



specified building permits. [13:1 CRLR 113; 12:2&3 CRLR 224; 12:1 CRLR 161]

### RECENT MEETINGS

At its July meeting in Huntington Beach, the Commission approved a coastal development permit for the Surfcrest North Development project, a 252-unit condominium complex adjacent to the Bolsa Chica Regional Park. [13:2&3 CRLR 184-85] The Commission required the developer to eliminate the locked gates that were to surround the complex and open up the project to public use, thereby furthering its policy of ensuring public access to the coast. The developer, Surfcrest Partners, also agreed to set aside 156 of the 252 residential units in the project as "affordable housing" units; these units will be priced to be affordable to a family whose income does not exceed \$69,000 annually.

At its August meeting, the Commission approved a developer's plans to build 51 luxury homes and grade 830,000 cubic yards of dirt in Malibu's Encinal Canyon. The developer, Banyan Management Corporation, acquired the property last year from VMS Realty Partners and its subsidiary, the Anden Group. Despite objections from its staff, the Commission had approved an even larger version of this project in 1991, but was ordered to reconsider that decision earlier this year by a Ventura County Superior Court judge because the project appears to violate the California Coastal Act in numerous ways. Opponents at the August meeting argued that the project sets a dangerous precedent for developing land in the Santa Monica Mountains that until now has been considered undevelopable, and that the project fails to protect an area of environmentally sensitive habitat on the property. The City of Malibu will probably return to court in an attempt to block the Commission's latest approval.

At the Commission's September 15 meeting in San Francisco, Executive Director Peter Douglas presented the Annual Local Coastal Plan Status Report, which covers LCP activity and progress for the period of January 1—July 1, 1993. Currently, 85% of the coastal zone is covered by certified LCPs, with 64% of certifiable local governments issuing permits.

Also at its September meeting, the Commission established new policy when it approved a lot line adjustment of two adjoining parcels in Mendocino County. Commission staff recommended approval of Anna Pesula's application for a lot line adjustment on her two parcels, on which her residence and garage, respectively, are located. Before the adjustment, the parcel

pertaining to the house was conforming (i.e., greater than the 12,000-square-foot minimum) and the parcel pertaining to the garage was non-conforming (400 square feet, less than the minimum). The lot line adjustment created two non-conforming parcels (both parcels—7,200 square feet and 9,200 square feet—are less than the minimum lot size of 12,000 square feet). Pesula's application was presented to the Commission by Jared Carter, a former Coastal Commissioner. Commissioner David Malcolm pointed out that Pesula's application is highly unusual in that both parcels would be non-conforming after adjustment, and expressed his concern that "the rules applied by the Coastal Commission to coastal permit applications for property in Mendocino County must be applied in the same manner to coastal permit applications for property in Malibu." It is unclear how much precedent this case will set for future lot line adjustment applications, since Commission staff distinguished the application by discussing the unique qualities of Pesula's property. Assembly Speaker Willie Brown made an unusual appearance during the Commission's discussion of this matter.

On September 17, the Commission issued a cease and desist order temporarily stopping demolition work at the Bolsa Chica Mesa Project in Huntington Beach. The developer, the Koll Company, had begun preliminary demolition work on two World War II gun emplacements at the site of a planned development at Bolsa Chica Mesa. If approved, the proposed development project will convert an existing oil field into a 400-acre residential community and a 1,100-acre wetlands preserve. Representatives of the Bolsa Chica Land Trust, an environmental group which opposes the development, obtained photographs showing earthmovers illegally grading the Bolsa Chica wetlands and submitted these photographs to the Coastal Commission. The demolition permit, approved at the Commission's July meeting, only allowed for the placement of fences and the removal of the two emplacements. The Koll Company argued the earthmovers were only loosening the dirt before the fences were installed, which is authorized under the demolition permit. At this writing, the Commission plans to review the demolition permit at its October meeting.

### FUTURE MEETINGS

January 11-14 in Los Angeles.  
February 15-18 in San Diego.  
March 15-18 in San Rafael.  
April 12-15 in Los Angeles.

## FISH AND GAME COMMISSION

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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.

On April 29, Governor Wilson appointed Douglas B. McGeoghegan to FGC. McGeoghegan is vice-president of Gunnersfield Enterprises, Inc., an agricultural land management, wildlife habitat restoration and consulting, and land sales and leasing company. He is also a general partner in C-5 Leasing and a partner in McGeoghegan Farming Venture. In 1990, he received the Distinguished Service to Agriculture award from the U.S. Department of Agriculture.

## MAJOR PROJECTS

### Commission's Delisting of Mohave Ground Squirrel Challenged in Court.

At its June 17 meeting, FGC ratified its unprecedented May 14 decision to remove the Mohave ground squirrel from the list of threatened species under the California Endangered Species Act (CESA), which is codified at section 670.5, Title 14 of the CCR. The habitat of the squirrel, which has been listed since 1971, is located in the Mojave Desert in portions of Kern, Los Angeles, San Bernardino, and Inyo counties. Kern County had petitioned for delisting, arguing 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.

To delist a species, the Commission must find that the petitioned action is supported by substantial evidence in the form of reasonable, sufficiently credible, and reliable scientific evidence to indicate that the continued existence of the species is no longer threatened. After reviewing Kern County's petition, DFG concluded that it 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." The Commission rejected DFG's evidence and recommendation on May 14, and again on June 17.

