and criticized by many environmentalists (*see* FEATURE ARTICLE). SCE has admitted no wrongdoing, maintaining that it has complied with all applicable environmental regulations, and claims that the settlement is an expedient way to avoid potentially more costly and complex litigation. Part of the settlement will be passed on to SCE ratepayers, pending approval by the Public Utilities Commission.

RECENT MEETINGS

At its January 14 meeting in Santa Monica, the Commission rejected for the second time in thirteen months developer Norman Haynie's plans to build luxury homes on Lechuza Beach in Malibu. Haynie bought the property in 1991 and contends that the Commission's refusal to grant him a building permit constitutes an unlawful taking without compensation, prohibited by the fifth amendment to the U.S. Constitution. The Commission had rejected Haynie's plans in 1991 but, in light of the U.S. Supreme Court's 1992 decision in *Lucas v. South Carolina Coastal Commission [12:4 CRLR 196–97]*, reconsidered the matter upon order by a superior court. As it had done previously, the Commission ruled that Haynie and his associates have no right to build on their property because to do so would violate the Coastal Act, which prohibits seawalls from being built except to protect existing structures. State officials had previously determined that the proposed homes would be unsafe without a seawall. The decision was cheered by residents who have opposed the building plans because their ocean views would have been affected. Haynie intends to file a suit against the Commission under *Lucas*.

Also in January, Executive Director Peter Douglas presented the Local Coastal Plan Status Report to the Commission, covering activity and progress for the period of January 1–December 31, 1992. The highlight of the year was the effective certification of the Mendocino County LCP and the assumption of permit-issuing authority by the County. Currently, 85% of the coastal zone is covered by certified LCPs, with 64% of certifiable local governments issuing permits.

At its February meeting, the Commission approved plans with conditions for a 42-acre park in the City of Carlsbad. The plan for the $11 million park includes a combination gymnasium and community center, a tennis complex, lighted baseball fields, a soccer field, basketball courts, a sand volleyball court, and picnic sites, including two covered shelters. The Commission required that the park site include 4.7 acres of undisturbed coastal sage scrub and 3.1 acres of disturbed coastal sage scrub as well as other environmentally sensitive acreage.

At its March meeting, the Commission announced the opening of a new regional office in Ventura to serve the area between Malibu and Santa Barbara County.

At its April meeting, the Commission granted a long-time Laguna Beach resident's petition for a permit to build a 2,800-square-foot residence in a huge boulder. Mary Bowler, 75, has dreamed of this project for 35 years. Earlier efforts to build on the rock or flatten it out failed, so an architect came up with a $2 million plan to dig the house into the rock and recap it with simulated rock and original plants. While some environmentalists were shocked that the Commission allowed such a development, no other hurdles are expected before construction begins.

At its May meeting, the Commission decided to limit long-term stays at the Ventura Beach Recreational Vehicle Resort as a cautionary measure because the park sits on a flood plain at the mouth of the Ventura River. During the flooding of 1992, the resort received national attention as about 40 recreational vehicles were damaged or destroyed and one indigent man drowned. This raised concern about long-term stays because, over time, many of the RVs had become inoperable due to lack of maintenance. The Commission's decision restricts visitors to a total of 90 days per year. Campers must leave every 30 days for a minimum period of 48 hours. The Commission also required that the park owner carry a $10 million insurance policy.

FUTURE MEETINGS

September 14–17 in San Francisco.
October 12–15 in Los Angeles.
November 16–19 in San Diego.
December 14–17 in San Francisco.

FISH AND GAME COMMISSION

Executive Director:
Robert R. Treanor
(916) 653-9683

The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of the Department of Fish and Game (DFG). The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 *et seq.* Each member is appointed by the Governor to a six-year term. Whereas the original charter of FGC was to "provide for reasonably structured taking of California's fish and game," FGC is now responsible for determining hunting and fishing season dates and regulations, setting license fees for fish and game taking, listing endangered and threatened species, granting permits to conduct otherwise prohibited activities (*e.g.*, scientific taking of protected species for research), and acquiring and maintaining lands needed for habitat conservation. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

Created in 1951 pursuant to Fish and Game Code section 700 *et seq.*, DFG manages California's fish and wildlife resources (both animal and plant) under the direction of FGC. 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.

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 over 570,000 acres of land, 5,000 lakes and reservoirs, 30,000 miles of streams and rivers, and 1,300 miles of coastline. Over 648 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

Federal Government Lists Gnatcatcher as Threatened, Permitting NCCP Experiment to Proceed. On March 25, U.S. Interior Secretary Bruce Babbitt added the California gnatcatcher to the list of threatened species under the federal Endangered Species Act (ESA), ending years of controversy and months of delay. Although it failed to fully satisfy the request of either faction in this contentious dispute, Babbitt's compromise action was hailed by developers and environmentalists alike; developers had argued against any listing whatsoever and any restriction on their ability to bulldoze the remaining coastal sage scrub (CSS) habitat of the gnatcatcher in southern California, and environmentalists had sought an endangered listing entitling the songbird and its habitat to full protection under federal law. FGC refused to list the gnatcatcher under the California Endangered Species Act (CESA) in August 1991. *[13:1 CRLR 117–18; 12:4 CRLR 202–03; 12:2&3 CRLR 233–34]*

