



cussed in CRLR Vol. 7, No. 4 (Fall 1987) at page 93, has been dismissed. The County dropped the suit in recognition of Exxon's acceptance of the County's onshore permit, including requirements for OCS facilities.

In *WOGA v. Sonoma, et al.*, the Western Oil and Gas Association (WOGA) filed suit challenging local ordinances which restrict or prohibit onshore support facilities for offshore oil and gas exploration. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 92-93 for background information.) In its suit, WOGA claims that the ordinances are unconstitutional, violating the Supremacy and Commerce Clauses. In late November, the State Lands Commission and the Coastal Commission intervened as defendants, contending that administrative remedies have not been exhausted and that the ordinances are constitutional.

On February 8, the parties argued motions to dismiss filed by the local and state government defendants, and a motion for partial summary judgment filed by WOGA. On April 21, the court issued its rulings, granting the motions for dismissal with respect to all of the ordinances except those applying outside the coastal zone, and denying WOGA's motion for summary judgment. The court's order includes a determination that WOGA has not exhausted its administrative remedies, in that under the Coastal Act it could request that the Commission amend a local coastal plan to provide for additional energy facilities. The court also found that the ordinances are not preempted by the CZMA, the Outer Continental Shelf Lands Act, or certain other statutes providing for Coast Guard regulation of tanker activities.

In *WOGA v. Santa Barbara*, WOGA challenges a consolidation policy adopted by the County of Santa Barbara. The policy has been filed with the Coastal Commission as a proposed amendment to the county's local coastal plan. WOGA contends that implementation of the policy would violate due process and the Commerce Clause, and that the LCP procedure was a violation of the California Environmental Quality Act. The Coastal Commission filed a motion to intervene based on two concerns. First, the Commission seeks to protect its procedures for review of LCP provisions from interference by the courts. Second, an adverse ruling on the Commerce Clause issue may affect its implementation of Coastal Act consolidation policies. The Commission's motion was granted; motions for dismissal and/or

summary judgment were expected to be filed in July.

In *People of the State of California v. Hodel*, Attorney General John Van de Kamp, the Coastal Commission and the State Lands Commission have sued the Secretary of the U.S. Department of the Interior on his approval of the Final Lease Program for 1987-1992. (See *supra* MAJOR PROJECTS; see also CRLR Vol. 7, No. 4 (Fall 1987) pp. 92-92 and Vol. 7, No. 3 (Summer 1987) p. 116 for background information.) The state's brief filed on March 21 alleges violations of the National Environmental Policy Act, section 18 of the Outer Continental Shelf Lands Act, and Section 11 of the Continuing Appropriations Act for Fiscal Year 1987 regarding leasing offshore California. Oral argument is scheduled before the District of Columbia Circuit Court of Appeals on September 7.

In *Santa Barbara and Ventura Counties v. California Coastal Commission*, Santa Barbara and Ventura counties have filed a petition for writ of mandate in state court challenging the Commission's concurrence in the consistency certification for Cities Service's Platform Julius. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 93 for background information.) The petitioners allege that the Commission failed to properly implement the California Environmental Quality Act and the air pollution control requirements of the Santa Barbara and Ventura County Air Pollution Control Districts. A hearing in the case was scheduled during August.

#### FUTURE MEETINGS:

September 13-16 in Marina del Rey.  
October 11-14 in San Diego.

### DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli  
(916) 445-3531

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 popula-

tions 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.

On June 30, the Senate confirmed Pete Bontadelli as DFG's Director by a vote of 22-0. Bontadelli was supported by an unusual coalition of organizations, including the Sierra Club, the Defenders of Wildlife, the Planning and Conservation League, the National Rifle Association, and the California Rifle and Pistol Association.

#### MAJOR PROJECTS:

*Approval of Mountain Lion, Big-horn, and Tule Elk Hunting Seasons.* At its April 8 meeting, the DFG adopted proposed section 369, Title 14 of the California Code of Regulations (CCR), which would provide for the hunting of mountain lions. The DFG's attempts to authorize mountain lion hunts has been the source of much controversy and public opposition for the past several years. (For background information, see



## REGULATORY AGENCY ACTION

CRLR Vol. 8, No. 2 (Spring 1988) pp. 107-08; Vol. 8, No. 1 (Winter 1988) p. 95; Vol. 7, No. 4 (Fall 1987) p. 95; and Vol. 7, No. 3 (Summer 1987) p. 118.) Indeed, graffiti opposing the hunt was sprayed on an outside wall of the building where the DFG met.

The DFG's order would revive mountain lion hunting in California for the first time since it was banned in 1972. Last year, the DFG approved the hunting of mountain lions only to have the San Francisco Superior Court order the Department to perform further research on population and environmental impact.

If approved by the Office of Administrative Law (OAL), section 369 would authorize 190 lottery-picked hunters to hunt the cougars during a 79-day hunting season, which would begin in October and be confined to specified areas of northern California. State biologists estimate the population of the mountain lions at 5,000.