On July 2, the Commission published its findings on the listing, as required by the Fish and Game Code. As to the species' distribution, the Commission found that the Mohave ground squirrel occurs in all described plant communities within its range in the western Mojave Desert; FGC stated that its range encompasses nearly five million acres, four million of which are undeveloped. As to DFG's concerns that rapid urban growth threatens the species and its habitat, FGC found that "[t]he impact of urban and rural development on Mohave Ground Squirrel habitat affects less than nine percent (9%) of the total range of the Mohave Ground Squirrel. It is likely that only a small percentage of the total Mohave Ground Squirrel range, perhaps less than ten percent (10%), is unsuitable habitat for the species. Accordingly, over four million acres of habitat remain in the known range of the species." FGC also found that up to 64% of the range is in public ownership and is managed by federal, military, and state agencies.

As to population, FGC stated that "[t]here are no dependable estimates of the historic or current population of Mohave Ground Squirrel nor were any such estimates used in the original listing of the species in 1971." Although lack of data would appear to argue for maintaining protection for a listed species, lack of data was here used to justify delisting the species.

Finally, FGC stated that it found no evidence in the record to indicate that the Mohave ground squirrel is threatened by overexploitation, predation, competition, disease, or "natural occurrences or related activities" such as drought, vehicles, shooting, and pesticides.

On July 9, the Commission published formal notice of its intent to delist the squirrel and a final public hearing on the matter on August 27. Following the August 27 hearing, FGC adopted the amendment to section 670.5, and submitted the rulemaking record on the proposed action

to the Office of Administrative Law (OAL) on September 22.

In the meantime, however, five environmental groups filed suit on August 2 in San Francisco Superior Court challenging FGC's decision. In an amended petition for writ of mandate filed September 21 in *Mountain Lion Foundation, et al. v. California Fish and Game Commission, et al.*, No. 953860, petitioners allege (among other things) that FGC is not authorized to grant Kern County's petition because it fails to contain the information required by CESA; FGC violated the procedure for delisting set forth in CESA; and that FGC violated the California Environmental Quality Act (CEQA) by failing to prepare an environmental impact report (EIR), an initial study, or a negative declaration. At this writing, FGC's rulemaking file has yet to be approved by OAL, and oral argument on the petition has not yet been scheduled.

**Lower Owens River Fish Study Kills 5,000 Fish.** On July 6, DFG, Inyo County, and the Los Angeles Department of Water and Power (LADWP) commenced—as described in the July 10 issue of DFG's weekly newsletter—"a cooperative study...[which] holds promise of bringing new life to as much as 60 miles of the lower Owens River in Inyo County." For 70 years, the river's flow has slowed to a trickle because of massive diversions by LADWP; the joint fish study, which was preceded by the agencies' preparation of a management plan and an EIR under CEQA, was to involve the rewatering of diverted sections of the river through the release of 8,000 acre-feet of water over the 40-day period of the study. The goal of the study was to gather information about fishery and wildlife habitat for a future project to permanently resupply water to a 60-mile stretch of the Owens River. The agencies planned to alternate among three flow levels (80 cubic feet per second (cfs), 40 cfs, and 15 cfs) to avoid significant effects on fish and the environment.

However, about 25 days into the study, the most significant effect had occurred. Over 5,000 largemouth bass, catfish, and carp had been killed or were dying and rotting due to the effects of the study. The 80 cfs flows flushed sediment from the riverbed and carried organic wastes which clogged fish gills and suffocated them to death. The fish kill is thought to be the second-largest in the state's history, behind the July 1991 Southern Pacific train wreck which dumped 20,000 gallons of toxic metam sodium into the Upper Sacramento River and killed all animal and plant life along a 45-mile stretch of the river. [11:4 CRLR 164, 204]



The three agencies have promised to restock the river as soon as possible.

**NCCP Update.** Following the federal government's March 1993 listing of the California gnatcatcher as threatened under the federal Endangered Species Act, DFG's Natural Community Conservation Plan (NCCP) pilot project to preserve the coastal sage scrub (CSS) habitat of the gnatcatcher is proceeding apace. Under the program, numerous southern California cities and counties, state and federal agencies, and private landowners and developers have enrolled CSS land into the program. Development on those lands is restricted until the NCCP's scientific review panel (SRP) adopts final guidelines and identifies particular parcels which must be preserved to ensure the existence of the gnatcatcher. [13:2&3 CRLR 188]

On July 20, the CSS NCCP program released its Draft Conservation Guidelines, which describe the CSS ecology, restate the interim strategy announced by the SRP in March (only 5% of CSS habitat may be developed, and any such development should take place only on low-priority CSS habitat), and set forth a research agenda which calls for—among other things—detailed mapping of the extent and distribution of CSS vegetation and its constituent species in the southern California region and each subregion. Completion of the research agenda will lead to the development of management and restoration practices which should be undertaken after a NCCP is adopted.

Also in July, the NCCP program released amendments to its Process Guidelines, which explain the roles of local, state, and the federal government in the program and describe how the planning process will shift in focus from the regional to the subregional level. The regional CSS planning area is roughly 6,000 square miles and affects parts of five southern California counties. While the regional planning phase is currently focusing on the overall scientific and legal framework for the establishment of a Natural Community Conservation Plan and a memorandum of understanding between the state and federal governments, the NCCP program expects that 15–20 functional subregional units will emerge. This will result in the development of individual subregional NCCPs which will guide actual decisionmaking at the local government level regarding conservation and development. The Process Guidelines describe each step of the NCCP process on both the regional and subregional levels, and also include a calendar of NCCP milestones and a glossary of NCCP terms and acronyms.

**Continued Protection for Salmon.** Over the past few months, FGC has adopted several sets of regulatory changes aimed at restricting salmon fishing off the coast of California and in California rivers.

