



The Ninth Circuit reversed the lower court, ruling that Exxon could not mount a direct challenge in federal court to the state Coastal Commission's objections, which had already been upheld by U.S. Department of Commerce Secretary Malcolm Baldrige. The court held that the company must instead contest Baldrige's ruling in favor of the state agency, and must prove that the federal agency acted unreasonably in its area of expertise.

RECENT MEETINGS:

Michael Wornum, Chairperson of the Coastal Commission, apologized at the November 12 meeting for the use of his name in a political campaign mailer which implied that the Commission was supporting a state senate candidate. The mailer was attacked as unethical because of the use of the Commission's name and a look-alike logo.

FUTURE MEETINGS:

February 24-27 in Marina Del Rey.

March 24-27 in San Francisco.

April 21-24 in Marina Del Rey.

DEPARTMENT OF FISH AND GAME

Director: Jack Parnell
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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 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. Its main concern is with the creation of recreation areas in order to restore, protect and preserve wildlife.

MAJOR PROJECTS:

Annual Report from USDA Forest Service. At its October meeting in Sacramento, the Fish and Game Commission received the 1986 Annual Report from the U.S. Department of Agriculture Forest Service. The Annual Report is the product of a policy adopted by the Commission in 1984 for ensuring effective communication between the U.S. Forest Service (USFS) and the California DFG. It is designed to address Forest Service plans, management practices, and policies on National Forest lands within the state which may impact fish and wildlife resources or their habitat.

The report is additionally a recognition that the two agencies respond to different mandates concerning resource management. While the DFG seeks to maximize fish and wildlife resources, the USFS is bound to the federally-legislated practice of multiple use. The report was revised for 1986 to highlight those Forest Service plans, management practices, and policies which might negatively impact fish and wildlife resources.

Among the issues addressed in the report are the following:

- **Hardwood Management.** In forests where significant timber harvesting occurs, there is concern that fewer hardwoods will result in smaller populations of hardwood-dependent species. The Forest Service Report recommended that DFG work with the Forest Service to set some hardwood species goals for

which specific standards and guidelines may be developed.

- **Off-Road Vehicles.** The report acknowledged the complexity of the issue due to varied opponent and proponent positions, but stated that land management plans will provide additional direction and standards for management of the activity. Further, the report stated that revisions and resolutions must come from the Forest Service, but that continued involvement by the DFG would be required.

- **Livestock Grazing.** The report addressed the concern that an increase in livestock grazing will result in less transitory forage available for deer. The USFS suggests evaluation of proposed increases in livestock grazing and existing cases of overgrazing on a case-by-case basis with the individual forests. Any specific proposals for increases will consider effects on other resources such as recreation, fish, and wildlife.

- **Economic Values of Fish and Wildlife.** The U.S. Department of Agriculture formed the USDA Task Force to investigate criticism that the USFS gives insufficient valuation in its land management planning activities to fish and wildlife outputs. The Task Force was designed to study emerging markets for hunting, fishing, and viewing of wildlife, and to recommend methods for assessing market values for these activities commensurate with those for commodities such as timber and minerals. The Task Force's final report should be published in the near future.

The Forest Service Annual Report additionally addressed such topics as riparian area management, sensitive plants, deer forage production, biologist staffing levels, and minimum viable populations.

Condor Captured. The first of the remaining three wild condors was captured in December. The condor, known as AC-2, was taken to the San Diego Wild Animal Park to become part of its captive breeding program.

A permanent capture prohibition, imposed in January 1986 at the request of the National Audubon Society, was lifted in June by the District of Columbia Circuit Court of Appeals in Washington, D.C. (see CRLR Vol. 6, No. 4 (Fall 1986) pp. 79-80). The ending of the prohibition allows for renewed efforts to capture the remaining condors before winter sets in. Condors have a high mortality rate in the wild.

At its December meeting, the Fish and Game Commission listened to a request by the Chumash Indians asking for



translocation of the California condors to the Channel Islands. The Commission was also asked not to capture the remaining wild condors and to release some of the captive birds. The request apparently stemmed from religious beliefs of the Chumash which mandate that birds should be free-flying. The Commission declined to alter its policy of support for the recapture of the condors. The Commission was of the opinion that the Chumash have had adequate opportunity to present their views earlier in the proceedings.

