smaller, to take sharks other than thresher shark, shortfin mako shark, and white shark during the shark and swordfish season. The bill would authorize the incidental taking of not more than two thresher sharks and two shortfin mako sharks for possession and sale. The bill would specify the conditions for that incidental taking.

Existing law prohibits the use of round haul nets in specified areas, except (among other uses) for live bait in District 19B, but not within 750 feet of specified public piers. This bill would also exempt the use of round haul nets to take live bait in District 19A, and would condition the exemption from that prohibition in Districts 19A and 19B to exclude the use of those nets within 750 feet of any public pier. *[A. WP&W]*

AB 76 (Morrow). Existing law authorizes persons operating a commercial fishing vessel registered in this state to land fish taken in a far offshore fishery, as defined, when those fish may be lawfully imported into this state from a foreign nation or from another state. Existing law also prohibits the operator of any vessel operating under that authorization from fishing in or landing fish from any waters within the 200-mile fishery conservation zone during any trip for which the operator has received clearance by U.S. Customs for departure for the high seas. As introduced December 22, this bill would redefine the term "far offshore fishery" to mean a fishery that lies outside the U.S. 200-mile exclusive economic zone, as defined by federal law. The bill would authorize the landing in this state of fish taken in a far offshore fishery which may be lawfully imported by persons operating a commercial fishing vessel registered in this state who took the fish in the far offshore fishery. The bill would delete the requirement for clearance and declaration of the location of the catch on reentry to the U.S. Customs. The bill would, instead, require the operator to file a declaration with DFG before departure and to complete and submit the return portion of the declaration to DFG within twelve hours of arrival at a port in this state.

In addition, AB 76 would provide that the Pacific sardine season is from August 1 to July 31, inclusive, and establish a 12,000-ton-per-season quota unless DFG produces an estimate of the total biomass of the northern stock of sardines and uses that estimate to calculate a quota. The bill would also require DFG to consider in-season adjustments to the quota at the request of the commercial fishing industry. The bill would permit sardines to be taken for live bait purposes at any time.

Existing law establishes the tolerance for sardines taken incidentally to other fishing operations. This bill would permit the DFG Director to establish those tolerances up to certain specified percentages of the landings.

Existing law permits 250 tons of sardines to be taken, possessed, and landed for dead bait purposes during the period of March 1 to February 28, inclusive. This bill would repeal that provision.

Under existing law, any person who operates or assists in operating any trap to take finfish or who possesses or transports finfish on a vessel when a trap is aboard is required to have a general trap permit issued by DFG. This bill would require the persons who take finfish with traps for commercial purposes to obtain a finfish trap permit. The bill would set the fee for the permit at $110. The bill would limit the persons who may obtain a finfish trap permit to persons who held a general trap permit in the preceding permit year and who made specified landings of finfish taken in traps. The bill would provide that persons denied a permit may appeal to FGC. The bill would provide for certain restrictions on the taking of finfish pursuant to the permit. This bill would also authorize DFG to enter into contracts for the purpose of printing finfish permits and informational material and would exempt these contracts from certain provisions of the Public Contract Code.

Existing law prohibits taking, possessing, or selling California halibut less than 22 inches in total length, except as specified. Existing law also authorizes a person who holds a commercial fishing license to possess for noncommercial use not more than four California halibut less than 22 inches in total length or less than the minimum weight if taken incidentally in commercial fishing. This bill would limit that incidental possession to halibut taken with a gill net, trammel net, or trawl net while commercial fishing. *[S. NR&W]*

AB 77 (Morrow), as amended March 20, would declare the garibaldi as the official state marine fish, and prohibit the taking or possession of garibaldi for commercial purposes until February 1, 2002 and, thereafter, permit that taking only under a marine aquaria collector's permit from October 31 to February 1, inclusive.