On June 16, FGC held a public hearing on proposed amendments to section 7.50, Title 14 of the CCR, to revise in-river 1993–94 salmon regulations in accordance with Pacific Fishery Management Council rules. At the hearing, FGC considered several options for the Klamath River system [13:2&3 CRLR 189–90] and chose DFG's preferred alternative, which calls for retention of the 1992–93 regulations except that the total quota is slightly increased to 2,700 king salmon for the Klamath River Basin and the prohibition on barbless hooks is repealed. OAL approved these regulatory changes on September 27.

On July 6, OAL approved FGC's emergency amendments to section 27.80, Title 14 of the CCR, which reduce the sport fishing quota of king salmon for waters north of Horse Mountain to a total of 12,500 for both open salmon fishing periods, and postponed the change in the daily bag limit for waters south of Point Arena from August 9 to September 1.

On July 13, OAL approved FGC's amendments to section 2.04, Title 14 of the CCR, which amend gear restrictions relative to hook sizes and weighted lures to further protect migrating and spawning salmon and steelhead.

On September 3, OAL approved FGC's emergency amendments to section 182, Title 14 of the CCR, which amend the existing commercial salmon fishing regulation to allow ocean fishing for salmon other than coho south of Point Arena beginning September 6 and continuing through September 30 or the date the DFG Regional Director determines that 7,400 king salmon have been taken.

**San Francisco Bay Herring Fishery to Remain Open.** At its August 27 meeting, FGC considered proposed amendments to sections 163 and 164, Title 14 of the CCR, which would establish rules and quotas for the 1993–94 commercial herring fishing season. In addition to making changes relating to seasons, temporary substitutions, use of beach seines, notification requirements, closed fishing areas, and revocation of permits, the proposed rules would have closed the herring fishery in San Francisco Bay until the season following a spawn escapement greater than 26,000 tons. In its report to the Commission, DFG stated that a closure of the fishery in San Francisco is the preferred option; another option would permit a limited take per license. DFG indicated that herring numbers have been declining for

some time; like other pelagic fisheries, the herring population may be subject to complete collapse should the numbers fall too low.

The possibility of season closure provoked impassioned testimony from Bay Area commercial herring fishers who opined that the decline of the herring fishery is primarily attributable to the recent drought and other factors not related to the fishing industry. The industry representatives also described the economic hardship which commercial fishers and local canneries would face if the fishery were closed. Following this testimony, the Commission agreed to leave the fishery open but to restrict the total commercial take of herring in San Francisco Bay to 2,186 tons, less than half of the 5,000 tons permitted last year.

On September 9, FGC submitted this proposed regulatory action to OAL, where it is pending at this writing.

**1993–94 Resident Game Bird Season Regulations.** On September 16, OAL approved FGC's amendments to sections 300, 302, 303, 306, and 310.5, Title 14 of the CCR; this regulatory action establishes rules and dates for the 1993–94 resident game bird season in California. Specifically, the regulatory changes increase the bag limit for pheasants after the second day of the season, establish a special falconry season for red-legged partridge (chukar) and sage grouse, change the number of permits for sage grouse, extend the spring wild turkey season to include State Game Refuge 1G, and extend the shooting hours for the spring wild turkey season from one-half hour before sunrise to 4:00 p.m. These regulations became effective on September 16.

**1993–94 Migratory Waterfowl Season Regulations.** At its August 27 meeting, FGC adopted proposed amendments to sections 502, 507.1, 509, and 600.4, Title 14 of the CCR; this regulatory action establishes rules and dates for the 1993–94 migratory waterfowl season in California. Generally, these regulatory changes lengthen or push back the opening of the second half of the split season in most areas and conform California law to federal law by requiring the use of steel shot for waterfowl, American coot, and common moorhen hunting statewide. On September 22, FGC submitted the rulemaking file on this action to OAL, where it is pending at this writing.

**FGC Seeks to Require Additional Identification on Hunting and Fishing Licenses.** On August 20, FGC published notice of its intent to amend section 705, Title 14 of the CCR, to require applicants to disclose their driver's license or identi-



fication card number on hunting and fishing license applications; this information would also appear on the license itself. According to FGC, requiring applicants to provide their driver's license number or DMV identification card number will assist enforcement personnel to verify a licensee's residency and identity. Further, it would enable enforcement officers to issue citations without having to arrest and book an individual to obtain identification information. At this writing, FGC is scheduled to hold a hearing on this proposal at its October 8 meeting.

**Creation of Four New Ecological Reserves.** On September 17, FGC published notice of its proposal to add section 630.5, Title 14 of the CCR, to establish four new marine ecological reserves. Pursuant to Proposition 132, the Marine Resources Protection Act of 1990 (codified in sections 8610.9 and 8610.14 of the Fish and Game Code), FGC is directed to create four new ecological reserves along California's mainland shore. Each reserve must be at least two square miles in area, with uses in those reserves restricted to scientific research related to the management and enhancement of marine resources.

The proposed locations for the four new reserves are at or near King Range (Punta Gorda) in Humboldt County, Big Creek in Monterey County, Vandenberg Air Force Base in Santa Barbara County, and Big Sycamore Canyon (south of Point Mugu) in Ventura County. Three alternative sites are available for the Commission's consideration: Point Arena in Mendocino County, Bodega Head in Sonoma County, and South Laguna Beach in Orange County. At this writing, FGC is scheduled to hold public hearings on this proposed regulatory action on October 7 and November 5.