The Commission also approved a limited hunting season on bighorn sheep (proposed section 263), authorizing the issue of one special auction and eight general permits to hunt Nelson bighorn sheep in San Bernardino County. Population of the bighorn is estimated at 4,800.

Hunting of tule elk would be renewed by the Commission for the first time since the 1970s if proposed section 364 is approved by OAL. Studies show the population of the elk has rebounded to about 2,500. The new provision would provide for the issuance of a total of 105 tags for hunting around Bishop and Lone Pine in Inyo County and in the Cash Creek area of Colusa County.

Interest is expected to run high in all three controversial species, with applicants for the tags far outnumbering the tags available. Last year the winning bid at the auction for the one bighorn permit was \$60,000.

Also adopted in April were regulations which would establish the fall hunting season for Rocky Mountain elk, bear, and deer. (For background information on these hunts, see CRLR Vol. 8, No. 2 (Spring 1988) pp. 106-07.)

**Regulatory Determination Decision.** On April 6, the OAL concluded that from the time of the DFG's January 1987 adoption of its "Wetlands Resources Policy" until December 3, 1987, the Fish and Game Commission failed to comply with the Administrative Procedure Act (APA) insofar as the policy implemented, interpreted, or made specific statutes granting the DFG authority to compel mitigation measures modify-

ing streambed alteration projects. (For background information on the Wetlands Resources Policy, see CRLR Vol. 8, No. 1 (Winter 1988) p. 94; for further information on the OAL's decision, see *supra* agency report on OAL.)

The challenged part of the policy stated that "the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage." Government Code section 11342 defines "regulation" as "every rule, regulation... or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it..." and requires adherence to specific rulemaking procedures with regard to regulations. The OAL found that the questioned part of the policy constituted a regulation since it was a standard of general application and made specific the law enforced or administered by the Commission through the Department.

In a response dated March 7, the Commission stated that the policy was made nonregulatory by the adoption of a second policy by the Commission on December 3, 1987. The second policy expressly limits the application of the original policy and confines the Department to an "advisory" role with respect to its implementation. Because of this policy revision, OAL determined that the Commission's policy is now nonregulatory in nature and is therefore not subject to APA rulemaking requirements.

**Regulatory Changes.** OAL has approved an amendment to section 472(d), Title 14 of the CCR, pertaining to American crows (*Corvus brachyrhynchos*). The amendment in effect states that the taking of crows with toxicants must be under the supervision of employees or officers of the Department of Food and Agriculture or federal or county pest control officers or employees acting in their official capacities. Officers or employees must possess a qualified applicator certificate issued pursuant to sections 14151-14155 of the Food and Agriculture Code. The subsection became operative on March 11.

Several birds were added to the endangered species list on March 17, with OAL's approval of an amendment to section 670.5, Title 14 of the CCR. The list's new additions include the Gilded Northern Flicker (*Colaptes auratus chrysoides*), Gila Woodpecker (*Melanerpes uropygialis*), and Arizona Bell's Vireo (*Vireo bellii arizonae*).

Effective March 26, a sport-caught fish processor's permit is required of

any person or persons who, for a fee or for exchange, can or smoke fish taken under the authority of a sport fishing license. Upon application and payment of \$50, the DFG shall issue such permits, as provided in amendments to section 231, Title 14 of the CCR, which were approved by OAL in February.

### LEGISLATION:

**AB 2891 (Jones)** would amend sections 4754, 4758, and 4804 of the Fish and Game Code to prohibit the possession of bear meat, skin, hide, or other bear parts. The measure would also recast provisions of the Fish and Game Code relating to violations of laws concerning bears or mountain lions. Specifically, the bill would make forfeiture of license tags effective upon a conviction for violation of the Code, or rules, regulations, or orders issued under the Code, relating to the respective game. Persons so convicted would be guilty of a misdemeanor offense if found to have applied for the respective license tags for the following year. AB 2891 passed the Assembly on June 9 and is pending before the Senate Committee on Natural Resources and Wildlife at this writing.

**AB 3094 (Allen)** would amend section 1055 of the Fish and Game Code to forbid DFG from issuing punch cards to previous-season card holders who failed to return cards within one month and twenty days after the end of the license year. The measure would also require the Department to bill for punch cards and license documents returned within sixty days after the license year ends, and would require license agents to pay interest and penalties, as specified. AB 3094 is awaiting action by the Governor at this writing.

**AB 3330 (Costa)**, which would repeal and add sections 12002.5, 12002.6, and 12002.8 of the Fish and Game Code to reenact FGC authority to revoke or suspend boat registrations and commercial fishing licenses for specified commercial fishing violations, is also awaiting action by the Governor at this writing.

**SB 2619 (Marks)**, which would amend section 5106 of the Vehicle Code to increase personalized environmental license plate fees from \$35 to \$40 for issuance and from \$20 to \$25 for annual renewal, is pending in the Assembly Natural Resources Committee after passing the Senate on May 27.

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 107-08:

**AB 1960 (Farr)**, relating to birds of prey, has been amended to include



language authorizing an unspecified fee for the issuance of a raptor propagation permit. The bill is pending in the Senate Appropriations Committee at this writing.

