission

was scheduled to hold a hearing on its proposed amendment to sections 121 and the addition of section 121.5, Title 14 of the CCR, to require that all lobsters taken, possessed, transported, or sold be maintained in such a way as to permit verification of size until prepared for immediate consumption or sold to the ultimate consumer; its proposed amendments to sections 550 and 630, Title 14 of the CCR, to increase the \$1 daily use fee to \$2 on four wildlife areas, add a \$2 daily use fee at three additional wildlife areas and two ecological reserves, provide for a \$10 annual wildlife use pass, and require an entry fee for persons 16 years and older; proposed amendments to section 670.5, Title 14 of the CCR, to list the bank swallow as a threatened species and the Tipton kangaroo rat as an endangered species; and numerous amendments and additions to section 671 *et seq.*, Title 14 of the CCR, to provide for the humane care and treatment of wild animals.

-In February, the FGC was scheduled to hold a hearing on another proposed amendment to section 670.5, Title 14 of the CCR, to add the desert tortoise to the list of threatened animals. The Desert Tortoise Council petitioned the Commission to list the tortoise as a threatened species due to the documented drastic declines in populations of this species. The FGC approved the desert tortoise for "candidate species" status at its November 1987 meeting, and commenced a period of one year for the Department to evaluate the proposed listing.

*OAL Disapproves Proposed Regulation.* On September 29, OAL disapproved proposed section 163.5, Title 14 of the CCR. The proposed section would have allowed the FGC Executive Secretary to negotiate penalties with herring permittees who have been convicted of violating a commercial herring fishing regulation, in lieu of a suspension or revocation of the violator's permit. OAL disapproved the regulation because the necessity and clarity standards of Government Code section 11349.1 were not met. OAL also refused to approve the regulation because the procedure followed by FGC was incorrect. FGC failed to include the date the notice of proposed modifications were mailed in the rulemaking file, as required under section 44(b), Title 1 of the CCR.

FGC amended its rulemaking file and resubmitted it to OAL, which approved section 163.5 on January 3.

## LEGISLATION:

*AB 1 (Allen)* would establish the Marine Resources Protection Zone around the Channel Islands, and would prohibit the use of gill nets and trammel nets in the Zone on and after January 1, 1993, except for persons holding permits received in a DFG lottery. The bill would also prohibit the use of specified trammel nets in the Zone after that date. Between January 1, 1990, and December 31, 1992, except for persons holding permits obtained in the lottery, gill nets or trammel nets could only be used pursuant to a permit issued by the DFG to applicants meeting specified requirements.

*AB 196 (Allen).* Existing law prohibits a person from intentionally interfering with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where the activity is taking place; and sets forth specified fines and jail terms for first and subsequent violations. This bill would delete those fine amounts and provide for unspecified fines for any infraction or misdemeanor under those provisions.

*AB 197 (Allen).* Existing law authorizes the DFG to impose civil liability on 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; and sets forth specified civil penalties for violations thereof. This bill would delete those specified maximum civil penalties and provide for unspecified penalties for violating those provisions.

*AB 178 (Floyd)* would exempt persons 65 years of age or older from the license required before taking any fish, reptile, or amphibian for any purpose other than for profit.

*SB 211 (Nielsen)* would exempt persons 62 years of age or older from the license required before taking any fish, reptile, or amphibian for any purpose other than for profit.

*AB 311 (Allen)* would require any person engaged in taking any bird, mammal, fish, amphibian, or reptile to have on his/her person or in his/her immediate possession a license, license tag, license stamp, or permit that is required for the taking of the animal.

Following are areas of possible legislation to be sponsored or supported by DFG during the 1989 legislative session:

-DFG favors a tax increase on commercial herring fishers, with the proceeds funding the herring fishery



# REGULATORY AGENCY ACTION

account. DFG is concerned about the lack of funds in this account; due to its rapid rate of depletion, the herring fishery needs funds available to replenish its stock.