The key to Babbitt's decision is the existence of the Wilson administration's experimental Natural Community Conservation Planning (NCCP) program (codified at Fish and Game Code section 2800 *et seq.*), under which developers, landowners, environmentalists, and state and local governments may negotiate and enter into voluntary agreements to set aside certain lands as multi-species habitat preserves in exchange for permission to develop other lands. Created in 1991 as an alternative to the ESA/CESA, the NCCP program got off to a rocky start due to an absence of enforcement mechanisms in the statutory scheme to protect both the gnatcatcher and its habitat pending program implementation, and a complete failure on the part of the building industry to enroll any CSS lands in the program. Only terse threats by Wilson administration officials in May 1992 about the harsh inflexibility of the ESA/CESA, should either the state or federal government list the gnatcatcher, succeeded in convincing developers and several southern California cities and counties to join the program. In a February report issued by the NCCP, the program noted that, to date, 31 local jurisdictions or public entities and 37 private landowners and developers had enrolled over one million CSS acres in the NCCP program; this enrolled land, combined with other CSS habitat which is under the jurisdiction of cooperating federal agencies, equates to approximately 53% of the known CSS habitat in the planning area.

Under Babbitt's decision, the gnatcatcher is listed as threatened under the ESA and, as such, is entitled to full statutory habitat protection. However, landowners who enroll their lands and participate in the NCCP program are exempted from the prohibitions of the ESA, so long as they comply with the habitat conservation plan developed by the program and so long as the state program's results please the federal government. Babbitt warned the Wilson administration and DFG, which is coordinating and staffing the NCCP program, that if the NCCP scientific review panel fails to come up with a plan that protects the gnatcatcher and its habitat, and which is agreed to by all participants, the federal government will not hesitate to step in and take harsh measures to protect the bird.

A week later, the NCCP scientific review panel, chaired by Stanford University wildlife biologist Dennis Murphy, released preliminary non-regulatory Conservation Guidelines which call for 95% of the remaining CSS habitat in southern California to be spared from development for several years to guarantee the survival of the gnatcatcher. The development restriction must remain in place until the panel can conduct detailed surveys of the area and the species, and identify lands which must be permanently preserved. Developers, now restricted to just 5% of the CSS habitat for the foreseeable future, were not overly alarmed, as the continuing economic recession in California has stifled any demand for new housing tracts. The scientific review panel and the participating agencies hope to adopt final guidelines and identify particular parcels of CSS land as dedicated to the preserve or developable by November 1.

Babbitt's compromise decision signals a new willingness on the part of the federal government to work cooperatively with states, local governments, and private parties in wildlife protection ventures, and is particularly unusual in that a federal Democratic administration is entrusting a state Republican administration with the implementation of a landmark environmental decision. Hopefully, the federal government's action will also be accompanied by federal money to help California succeed in this precedent-setting experiment. The NCCP program—which has the potential to result in the creation of multi-species preserves offering protection to rare plants and animals in addition to the gnatcatcher—has been consistently underfunded since its inception, and California's ongoing budget crisis does not promise much additional state assistance for the program.

Commission Delists Mohave Ground Squirrel. In an unprecedented move at its May 14 meeting, FGC voted 4–0 (with one abstention) to remove the Mohave ground squirrel from the list of threatened species under the California Endangered Species Act. The only habitat of the squirrel—which has been listed since 1971—is 7,000 square acres of the Mojave Desert in portions of Kern, Los Angeles, San Bernardino, and Inyo counties. The delisting came at the request of Kern County officials, who argued that the squirrel's listing has blocked 226 development projects and that much of the species' habitat is located on public or military land which is not likely to be developed anyway.

FGC's vote was contrary to the recommendation of DFG's biologists, who reviewed Kern County's petition for delisting and concluded that it did not contain sufficient scientific information to indicate that the squirrel should be removed from the list. In fact, DFG found that the petition contained no scientific information on the squirrel's population trend, range, distribution, abundance, factors affecting the ability of the species to survive and reproduce, degree and immediacy of threat, and impact of existing management efforts—all of which are required under section 2072.3 of the Fish and Game Code. DFG concluded, "based on the best available biological information, that the Mohave ground squirrel continues to be threatened by modification and destruction of its habitat. The modification of habitat primarily is human-related....The rapid growth in the urban areas of Palmdale, Victorville, and Ridgecrest in recent years, and the lack of coordinated planning to provide for the continued existence of the species in or near these areas during this growth, is the major cause for our position that Threatened status should be retained."

However, the FGC majority debated economics, not science, at the May hearing. Despite DFG's recommendation, Commissioner Albert Taucher announced his opinion that the squirrel is no longer threatened with extinction, and should be delisted. Commissioner Frank Boren abstained from the vote, stating that he did not trust the scientific evidence presented by DFG or by Kern County; Boren argued unsuccessfully for an independent scientific review of the species' condition.