Existing law that is effective until January 1, 2000, prohibits the taking of organisms for marine aquaria pet trade purposes on the south side of Santa Catalina Island. This bill would continue that existing law beyond January 1, 2000, by deleting that date. *[A. Floor]*

AB 704 (Hauser). Under existing law, DFG may accept gifts and grants from various sources for specified purposes, including funds for fish and wildlife habitat enhancement for deposit in the Wildlife Restoration Fund. This bill would authorize DFG to deposit grants from the federal government, grants from private foundations, money disbursed from court settlements, and donations and bequeaths from individuals in the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund. *[A. Appr]*

LITIGATION

FGC's appeal of San Francisco Superior Court Judge Thomas J. Mellon's decision in ***Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.***, No. 953860 (July 19, 1994), is still pending. In this case, Judge Mellon invalidated the Commission's unprecedented delisting of the Mohave ground squirrel from the state's threatened species list under CESA. Judge Mellon found that FGC's action to remove the squirrel from the CESA threatened list is a "project" under the California Environmental Quality Act (CEQA) such that an environmental impact report is required. *[14:4 CRLR 177]*

On April 17, the U.S. Supreme Court heard oral argument in the federal government's appeal of the D.C. Circuit Court of Appeals' decision in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, 17 F.3d 1463 (Mar. 11, 1994), in which the appellate court ruled that significant habitat degradation is not within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. *[15:1 CRLR 152; 14:4 CRLR 177; 14:2&3 CRLR 192]* The D.C. Circuit's decision conflicts directly with the Ninth Circuit's decision in *Palilla v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988), thus prompting the Supreme Court to review the issue. At this writing, the high court has not yet released its decision.

FUTURE MEETINGS

June 22–23 in Bishop.
August 3–4 in Santa Rosa.
August 24–25 in Long Beach.
October 5–6 in Redding.
November 2–3 in San Diego.
December 7–8 in Sacramento.

BOARD OF FORESTRY

Executive Officer:
Dean Cromwell
(916) 653-8007

The Board of Forestry is a nine-member Board appointed to administer the

Z'berg-Nejedly Forest Practice Act (FPA) of 1973, Public Resources Code (PRC) section 4511 *et seq.* The Board, established in PRC section 730 *et seq.*, serves to protect California's timber resources and to promote responsible timber harvesting. The Board adopts the Forest Practice Rules (FPR), codified in Division 1.5, Title 14 of the California Code of Regulations (CCR), and provides the California 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, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Nicole Clay, Jane M. Dunlap, Robert C. Heald, Bonnie Neely (Vice-Chair), and Richard Rogers.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and William E. Snyder.

Range Livestock Industry: Robert J. Kersteins (Chair).

The FPA 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 deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

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 CDF, 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.

In early April, Governor Wilson reappointed Richard B. Rogers and Thomas C. Nelson to new terms on the Board. Rogers is chairman of Pacific Earth Resources, an environmental horticulture company in Camarillo; Nelson is the timberlands director for Sierra Pacific Industries.

In late April, Governor Wilson appointed two new members to the Board of Forestry. Jane M. Dunlap, a public member replacing James W. Culver, is a member of the Commission on the Status of Women for San Bernardino County; she previously served on the CDF's Stewardship Coordinating Committee. William E. Snyder, a forest products industry member replacing Keith Chambers, is the chief forester for Fibreboard Corporation.

MAJOR PROJECTS

Forest Practice Rules Clean-Up. On February 8, the Board held a public hearing on CDF's proposal to amend approximately 35 provisions in the Forest Practice Rules in Division 1.5, Title 14 of the CCR. According to the Board's notice of proposed rulemaking, CDF has proposed these changes because, during the past several years, it has recognized that a number of rules need clarification and others "do not provide adequate protection or mitigation for the forest or other resources as required by the Forest Practice Act." According to the Board, the proposed modifications are designed to improve protection of forest and other resources, and the implementation of the FPR by RPFs, timber owners, timber operators, and CDF.

Following public hearings at its February and March meetings, the Board decided that the package, as written, was too unwieldy and should be divided into separate sections to facilitate research, amendments, discussion, and agreement on the rule changes. The Board divided the rule changes into three categories: grammar, operations, and planning.

On May 18, the Board released a modified version of several of the proposed rule changes; according to the notice, all of the changes in this package are classified as "grammar" changes except for the change to section 1091.3, which is classified as "planning." The Board decided to consider these rule changes first as there is general agreement on the language, and section 1091.3 needs to become operable for parties who are preparing sustained yield plans (SYPs). The rule changes published in the May 18 notice include the following:

• Section 895.1 would be amended to include new definitions of the terms "commercial timberland," "domestic water use," "equipment exclusion zone," "equipment limitation zone," "logging area," "reconstruction of existing tractor roads," and "saturated soil conditions."