Mountain Lions. The second mountain lion attack in 1986 occurred in October in Casper County Park in Orange County. The October attack followed an earlier attack in March in the same park. (See CRLR Vol. 6, No. 3 (Summer 1986) pp. 70-71.)

DFG is currently monitoring two female lions in the area through the use of radio tags. Additionally, the Department worked with the Orange County Parks and Recreation Department in developing a public safety plan. Casper County Park was closed for sixty days following the incident and re-opened just after the first of the year.

The family of the child involved in the March attack is currently pursuing litigation against the Department, the Fish and Game Commission, and Orange County.

RECENT MEETINGS:

At its November meeting in Sacramento, the Commission discussed several areas of proposed legislation. For example, during the last several years the Commission has developed a private lands management program which offers tax incentives and special hunting programs to private landowners in exchange for public access to privately-owned land. However, the program has been hindered because of possible liability to participating landowners if members of the public are injured while using the landowner's land. Therefore, the Commission agreed to draft language and seek a sponsor for legislation limiting the liability of private landowners who allow public access to private land for recreational purposes. Currently, Montana and Wyoming have enacted similar legislation.

The Commission also agreed to draft language for a bill to encourage wildlife preservation on privately-owned land, especially land used by upland game, such as quail or pheasant. The bill would create tax incentives for private

landowners to preserve wildlife habitat instead of using the land for farming purposes.

Currently, animals on the state's "prohibited animals" list—such as monkeys, ferrets, and alligators—may be brought into the state for pet purposes if the owner obtains a permit from the Commission. The Commission, however, has agreed to amend the rules such that permits for prohibited animals will be granted only for scientific or educational purposes. Furthermore, through rule-making, the Commission will also delegate the permit-granting authority for prohibited animals to the Department of Fish and Game, with a right of appeal to the Commission if the Department denies the application. Both of these changes will significantly reduce the workload of the Commission. The Commission discussed whether statutory amendments would be required in order to make the needed changes; however, it determined that the changes may be accomplished through rulemaking.

Currently, sport fishing and mammal hunting regulations are adopted each year. The Commission agreed to draft language for a bill which would allow sport fishing regulations to be adopted in even-numbered years and mammal hunting regulations to be adopted in odd-numbered years. The Commission, however, would retain the power to make changes to either set of regulations as needed. Adopting fishing and hunting regulations every other year will require one additional Commission meeting per year for the adoption process. The Commission agreed that the regulation recommendation meeting should be held in Sacramento, the tentative adoption meetings should be held in Redding and San Diego, and the final adoption meeting should be held in Los Angeles or Long Beach.

In response to a tentative initiative proposal which would earmark all sales tax from the sale of sporting goods for DFG's Preservation Fund, the Commission's staff drafted an alternative proposal which calls for only one-sixth of the sales tax collected from the sale of sporting goods to be allocated to the Preservation Fund. The Commission, however, refused to approve the proposal. The Commission noted that the plan would have burdened storeowners, who would be forced to separately account for sales tax collected on sporting goods. Furthermore, the proposal would have met with a great deal of hostility from cities and counties because it would have diminished the amount

of money available for use by cities and counties.

Currently, the Department pays an in lieu tax to counties for land purchased for state wildlife preserves. This tax equals the property tax which would have been paid to the county if the land had not been removed from county tax rolls. In contrast, no in lieu tax is paid to the counties for land purchased by DFG for the purpose of ecological preserves. The Commission agreed to draft language for a bill which would exempt the Department from paying the in lieu tax when it purchases state wildlife preserves.

The Commission also agreed to draft language for a bill which would allow DFG to enter into a compact with other states for the purpose of cooperating on fish and game wildlife violations. The compact proposal was brought to the Commission's attention by members of the Western Association of Fish and Game (WAFG). Earlier in the year at a WAFG meeting, Association members agreed to lobby their respective legislatures to enter into a compact on fish and game violations with other states.

The Commission listened to appeals from approximately six fishermen who failed to meet the deadline for submission of a commercial herring permit renewal application to DFG. The fishermen had either moved and had not received the permit renewal notice, or had received it but failed to return it to the Department. The Commission granted permits to all fishermen who appealed, with a stern warning that they must meet renewal deadlines in the future or risk losing their herring permits.