While Kern County developers gleefully announced plans to immediately seek construction permits, environmentalists rued FGC's decision and the precedent it might set, and debated whether to challenge it in court. At this writing, the Commission must ratify its May decision at its June meeting, publish notice of the delisting for a 45-day comment period,

and hold a regulatory hearing on the proposed action at its August 27 meeting. Meanwhile, the federal government—which has already classified the species as "declining"—has been considering whether to list the Mohave ground squirrel under the ESA since 1991.

Federal Government Lists Delta Smelt as Threatened, Prompting Similar FGC Action. On March 4, the U.S. Fish and Wildlife Service listed the tiny Delta smelt as a threatened species under the ESA, prompting FGC to take similar action at its April 2 meeting; the Commission again listed the smelt—an "indicator species" of the general ecological condition of the Sacramento-San Joaquin Delta—as a candidate species under section 2068 of the Fish and Game Code. In 1989, FGC previously granted candidate species to the Delta smelt, but—at the end of the review period in August 1990—decided not to list the fish on grounds of "lack of information." *[12:1 CRLR 165; 11:1 CRLR 126; 10:4 CRLR 154]*

Along with other recent legal and political actions (*see* agency report on WATER RESOURCES CONTROL BOARD), the government's listing of the Delta smelt is expected to spur fundamental changes in California's water supply and delivery system. The Delta and many of its native species have been devastated both by the recent five-year drought and by massive amounts of water pumping from the Delta through state- and federally-owned water projects. A leading cause of the decline of the Delta smelt is direct entrainment of larval, juvenile, and adult smelt in water diversions of the Central Valley Project and the State Water Project.

At this writing, FGC is expected to consider whether to list the Delta smelt as threatened under CESA at its June 18 meeting.

FGC Adopts 1993–94 Mammal Hunting and Trapping Season Regulations. Following a public hearing at its February meeting, FGC adopted its 1993–94 mammal hunting and trapping season regulations at its April 22 meeting. The proposed regulatory changes to sections 307 (elimination of an early tree squirrel hunting season in some counties), 351 (clarification of the definition of certain types of deer), 353 (clarification of methods authorized for the taking of big game), 360 (technical changes to deer hunting regulations), 361 (archery deer hunting), 362 (change in the number of Nelson bighorn sheep tags and increase in tag fee), 363 (changes in pronghorn antelope regulations and increase in tag fee), 364 (addition of three days to beginning of elk hunting season and increase in tag fee), 364.5 (change in number of Tule elk tags and increase in tag fee), and 371 (technical changes regarding deer hunt tags), Title 14 of the CCR, proved uncontroversial and were easily adopted. At this writing, these regulatory changes are pending at the Office of Administrative Law (OAL) awaiting approval.

However, several other proposals related to the regulatory package caused considerable controversy; at this writing, these proposed changes have been set for a separate FGC hearing on June 18 and FGC consideration on August 6. Specifically, DFG Director Boyd Gibbons shocked many of the hunters in attendance at FGC's April meeting when he stated his opinion that the use of dogs in black bear hunting presents a "moral dilemma... something more than a private choice. It is a challenge to our collective conscience as hunters, who respect the animals we hunt." In a subsequent newspaper editorial, Gibbons wrote that "[h]ound hunting is an old tradition, but it is not enough to defend a form of hunting simply because it is traditional. Bear-baiting was a tradition in California, as it still is elsewhere, but that is a tradition our society for good reason no longer sanctions." Warning that some segments of society are opposed to hunting in any form and would like to see it ended, Gibbons stated that "[w]e hunters must candidly examine what civilizes us and what does not."

Thus, FGC will consider proposed amendments to sections 265 and 367, Title 14 of the CCR, to prohibit the use of dogs in the hunting of black bear. The Commission will also consider other options related to black bear hunting and the use of dogs, including the following: (1) no change in the existing regulations; (2) allowing pursuit of bears with dogs but prohibiting the take of bears with dogs; (3) prohibiting the use of radio telemetry equipment on dogs used in bear hunting; (4) limiting the number of dogs which may be used to hunt bear; (5) prohibiting the use of dogs for taking bear and restricting their use for hunting other mammals in specific areas of the state during the bear season; (6) prohibiting the use of dogs for taking bear and other mammals in bear habitat on a year-round basis; (7) limiting the use of dogs to certain areas of the state; (8) regulating the number of hunters using dogs via a permit system; and (9) allowing the use of dogs for only a portion of the season with a permit required.

FGC is also scheduled to consider a proposed change to section 251.5, Title 14 of the CCR, which currently authorizes DFG to issue a permit to capture and temporarily possess a live nongame, furbearing mammal. Mammals possessed under such a permit must be released in good condition in the area they were trapped. The proposed change would require DFG to issue such a permit when it determines that the activity which temporarily uses the mammal will not pose a threat to the public welfare or the wildlife resource and the activity will be conducted in a humane manner to the captured mammal.

