



REGULATORY AGENCY ACTION

then hauled away to be used by a private firm as fertilizer. In 1981, the Commission allowed a 30-acre expansion of the sludge beds on the condition that the City remove the beds by 1987. The City has been granted four extensions since 1987; the most recent extension expired in April. The City plans to ask for another extension, citing the need to conduct full environmental studies prior to selecting an alternate site. San Diego City Councilmember Bruce Henderson has developed a plan to force the City off Fiesta Island by requiring \$1 million payments annually so long as Fiesta Island is used as a sludge bed. The proposal would not allow the Island to be used after 1995 regardless of payment. Environmental groups argue that the proposal would allow Mission Bay to continue to be used as a dump for up to six years; Henderson disagrees, contending that the payments would provide the City with an incentive to discontinue its use of Fiesta Island, and the money could be used to improve Mission Bay and surrounding areas. The Commission was scheduled to rule on this issue at its April meeting.

FUTURE MEETINGS:

July 11-14 in Marina del Rey.

DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli
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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 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.

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. At its February and March meetings, FGC announced and discussed its proposed 1989-90 manual hunting and trapping regulations. Following a public comment period, FGC was scheduled to adopt the regulations at its April 27 meeting in Sacramento.

At its February 3 meeting, the Commission made the following recommendations for changes:

-Tule Elk. In spite of the success of conservation groups in preventing a Tule elk hunt in the past (see CRLR Vol. 8, No. 4 (Fall 1988) p. 106 for background information), the FGC has proposed section 364.5, Title 14 of the California Code of Regulations (CCR), which would provide for the sport hunting of Tule elk. Currently, there is no such regulation. Last year, the Committee for the Preservation of the Tule Elk successfully blocked the proposed hunt in Sacramento Superior Court. DFG decided not to appeal that court's ruling that an environmental impact report prepared by DFG biologists failed to meet the standards of the California Environmental Quality Act. For the 1989-90 season, FGC has proposed hunting Tule elk with either rifles or bow and arrows,

but decided to prohibit the use of dogs.

-Mountain Lions. At this time, DFG has declined to recommend a mountain lion hunt for the 1989-90 season; however, the possibility remains that a hunt could be adopted following notice to the public and a comment period. DFG's appeal of the San Francisco Superior Court's decision in *Mountain Lion Preservation Foundation, et al. v. California Fish and Game Commission* is still pending. (See CRLR Vol. 9, No. 1 (1989) p. 92 for background information.)

-Other Mammal Regulations. FGC has also proposed regulations for hunting seasons on deer, pronghorn antelope, elk, black bear, and wild pigs. FGC's existing section 265, regarding the use of dogs in the pursuit or hunt of mammals, is being amended to remove a portion of Mariposa and Tuolumne counties from the dog closure area.

FGC Delays Listing the Desert Tortoise as Threatened Species. At its February 3 meeting in Long Beach, FGC decided to postpone a decision on whether to adopt an amendment to section 670.5, Title 14 of the CCR, which would add the desert tortoise to FGC's list of threatened species. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 91 for background information.) Originally scheduled to be determined on February 3, the Commission has decided to delay a decision until June 30.

FGC stated that the delay was caused by voluminous amounts of mail received by the Commission just days before the issue was to be determined. The Commission is required to consider all public comments regarding proposed action before a vote is taken. In this instance, the Commission stated it had not had an opportunity to review all the comments before the scheduled vote.

In a surprise move, the federal Bureau of Land Management (BLM) requested, just two days before the scheduled vote, that the state delay in the listing of this species for two to four years. BLM stated that before the state acts on this issue, it would like time to implement its own program to protect the desert tortoise on federally-owned land.

BLM biologist Kristin Berry disagreed with BLM's request, stating that action to protect the desert tortoise must be taken now. According to Berry, the tortoise population has registered declines of 30-70% in the western Mojave Desert over the past seven years. DFG spokesperson James St. Amant also expressed disappointment with the BLM action. He noted that a two- to four-year delay could effectively kill chances of having



the tortoise listed and could threaten dwindling tortoise populations in some parts of the Mojave Desert with extinction. Several people were puzzled at BLM's stated reason, because any listing by FGC would apply only to state and privately-owned lands, and not federal lands under BLM's jurisdiction.

The DFG has endorsed the listing of the desert tortoise as threatened. Department biologists have expressed alarm at the tortoise's dramatic decline in population and have noted problems confronting other animals due to the decline of the tortoise. The tortoise is known as an "indicator species" because its declining numbers have a ripple effect throughout the desert habitat. Glenn Stewart, a zoology professor at Cal Poly Pomona, stated in a January 26 interview with the *Los Angeles Times* that the tortoise plays a vital role in the desert environment. He noted that the tortoise provides food for the desert kit fox, coyote, bobcat, golden eagle, and raven. Their burrows become shelter for snakes, lizards, and small rodents. Further, tortoise holes are a major nesting site for the burrowing owl. Stewart concluded that preservation of this one species would benefit many other desert animals.

