



action permitting imposition of the condition. The court disagreed that conducting its activities in part on land leased from the state was insufficient to meet a finding of state action.

The Club further contended that the Coastal Commission lacked statutory authority to impose the membership condition. However, the appellate court again disagreed with the Club's argument. Citing the California Coastal Act, the Court reiterated one of the act's stated goals to "maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners." Further, the court relied on Public Resources Code section 30210, which requires that "maximum access...and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights...."

The court distinguished its decision from a recent U.S. Supreme Court case, *Nollan v. California Coastal Commission*, ___ U.S. ___, 97 L.Ed. 2d 677 (1987) (see CRLR Vol. 7, No. 3 (Summer 1987) p. 117), which places limitations on the type of conditions the Commission may impose. The *Nollan* Court held that the takings clause of the Fifth Amendment was violated when the Commission required a private property owner to grant a public easement to the beachfront as a condition for obtaining a building permit for a single-family home. The Second District found that the instant case involves neither the granting of an easement nor the takings clause, and includes public land in the plans for the proposed development. Further, by imposing the condition, the court said the Commission maximized the possibility that all segments of the public would have access to the leased land.

In *Exxon v. Fischer, et al.*, filed in 1983, Exxon alleged that the Commission misapplied Coastal Act policies and exceeded its statutory authority under the CZMA in objecting to its Option A Santa Ynez Unit Development and Production Plan. In 1984, a federal judge stayed further consideration of the matter pending a final decision by the Secretary of Commerce on the merits of Exxon's appeal under the CZMA. In 1987, the same federal judge vacated the stay and orally denied the parties' cross-motions for summary judgment. Trial scheduled for May 1987 was delayed, and the parties have jointly asked the

court for a further continuance on new summary judgment notions until May 1988.

The judgment is now final in *Exxon v. Fischer* (Thresher Shark Case), in which Exxon's request for reconsideration of a decision by the Secretary of Commerce was denied. The action involved the Secretary's decision to uphold the Commission's limitation of exploratory drilling on Tract No. 0467. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 93; Vol. 7, No. 3 (Summer 1987) p. 117; and CRLR Vol. 6, No. 4 (Fall 1986) p. 77 for background information).

RECENT MEETINGS:

At its January meeting in San Diego, the Commission approved Robert Marx' request to dig up an ancient Spanish galleon, the *San Augustin*, in Drakes Bay. Marx, an authority on underwater digs, said discovering the ship which sank in 1595 was his "dream." The staff reported that the environmental impact would be minimal in Drakes Bay, which is located approximately thirty miles from San Francisco. As such, the Commission approved a salvage permit, with conditions, for a twenty-acre area in Drakes Bay.

FUTURE MEETINGS:

To be announced.

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 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:

Receipt of Recommendations for Changes in the 1988 Mammal Hunting and Trapping Regulations. At its February 5 meeting, the FGC received DFG and public recommendations for changes to mammal hunting and trapping regulations. Section 211 of the Fish and Game Code requires FGC to receive DFG and public recommendations relating to mammals each March.

Specifically, DFG recommended amending section 257.5(a) to add "commercial scents" to the definition of "bait" in order to prohibit the use of commercial scents in taking game. In addition, DFG proposed amending section 265 to add portions of Madera and Fresno counties to those lands in which the use of dogs in hunting is prohibited. With regard to deer hunting, DFG encouraged FGC to amend section 360 to increase the number of deer permits in several areas of the state including Zone S-10 (Camp Pendleton). Specifically, for Zone S-10, DFG recommended increasing the number of deer permits from 160 (80 military and 80 general public) to 180 (90 military and 90 general public). DFG declared a necessity to "har-



vest additional antlerless deer...to maintain herd health.”

In regard to section 362 on bighorn sheep, DFG advised maintaining authorization for the issue of one special auction and eight general permits to hunt Nelson bighorn sheep in two zones in San Bernardino County. However, DFG recommended three general permits be issued for the Marble Mountains (Zone 1), and five general permits for Kelso Peaks/Old Dad Mountains (Zone 2), instead of four permits in each zone. DFG did not recommend altering the \$5 application fee or \$200 general permit cost.

With respect to antelope, DFG recommended amending section 363 to provide for a public drawing as the means of selecting five hunters and five alternates to participate in the previously-authorized hunt in the Clear Lake National Wildlife Refuge in Modoc County. The proposed amendment specifies that a postcard marked “Application for Antelope Hunt Access Permit, Clear Lake Peninsula” must be sent to the Redding office by the third Friday in August. DFG did not propose the auction of hunting rights as a revenue-enhancing alternative to a public drawing. Instead, DFG suggested raising the cost of a permit from \$55 to \$61.