Continued Protection for Salmon. Both the state and federal governments have recently taken action to restrict ocean salmon fishing off the coast of California and in California rivers. On April 28, the U.S. Department of Commerce issued new guidelines closing the commercial salmon season in federal waters (from three to 200 miles offshore) off much of northern California for the month of May. On May 4, FGC adopted emergency amendments to section 27.80, Title 14 of the CCR, to similarly restrict salmon fishing in state ocean waters (from the shore to three miles out) for much of northern California. The restrictions are area-specific, and affect bag limits, area quotas, permissible fishing gear, and season limitations. The 1993 season restrictions are slightly less harsh than those imposed in 1992. *[12:2&3 CRLR 235–36]*

Regarding the inland salmon fishery, FGC is scheduled to hold a June 18 public hearing on proposed amendments to section 7.50, Title 14 of the CCR, to revise in-river salmon regulations in accordance with Pacific Fishery Management Council rules. FGC will consider several options for the Klamath River system:

- continuation of the regulations adopted for the 1992–93 season, which included daily and weekly bag limit reductions for salmon more than 22 inches total length, a ban on barbed hooks in the Klamath River main stem, from 3500 feet below Iron Gate Dam to the Klamath River mouth, a closure to all fishing in the Klamath River within 500 feet of the mouths of the Salmon, Scott, and Shasta Rivers between September 15 and November 15, and an 820-fish quota, or "ceiling," on the recreational take of chinook salmon more than 22 inches total length in the Klamath River system;
- "Alternative 1" (DFG's "preferred alternative"), which calls for retention of the 1992–93 regulations, except the quota would be increased and the prohibition on barbless hooks would be repealed;
- "Alternative 2," which would call for closure of the Klamath River system to all salmon fishing all year, with additional closures to all recreational fishing during periods of peak fall-run salmon abundance; and

• "Alternative 3," which calls for the quota changes in Alternative 1 and restores the more liberal daily and weekly bag limits and possession limits which existed prior to 1992–93.

Update on Other Regulatory Changes. The following is a status update on other regulatory changes proposed and/or adopted by FGC/DFG in recent months:

• ***Additional State Ecological Reserves***. Following a January 5 hearing, FGC adopted proposed amendments to section 630, Title 14 of the CCR. Section 630 currently lists 70 habitat areas as state ecological reserves that protect resource values while permitting compatible public uses of the areas. The proposed regulatory changes would designate thirteen additional areas as state ecological reserves. *[13:1 CRLR 120]* At this writing, the rulemaking file on these changes is pending at OAL.

In addition, FGC is scheduled to hold a June 18 hearing on more amendments to section 630, to add three areas to the list of designated ecological reserves and provide special area regulations for one new reserve and one existing reserve.

• ***Validity Date of Sport Fishing License***. On February 1, OAL approved FGC's amendment to section 705, Title 14 of the CCR, requiring one-day sport fishing licenses to show clearly the date of validity. *[12:4 CRLR 207]*

• ***Marine Aquaria Receiver's License Fee***. Last December, DFG adopted section 188, Title 14 of the CCR, on an emergency basis to implement AB 2261 (Felando) (Chapter 742, Statutes of 1992), setting the annual fee for a marine aquaria receiver's license at $1,000. *[13:1 CRLR 120]* The Department adopted section 188 on a permanent basis after a January 4 hearing; at this writing, this regulatory action awaits approval by OAL.

• ***Additions Proposed to List Four Prohibited Species***. Following a public hearing at its February meeting, FGC adopted amendments to section 671 and new section 671.7, Title 14 of the CCR, to add certain exotic aquatic species to the prohibited species list, and provide for a new permit for aquaculture of prohibited species. *[13:1 CRLR 120]* At this writing, these regulatory changes are pending at OAL.

Upper Sacramento River Recovery Plan Announced. On March 26, DFG released its final 1993 Fisheries Management Plan for the upper Sacramento River, following a heated public comment period on the draft plan which extended from January 22 through March 15. DFG acknowledged that differences of opinion exist regarding appropriate management of the River as it recovers from the disastrous July 1991 metam sodium spill *[12:4 CRLR 210; 12:2&3 CRLR 14, 216, 236–37]*, but contended that its final plan represents the most appropriate methods for achieving a prompt recovery of the pre-spill ecosystem and fishery.

For 1993, the DFG plan recommends that no fishing occur on the upper river and its tributaries from Box Canyon Dam to Shasta Lake; that the river has not reached the point where it can withstand the stocking of hatchery trout, but that nearby off-river stocking may occur; and that the area should remain closed to suction dredging since DFG cannot conclude that such actions would not have a deleterious effect on fish.

Each option was considered against six criteria: whether the option promotes recovery of the ecosystem (the primary goal), maximizes wild trout survival and reproduction during 1993, provides fishing opportunities in 1993 at levels existing prior to the spill, is a technically feasible option, whether the implementation costs are acceptable, and whether it will have no effect on the natural resource damage assessment.

DFG biologists concluded that the river has made good progress towards recovery without any human intervention (except for resource protection). The experimental level of management during 1992 showed the very real adverse impacts of "hands-on" actions; thus, the 1993 plan is conservative and based on the most current biological evaluation of the river.