**AB 2007 (Kelley)**, concerning duties of persons licensed by DFG to use their property for recreational purposes, is scheduled for an August 2 hearing in the Senate Judiciary Committee.

**AB 2324 (Killea)**, authorizing DFG to carry out a California condor preservation project, has been chaptered (Chapter 88, Statutes of 1988).

**AB 2605 (Seastrand)**, concerning damages to commercial fishermen whose vessels operate in areas impacted by oil and gas development, has been amended to provide for the creation of a local Marine Fisheries Mitigation Program. The bill would also authorize the Secretary of Environmental Affairs to make grants, contract for services or research, or enter into interagency agreements. This bill is pending in the Senate Committee on Natural Resources and Wildlife at this writing.

**AB 2725 (Chacon)**, which was amended in May, would no longer allow the commercial taking of crayfish from lakes or reservoirs. Instead, it would require the DFG to conduct a study on the impact of commercial crayfishing on lakes and reservoirs. This bill is pending in the Assembly Committee on Water, Parks, and Wildlife.

**SB 2020 (Green)** was substantially amended in April, at which time all of its original text was deleted. The bill would now create the Southern California Citizens Advisory Committee on Ocean Habitat and Fishery Restoration within DFG. The Committee would be required to develop a plan to restore fishery resources south of Point Conception.

The bill would also require that each panel of a gill net or trammel net be permanently identified, as specified, with the permit number of the owner.

**SB 2020** would further require the Department to fill all vacancies in its Wildlife Enforcement Branch by a specified date. Finally, the bill would appropriate an unspecified amount for DFG to obtain a patrol aircraft to patrol specified waters. **SB 2020** is pending in the Senate Appropriations Committee.

**SB 2021 (Green)**, as amended, would now amend—as opposed to repeal—a provision of existing law which restricts or prohibits the taking or possessing of giant sea bass for those sea bass incidentally taken in commercial fishing operations. The restriction would be lowered from two to one fish per vessel. **SB 2021**

is awaiting the Governor's signature at this writing.

**SB 2022 (Green)**, as amended, now includes a prohibition against the taking of rockfish and lingcod in waters less than 70 fathoms in depth along the mainland shore and in waters less than 100 fathoms in depth at the Sixty Mile Bark. This bill was sent to the Assembly consent calendar in late June.

The following bills were last reported in CRLR Vol. 8, No. 1 (Winter 1988) at page 95:

**ACA 44 (Campbell)**, concerning qualifications of Commission members; **AB 33 (Harris, D. Brown)**, concerning tax-free contributions to the Rare and Endangered Species Fund; and **AB 369 (Allen, Chacon)**, regarding redirection of fishing from overexploited to underutilized areas, have all died in committee.

**AB 253 (Kelley)**, which would require the DFG to report to the legislature on or before January 1, 1990 on warden staffing patterns and responsibilities, as specified, remains pending in the Senate Committee on Natural Resources and Wildlife.

**AB 271 (Allen, Killea)**, requiring that all state agencies comply with certain administrative reporting procedures, is pending in the Senate Committee on Governmental Organization.

**AB 212 (Condit, et al.)** has been amended several times. In addition to exempting any state resident 62 years of age or older from the requirement for a sport fishing license, this bill would also authorize a disabled veteran to receive a hunting license from DFG for a fee of \$2. **AB 212** was scheduled to be heard in the Senate Appropriations Committee on August 8.

**AB 512 (Allen)** was amended for the eighth time in late June. Upon adoption of specified guidelines by the FGC, this bill would authorize the Department to impose civil liability on persons who perform specified acts in violation of the Fish and Game Code or related regulations. The bill would provide exemptions for forestry, agricultural, or governmental permitted development or maintenance activities. It would further provide that flight from the state to escape prosecution for violations of the bill's provisions would constitute a felony. **AB 512** passed the Senate Committee on Natural Resources and Wildlife in late June.

#### LITIGATION:

In June, and for the second consecutive year, the Mountain Lion Preservation Foundation filed a lawsuit in San

Francisco Superior Court to block the FGC's efforts to allow mountain lion hunting in the state. (See *supra* MAJOR PROJECTS; for information on the previous litigation, see CRLR Vol. 8, No. 1 (Winter 1988) p. 95; Vol. 7, No. 4 (Fall 1987) p. 95; and Vol. 7, No. 3 (Summer 1987) p. 118.)

On June 8, San Francisco Superior Court Judge Lucy McCabe, who blocked the hunt last year, ruled that the dispute will be decided in the San Francisco court—and not in Sacramento, where Commission attorneys had filed suit against the Foundation in April. That suit was dismissed by the Sacramento court on June 1. Judge McCabe commented that she has continuing jurisdiction "in that this is the same issue" as was litigated last year, as far as she is concerned.

Opponents of the hunt hailed Judge McCabe's ruling as a victory, with petitioner Mountain Lion Preservation Foundation claiming that in filing its own suit in Sacramento, the Commission simply wanted the case to be heard by a more sympathetic court.

#### FUTURE MEETINGS:

To be announced.

#### 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 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