



REGULATORY AGENCY ACTION

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.



MAJOR PROJECTS:

THP Exemptions—Limitations on "Minimum Impact". After receiving testimony at its November 4 meeting, the Board approved amendments to section 1038(b), Title 14 of the California Code of Regulations (CCR), at its January meeting, to include nine activities which would exceed "minimum impact". Un-amended, section 1038 provided that landowners could harvest dead, diseased, and dying trees which amount to less than 10% of the average volume per acre, as well as trees cut for fuelwood and woodchips without a THP so long as "there will be only minimum impact on the forest resources." (For a report on specific activities which exceed "minimum impact", see CRLR Vol. 8, No. 1 (Winter 1988) p. 96.)

Preferential Conifer Stocking. At its February 3 meeting, the Board, at the request of its staff, revised and renoted proposed amendments to sections 912, 932, and 952, Title 14 of the CCR, providing for the restocking of fast-growing, economically profitable Group A commercial species in the coast, northern, and southern forest districts. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 95-96 for background information.) Current regulations allow restocking with any commercial species enumerated in the same sections.

The proposed revisions allow the Department of Forestry discretion to approve THPs which increase the basal area percentage of Group B commercial species after restocking. In order to increase the percentage of Group B trees, which include many slower-growing hardwoods, the THP must demonstrate with "clear and convincing evidence" that the intent of the Forest Practice Act is met, and that "there will not be an immediate significant and long-term harm...."

The comment period on the revised regulations closed on February 29.

Board Disapproves Old Growth Habitat Emergency Regulations. On January 21, the Director of the CDF proposed emergency amendments to sections 898.1, 1034(HH), and 895.1, Title 14 of the CCR, to address the issue whether the existing forest practice rules deal adequately with the effects of harvesting old growth stands on wildlife species dependent on this habitat. According to the Board's announcement, the Department of Fish and Game has stated that harvesting of old growth stands makes the dependent species vulnerable to extinction due to loss and fragmentation of their habitat.

The proposed emergency regulations

would have provided the Director with guidance in the review of THPs, definitions necessary to determine what constitutes an old growth habitat, and guidance on what information would be necessary to include in a THP so an evaluation of feasible alternatives could be made. Specifically, the changes would have empowered the Director, in his/her review of THPs, to weigh "any relevant specific economic, social, or other alternatives...against...remaining unmitigated environmental effects." In addition, the proposal would have designated the Department of Fish and Game as "the official review and comment agency on fish and wildlife issues," and would have required THPs to analyze whether timber (1) was "within the range" of certain old growth species such as the spotted owl, marbled murrelet, or Del Norte salamander, and (2) contained individual live trees greater than 200 years of age.

After hearing testimony on February 2, the Board rejected the proposed emergency regulations. The Board's statement of reasons, drafted by public member Clyde Small, asserts that existing Board regulations authorize the Director to disapprove a THP when "the Director finds harvesting pursuant to the plan may cause immediate, significant and long-term harm to old-growth-dependent wildlife species." The Board did agree to delete section 898.1(f), Title 14 of the CCR, the application of which produces a "circumlocutory delay" in the Director's decisionmaking process.

LEGISLATION:

SB 1335 (McCorquodale), which would mandate CDF inspection of all timber operation areas in which an RPF has not assumed operational responsibility, passed the Senate on January 21 and is pending in the Assembly Committee on Natural Resources.

SB 1572 (Campbell), which would define the term "direct cost of fire suppression" for purposes of reimbursing counties electing to assume responsibility for fire prevention and suppression in state responsibility areas, passed the Senate 38-0 on January 28 and is currently pending in the Assembly Committee on Natural Resources.

SB 1577 (Campbell) would require the Department of Justice to furnish requesting employers with notices of arson convictions for persons applying for positions with "supervisory or disciplinary power over a minor." SB 1577 is pending in the Assembly Committee on Public Safety.

AB 2079 (Baker), which would appropriate \$2,200,000 for training firefighters and arson investigators, passed the Assembly on January 28 and is pending in the Senate Committee on Governmental Organization.

AB 2720 (Sher), which would appropriate \$15,775,000 for reforestation loans and grants under Part 2.5 (commencing with section 4790) of Division 4 of the Public Resources Code, and for capital improvements to the state forest nursery system, including funds for land acquisition and seed processing equipment purchase, failed passage in the Assembly Ways and Means Committee on March 16, but was granted reconsideration.

AB 2721 (Sher) would appropriate \$30,200,000 to augment CDF's 1987-88 fiscal year budget for emergency revegetation, extended fire crew staffing during fall 1987, and airtanker aircraft replacement. AB 2721 was introduced on January 5, passed the Assembly Committee on Natural Resources, and is pending in the Assembly Ways and Means Committee at this writing.

SB 4 (Presley) is still in the Assembly Ways and Means suspense file; and **SB 495 (Davis)** remains pending in the Assembly Public Safety Committee at this writing. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 96 for details on these bills.)

RECENT MEETINGS:

At the Board's March 3 meeting, Dr. John Wenz of the U.S. Forest Service (USFS) briefed the Board on Douglas fir tussock moth infestation in Plumas County. Dr. Wenz advised the Board that the moth's primary host in California is white fir, and that the current extent of infestation is 6,000 acres, of which 87% is in the Plumas National Forest.