DFG noted that it received correspondence from 791 individuals expressing opposition to stocking and opening the river to angling in 1993, because the entire aquatic ecosystem needs more time to recover on its own; the river's wild trout population has not recovered to the point that it can withstand competition from domestic hatchery trout; and the fishery will benefit more in the long run if the river remains closed to angling in 1993. Thirty-five organizations, including California Trout, the U.S. Forest Service, the U.S. Fish and Wildlife Service, and the California Sportfishing Protection Alliance also expressed opposition to stocking for the first two reasons listed above.

DFG also received correspondence from 22 individuals supporting the stocking of hatchery trout and the opening of the river to angling, because DFG has stocked this section of the river for many decades prior to the spill; they believe the river has recovered enough for it to support hatchery trout for the short amount of time they remain in the river; and businesses are suffering greatly due to the lack of fishing tourism. Eight organizations, including Southern Pacific Railroad, the Shasta area Chamber of Commerce, and the County Board of Supervisors, also supported a stocking program because limited stocking will send a message that the river is no longer contaminated and will encourage the public to come and use the river again.

DFG noted that its charge is to represent the fishery *qua* fishery, and not to consider economic and social factors when making a decision. If businesses have been damaged from the toxic spill, they should recoup their losses from Southern Pacific, the perpetrator of the spill; it is not part of DFG's mandate to save the businesses by planting hatchery fish.

LEGISLATION

AB 1151 (Alpert). Existing law declares the intent of the legislature that the costs of commercial fishing programs be provided solely from revenues from commercial fishing taxes, license fees, and other specified revenues; that the costs of hunting and sport fishing programs be provided solely out of hunting and sport fishing revenues and reimbursements and federal funds received for hunting and sport fishing programs; and that other costs be funded, as specified. As introduced March 2, this bill would delete the declaration that commercial fishing programs and hunting and sport fishing programs be funded solely from those sources and would additionally declare the intent of the legislature that those programs be funded also with other funds appropriated by the legislature for those purposes. *[S. NR&W]*

SB 380 (Hayden). Under existing law, all mammals occurring naturally in California that are not game mammals, fully protected mammals, or fur-bearing mammals, are nongame mammals, and may not be taken or possessed except as provided in the Fish and Game Code or regulations adopted under that Code. Bobcats are nongame mammals. Under those regulations, a license tag or trapping license is required to take bobcats, except that depredating bobcats may be taken at any time, as specified. As introduced February 23, this bill would designate bobcats as a specially protected mammal and would prohibit their taking, injury, possession, or sale. The bill would allow DFG to issue a permit to take bobcats that are causing injury, damage, or destruction to livestock or other property or to issue a permit confirming the taking of a bobcat under specified conditions. *[S. NR&W]*

AB 1390 (Epple). Existing law authorizes FGC to limit the number of permits that may be issued to take sea urchins. Existing law provides for a fee of $250 for a sea urchin permit until April 1, 1993, and $330 thereafter. As introduced March 3, this bill would, under specified conditions, permit the holder of a sea urchin diver permit to designate an assistant with the approval of the DFG Director. The bill would authorize the assistant to take or assist in the taking of sea urchin when the assistant is in the presence of the permittee. The bill would provide for a review of the approval of the assistant every three years and would provide for revocation, suspension, or other action related to the sea urchin permit if the assistant commits specified violations. The bill would require the payment of a fee by the assistant in the same amount as for a permittee and require the assistant to carry proof of payment whenever conducting activities pursuant to the bill. *[S. NR&W]*

AB 1185 (Cortese). Under existing law, persons who take fish and game are generally required to obtain licenses or permits from DFG; existing law also requires persons engaged in certain activities, occupations, and professions to be licensed or certified. As amended April 22, this bill would, unless otherwise required by the Fish and Game Code, exempt anyone conducting scientific or regulatory investigations, determinations, or reviews for specified purposes from required professional licensing or regulatory certification in order to conduct fish and wildlife management activities required for the conservation, protection, enhancement, and restoration of natural resources, including fish and wildlife and their habitat. *[A. W&M]*

AB 899 (Costa). Existing law requires DFG to establish and collect filing fees for Departmental actions relating to projects subject to the California Environmental Quality Act in specified amounts, and requires those fees for projects on federal lands unless explicitly preempted by federal law. Existing law requires county clerks and the Office of Planning and Research to maintain records of environmental documents and to remit the filing fee to the Department. Existing law authorizes county clerks to charge a documentary handling fee of $25 for filings. As amended April 19, this bill would repeal those provisions and would make conforming changes. *[A. W&M]*

SB 67 (Petris). Under existing law, it is unlawful to use dogs to hunt, pursue, or molest bears generally, except under a depredation permit issued by DFG or during certain open seasons. As amended February 12, this bill would additionally prohibit the use of dogs to hunt, pursue, or take black bears, except black bears taken pursuant to a depredation permit, pursuant to a depredation management plan adopted by FGC, or by federal or state officers in the conduct of official business. *[S. NR&W]*

AB 1222 (Cortese). Under existing law, FGC may require the owner and operator of a commercial fishing vessel, the holder of a commercial fishing license or permit, and the owner and licenseholder of a commercial passenger fishing boat to keep and submit a complete and accurate record of fishing activities in a form prescribed by DFG. Existing law prescribes penalties for violation of the requirement to maintain records, including suspension or revocation of a license or permit for a period of not more than one year. As amended April 12, this bill would expressly limit the suspension or revocation to commercial fishing licenses or permits. *[A. Floor]*