• The term "watercourse" would be substituted for the term "stream" in sections 921.6(c), 961.1(a)(5), 961.1(b)(2), 961.7, and 1052(d); additionally, the amendments would eliminate some redundant language in section 961.7.

• Section 952(c) would be eliminated; that subsection defines the term "commercial timberland," and that definition is now being included in section 895.1 (*see above*).

• Section 1032.10 would be amended to change the information which a THP submitter must provide to landowners within 1,000 feet downstream of the THP; under the amendments, the public notice must refer to "domestic water use" instead of "domestic water supply" since "use" is defined and "supply" is not. The notice should refer to surface water use taken within 1,000 feet of the THP boundary. The amendments also clearly state that a ten-day wait between publication of the notice and submission of the THP is required, and also clarify when publication of the notice in a newspaper of general circulation is required.

• Section 1071 would be amended to clarify that if stocking is required to be met immediately upon completion of timber operations, a stocking report must be filed within six months of the completion of timber operations.

• Sections 1090.7(h), 1090.7(i), and 1090.25 would be amended to reflect changes in the rules that require evaluation of cumulative impacts to listed species.

• Finally, section 1091.3, which defines the term "management unit" for purposes of preparing a SYP, would be expanded to allow a SYP to be filed on specified portions of an ownership of timberland, rather than requiring the SYP to cover the entire ownership within a district. Specifically, the term "management unit" means the part or parts of timberland ownership which are analyzed together as part of a SYP and may include areas outside the ownership when addressing watershed and wildlife issues. The management unit is limited to one forest district. The landowner has the option of including within its management unit its entire ownership within the forest district and any areas outside the district that the CDF Director agrees are part of a logical management unit, or it may divide the ownership into management units based on administrative, regulatory, and ecological factors with concurrence from the Director. The management unit must include one or more planning watersheds, and may include associated resource assessment areas.

At this writing, the Board is scheduled to hold another public hearing and adopt the May 18 revised language of the sections described above at its June 6 meeting in Redding.

Other Board Rulemaking. The following is a status update on other rulemaking proceedings conducted by the Board in recent months and covered in detail in previous issues of the *Reporter*:

• ***Checklist THP Rules.*** At its January 10 meeting, the Board adopted a modified version of new section 1051.5, Title 14 of the CCR, which would implement a "Checklist Timber Harvest Plan" (CTHP) for those timber harvesting operations that, with incorporated mitigations, are not likely to result in significant adverse effects on the environment. According to the Board, the proposed rules are designed to lessen some of the informational requirements and related costs to landowners resulting from full THP preparation and impact analysis, while ensuring that significant adverse impacts on the environment are avoided. The Board adopted the new rule despite public comment from the Department of Fish and Game (DFG) and the Water Resources Control Board that the rule may permit a greater degree of adverse environmental impact that does the California Environmental Quality Act (CEQA) or the Forest Practice Act. *[15:1 CRLR 152–53]*

At this writing, staff has not yet submitted the rulemaking file on proposed section 1051.5 to the Office of Administrative Law (OAL) for review and approval; the Board has until August 19 to do so, or the original notice will expire.

• ***AB 49 Fire-Safe THP Exemption.*** At its October 1994 meeting, the Board adopted emergency amendments to section 1038, Title 14 of the CCR, to implement AB 49 (Sher) (Chapter 746, Statutes of 1994). AB 49 exempts from several requirements of the FPA (specifically, the THP preparation and submission requirement of PRC section 4581 and the completion and stocking report requirements of PRC sections 4585 and 4587) the cutting or removal of trees to reduce fire hazards, and requires the Board to adopt regulations—initially as emergency regulations—to obtain compliance with that provision. To implement AB 49, the Board added subsection (d) to section 1038, to exempt the cutting or removal of trees as specified in PRC section 4584(j). *[15:1 CRLR 153; 14:4 CRLR 182]* As the Board's emergency amendments were effective only until February 20, the Board readopted them on February 7; OAL approved them on February 15. At this writing, they are effective until June 15.