According to the report, a tussock moth outbreak occurs every nine to ten years, and has yearlong release, peak, and decline stages. Moth larvae feed off the upper crowns of the trees, causing a burnt brown appearance. Trees which are less than 85% defoliated have a high probability of survival.

Dr. Wenz outlined USFS plans to test egg mass toxic viral levels in April to determine whether the moth population will decline this summer. If viral levels are low, USFS plans to area spray federal forestlands with *Bacillus thuringiensis* to retard larval development. Northern DTAC Chair Gil Murray expressed concern for the possible need to abate tussock moth larval infestation in private lands.



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Also at the March 3 meeting, the Board recognized Captain (U.S. Navy Retired) and Mrs. Anita Petrosky as American Tree Farm System 1988 State Tree Farmers of the Year. The Board of Forestry commended the Petroskys for 32 years of "sound forest management." The Petroskys addressed the Board, stating that they purchased their property near Twain Harte in 1955. In 1978, they cut approximately 250,000 board-feet of timber, and in 1987, selectively cut approximately 145,000 board-feet. Captain Petrosky recounted how he dug holes for his wife to plant 11,000 bare root trees. The American Tree Farm System's introductory letter cited the Petroskys as "an excellent example of a small forest-land owner."

FUTURE MEETINGS:
To be announced.

WATER RESOURCES CONTROL BOARD

Executive Director:
James L. Easton
Chairperson: W. Don Maughan
(916) 445-3085

The Water Resources Control Board (WRCB), established in 1967 by the Porter-Cologne Water Quality Control Act, implements and coordinates regulatory action concerning California water quality and water rights. The Board consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional board composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concerning the water resources of its respective region. All regional board action is subject to state Board review or approval.

Water quality regulatory activity includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pol-

lution control and waste water reclamation to discharge impacts on the marine environment. Construction grants from state and federal sources are allocated for projects such as waste water treatment facilities.

The Board administers California's water rights laws through licensing appropriate rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water and violations of license terms. Furthermore, the Board is authorized to represent state or local agencies in any matters involving the federal government which are within the scope of its power and duties.

MAJOR PROJECTS:

Proposition 65. The Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) places certain restrictions on persons doing business in California. (See *supra* agency report on DEPARTMENT OF FOOD AND AGRICULTURE and CRLR Vol. 6, No. 4 (Fall 1986) p. 83 for background information.) Its provisions include the following:

-Health and Safety Code section 25249.8 requires the Governor to publish and, at minimum, annually update a list of chemicals known to cause cancer or reproductive toxicity.

-Health and Safety Code section 25249.5 prohibits persons from contaminating drinking water with chemicals known to cause cancer or reproductive toxicity. Twenty months after the listing of a chemical under section 25249.8, no person in the course of doing business may discharge or threaten to discharge a listed chemical to a source or potential source of drinking water.

-Health and Safety Code section 25249.6 requires a warning before exposing individuals to chemicals known to cause cancer or reproductive toxicity. Twelve months after the listing of a chemical under section 25249.8, a person in the course of doing business must warn another person who may consume or come in contact with or otherwise be exposed to that chemical.

-Finally, Health and Safety Code section 25180.7 requires designated government employees to report violations of the Act. Any designated employee (typically those who must file conflict-of-interest statements) who obtains knowledge of an illegal discharge or threatened illegal discharge of a hazardous waste must report that information to the county board of supervisors and

local health officer for the location of the discharge.

On February 27, 1987, the first requirement of Proposition 65 was implemented with the Governor's publication of a list of 29 cancer-causing chemicals such as asbestos, benzene, lead, vinyl chloride, and arsenic. As of October 1 of last year, 54 more chemicals had been added to the list. The list is being developed and expanded by a scientific advisory panel appointed by the Governor. Environmental groups and business associations are assisting state agencies such as the Health and Welfare Agency and the WRCB in identifying other toxics and carcinogens to be included on the list. Several environmental groups insist that the list should include over 250 carcinogens and reproductive toxins. (See, e.g., CRLR Vol. 7, No. 2 (Spring 1987) pp. 15-16.)

State agencies are developing guidelines to determine the threshold level at which identified chemicals pose a "significant risk," and various methods which businesses may employ to meet requirements for "clear and reasonable" warnings regarding cancer-causing chemicals and reproductive toxins. Currently, acceptable methods include (1) labeling products containing chemicals identified by the Governor's scientific advisory panel; (2) installing toll-free telephone numbers to supply consumers with additional information on these substances; and (3) posting warning signs in and around gas stations, bars, and liquor stores to warn of certain hazards associated with gasoline and alcohol.

Violators of Proposition 65 are subject to fines of up to \$2,500 per day. The measure allows private citizens to file suit and collect 25% of the penalty if the suit is successful, provided that a state or local agency initially declined to prosecute.

The WRCB is involved in the implementation of Proposition 65 in a number of ways. First, the Board has proposed a policy to adopt water quality control plans defining the term "source of drinking water." (See CRLR Vol. 7, No. 4 (Fall 1987) p. 98.) In a January 1988 public hearing, various opinions were expressed regarding the appropriate definition. These public opinions prompted some revisions in the state plan which will be adopted by each regional board. This revised language was scheduled for consideration at a public hearing in April.

The WRCB is assisting the Health and Welfare Agency in devising a priority list of chemicals to be forwarded to the Governor's scientific advisory panel.