AB 1406 (Morrow). Existing law, until January 1, 1994, establishes bag limits for the taking of abalone for commercial purposes and imposes an additional landing tax on abalone to fund the Abalone Resources Restoration and Enhancement Program. Existing law also prohibits the taking of black abalone within one mile of specified channel islands and along the mainland coast until January 1, 1994, and along the mainland coast thereafter. As amended April 12, this bill would extend the operation of those bag limits and additional landing tax to January 1, 1997. The bill also would prohibit the taking of black abalone for commercial purposes anywhere until January 1, 1997, and within one mile of the specified channel islands and along the mainland coast, except as authorized, thereafter. *[A. Floor]*

AB 1367 (Cortese). Under existing law, DFG is required to issue reduced fee hunting licenses to disabled veterans, as defined, for a fee of $2, adjusted as specified. As amended April 12, this bill would change that fee to $3, adjusted as specified.

Existing law defines upland game bird species for purposes of the Fish and Game Code. This bill would delete desert quail, sage hens, varieties of California and mountain quail, and varieties of partridges from that definition and would include blue grouse in that definition.

Existing law requires a person who takes a deer to punch out the date of the kill on the license tag and attach part of the tag to the deer, and keep it attached until fifteen days after the open season. Existing law also requires the other part of the tag to be immediately sent to DFG after it has been countersigned. This bill would, instead, require the person to clearly indicate the date of the kill in the manner specified by DFG and to attach one part to the deer, countersigned as specified, keep it attached until fifteen days after the open season, and immediately send the other part of the tag to DFG. *[A. W&M]*

AB 1353 (Cortese) Existing law, until January 1, 1994, provides for the issuance of lifetime sport fishing and sportsperson's licenses for specified fees. As amended April 12, this bill would continue those existing laws beyond January 1, 1994, by deleting the repeal date. The bill would require DFG to establish the fees for subsequent years in an amount not to exceed the adjustment based on Department costs, as prescribed.

Existing law authorizes DFG to issue licenses, license stamps, punch cards, and license tags through authorized license agents. Existing law prohibits a license agent from collecting less from the license applicant than the fee prescribed in the Fish and Game Code or regulations adopted thereunder. This bill would, instead, prohibit a license agent from collecting less from the license applicant than 10% of the fee prescribed in the Fish and Game Code or regulations adopted thereunder. *[A. Floor]*

AB 14 (Hauser). Under existing law, the moneys in the Fisheries Restoration Account are appropriated to DFG for expenditure in fiscal years 1991–92 to 1993–94, inclusive. Existing law generally authorizes DFG to expend those funds for the construction, operation, and administration of various projects designated in the plan developed by DFG in accordance with the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act, and projects designed to restore and maintain fishery resources and their habitat that have been damaged by past water diversions and projects and other development activities. Existing law specifically authorizes DFG to expend up to $800,000 of the funds in the account during those fiscal years to acquire heavy equipment and $2 million to complete watershed assessments and fisheries restoration planning in coastal waterways. As amended March 18, this bill would delete the express authorization for DFG to expend funds for heavy equipment, watershed assessments, and fisheries restoration, and would instead include the completion of watershed assessments and fisheries restoration planning within the general authorization for DFG to expend funds for various projects.

Existing law requires persons who purchase or receive live marine species indigenous to California for commercial purposes from, among others, a licensed commercial fisher who takes specified organisms or a registered aquaculturist, to obtain a marine aquaria receiver's permit from DFG. This bill would delete the requirement that a person who purchases or receives live marine species indigenous to California for commercial purposes from those persons obtain a marine aquaria receiver's permit. The bill would also recast the provision authorizing the Department to establish the fee for that license.

Existing law requires, until January 1, 1995, that any person who lands Dungeness crabs in California possess a Dungeness crab permit issued by DFG; the permits are designated as nontransferable and are available only to persons who landed crab commercially in this state in their own names between August 5, 1982 and August 5, 1992. Existing law also, generally, makes any limited entry fishery permit transferable to the survivors of a permittee and, under specified conditions, transferable to a working partner of a permittee. This bill would also require DFG to issue a permit to a person who has invested $5,000, or more, in equipment, gear, or a vessel, as specified.

Existing law prohibits taking or possession of specified groups or species of, among others, specified marine plants for commercial purposes. This bill would delete marine plants from that prohibition. *[S. NR&W]*

AB 522 (Hauser), as amended March 25, would, until January 1, 1999, prohibit the taking of white sharks for recreational purposes except under a permit issued by DFG for scientific or educational purposes. The bill would also generally prohibit the taking of white shark for commercial purposes, except that the bill would permit incidental taking by commercial fishing operations using certain types of nets and would prohibit severing the pelvic fin on those white sharks until after they are brought ashore.