In the meantime, the Board published notice of its intent to adopt permanent regulations implementing AB 49. On February 7, the Board held a public hearing on its proposal to adopt new sections 1038(f), 1038.2, and 1024(j), and amend sections 1022, 1023, 1024.1, 1025, and 1038.1, Title 14 of the CCR. Collectively, these changes will authorize landowners to cut trees in compliance with PRC sections 4290 and 4291 within 150 feet on each side of a structure as specified in PRC section 4584(j). The following silviculture methods may not be used: clearcutting, seed tree removal step, or shelterwood removal step. Surface fuels must be chipped, burned, or otherwise removed within 45 days from the date of the start of timber operations. Timber operations must conform to applicable city or county general plans, implementing ordinances, and city or county zoning ordinances.

Following the receipt of commentary at its February, March, and April meetings, the Board issued modified language of the proposed regulatory changes on April 20 for further discussion at its May 11 meeting. At the May meeting, the Planning and Conservation League offered a letter contending that the Board's proposed rules violate CEQA; as a result, the Board decided to further modify the language and tabled the matter to its June meeting.

• ***Proposed Mendocino County Subdistrict.*** In 1994, Mendocino County petitioned the Board to adopt local forest practice rules for the county due to concern about the rapid depletion of its natural forest resources, which will result in reduced future harvest and economic loss for the county. The proposed rules would have—among other things—restricted harvest volume to 2% of inventory ("2POI") per year, or 20% of standing inventory over a ten-year period, within the county; established a four-year transition timeframe for graduated implementation towards the 2POI volume control standard; set prescriptive limitations for clearcutting and group regeneration harvesting; defined set stocking restrictions on timber harvest operations under evenage, unevenage, group regeneration, and sanitation-salvage methods; and required each timberland ownership subject to the local rules to submit Harvest Assessment Data (HAD) to the CDF Director as part of each THP submitted. *[14:4 CRLR 179–80]*

At its December 1994 meeting, the Board rejected the County's petition for local rules. However, CDF suggested that the Board consider creating a special subdistrict in lieu of adopting county rules. CDF's proposal would create a two-part Mendocino Subdistrict covering all of Mendocino County; one part would consist of lands in the current Coast Forest District, and the other would consist of lands in the current Northern Forest District. The Subdistrict Rule would not apply to ownerships under 10,000 acres in size; it would also not apply to ownerships over 10,000 acres in size with total average gross conifer inventories of 20,000 board-feet per acre or more in the Coast Forest District component of the Subdistrict and of 15,000 board-feet per acre or more in the Northern Forest District component of the Subdistrict. *[15:1 CRLR 154–55]* Following discussion at its October meeting, the Board decided to publish CDF's proposal for a 45-day comment period, as an alternative to the proposed local rules.

However, after public hearings at its December 1994 and January 1995 meetings, the Board decided to rescind the 45-day notice at its February meeting, upon the recommendation of its Forest Practice Committee. The Committee recommended that before any further action is taken, the Board and Mendocino County landowners would benefit from a workshop on the submission and use of SYPs as an alternative to creation of a subdistrict.

• ***Board Effectively Denies Petition to Classify Coho Salmon as a Sensitive Species.*** In April 1994, the Fish and Game Commission (FGC) listed the coho salmon as a candidate for threatened species status under the California Endangered Species Act (CESA) in all creeks south of San Francisco. Simultaneously, DFG petitioned the Board of Forestry to list the coho salmon as a sensitive species under section 919.12 (939.12, 959.12), Title 14 of the CCR. In its petition, DFG noted that "[c]oho salmon require year-round cool high quality water, an abundance of shade, heavy riparian canopy, deep pools, cover in the form of large, stable, woody debris and undercut banks, and an unembedded gravel/rubble substrate," and that timber harvesting practices allowed by the Board have caused heavy stream sedimentation, loss of dense overstory shade canopy and subsequent increase in water temperature, and loss of large woody debris. A "sensitive species" classification by the Board would entitle the species to additional protections from the impacts of timber harvesting in these areas. *[15:1 CRLR 153–54; 14:4 CRLR 179; 14:2&3 CRLR 186, 195]*

However, following public hearings and discussions at its April, June, July, September, and November 1994 meetings, and at its January, February, March, and May 1995 meetings, the Board of Forestry has failed to reach a decision on the issue.