**Commission to Ban Zebra Mussels in California.** On September 10, FGC published notice of its intent to amend section 671, Title 14 of the CCR, to add zebra mussels to the existing list of species which may not be lawfully imported, possessed, or transported alive in California. The Commission has proposed this amendment to ensure that the zebra mussel does not gain a foothold in California waterways. This prolific mussel, which has spread rapidly throughout the Great Lakes, has fouled municipal electric power generation and industrial water intake facilities, disrupted food webs and ecosystems, and interfered with sport and commercial fishing, navigation, recreational boating, beach use, and irrigation throughout the area of infestation. Maintenance costs to the water and power industries in the eastern United States are

expected to be in the billions of dollars by the end of the decade. At this writing, the Commission is scheduled to hold a public hearing on this proposal at its November 5 meeting.

**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 and described in detail in previous issues of the *Reporter*:

• **Delta Smelt Listed as Threatened.** Following a public hearing at its June 17 meeting, FGC finally listed the Delta smelt as a threatened species under CESA on August 27. Having declined on several prior occasions to list the species, FGC took the action after the federal government listed the smelt as threatened under the federal Endangered Species Act last March. [13:2&3 CRLR 177, 189] FGC's action requires an amendment to section 670.5, Title 14 of the CCR; on September 23, the Commission submitted the rulemaking file on the amendment to OAL, where it is pending at this writing.

• **1993-94 Mammal Hunting and Trapping Season Regulations.** On June 23, OAL approved FGC's amendments to sections 307, 351, 353, 360, 361, 362, 363, 364, 364.5, and 371, Title 14 of the CCR, which establish the rules and season dates for 1993-94 mammal hunting and trapping. [13:2&3 CRLR 189]

• **Use of Dogs to Hunt Black Bear.** At its June 18 and August 6 meetings, FGC discussed proposed amendments to sections 265 and 367, Title 14 of the CCR, which would prohibit the use of dogs in black bear hunting. [13:2&3 CRLR 189] Nine different options were discussed, ranging from a total ban on hound hunting to no change in existing regulations which permit the use of dogs in black bear hunting. The proposed ban generated impassioned testimony from the hunters present at the hearings, prompting FGC to choose the latter option by taking no action at all. With SB 67 (Petris) pending in the legislature (see LEGISLATION), this issue will probably be revisited in 1994.

• **Special Permit for Temporary Possession of Mammals to Train Dogs.** At its August 6 meeting, FGC adopted a proposed amendment 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 for dog training and other purposes. 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 activities 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. On September 23, FGC submitted the rulemaking file on this proposed change to OAL, where it is pending at this writing.

• **Additional State Ecological Reserves.** On June 24, OAL approved FGC's 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 regulatory changes designate thirteen additional areas as state ecological reserves. [13:1 CRLR 120]

At its June 18 meeting, FGC approved additional amendments to section 630 which add three more areas to the list of designated ecological reserves and provide special area regulations for one new reserve and one existing reserve. OAL approved these regulatory changes on September 23.

• **Additions Proposed to List Four Prohibited Species.** On July 21, OAL approved FGC's amendments to section 671 and adoption of new section 671.7, Title 14 of the CCR, which 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]

## LEGISLATION

**SB 919 (Dills).** The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare an environmental impact report (EIR) on any project which it proposes to carry out or approve that may have a significant effect on the environment, with specified exemptions. As amended September 9, this bill provides that, in certain cases, an EIR is not required for specified activities relating to an existing facility. The bill requires an EIR to be prepared if there is substantial evidence in light of the whole record before the agency that the project may have a significant effect on the environment.

CEQA prohibits a public agency from carrying out or approving a project for which an EIR has been completed which identifies one or more significant effects on the environment unless the agency makes one or more of specified findings, which may include a finding that specific economic, social, or other considerations make infeasible the mitigation measures or alternatives identified in the EIR. This bill includes legal and technological considerations and provides that those considerations include considerations for the



provision of employment opportunities for highly trained workers.

CEQA requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in the record, and requires a court, in an action or proceeding challenging an action of a public agency on the grounds of noncompliance with CEQA, to determine whether the action of the agency is supported by substantial evidence in light of the whole record. State guidelines adopted by the Secretary of the Resources to implement CEQA require the preparation of an EIR if it can be fairly argued on the basis of substantial evidence that the proposed project may have a significant effect on the environment. This bill requires the lead agency to make its determination based on substantial evidence in light of the whole record.

The bill requires the court to make a specified finding before issuing an order requiring a public agency or real party in interest to suspend activity relating to a project in an action or proceeding under CEQA. The bill prohibits the bringing of an action or proceeding under CEQA unless the alleged grounds for noncompliance with CEQA were presented to the public agency, and unless the person bringing the action or proceeding objected during the public comment period, or prior to the close of the public hearing on the project.

Existing law prohibits a lead agency under CEQA, in establishing criteria for the completeness of an application for a development project, from requiring the informational equivalent of an EIR as a prerequisite for completeness of the application. This bill also applies that prohibition to a responsible agency, and prohibits the lead or responsible agency from otherwise requiring proof of compliance with CEQA as such a prerequisite.

The bill requires certain state agencies to perform an environmental analysis containing specified information at the time of adopting a specified rule or regulation, or performance standard, or treatment requirement. This bill was signed by the Governor on October 10 (Chapter 1131, Statutes of 1993).