Section 365 provides for black bear hunting in portions of Inyo, Mono and Madera counties. DFG recommended amending section 365.5 to provide for a special 142-day bear season on private lands in Humboldt and Del Norte counties, where 68 black bears were taken under depredation permits for damaging commercial timber during the period July 1986 to July 1987.

With respect to mountain lions, DFG advised the Commission to continue its policy of authorizing 190 mountain lion hunting permits for a 79-day season commencing the second Saturday in October. DFG’s recommendation included a bibliography of 27 reports and studies regarding mountain lions. (For a reporting on the injunction which prevented the 1987 season, see CRLR Vol. 7, No. 4 (Fall 1987) p. 95.)

FGC Secretary Harold Cribbs asked the public for recommendations to be noticed for consideration at the Commission’s March 4 meeting in San Diego. In receiving public recommendations, FGC did not allow extensive reasoning and limited public testimony to five minutes.

With regard to section 265 on the use of dogs in the pursuit and hunting of mammals, Louise W. Moon recom-

mended prohibiting the entire practice statewide.

Concerning deer hunting (section 360), Mary Fitzpatrick, President of the Shasta County Cattlewomen’s Association, opposed the hunting of all does. She briefly mentioned that she had witnessed the deer herd decline from a large to a small population and that the mountain lion needs one deer upon which to feed each week. In contrast, Ed Haig, who claimed he has appeared before the Commission for thirty years, recommended extending the hunt by “one or two weeks.” Haig reasoned that each year the herd is reduced by one-third. Causes of fatality include predation, starvation, fires, highway accidents, poaching, and hunting—of which hunting results in the lowest kill. In order to afford the hunter (who contributes proportionately more to DFG’s budget) additional hunting opportunities, the hunt should be extended.

John R. Davis of Lassen County recommended that deer hunting permits be reduced from 500 to 50 in the state’s smallest county. Davis cited a loss of 33,000 acres of winter range. In addition, Davis advocated issuing permits to only residents of a particular hunting zone. He mentioned that his neighbors are fortunate to draw one permit every five years, but his neighbors in Nevada apply every year and receive a permit.

No one advanced permit sales as a means of allocating fewer permits and increasing revenues.

In regard to section 362 (bighorn sheep), Richard Spotts, the California representative of Defenders of Wildlife, opposed the hunt because of its threat to the “very limited” Nelson bighorn sheep gene pool.

Concerning section 364 (elk), the Sierra Club opposed hunts in Humboldt and Del Norte counties.

Public opposition to mountain lion hunting (section 369) was advanced by Sharon Negri, organizer of the Mountain Lion Coalition, and Richard Spotts of Defenders of Wildlife. Negri, who noted that the Commission split 3-2 last year in approving the hunt, stated that she had no desire to appear before the Commission for the next thirty years. Negri stated that Superior Court Judge Lucy McCabe suspended mountain lion hunting until DFG demonstrates the “cumulative impact” of granting 190 mountain lion hunting permits. (For background information, 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.) Spotts

briefly argued that mountain lions are not hunted for food or clothing, but as a sport which could be replaced by the challenge of pulling a camera trigger.

Elwood Davis of Alpine County provided no specific recommendation but supported the mountain lion hunt as a means of protecting deer and domestic dogs. In support, John R. Gaither, Supervisor of District 3 in Lassen County, mentioned that mountain lions have consumed dogs. Dave Fitzpatrick, member of the Shasta County Cattlemen’s Association, stated that mountain lions also prey upon sheep and cattle. Fitzpatrick asserted, “This [the mountain lion hunt] is survival, not a trophy hunt.”

LEGISLATION:

AB 1960 (Farr) would authorize the DFG to issue a propagation permit at a fee established by the DFG to a licensee to take, possess, transport, transfer, purchase, sell, or barter any lawfully possessed raptor, raptor egg, or raptor semen. The bill was referred to the Senate Committee on Natural Resources and Wildlife on February 4.

AB 2007 (Kelley) would impose duty of care obligations on owners of real property who are licensed by DFG to use their property for recreational purposes. The bill was referred to the Senate Judiciary Committee on February 4.

AB 2324 (Killea), as amended February 11, would authorize the DFG to carry out a California condor preservation project, and would appropriate \$500,000 from the California Environmental License Plate Fund to the DFG for the project. This bill has passed the Senate and has been returned to the Assembly for concurrence in amendments.

AB 2605 (Seastrand) would provide funding for damages to specified fisheries and for specified fisheries development purposes. The bill was referred to the Senate Committee on Natural Resources and Wildlife on February 4.