-A reduction of aircraft restrictions over wildlife refuges is also being considered. The current restrictions ensure no disturbance of wildlife breeding; this proposal would allow the film industry to fly over and photograph these areas during the non-breeding seasons.

-Proposals to increase fees for the habitat enhancement program are also being considered. Following an Auditor General's investigation into the alleged lax enforcement of this program and its inability to pay for itself, DFG is considering a proposal to increase the maximum statutory application and day fees allowed. The fee increases would be earmarked for enforcement funding and overall financial support.

-DFG will also propose an extension of the sunset provision in Fish and Game Code section 8151.5. The current statute allows DFG to monitor the number and take limits of sardines. This legislation sunsets on January 1, 1990; the proposed legislation would extend the program to January 1, 1991.

## LITIGATION:

In *Mountain Lion Preservation Foundation, et al. v. California Fish and Game Commission*, FGC is currently appealing the San Francisco Superior Court's decision banning the FGC-approved mountain lion hunt for the second consecutive year. The court again found fault with the environmental impact statement relied upon by the Commission. The FGC defends the adequacy and accuracy of its report. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 106 for background information.)

At this time, FGC has no plans to appeal a similar decision by the Sacramento Superior Court that its environmental impact report on a proposed tule elk hunt fails to meet the standards of the California Environmental Quality Act. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 106 for background information.)

## RECENT MEETINGS:

At its October meeting, the Commission heard testimony in opposition to the Department's request to list the plant Orange County Turkish Rugging as a candidate for threatened species protection. The controversy developed because listing this plant as "threatened" would hinder many development interests in Orange County.

Listing a species as a candidate for

"threatened" or "endangered" status carries automatic protections until a final determination on the possible listing is made. These protections would severely curtail the Irvine Company's ongoing development of an area containing many of these plants.

In rejecting the Department's request, the Commission stated that DFG did not provide enough information to warrant protective status for the plant. The Commission recommended that the affected business interests and DFG coordinate an effort to determine the total plant population and establish with more accuracy the threat of endangerment to this species.

At the Commission's December meeting, cold storage facilities were put on notice of the Department's intent to actively enforce section 711, Title 14 of the CCR, a recently-adopted regulation concerning the storage of game animals. The new regulation requires these facilities to keep paperwork on each animal in storage, including records of animal tags and owners' license numbers. The purpose of the new regulation is to reduce the poaching of restricted game animals and to require a full accounting of the owners' records regarding them. The cold storage facilities that handle game animals had requested the new regulation in order to clarify their responsibility.

## FUTURE MEETINGS:

April 6-7 in Sacramento.

April 27 in Sacramento.

## BOARD OF FORESTRY

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The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code section 4511 *et seq.*). 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. The Board members are:

Public: Harold Walt (chair), Carlton Yee, Clyde Small, Franklin L. "Woody" Barnes, and Elizabeth Penaat.

Forest Products Industry: Roy D. Berridge, Clarence Rose and Joseph

Russ, IV.

Range Livestock Industry: Jack Shannon.

The Forest Practice Act 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 appropriate, by experts from the Department of Fish and Game and/or the regional water quality control boards.

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:

*Site Preparation Regulations Adopted.* On September 7, the Board began public hearings to discuss amendments to the Board's site preparation rules in Title 14 of the California Code of Regulations (CCR). (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 106-07 for detailed background information on these proposed changes.) These hearings were continued at the Board's October and November meetings, and the proposed amendments were formally adopted on December 9.

The following is a synopsis of the newly adopted amendments: section 895.1 was amended to add relevant site preparation definitions; Technical Rule Addendum Number One was amended regarding procedures on estimating surface soil erosion hazard rating (sections 912.5, 932.5, and 952.5); regulations for each forest district dealing with harvesting practices and erosion control were revised to include site preparation activities (sections 914, 914.2, 914.7, 934, 934.2, 934.7, 954, 954.2, and 954.7); and