Essentially, the Board has decided not to take a leadership role on this issue; instead, it prefers to work with DFG and wait for FGC to make a decision on whether to formally list the coho salmon as threatened or endangered under CESA. Because of intense disagreement between environmentalists and the timber and fishing industries over this issue, DFG and FGC are exploring the idea of using the Natural Communities Conservation Planning (NCCP) approach toward conservation of the coho and its habitat; this method has proven somewhat successful in protecting the California gnatcatcher and its coastal sage scrub habitat in southern California. *[14:1 CRLR 146; 13:4 CRLR 188; 13:2&34 CRLR 188]* The NCCP program (which is codified at Fish and Game Code section 2800 *et seq.*) is designed to be a voluntary, negotiated, consensus-driven alternative to the sometimes harsh consequences of the listing of a species as endangered or threatened under CESA or the federal Endangered Species Act. At this writing, DFG and FGC are still exploring this alternative. In the meantime, the coho salmon population continues to dwindle.

• ***Three-Zone Rule for Protection of the NSO.*** The Board's notice of its proposal to adopt section 919.8 and amend sections 895, 898.2(d), 919, 919.1 (939.1, 959.1), 919.4 (939.4, 959.4), 912 (932, 952), 912.9 (932.9, 952.9), 913.6 (933.6, 953.6), 914 (934, 954), 915 (935, 955), 916.3 (936.3, 956.3), 916.4 (936.4, 956.4), Title 14 of the CCR, its existing regulations to protect the northern spotted owl (NSO), expired on March 18. The NSO has been listed as threatened by the federal government since July 1990. *[15:1 CRLR 155; 14:4 CRLR 180–81; 14:2&3 CRLR 193–94]*

• ***Biologist Consultation Contracts.*** On March 27, OAL approved the Board's revised version of its proposed amendments to sections 919.9 and 939.9, Title 14 of the CCR, two provisions of the Board's existing NSO protection rules. These sections clarify the qualifications and duties of designated state biologists and independent consultant biologists who work with CDF to determine whether a proposed THP will result in the take of an individual northern spotted owl prior to approving the plan. *[15:1 CRLR 155–56; 14:4 CRLR 181; 14:2&3 CRLR 194–95]*

• ***Modified Timber Harvest Plan.*** On April 28, OAL approved the Board's readoption of sections 1051, 1051.1, 1051.2, and 1052.3, Title 14 of the CCR, to reimplement the modified timber harvest plan (MTHP) for non-industrial owners. These regulations provide forestland owners with an entire ownership of 100 acres or less with a cost-effective alternative to filing a regular THP. Section 1051 sets forth the conditions and mitigation measures with which MTHP submitters must comply; section 1051.1 sets forth the required contents of the MTHP; section 1051.2 addresses the review of a MTHP by CDF; and section 1051.3, as modified, imposes a two-year sunset date on the MTHP program. *[15:1 CRLR 156; 14:4 CRLR 180]*

LEGISLATION

AB 1937 (Olberg). The FPA authorizes the Board to adopt forest practice rules to ensure the continuous growing and harvesting of commercial forest tree species and to protect other specified resources; Board regulations provide for the preparation of sustained yield plans (SYPs) that have a duration of three years, with two one-year extensions allowed. As introduced February 24, this bill would prohibit long-term planning documents intended to address specified long-term forest land management issues that are prepared in accordance with rules adopted by the Board pursuant to that provision, including specified SYPs prepared in accordance with those Board rules, from being effective for a period of more than ten years. *[A. Appr]*

SB 1282 (Leslie). The FPA authorizes the Board to exempt specified forest management activities from the Act if the Board determines that the exemption is consistent with the purposes of the Act, including the cutting or removal of trees, in compliance with specified provisions of the Act, that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 150 feet on each side from an approved and permitted Group R occupancy, as defined, when that cutting or removal is conducted as prescribed. As amended March 30, this bill would delete that exemption and instead authorize the Board to exempt the harvest of solid wood forest products pursuant to specified provisions of the Act, or other activities to create defensible space from wildfires for structures. The bill would require those exempted activities to comply with specified environmental standards and would require a violation of those standards to be subject to the penalty and enforcement provisions of the Act. The bill would authorize the Board to adopt regulations that the Board determines to be necessary to implement that exemption. The bill would provide that the exemption shall become inoperative on January 1, 2000, unless a later enacted statute deletes or extends that date.