The Commission also listened to appeals from 20-25 fishermen who were not allowed to participate in the lottery for five herring permits because they did not have the required number of points. In order to qualify for the lottery, a fisherman must have at least twenty points. A point is awarded to a fisherman for each year of the last ten years that he/she has held a fishing license. Ten points are awarded to a fisherman if he/she has been a member on a herring boat for the last three years. However, none of the fishermen who appealed to the Commission were able to prove that he/she had the required number of points to participate in the lottery, and the Commission refused to grant any of the appeals.

On December 5 in Long Beach, the Commission adopted sport fishing regulations for 1987 which include two salmon fishing closures on the Sacramento



River. To protect the diminutive run of salmon, the Commission approved closures on the Sacramento River between Deschutes Bridge in Shasta County and the Red Bluff Diversion Dam from January 1 through June 30 and from the Red Bluff Dam to Knights Landing from January 1 through June 1.

Additionally, the Commission adopted provisions prohibiting salmon fishing in the Calaveras River and restricting recreational ocean salmon anglers to the use of single barbless hooks.

FUTURE MEETINGS:

To be announced.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell
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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. 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 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. Barridge, 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:

Hardwood Resources. Two Board-commissioned reports on California hardwood resources were recently completed and presented to the Board. These reports are entitled *Status of the Hardwood Resource of California* and *Policy Options for California's Hardwoods*.

Since 1981, the Board has attempted to determine the extent of information available on hardwood resources within the state in an effort to analyze the impact of conversion of the hardwood forests to other uses. Earlier studies found that hardwoods are often seen as unwanted vegetation in the way of urbanization and agricultural and range improvements. As with any resource, hardwoods can tolerate only so much use and conversion before detrimental effects on the species are observable. Questions raised by previous studies about the loss of wildlife habitat, degradation of soil and water quality, and regeneration problems in the species led to the Board's request for these two latest reports.

Status of the Hardwood Resource of California is an analysis of current knowledge of the extent and condition of the hardwood resource, and the various practices and attitudes concerning resource utilization. This report was compiled with the cooperation of the Departments of Forestry and Fish and Game, the University of California and the State University systems, and the U.S. Forest Service (USFS). Five factors are brought to the Board's attention in this report:

1. Hardwood rangeland is primarily being converted for intensive agriculture and residential/commercial development. County governments bear responsibility for land use decisions, but treatment of the effects of conversion is not uniform, and the extent of this conversion remains unknown.

2. Range modification continues but at a much slower rate than in the past,

due to the depressed state of the livestock industry. Livestock producers generally value their hardwoods as a resource which aids in livestock production and enhances property values. However, firewood cutting on hardwood rangeland is believed to be on the rise, though the extent is unknown.

3. Conversion of hardwoods to conifers continues with concerns being raised about the effects on wildlife habitat. No monitoring method exists to analyze the regional effects of these conversions. Hardwoods are viewed as a substantial obstacle to full utilization of conifer lands for softwood production. Because it is more profitable to clear hardwoods and plant conifers, no significant hardwood saw timber or furniture grade lumber industries have emerged in California. California's furniture industry, the nation's second largest, relies on imports for its lumber. Research is needed to determine the feasibility of utilizing the state's own hardwoods for wood products.

4. With the exception of deer, changes in wildlife populations remain insufficiently documented to enable quantification of the loss of wildlife related to the removal of hardwoods on conifer or hardwood rangelands. Evidence is available, however, which indicates a strong relationship between available hardwood habitat and the number of wildlife species and their productivity. There is no doubt that continued conversion of the hardwood range resource will increase the pressure on numerous wildlife species, especially deer.

5. While the factors in the success or failure of hardwood regeneration are complex, it is clear that the valley oak, Englemann oak, and blue oak species are not regenerating well. The causes of this decline in regeneration are not sufficiently understood. Studies on overall hardwood regeneration are warranted.

The *Status* report contains comprehensive information on the five factors, and recommendations for future Board action. One of the first actions suggested is that the Board declare hardwoods to be a commercial species, thus bringing them under the jurisdiction of the Forest Practice Act.

The *Policy Options* report, prepared by Board staff, draws upon information supplied in the *Status* report to make policy recommendations to the Board. From a policy perspective, two points emerge from this analysis. First, enough information has been obtained since 1983 to identify trends warranting Board attention. Secondly, much is still un-