Under California's endangered species law, FGC has the responsibility to protect California's plants and animals from extinction. When the Commission votes to list an animal or plant as either threatened or endangered, several protections are afforded to both the listed species and its habitat.

Several communities have expressed concern that desert use would be severely restricted if the tortoise were listed as threatened because the tortoise would require undisturbed habitat. Over 100 people turned out at the Commission's February 3 meeting to be heard on this issue. While many supported the proposed listing, others were extremely disturbed at the prospect of restricted desert use. For example, developers could be required to consider the tortoise's habitat when planning a project, and development could be stopped if a serious threat to the species required it. Sheep grazing, off-road vehicle use, and desert motorcycle races could also be banned.

FGC's decision to delay a determination of the tortoise's status until June 30 will allow the Commission time to review the public comments received just prior to the February meeting. The Commission noted that on June 30, no public comments will be allowed, and this issue will finally be resolved.

Andean Condors Released. DFG has

instituted its program which allows for the release of Andean Condors into the former habitat and range of the California Condor. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 105; Vol. 7, No. 4 (Fall 1987) p. 94; and Vol. 7, No. 3 (Summer 1987) p. 119 for background information.)

The purpose of this program is to determine whether the Andean Condors can survive in the wild before the scheduled release of the California Condor. Currently, all California Condors known to exist have been captured and placed in captive breeding programs in the Los Angeles and San Diego zoos.

The Andean Condors will be closely watched over the next few years to view the health of these birds and their mortality rate. DFG hopes the information obtained from the program will enable the state to release the California Condors with confidence that they will survive in the wild. The program is set to run for two to three years; FGC hopes to reintroduce the California Condors to the wild by 1992.

Emergency Rulemaking. At its January meeting in Palm Springs, FGC adopted an emergency rule restricting the taking of steelhead trout from the Sacramento River. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 91 for background information.) The rule imposes restrictions on the size of fish allowed to be caught; a twenty-inch maximum size limit has been imposed. The restrictions apply to all steelhead (rainbow trout) caught in the Sacramento River between Keswick Dam and the mouth of the Feather River. The emergency regulation was needed due to the rapid decline in the steelhead run and to protect them during the spawning season.

The agency subsequently adopted new section 12.61 and an amendment to section 12.60, Title 14 of the CCR, to permanently impose these restrictions. The Office of Administrative Law (OAL) approved the rulemaking in February.

Other FGC Rulemaking. The following is a status update of rulemaking reported in CRLR Vol. 9, No. 1 (Winter 1989) at pages 90-91:

-In November, the Commission adopted section 6.15, Title 14 of the CCR, allowing limited sport fishing areas in San Diego's Murray Lake. OAL approved this regulation on January 3.

-Also in January, OAL approved section 237(c)(7), Title 14 of the CCR, which will bring marking requirements for aquaculture lease sites into conformance with international regulations recently approved by the International Association of Lighthouse Authorities.

-The Commission decided to delay hearings on proposed amendments to sections 121 and 121.5, Title 14 of the CCR. These proposed sections would place restrictions on lobsters sold and possessed in the state. The Commission has scheduled these amendments for a hearing at its November 3 meeting. The Commission noted that the regulations as written lack clarity, a requirement all rulemaking must meet before receiving approval from OAL.

-At its March meeting, the FGC approved an amendment to section 670.5, Title 14 of the CCR, to list the Bank Swallow as threatened and the Tipton Kangaroo rat as endangered. This amendment is currently awaiting approval from OAL.

LEGISLATION:

AB 1619 (Floyd) would repeal section 713 of the Fish and Game Code, which currently allows DFG to increase the base fee for fish and game licenses, permits, and tags by a specified inflation factor; and instead would prohibit the fee charged for any license, stamp, or tag from exceeding the fee in effect on January 1, 1989, unless the fee increase or decrease is approved by statute. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1222 (Costa) would extend until January 1, 1994, an existing provision requiring each state lead agency to consult with DFG to ensure that specified actions of the agency are not likely to jeopardize the continued existence of any endangered or threatened species. This bill is pending in the Assembly Ways and Means Committee.