Under CEQA, a lead agency, as defined, is required to prepare (or cause to be prepared) and certify the completion of an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect, unless the project is exempt. This bill would exempt from CEQA a project that provides fire-safe conditions, defensible space, or fuel breaks, if the project is in compliance with provisions regarding the protection of forest resources from fire and any regulations adopted by the Board pursuant to those provisions. The bill would require the Board to adopt regulations that the Board determines to be necessary to implement, and to obtain compliance with, that exemption. *[S. NR&W]*

AB 938 (Sher) as amended May 15, would authorize the Board to exempt from the FPA the cutting and removal of trees by the commercial thinning intermediate treatment silvicultural method pursuant to an exemption notice prepared by an RPF, to reduce the threat of wildfire within a very high fire severity zone designated by the CDF Director on or after January 1, 1995, pursuant to specified provisions. The bill would prescribe requirements to qualify for that exemption, including a requirement that an RPF with a fire-safe timber operator certification direct activities pursuant to the exemption, and would require the Board to adopt regulations to implement the exemption, initially as emergency regulations. *[A. Appr]*

AB 996 (Sher, Bordonaro). The Budget Act of 1994 appropriates funds for support of CDF that are available for emergency fire suppression and detection costs and related emergency revegetation costs. As amended April 5, this bill would appropriate the sum of $33 million from the general fund to CDF, in augmentation of that budget item, solely for emergency fire suppression costs and related emergency revegetation costs, and would authorize the Director of Finance to withhold authorization for the expenditure of those funds until, and to the extent that, preliminary estimates of potential deficiencies are verified. *[S. Floor]*

SB 220 (Haynes), as amended May 18, would provide that, notwithstanding a specified provision of the Administrative Procedure Act, regulations adopted or revised by the Board pursuant to the FPA shall become effective on the next January 1 that is not less than thirty days from the date of approval of those rules or regulations by OAL. *[14:4 CRLR 178]* The bill would provide that, if the Board adopts emergency regulations and subsequently adopts those emergency regulations as nonemergency rules or regulations pursuant to the Act, the rules or regulations shall become effective thirty days

from the date of approval of the rules or regulations by OAL. *[S. Floor]*

AB 1385 (Woods). Under the FPA, generally, no person may conduct timber operations on timberland unless the person has submitted a THP to CDF; the Act requires CDF and the Board to review a THP, and limits the criteria that may be employed by the CDF Director when reviewing a THP to the rules adopted by the Board pursuant to the Act. Under CEQA, a state agency regulatory program meeting specified requirements is authorized to submit an abbreviated document in lieu of a full environmental impact report, if the Secretary of the Resources Agency has certified that regulatory program. Under CEQA, the CDF Director, as the lead agency executive head, is authorized to require a person submitting a THP for review and approval to submit data and information, in addition to that required pursuant to the Forest Practice Act, that is necessary to enable the Director to determine whether the proposed plan may have a significant effect on the environment.

As introduced February 24, this bill would remove the Director's authority, pursuant to CEQA, to require additional data and information from a person submitting a THP for review unless the Board adopts regulations in implementation of CEQA to require that person to include all data and information that may be necessary to enable the Director to determine whether the proposed plan may have a significant effect on the environment. The bill would make clarifying changes in the Forest Practice Act. *[A. NatRes]*

AB 137 (Olberg). The California Endangered Species Act provides for listing of endangered species and threatened species by the Fish and Game Commission, and provides procedures by which DFG may recommend to FGC, and by which interested persons may petition the Commission, to list, or remove from a list, any species that meets specified criteria. As introduced January 13, this bill would define the terms "interested person" and "interested party" for purposes of these provisions. The bill would provide that after January 1, 1996, species may not be added to the list of endangered or threatened species except by statute enacted by the legislature, and unless a economic assessment report required by the bill shows that the benefits to be derived from the action exceed the estimated costs associated with protecting the species.