**SB 1031 (Thompson).** CEQA requires an EIR to contain, among other things, the potential significant effects on the environment of a proposed project and a brief statement indicating the reasons for determining that various potential effects are not significant and consequently have not been discussed in detail in EIR. As amended September 9, this bill would have specified that an EIR discuss fully only the potential effects on the environ-

ment which the lead agency has determined are, or may be, significant and omit any detailed discussion of potential effects that the lead agency has determined are not significant. The bill would have declared policy in that regard. This bill was vetoed by the Governor on October 10.

**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 deletes the declaration that commercial fishing programs and hunting and sport fishing programs be funded solely from those sources and additionally declares the intent of the legislature that those programs be funded also with other funds appropriated by the legislature for those purposes. This bill was signed by the Governor on October 10 (Chapter 1027, Statutes of 1993).

**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 DFG-sponsored bill extends the operation of those bag limits and additional landing tax to January 1, 1997. The bill also prohibits 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. This bill was signed by the Governor on October 10 (Chapter 1100, Statutes of 1993).

**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 June 15, this bill continues those existing laws beyond January 1, 1994, by deleting the repeal date. The bill requires 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 instead authorizes a license agent to issue a punch card, license, license stamp, or license tag for any amount up to 10% less than the prescribed fees. The bill requires the license agent to remit the full amount of the prescribed fees for the punch cards, licenses, license stamps, or license tags issued. This bill was signed by the Governor on October 10 (Chapter 1099, Statutes of 1993).

**AB 14 (Hauser).** Existing law requires the DFG Director to make a grant in installments to a nonprofit sea urchin divers' organization to establish a communications network and an education program on the conservation and utilization of sea urchins. The grant is required to be funded by a special landing tax on sea urchins until March 1, 1994. Existing law also requires that the grant funds be distributed 60% to the Sea Urchin Resources Enhancement Program and 40% to research and management activities relating to the sea urchin resource. As amended September 1, this bill extends that grant provision and the related landing tax to March 1, 1996, and requires the distribution to be 50% for each of those purposes.

Existing law prohibits the transport of eggs or fry of golden trout out of the state. This bill repeals that prohibition.

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. This bill deletes the express authorization for DFG to expend funds for heavy equipment, watershed assessments, and fisheries restoration, and instead includes the completion of watershed assessments and fisheries restoration planning within DFG's general authorization to expend funds for various projects.

Existing law requires DFG to establish



and adjust a quota for the landing of sardines for commercial purposes when the spawning population exceeds 20,000 tons. One-third of that quota is required to be allocated for landings north of San Simeon Point in San Luis Obispo County and two-thirds for landings south of that point. This bill requires DFG to determine the portion of that quota that has not been taken by September 30 and, on or before October 15, to reallocate the remaining untaken portion.

This bill also deletes an existing provision requiring 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. The bill recasts the provision authorizing DFG to establish the fee for that license; deletes an exception from the general authorization to take fish for commercial purposes of certain species for pet industry or hobby purposes; and deletes obsolete provisions relating to sea urchins.

Existing law requires, until April 1, 1993, any person landing groundfish subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act for commercial purposes to keep a copy of the landing receipt on board the fishing vessel for 30 days following the date of landing. This bill makes these provisions operative until April 1, 1995.

Existing law requires a person licensed to conduct commercial business in fish, as specified, and every commercial fisher who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes, to complete a landing receipt for those fish. Existing law also requires every commercial fisher or his/her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, to fill out a transportation receipt at the time the fish are brought ashore. Existing law specifies the contents of the landing receipt, including any other statistical information DFG may prescribe. Until April 1, 1997, this bill additionally authorizes groundfish transportation receipts to be issued by DFG to licensed fish receivers to transport groundfish species, and authorizes those receivers to use those groundfish transportation receipts under specified conditions. The bill also changes the contents of the landing receipts to, instead, include any other information DFG may prescribe.

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 also requires DFG to issue a permit to a person who has a commercial fishing license and one year's experience as a crew member on a crab vessel, who has invested \$5,000 or more in equipment, gear, or a vessel, and who is ineligible to participate in any other state's crab fishery, upon finding of hardship by a review panel. The bill requires an applicant for hardship to pay a nonrefundable review fee of \$250 which other provisions of existing law would require to be deposited in the Fish and Game Preservation Fund.

Existing law permits the taking of squid year-round, except in Districts 16 and 17 and in Tomales Bay. This bill restricts attracting squid by lights from a vessel in District 10, unless the vessel is used for that taking or is a seine skiff of that vessel. This bill was signed by the Governor on September 30 (Chapter 617, Statutes of 1993).

**AB 522 (Hauser)**, as amended June 3, prohibits, until January 1, 1999, the taking of white sharks for recreational purposes except under a permit issued by DFG for scientific or educational purposes. The bill also generally prohibits the taking of white shark for commercial purposes, except that it permits incidental taking by commercial fishing operations using certain types of nets and prohibits severing the pelvic fin on those white sharks until after they are brought ashore. The bill permits white shark taken incidentally and alive to be sold for scientific or live display purposes. The bill prohibits the landing of any white shark killed or injured by any person in self-defense.

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 also excepts white sharks from that authorization until January 1, 1999. This bill was signed by the Governor on October 11 (Chapter 1174, Statutes of 1993).

**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 overrules Attorney General's Opinion No. 93-302 [12:4 CRLR 205] by specifying 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 also states that recreational uses are not in conflict with the above requirements; and requires FGC to hold public hearings prior to establishing the reserves. This bill was signed by the Governor on October 11 (Chapter 1250, Statutes of 1993).

**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 amended July 16, this bill would have required 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. This bill was vetoed by the Governor on September 27.