AB 1652 (Wright) would authorize DFG to renew gill net or trammel net permits to existing holders of permits who meet the qualifications prescribed in the bill; prohibit issuing permits to new persons until there are less than 400 permits issued by the DFG for a particular permit year, as defined; authorize the transfer of permits to persons holding crewmember permits, the issuing of which would be provided for in the bill; and would exempt fishing under limited entry permits to take herring for roe and limited entry shark or swordfish permits from the requirements for the gill net or trammel net permit. This bill is pending in the Assembly Ways and Means Committee.

SB 999 (McCorquodale). Existing law requires the FGC to conduct a final consideration hearing on a petition for the listing of species as threatened or endangered after the DFG conducts a



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review of the candidate species, and, at that hearing, to determine if the petitioned action is warranted or not. If FGC determines that the listing is warranted, it is then required to publish a notice of proposed rulemaking, and conduct further proceedings pursuant to the Administrative Procedure Act. This bill would require FGC to publish the notice of proposed rulemaking in conjunction with scheduling the petition for final consideration, which is to be at its first meeting occurring at least 45 days after receiving a report on the petition from DFG, and to adopt the rule or regulation at the final hearing if the petitioned action is warranted. This bill is pending in the Senate Appropriations Committee.

SB 1208 (Keene) would authorize the DFG Director to close any waters or to restrict the taking under a commercial fishing license in state waters of any species or subspecies of fish that is likely to pose a human health risk from high levels of carcinogens. The closure or restriction would be required to be adopted by emergency regulation. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 756 (Marks) would prohibit the use or sale of any type of leghold steel-jawed trap in California. Violation of this prohibition would be a misdemeanor. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 763 (Green) would authorize the FGC to require the owner and operator of a commercial fishing vessel, the holder of a commercial fishing permit, and the owner and license holder of a commercial passenger fishing boat to keep and submit a complete and accurate record of fishing activities in a form prescribed by the DFG. The bill would authorize the revocation or suspension of those licenses for failure to keep and submit those records. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

AB 317 (Allen) would require every person, when engaged in taking any bird, mammal, fish, amphibian, or reptile, to have on his/her person or in his/her immediate possession the license, tag, stamp, or permit required for the taking of the bird, mammal, fish, amphibian, or reptile. Violation of this provision would be an infraction with prescribed minimum and maximum fines. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 371 (Condit) would exempt any resident 62 year of age or older from the requirement for a sport fishing license. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 212 (Nielsen) would exempt any resident 62 years of age or older from the requirement for hunting licenses. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

AB 860 (Costa) would return the mountain lion to specially protected status, and would provide for the issuance of special permits by the DFG to take mountain lions which have injured or destroyed livestock, or damaged property. Violation of this provision would be a misdemeanor. 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. 9, No. 1 (Winter 1989) at page 91:

AB 1 (Allen), which would establish the Marine Protection Resources 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 (with specified exceptions), is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 211 (Nielsen), which would exempt any resident 62 years of age or older from the requirement for a sport fishing license, is pending in the Senate Committee on Natural Resources and Wildlife.

AB 178 (Floyd) was amended on April 11 to specifically direct the 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 requirements of the California Environmental Quality Act. This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 196 (Allen) was amended on April 13. This bill 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 mammal (with prescribed exceptions). This bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 197 (Allen), which would provide 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, is also pending in the Assembly Committee on Water, Parks and Wildlife.

RECENT MEETINGS:

At its January meeting, the Commission delayed a hearing on proposed regulations regarding the importation, possession, transportation, care, and treatment of wild animals and prohibited species.

The proposed regulations focus primarily on caging requirements, but also apply to the overall general health of the animals while in transit and at their final destination. Currently, no comprehensive set of standards for the care of these animals exists in the state. FGC noted the complexity of these regulations as a reason for delaying the hearing until August 3, 1989.

In February, the Commission designated 2,254 acres of land located in Hope Valley, Alpine County, as a state wildlife area. Previously held by the Wildlife Conservation Board, an agency of DFG, this land was not subject to local tax assessment until the designation by the Commission. By declaring this area a wildlife area, Alpine County is now able to assess and collect property taxes against the state-held land.

In March, the Commission heard a proposal from the Department to list the Sacramento River Winter-Run King Salmon as endangered. The FGC refused to follow DFG's recommendation, stating that the listing of this species is unjustified at the present time because fisheries currently have a stock of over 1,000 of these fish. The Commission noted that if the fishery's stock were to decline, or if the population of the fish in the wild were shown to be in great danger, the Commission could then take this issue up again at a later date. At the present time, however, the Commission found no need to list this fish as endangered.

FUTURE MEETINGS:

August 3-4 in Santa Rosa.
August 29-30 in Sacramento.
October 5-6 in San Diego.
November 6-7 in Redding.
Nov. 30-Dec. 1 in Long Beach.

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 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