The bill would also provide that no environmental impact report is required to be prepared to remove a species from the list of endangered or threatened species list unless an environmental impact report was prepared when the species was listed on the list. The bill would require FGC to appoint a panel of scientific experts knowledgeable about the species to review DFG's report to FGC on the petition. This bill would require FGC to annually prepare and submit to the Governor and the legislature a list of species that FGC recommends be added to the list of endangered or threatened species, and would require the report to include specified documents. The bill would also provide that just compensation shall be paid for the taking of private or public property, and would, for that purpose, define the term "taking." *[A. Appr]*

AB 427 (Olberg), as introduced February 15, would rename the California Endangered Species Act as the California Threatened and Endangered Species Act. *[A. WP&W]*

AB 428 (Olberg). The California Endangered Species Act requires FGC to notify owners of land which may provide habitat essential to the continued existence of a species for which FGC has accepted a petition for consideration of the species as a threatened or endangered species, with specified exceptions. Existing law also requires DFG to promptly commence a review of the status of a species listed in the petition and to provide a written report within twelve months to FGC that includes, among other things, a preliminary identification of the habitat that may be essential to the continued existence of the species. DFG is also required to review listed species, including the habitat that may be essential to the continued existence of the species. As introduced February 15, this bill would exclude land that may provide habitat of a type necessary for the continuing existence of a candidate species, threatened species, or endangered species from any requirement that it be managed as habitat for that species unless individuals of that species have been observed inhabiting that property during the period of review of the petition. The bill would define the terms "land which is identified as habitat for endangered species and threatened species," "kind of habitat necessary for species survival," "land which may provide habitat essential to the continued existence of the species," "habitat that may be essential to the continued existence of the species," and "habitat essential to the continued existence of the species" to exclude habitat areas on which the species has not been directly observed by a DFG employee to be present during the period of DFG's review of the petition. The bill would provide that habitat management activities are not required to be conducted on any such property on which the species has not been directly observed by a DFG employee to be present during the period of DFG's review of the petition. *[A. WP&W]*

LITIGATION

In ***Big Creek Lumber Company, Inc. v. County of San Mateo***, 31 Cal. App. 4th 418 (Jan. 9, 1995), the First District Court of Appeal ruled that counties may control, by zoning ordinance, the location of commercial timber harvesting.

In this important case of first impression, the court distinguished between the FPA—the state statute which authorizes the Board of Forestry to regulate the conduct of timber operations, and the Timberland Productivity Act of 1982, Government Code section 51100 *et seq.*—which requires cities and counties to zone described timberlands as "timberland production zones" (TPZs). According to the First District, the TPA "is intended to protect properly conducted timber operations from being prohibited or restricted due to conflict or apparent conflict with surrounding land uses."

In 1992, the San Mateo County Board of Supervisors enacted amendments to its zoning ordinance which prohibited, with certain exceptions, commercial timber harvesting in designated rural areas of the County "within 1,000 feet of any legal dwelling in existence on June 18, 1991." The ordinance did not apply to any TPZs. The buffer zone made about 13% of timber areas outside the TPZs unavailable for logging. Big Creek Lumber Company sought declaratory relief, contending that the ordinance was preempted by the FPA; the trial court agreed.

In reversing the trial court, the First District noted that zoning is largely left to local discretion. However, such local authority "is not limitless....In passing the FPA, the Legislature expressly preempted regulation of the conduct of timber harvesting operations." The court noted that the FPA requires the Board to divide the state into districts and to adopt regulations for each district which, under PRC section 4551.5, apply to "the conduct of timber operations...." Although PRC section 4516.5 expressly preempts local attempts to regulate the conduct of timber operations, the court noted that "the amended zoning ordinance at issue speaks not to how timber operations may be conducted, but rather addresses where they may take place. The TPA clearly contemplates local zoning authority be exercised on these issues. Other pertinent legislation demonstrates the Legislature's intent to preserve local zoning authority over the lands at issue....Reading the TPA and the FPA together, we are persuaded the Legislature did not intent to preclude counties from using their zoning authority to prohibit timber cutting on lands outside the TPZs."

On January 30, the First District denied Big Creek's petition for rehearing. On March 25, the California Supreme Court denied Big Creek's petition for review and petition for depublication of the First District's decision.