**SB 936 (McCorquodale)**, as amended September 2, enacts the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993. The bill authorizes, until January 1, 2010, DFG to qualify wetland mitigation bank sites in the Sacramento-San Joaquin Valley, to create wetlands in areas where wetlands are removed or filled, or where there are discharges into wetlands, under specified federal permits. [13:2&3 CRLR 1] The bill authorizes DFG to credit wetlands created in a bank site for wetlands lost in a qualifying urban area through actions by a federal permittee, and provides for payments by that federal permittee to the operator of the created wetlands under a specified procedure. The bill requires an owner 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. The bill requires DFG to report to the legislature on or before February 1, 1996, and once annually thereafter, with a description and evaluation of each mitigation bank site approved under the bill. This bill was signed by the Governor on October 11 (Chapter 1254, Statutes of 1993).

**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, DFG is required to determine and specify reasonable and prudent alternatives consistent with conserving the species, as specified. As amended April 21, this bill continues that existing law to January 1, 1999, by extending that termination date. This bill was signed by the Governor on September 8 (Chapter 337, Statutes of 1993).

**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 also defines "ecological reserve" as land or land and water areas that are to be provided some level of protection, as determined by FGC. This bill was signed by the Governor on October 1 (Chapter 667, Statutes of 1993).

**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 September 8, this bill requires FGC to hold meetings in even-numbered years for those purposes, alternating locations between sites, as specified, for the meetings relating to mammals. The bill makes conforming changes.

Existing law also requires FGC to provide copies of its fish, mammal, and bird regulations to specified local entities and authorizes FGC and DFG to do anything that is deemed necessary and proper to publicize and distribute copies of regulations so that persons likely to be affected will be informed of them. The existing State Contract Act generally provides that contracts entered into by state agencies are subject to approval by the Department of General Services. Existing law also requires, generally, that all state printing be performed by the Office of State Printing. This bill authorizes FGC and DFG to contract with private entities to print regulations and other regulatory and public information and exempts contracts for which state funds are not expended from specified provisions of the State Contract

Act. The bill also requires advertisements in material printed pursuant to that provision to meet specified criteria.

Existing law establishes the fees for license tags for the taking of deer, permits a person who possesses a deer tag to procure additional deer tags for the taking of additional deer during the current season for specified fees, 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 deletes obsolete provisions in that law; limits to one the number of additional deer tags that may be procured; and continuously appropriates 54% of the revenue derived from the fees to DFG for the purpose of implementing those specified deer herd management plans.

The bill also requires FGC to direct DFG to authorize the sale, as specified, 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; those tags will not be subject to the fees described above. The revenue from the sale of the tags will be continuously appropriated to DFG to be used for the Deer Herd Management Plan Implementation Program. This bill was signed by the Governor on October 3 (Chapter 804, Statutes of 1993).

**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. As introduced March 3, this bill expressly requires the guidelines to include coordination with the Trade and Commerce Agency. This bill was signed by the Governor on October 1 (Chapter 708, Statutes of 1993).

**SB 779 (Leslie).** Existing law makes all employees of DFG, who are designated by the DFG Director as deputized law enforcement officers, peace officers. As amended September 3, this bill declares that the status of a person as an employee, agent, or licensee of DFG does not confer any special right or privilege to knowingly enter private land without the consent of the property owner, a search warrant, or an inspection warrant, except as specified.

The bill also requires DFG, if it conducts a survey or evaluation on private

land that results in the preparation of a document or report, to provide, upon request, either a copy of the document or report or a written explanation of the Department's legal authority for denying the request. The bill authorizes DFG to charge a fee for each copy, not to exceed the direct cost of duplication.

The bill requires DFG, on or before January 1, 1995, to develop a statewide policy for processing specified complaints, to designate official Fish and Game indicia, as specified, and to prohibit any Departmental personnel, except as specified, from wearing any of those indicia. This bill was signed by the Governor on October 11 (Chapter 1288, Statutes of 1993).

**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 requires 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 repeals the provision for credit or fee reduction effective March 31, 1995. This bill was signed by the Governor on October 11 (Chapter 1177, Statutes of 1993).

**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 DFG, and, for certain fisheries or the use of certain fishing gear, special permits are required. 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. As amended September 1, this bill limits, until January 1, 1997, the issuance of permits to take and land pink shrimp to persons who possessed a trawl net permit in any previous permit year. The bill establishes the fees



for the permits to take and land pink shrimp at \$285. The bill also provides that not more than 150 pounds of halibut may be incidentally possessed or landed when fishing for pink shrimp under a trawl net permit. This bill was signed by the Governor on October 10 (Chapter 1104, Statutes of 1993).

**SB 492 (Kelley).** Existing law authorizes the DFG Director to appoint committees to advise the Director on humane care of wild animals, cats other than house cats, specified research projects, ocean fishing enhancement projects, sea urchin studies, abalone restoration and enhancement programs, gill and trammel net use, aquaculture diseases, aquaculture industry matters, and interagency matters relating to aquaculture. As introduced February 25, this bill would require the Director, instead, to appoint four advisory committees for the purpose of reviewing and advising DFG regarding policy and program activities, as specified. The members of the advisory committees would serve without compensation but would be paid their reasonable and necessary expenses incurred as a result of attending meetings of the advisory committees. The bill would also require the Marine and Anadromous Fisheries Advisory Committee, established under the bill, instead of the Commercial Salmon Trollers Advisory Committee, to recommend programs and a budget for expenditures from the Commercial Salmon Stamp Account; require a subcommittee of that Advisory Committee to serve as the Salmon Fishing Review Board; and require the Director to consult with industry representatives, academic scientists and other public agencies, instead of the Aquaculture Disease Committee, before recommending regulations to FGC for specified disease control purposes.