AB 2725 (Chacon) would authorize the commercial taking of crayfish from lakes or reservoirs. The bill was referred to the Assembly Committee on Water, Parks and Wildlife on January 15.

SB 2020 (Green), introduced February 10, would make it a misdemeanor to use gill, trammel, trawl, or any other type of entangling net, in ocean waters east of a line extending 180 degrees true from Point Conception, including an area bounded between Point Fermin and Newport Harbor. The bill would also authorize the FGC to adopt regulations governing the taking of fish with hook and line in that area for commercial or



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sport purposes. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 2021 (Green), introduced February 10, would repeal an exception from the prohibition against the taking of giant sea bass for those giant sea bass incidentally taken in commercial fishing operations by gill or trammel net. The bill would also prohibit the retention, possession, sale, or purchase of angel shark under a specified length. This bill is also pending in the Senate Natural Resources and Wildlife Committee.

SB 2022 (Green), introduced February 10, would increase the minimum mesh length of gill nets used to take white sea bass from 3.5 inches to 6 inches. The bill would also prohibit (1) severing the pelvic fin on the carcass of thresher shark taken with drift gill nets until after the shark is brought ashore; and (2) the taking of rockfish and lingcod with drift or set gill nets in certain waters between Pigeon Point and Point Santa Cruz and south of Point Hueneme. *SB 2022* is pending in the Senate Natural Resources and Wildlife Committee.

The following is a status update of bills reported in CRLR Vol. 8, No. 1 (Winter 1988) p. 95 and Vol. 7, No. 4 (Fall 1987) pp. 94-95:

AB 512 (Allen), regarding the monetary value of protected wildlife, remains before the Senate Committee on Natural Resources and Wildlife. Hearings have been postponed by the committee.

AB 33 (Harris, D. Brown), regarding California taxpayers' tax-free contributions to the Rare and Endangered Species Fund, is still pending in the Senate Revenue and Taxation Committee.

ACA 44 (Campbell), concerning qualifications of FGC members, remains before the Assembly Committee on Elections, Reapportionment and Constitutional Amendments. Hearings have been postponed by the committee.

AB 212 (Condit), which would exempt persons over the age of 65 from sport fishing licensure requirements, was referred to the Senate Committee on Natural Resources and Wildlife on February 4.

AB 253 (Kelley), regarding specified duties of law enforcement members of DFG's Wildlife Protection Board, was referred to the Senate Committee on Natural Resources and Wildlife on February 4.

AB 271 (Allen, Killea), requiring DFG compliance with certain internal accounting and reporting procedures, is pending in the Senate Governmental

Organization Committee at this writing.

AB 369 (Allen, Chacon), regarding redirection of fishing from overexploited to underutilized areas, is pending in the Senate Appropriations Committee.

LITIGATION:

After Judge Raul A. Ramirez upheld the federal imposition of steel shot waterfowl hunting zones on November 16 in *California Fish and Game Commission v. U.S. Department of the Interior*, No. Civ. 87-816RAR (U.S. District Court for the Eastern District of California), FGC appealed (No. Civ. 88-1633, Ninth Circuit Court of Appeals), contending that the lower court erred in declaring the Stevens amendment moot. Senator Stevens' amendment to the Interior Department's appropriation bill for fiscal year 1987 prohibited the U.S. Fish and Wildlife Service from imposing steel shot hunting zones in any state without that state's approval. The fiscal year 1988 appropriations bill, however, was not amended. FGC contends in the Ninth Circuit that future amendments providing state autonomy are foreseeable, and therefore, the Stevens amendment is not moot. Appellate argument is presently unscheduled.

(For a description of the district court pleadings, see CRLR Vol. 7, No. 4 (Fall 1987) p. 95; for information on the impact of lead shot on food chain poisoning, see CRLR Vol. 7, No. 3 (Summer 1987) p. 118.)

RECENT MEETINGS:

At the January 8 meeting, FGC denied transfer of a commercial herring permit from the permit holder to a commercial working partner. The Commission relied on section 8550 of the Fish and Game Code, which states "herring may only be taken for commercial purposes only under a revocable, non-transferable permit."

At the February 4 meeting, Vicky Joseph, DVM, requested a permit to possess out-of-state-registered predacious birds (raptors) for emergency medical treatment. Current DFG regulations do not provide for the emergency care of raptors which are unregistered in California but are legally registered in other states. In addition, Dr. Joseph asked for permit immunity for all veterinarians in California. FGC granted Dr. Joseph's request for a personal permit but rejected the proposal for a blanket veterinarian exemption.

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: Jean Atkisson, Harold Walt (chair), Carlton Yee, Clyde Small, and Franklin L. "Woody" Barnes.

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.