San Francisco Superior Court Judge Stuart Pollak heard oral argument in ***Sierra Club and Redwood Coast Watershed Alliance v. California State Board of Forestry***, No. 951041 (San Francisco Superior Court), in March. In this case, two environmental groups are challenging the adequacy of the Board's recently-adopted regulations which purport to define and implement the FPA's express statutory goal—the regulation of timbercutting so as to yield "maximum sustained production (MSP) of high-quality timber products." This lawsuit is an offshoot of ***Redwood Coast Watershed Alliance v. Board of Forestry***, No. 960626 (San Francisco Superior Court), RCWA's earlier litigation which successfully challenged the Board's 18-year failure to adopt any such rules. *[15:1 CRLR 156; 14:4 CRLR 183–84]* While that litigation was pending, the Board spent two years developing and adopting a package of MSP rules which were finally approved by OAL in January 1994 and are the subject of the challenge. *[14:2&3 CRLR 195; 14:1 CRLR 1515; 13:4 CRLR 184]* At this writing, Judge Pollak has not yet issued his ruling.

On April 17, the U.S. Supreme Court heard oral argument in the federal government's appeal of the D.C. Circuit Court of Appeals' decision in ***Sweet Home Chapter of Communities for a Great Oregon v. Babbitt***, 17 F.3d 1463 (Mar. 11, 1994), in which the appellate court ruled that significant habitat degradation is not within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. *[14:4 CRLR 184; 14:2&3 CRLR 198–99]* The D.C. Circuit's decision conflicts directly with the Ninth Circuit's decision in *Palilla v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988), thus prompting the Supreme Court to review the issue. At this writing, the high court has not yet released its decision.

FUTURE MEETINGS

June 6–7 in Redding.
July 11–12 in Oxnard.
August 8–9 in Sacramento.
September 12–13 in Tahoe City.
October 2–4 in Sutter Creek.
November 6–8 in San Diego.

INDEPENDENTS

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
Vivian R. Davis
(916) 227-2790

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members—five chiropractors and two public members.

MAJOR PROJECTS

Animal Chiropractic Therapy. At BCE's January 19 meeting, BCE member Lloyd Boland, DC, reported that he, along with BCE Executive Director Vivian Davis and Deputy Attorney General Joel Primes, met with representatives of the Board of Examiners in Veterinary Medicine (BEVM) on January 5 to discuss animal chiropractic therapy, including the unlicensed practice of chiropractic treatment on animals by individuals licensed as neither chiropractors nor veterinarians. According to Dr. Boland, BEVM and BCE agreed to work together on defining the scope of alternative veterinary care as it pertains to animal chiropractic therapy. *[15:1 CRLR 97]*

At its March 30 meeting, BCE reviewed draft regulatory language provided by BEVM regarding animal chiropractic therapy. Specifically, the language provides that animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of application of mechanical forces applied manually through the hands or through any mechanical device to treat or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals; under the draft regulation, chiropractic and other forms of MSM in nonhuman animals are considered to be alternative therapies in the practice of veterinary medicine. BEVM's draft language also provides that chiropractic and other forms of MSM may only be performed by a licensed veterinarian, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met.

After reviewing BEVM's draft language, Boland and Davis made several amendments, including the insertion of language stating that alternate therapies are not taught in veterinary college, and may require additional training, education, or consultation with a health professional trained in those areas. BCE's amendments also state that chiropractic and other forms of MSM may only be performed by a California licensed veterinarian acting in consultation with a licensed health professional trained in the alternative therapy, and require the chiropractor to maintain complete and accurate chiropractic records of the patient's treatment and provide the veterinarian with a duplicate copy of those records.

Also on March 30, BCE considered amending its own scope of practice regulation, which currently provides that a duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body; specifically, the Board discussed deleting the word "human" from this provision, to enable chiropractors to consult with veterinarians, as noted above, and subsequently treat animals. Following discussion, BCE agreed to postpone action on this proposal until further action is taken by BEVM.

At BCE's May 4 meeting, BCE member Michael Martello, DC, reported that BEVM objected to BCE's suggestion that a veterinarian should practice manipulation of animals only in consultation with a chiropractor; according to Martello, BEVM contends that there are not enough alternative health care professionals interested in veterinary health care to make consultation or supervision practical. BCE agreed to table further action on this matter until BEVM publishes formal notice of its intent to adopt regulatory language on this subject.

BCE Considers New Rulemaking Proposals. At its recent meetings, BCE discussed several rulemaking proposals, including the following:

• ***Reciprocity Requirements***. At its January 19 meeting, BCE agreed to pursue amendments to section 323, Title 16 of the CCR, to require license reciprocity candidates to show documentation of five years of chiropractic experience. *[15:1 CRLR 158]*