Existing law prohibits financing a research project from the Ocean Fishery Research and Hatchery Account unless it is approved by both the Director and a majority of the members of the Ocean Resources Enhancement and Hatchery Advisory Panel. This bill would terminate the existence of that Panel and prohibit the financing of a research project from that account unless funds have been appropriated by the legislature for the project.

Existing law, until January 1, 1994, provides for the issuance of lifetime sportfishing and sportsperson's licenses for specified fees. 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 the 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 the 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. *[S. NR&W]*

**SB 824 (Hayden).** Under the Z'berg-Nejedly Forest Practice Act of 1973, a person is prohibited from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the California Department of Forestry and Fire Protection (CDF) and reviewed by the CDF Director to determine if the plan is in conformance with the Act and the rules and regulations of the state Board of Forestry. Upon receipt of the plan, CDF is required to place the plan, or a true copy, in a file available for public inspection in the county in which timber operations are proposed under the plan, and to transmit a copy of the plan to DFG, the appropriate California regional water quality control board (RWQCB), the county planning agency, and, if within its jurisdiction, the Tahoe Regional Planning Agency, and to invite, consider, and respond in writing to any comments received from those agencies. As amended April 12, this bill would require the Board of Forestry to adopt any mitigation measures that are proposed by DFG or a RWQCB unless CDF demonstrates that its own proposed mitigation measures would result in greater protection for water and wildlife resources.

Under the Act, the Board of Forestry is required to adopt forest practice rules and regulations. This bill would require the Board to review recommendations for any rule changes that are submitted to it by DFG and a RWQCB at least twice each calendar year and to act on those recommendations within 120 days. *[S. NR&W]*

**SB 825 (Hayden),** as amended April 12, would require all timber harvests within ancient forests to be conducted in a manner that maintains a canopy structure similar to that existing prior to harvest, that maintains at least 60% of the overstory canopy closure, and which provides corridors and connectivity for wildlife which meet criteria developed by DFG. *[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 mam-

mals, 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 introduced February 23, this bill would designate bobcats as a specially protected mammal and 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; provide for a review of the approval of the assistant every three years; provide for revocation, suspension, or other action related to the sea urchin permit if the assistant commits specified violations; 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),** as amended July 9, is no longer relevant to FGC.

**AB 899 (Costa).** AB 3158 (Costa) (Chapter 1706, Statutes of 1990) requires DFG to establish and collect filing fees to cover Departmental costs of reviewing environmental documents relating to projects subject to CEQA in specified amounts, and requires those fees for projects on federal lands unless explicitly preempted by federal law. *[11:2 CRLR 156; 10:4 CRLR 155]* The law permits DFG to collect \$850 for reviewing EIRs and functional equivalent programs, \$1,250 for negative declarations, and \$850 for specified water applications. Proponents of this bill argue that these fees are excessive. As amended August 18, this bill would repeal those provisions on the date that another statute becomes operative which provides revenues in an amount sufficient to support these environmental activities, or January 1, 1996, whichever is earlier. The bill would additionally require DFG to prepare and submit to the legislature





and the Governor on or before October 1, 1994, a report addressing specified aspects of the environmental programs of the Department. [S. NR&W]

**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 (see MAJOR PROJECTS). [S. NR&W]

**AB 1222 (Cortese).** The California Wildlife Protection Act of 1990 creates the Habitat Conservation Fund, which is required to be used for, among other purposes, the acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing anadromous salmonids and trout resources. The Act generally requires a four-fifths vote of the legislature for amendment, which amendment is required to be consistent with and further the purposes of the Act. As amended July 15, this bill would include the purchase of water to augment streamflows as a means of acquisition, restoration, or enhancement.

Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and wildlife resources. Existing law requires the DFG Director, in consultation with specified persons, to prepare proposed streamflow requirements for each stream or watercourse for which minimum flow levels need to be established to protect stream-related fish and wildlife resources. Existing law authorizes the state Water Resources Control Board (WRCB) to approve any change associated with a water transfer, as specified, only if WRCB finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. The bill would require WRCB to establish and maintain a Registry of Instream Flow Reservations and Dedications to list all instream reservations and dedications; require WRCB to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the Registry; and require the DFG Director, in developing the requirements for each stream or watercourse, and WRCB, in making a finding whether a water transfer will unreasonably affect fish, wildlife, or other instream beneficial

uses, to take into account the sufficiency of streamflow for each stream or watercourse as reflected in the Registry. [S. Appr]

**AB 1367 (Cortese).** Under existing law, DFG is required to issue reduced fee hunting licenses to disabled veterans 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, attach part of the tag to the deer, keep it attached until fifteen days after the open season, and send the other part of the tag immediately 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, 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]

**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]

**AB 778 (Harvey).** Existing law requires that every person over the age of 16 years obtain a fishing license 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 amphibians. 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 amphibians. [A. W&M]

## LITIGATION

On June 28, Sacramento County Superior Court Judge Horace Cecchetti dismissed *Glenn-Colusa Irrigation District (GCID) v. State of California Department of Fish and Game, et al.*, No. 524305. At issue was the fish screen built by DFG in 1972 to keep migrating salmon from being sucked out of the Sacramento River by GCID's pumps. Under the terms of an agreement between GCID and DFG, routine screen maintenance is DFG's responsibility. When the fish screen failed to keep all migrating salmon from GCID pumps, the National Marine Fisheries Service (NMFS) sued GCID for violating the Endangered Species Act. A federal judge ruled in favor of NMFS [12:1 CRLR 168], prompting the District to sue DFG for the cost of replacing the screen. Judge Cecchetti dismissed the suit on the grounds that the Department's duty of "routine maintenance" does not include replacing the screen. Forthcoming environmental documents will determine the best method of replacing the screen. Replacement costs may reach \$38 million, 75% of which may be borne by the federal government. DFG has discretion in deciding whether to help GCID with the remainder of costs. In the meantime, the U.S. Army Corps of Engineers has imposed pumping restrictions and other operating requirements to improve the survival of baby salmon trying to get past GCID's pumps.