Existing law authorizes the use of spears, harpoons, and bow and arrows to take all varieties of skates, rays, and sharks, except soupfin sharks. This bill would also except white sharks from that authorization until January 1, 1999. *[A. Floor]*

AB 206 (Allen). Existing law requires FGC to establish four new ecological reserves in ocean waters along the mainland coast by January 1, 1994, and to restrict the use of these ecological reserves to scientific research relating to the management and enhancement of marine resources. As amended April 13, this bill would specify that the scientific research relating to the management and enhancement of marine resources includes, but is not limited to, those activities as they relate to sport fishing and commercial fishing. The bill would also state that recreational uses, as specified, are not in conflict with the above requirements. *[S. NR&W]*

AB 257 (Allen). Existing law permits DFG to impose civil liability on any person who exports, imports, sells, possesses, or engages in other specified conduct with respect to birds, mammals, amphibians, reptiles, fish, plants, or insects taken or possessed in violation of the Fish and Game Code, or regulations adopted pursuant to the Fish and Game Code. As introduced January 28, this bill would require DFG to annually prepare and submit a report to FGC, the legislature, the Governor, and interested individuals concerning its enforcement activities pursuant to these provisions. *[S. NR&W]*

SB 936 (McCorquodale). Existing provisions of the Keene-Nejedly California Wetlands Preservation Act require the Department of Parks and Recreation and DFG to prepare a wetlands priority plan and authorize the departments to acquire interests in wetlands and to enter into operating agreements with cities, counties, and districts for the management and control of wetlands or interests in wetlands acquired under that Act. As amended April 21, this bill would enact the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993. The bill would authorize DFG, until January 1, 2010, to qualify wetland mitigation bank sites, as defined, in the Sacramento-San Joaquin Valley, to provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands, under specified federal permits, except on specified farmlands. The bill would authorize DFG to credit wetlands created in a bank site for wetlands lost in a qualifying urban area, as defined, through actions by a federal permittee, and would provide for payments by that federal permittee to the operator of the created wetlands under a specified procedure. The bill would require an operator of a bank site, if it is a public entity, to annually pay to the county in which the property is located an amount equal to property taxes, as specified, and to pay specified assessments. (*See* FEATURE ARTICLE.) *[S. Floor]*

AB 426 (Cortese). Existing law requires, until January 1, 1994, that each state lead agency consult with DFG to ensure that any action authorized, funded, or carried out by that state lead agency is not likely to jeopardize the continued existence of any endangered or threatened species, and if jeopardy is found, the Department is required to determine and specify reasonable and prudent alternatives consistent with conserving the species, as specified. As amended April 21, this bill would continue that existing law to January 1, 1999, by extending that termination date. *[A. Floor]*

AB 521 (Allen). Existing law permits DFG, with the approval of FGC, to obtain, accept on behalf of the state, or otherwise acquire land, or land and water, or land and water rights, suitable for the purpose of establishing ecological reserves. Any property obtained by DFG pursuant to that provision may be designated by FGC as an ecological reserve. For those purposes, "ecological reserve" is defined as land or land and water areas that are to be preserved in a natural condition. As introduced February 18, this bill would also define "ecological reserve" as land or land and water areas that are to be provided some level of protection, as determined by FGC. *[S. NR&W]*

AB 1432 (Mountjoy). Existing law requires FGC to annually hold meetings in Sacramento, San Diego, Los Angeles, Long Beach, Redding, or Red Bluff in February, March, and April, as specified, for the purpose of adopting regulations relating to mammals and to annually hold meetings in June and August for the purpose of adopting regulations relating to game birds. As amended April 12, this bill would require FGC to hold meetings in even-numbered years for those purposes, alternating locations between sites, as specified, for the meetings relating to mammals.

Existing law establishes the fees for license tags for the taking of deer, and requires those fees to be adjusted by a specified factor. Existing law continuously appropriates a specified portion of those fees to DFG for the purpose of implementing specified deer herd management plans. This bill would delete obsolete provisions in that law and continuously appropriate 54% of the revenue derived from the fees to DFG for those purposes. The bill would also require FGC to direct DFG to authorize the sale of ten deer license tags for the purpose of raising funds for programs and projects to benefit deer to be sold at auction to residents or nonresidents. *[A. Floor]*

SB 658 (Deddeh). Existing law requires that, after a petition is accepted by FGC for consideration of a species for listing as a threatened species or as an endangered species, the status of the candidate species on the petition be reviewed

by DFG. Existing law requires DFG to provide a written report to FGC, and the Commission is required to schedule the petition for final consideration. As amended May 19, this bill would, until January 1, 1998, require FGC to direct DFG to conduct a collaborative phase during a species candidacy period upon request of a directly affected party, as described. That phase would require a working group, as described, to review specified items relating to the candidate species. The bill would, until January 1, 1998, require DFG to commence the preparation of, and make progress toward completion of, a recovery plan of specified content for the species proposed for listing during the period of candidacy and before final action by FGC. *[S. Appr]*

SB 755 (Kelley). Existing law authorizes DFG to enter into agreements with any person for the purpose of preparing and implementing a Natural Community Conservation Plan to provide comprehensive management and conservation of multiple wildlife species. Existing law authorizes DFG to prepare nonregulatory guidelines for the development and implementation of those plans and specifies the contents of those guidelines, including, but not limited to, coordinating with local, state, and federal agencies (*see* MAJOR PROJECTS). As introduced March 3, this bill would expressly require the guidelines to include coordination with the Trade and Commerce Agency. *[S. Floor]*

SB 779 (Leslie). Existing law provides that employees of DFG who are designated by the Director of Fish and Game as deputized law enforcement officers are peace officers. As amended May 3, this bill would declare that the status of a person as an employee of DFG does not confer any special right or privilege to knowingly enter private land without the consent of the property owner or a search warrant, except as specified. The bill would also prohibit any employee of DFG from attempting to confer on any person the authority to enter private land without the consent of the owner.