On August 12, U.S. District Judge Thelton Henderson of the Northern District of California granted plaintiffs' motion for summary judgment in *Parravano, et al. v. Babbitt, et al.*, No. C-933-2003-TEH, declaring that the U.S. Department of Commerce failed to demonstrate an emergency to justify overruling the salmon season adopted by the Pacific Fishery Management Council for 1993. [13:2&3 CRLR 189] The suit filed by Pacific Ocean salmon fishers seeks an injunction to block regulations intended to restrict ocean fishing in order to increase the fall chinook salmon run in the Klamath River and allow Yuroc Indians living along the river to catch more fish. The fishers claim the regulations will ruin the \$10 million salmon industry. The court agreed that the federal government failed to sustain its burden, and remanded the



matter to the Department of Commerce to develop sufficient justification for the emergency action.

## ■ FUTURE MEETINGS

January 4 in Sacramento.  
February 3-4 in Sacramento.  
March 3-4 in San Diego.  
April 7-8 in Long Beach.  
April 28 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: Franklin L. "Woody" Barnes, James W. Culver, Robert C. Heald, and Bonnie Neely.

Forest Products Industry: Thomas C. Nelson, Tharon O'Dell, and Joseph Russ IV.

Range Livestock Industry: Robert J. Kerstiens (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 June, Governor Wilson appointed former Board Chair Terry Barlin Gorton as Assistant Secretary of the Resources Agency, and named two new public members of the Board. Bonnie Neely is a Humboldt County supervisor who is a longtime supporter of the timber industry. Tharon O'Dell is a resources manager for Simpson Timber Company. At this writing, one public member seat on the Board is vacant.

## ■ MAJOR PROJECTS

**OAL Rejects Proposed Permanent Rules.** On July 30, the Office of Administrative Law (OAL) rejected the Board's proposed permanent adoption of three major rulemaking packages which have occupied almost all of its time since the fall of 1991. [13:1 CRLR 122-23; 12:4 CRLR 211-12; 12:2&3 CRLR 242-43]

• **Silvicultural Methods with a Sustained Yield Objective.** OAL rejected the Board's adoption of sections 1091.1-1091.14 and amendments to sections 895.1-953.11 (nonconsecutive), Title 14 of the CCR, which set new standards pertaining to evenage and unevenage silviculture prescriptions, establish a definition of the goal of maximum sustained production (MSP), and set up a regulatory procedure for the optional filing by timberland owners of long-term sustained yield plans (SYPs). OAL found that the regulations finally adopted by the Board (after numerous public hearings and revisions) contained a number of substantial changes to the originally-proposed text; however, OAL found that the Board did not provide notice of these changes and did not make the final revisions available for public comment. OAL also found several sections to be unclear and that the Board improperly referred to a publication called *A Guide to the California Wildlife Habitat Relationships System* without complying with OAL's rules for incorporation of materials in a regulation by reference.

• **Sensitive Watersheds.** OAL found five defects with the Board's rulemaking file on its proposed adoption of sections 916.8 (936.8, 956.8), 916.9 (936.9, 956.9), 916.10 (936.10, 956.10), and 1032.10, Title 14 of the CCR, which create a public process to assess watersheds and identify those which warrant classification as "sensitive" to further timber operations, establish requirements for the protection of domestic supplies, and require those submitting THPs to provide notice to downstream landowners and others: (1) the text of the regulations adopted by the Board and submitted to OAL contained changes from the last version of the text made available to the public; the Board's final statement of reasons failed to include a summary and response to all comments received during all the public comment periods; the regulation text contained some unclear provisions; the requirements for incorporation by reference were not met; and the rulemaking file did not contain all documents relied upon by the Board in adopting the proposed rules.

• **Old-Growth Forest, Late-Seral Stage Forest, and Wildlife Protection Regulations.** OAL also rejected the Board's adoption of sections 919.16(a) (939.16(a), 959.16(a)), and its amendment of section 895.1, Title 14 of the CCR, which establish additional reporting and mitigation requirements for timber harvesting in late succession forest stands and provide protection for wildlife residing in these stands. OAL found several of the provisions to be unclear and also found that the Board failed to release the last version to the public and properly respond to public comments received during earlier comment periods.

On August 19, the Board released its final version of these three regulatory packages for a public comment period ending on September 7. In this version, the Board attempted to clarify the sections OAL found to be unclear and correct the other technical errors identified. At this writing, the Board is scheduled to hold another public hearing on these proposed regulatory changes at its October 5 meeting.

**Board Considers Changes to "Exempt Conversion" Rules.** At its September 7 meeting, the Board held the first of two public hearings on its proposal to permanently amend sections 1038 and 1104.1, Title 14 of the CCR. Section 1104.1(a) currently provides for what is commonly called a "minor conversion" or an "exempt conversion." This section allows a landowner a single conversion of an area less than three acres to a non-timber-growing use of timberland, exempt from obtaining a THP and from the com-