The bill would also require DFG, if it conducts a survey or evaluation on private land that results in the preparation of a document or report, to provide a copy of the document or report to the owner of the land on or before the date that the document or report is released to the public. The bill would authorize DFG to charge a fee for the copy, not to exceed the direct cost of duplication.

The bill would prohibit any person, except as specified, from wearing any uniform the same as, or similar to, those worn by a game warden. *[S. Appr]*

AB 1150 (Alpert). Existing law prohibits the owner or operator of a licensed commercial passenger fishing vessel from permitting any person to fish from that boat or vessel unless the person has a valid sport fishing, sport ocean fishing, or sport ocean fin fishing license and any required license stamps. As amended April 27, this bill would require DFG to report to the legislature on or before March 1, 1995, its evaluation and recommendations on whether the operation of this provision should be continued.

Existing law also provides that persons obtaining a commercial passenger fishing vessel license receive a credit or reduction in the fee for that license equal to the fees paid by that person for commercial ocean fishing enhancement stamps to fish south of Point Arguello, for commercial salmon vessel permits, for gill net or trammel net permits, and for one commercial fishing salmon stamp. This bill would repeal the provision for credit or fee reduction effective March 31, 1995. *[A. W&M]*

AB 778 (Harvey). Existing law requires that every person over the age of 16 years obtain a fishing license, as specified, in order to take fish in this state for any purpose other than profit. For certain fish, a license stamp is also required. As introduced February 24, this bill would limit that requirement to persons over the age of 16 and under the age of 70. The bill would also exempt persons 70 years of age or more from any license tag or stamp otherwise required to take fish, reptiles, or amphibia. The bill would require a person who is 70 years of age or more to show proof of age to a peace officer on demand when taking fish, reptiles, or amphibia. *[A. W&M]*

AB 1567 (Hauser). Under existing law, persons taking fish for commercial purposes are required to be licensed as commercial fishers by DFG, the vessels are required to be registered with the Department, and, for certain fisheries or the use of certain fishing gear, special permits are required. As amended April 22, existing law also permits a person to use trawl nets of a design prescribed by FGC to take shrimps or prawns under a permit issued by DFG under regulations adopted by FGC. Existing law also prohibits possession or landing of California halibut or pacific halibut when fishing under a trawl net permit. This bill would, until January 1, 1997, limit the issuing of permits to take and land pink shrimp to persons who possessed a trawl net permit in one of three specified permit years. The bill would establish the fees for the permits to take and land pink shrimp at $330. The bill would also provide that not more than 150 pounds of halibut may be incidentally possessed or landed when fishing for pink shrimp under a trawl net permit. *[A. Floor]*

LITIGATION

On February 25, U.S. District Court Judge D. Lowell Jensen of the Northern District of California entered an order in ***Vietnamese Fisherman Ass'n, et al. v. California Department of Fish and Game***, No. C-91-0778, permanently enjoining DFG from enforcing the provisions of Proposition 132 beyond the three-mile state waters limit. *[11:4 CRLR 187; 11:3 CRLR 171]* Proposition 132, passed by California voters in November 1990, bans the use of gill and trammel nets in California coastal waters; these forms of fishing gear have been found to entangle sea lions, birds, porpoises, non-target fish, and other non-commercial marine life, causing injury and death. The court found that the legislative findings preceding the text of Proposition 132 support the conclusion that it was meant to be enforced only in state waters offshore, and that DFG's attempt to enforce it in federal waters as well conflicts with regulations adopted by the Pacific Fishery Management Council which permit the use of gill and trammel nets to take groundfish, including rockfish, in certain federal waters off the California coast.

On May 4, Attorney General Dan Lungren issued ***Attorney General's Opinion No. 92-1111***, upholding the constitutionality of Fish and Game Code section 7147, which requires owners and operators of commercial passenger fishing boats to ensure that all persons fishing from their boats are in possession of a valid fishing licensing. Likening section 7147 to the requirement that liquor store owners and nightclub operators check the identification of youthful patrons to ensure that they are not below the legal age for consumption of alcohol, the AG rejected arguments that the statute improperly requires boat owners and operators to act in the capacity of peace officers, unduly interferes with the efficient operation of commercial passenger fishing boats, and creates compliance and enforcement difficulties because it is "vague and ambiguous."

FUTURE MEETINGS

August 27–28 in Sacramento.
October 7–8 in San Diego.