

State of California  
FISH AND GAME COMMISSION  
Minutes, Meeting of May 15-16, 1989

MAY  
15-16

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State of California  
FISH AND GAME COMMISSION

Minutes, Meeting of May 15, 1989

Pursuant to the authority of Government Code Section 11126(q), the Commission met in closed Executive Session at 11:30 a.m. The purpose of this Executive Session was to consider pending litigation regarding listing of threatened and endangered species; transfer of commercial herring permits; unauthorized county trapping ordinances; mountain lion and tule elk.

Persons present:

FISH AND GAME COMMISSION

Robert A. Bryant	President
John A. Murdy III	Vice President
Albert C. Taucher	Member
E. M. McCracken, Jr.	Member
Benjamin F. Biaggini	Member

COMMISSION STAFF

Robert R. Treanor	Assistant Executive Secretary
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ATTORNEY GENERAL'S OFFICE

Peter Van der Nailen	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Spike Naylor	Acting Deputy Director
Eldridge Hunt	Chief, Wildlife Management Division
Robert Rawstron	Chief, Inland Fisheries Division

The Executive Session was recessed at 12:20 p.m.

State of California  
FISH AND GAME COMMISSION

Minutes, Meeting of May 15, 1989

Pursuant to the call of the President, the Commission met in the City Council Chambers, 990 Palm Street, San Luis Obispo, California, on May 15, 1989. The meeting was called to order at 1:10 p.m. by President Bryant.

Persons present:

FISH AND GAME COMMISSION

Robert A. Bryant	President
John A. Murdy III	Vice President
Albert C. Taucher	Member
E. M. McCracken, Jr.	Member
Benjamin F. Biaggini	Member

COMMISSION STAFF

Harold C. Cribbs	Executive Secretary
Robert R. Treanor	Assistant Executive Secretary

ATTORNEY GENERAL'S OFFICE

Peter Van der Naillen	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Paul Jensen	Deputy Director
Spike Naylor	Acting Deputy Director
Eldridge Hunt	Chief, Wildlife Management Division
DeWayne Johnston	Chief, Wildlife Protection Division
Al Petrovich	Chief, Marine Resources Division
Mike Martin	Environmental Services Supervisor
Bud Laurent	Associate Marine Biologist

The following persons were also present and heard:

Ken Kukuda	Editor, South Coast Sportfishing Magazine
Ilson New	Attorney at Law
Steve Rebuck	Save Our Shellfish
Willie T. Williams	Aquaculturist
Patrick Slattery	Exotic Animal Owner
Gary Hoffman	Commercial Abalone Diver
Alan Mootnick	Falconer
Peter Halmay	Commercial Fisherman

President Bryant introduced members of the Commission, its staff, Acting Deputy Director Naylor and Peter Van der Naillen of the Attorney General's office. The Assistant Executive Secretary explained that, at the request of

the Little Hoover Commission, the Executive Secretary, Deputy Director Jensen and other Department administrators were in Los Angeles responding to the issues raised by that Commission. He indicated that, until those individuals arrived from Los Angeles, the Commission would address only those agenda items where the Department had staff available to respond to the issue and skip over the other items.

#### SPECIAL AGENDA ITEM

##### A. SPECIAL DEPARTMENT AGENDA ITEM: MODIFICATION OF DEPARTMENT'S STREAMBED ALTERATION AGREEMENT FEE STRUCTURE.

The Assistant Executive Secretary pointed out that this agenda item was scheduled pursuant to the Department's request to receive public testimony regarding its proposed modified streambed alteration agreement fee structure. He noted that the Department had the authority, vested by the Legislature, to modify this fee structure. He pointed out that the Commissioners had been provided with a copy of the Department's proposed fee schedule. Mr. Treanor asked if there was anyone present who wished to speak to this item, and there was no response. He then indicated that no further action was required by the Commission at this time.

#### DISCUSSION ITEMS

##### 1. READING AND APPROVAL OF MINUTES OF FEBRUARY 2-3, 1989 MEETING.

Mr. Treanor stated that the minutes of the February 2-3, 1989 meeting had been distributed to the members of the Commission. He pointed out that the Commission staff knew of no errors or omissions therein and suggested that the minutes be approved as distributed.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. MCCRACKEN, THAT INASMUCH AS THE MINUTES OF THE FEBRUARY 2-3, 1989 MEETING HAVE BEEN DISTRIBUTED TO THE MEMBERS OF THE COMMISSION AND THERE ARE NO KNOWN ERRORS OR OMISSIONS THEREIN, READING BE DISPENSED WITH AND THEY BE APPROVED AS DISTRIBUTED.

PASSED UNANIMOUSLY.

##### 2. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.

NOTE: This item was postponed until the end of the May 16, 1989 meeting, but is reported here to maintain numerical sequence of the minutes.

The Executive Secretary stated that this item had been scheduled to afford the Department an opportunity to present the Commission with informational items which may be of interest to it. Mr. Cribbs indicated that in order to save time, the Department had prepared a written report on informational items it felt would be of interest to the Commission including the designation of 2,254 acres of land located in Hope Valley, Alpine County, as a state wildlife area; U.S. Bureau of Reclamation Water

Contracting Program Environmental Impact Statements for the Sacramento River, American River and Delta export service areas; Trout planting in underprivileged children's camps; and request for relocation of red fox from Seal Beach Naval Weapons Station National Wildlife Refuge to Wildlife Waystation in San Fernando.

Commissioner Taucher requested information and asked several questions regarding upland game, dove surveys in southern California and desert tortoise management. Deputy Director Jensen answered most of Commissioner Taucher's questions and indicated that the Department would provide the information Mr. Taucher requested as soon as possible.

3. RECEIPT OF COMMISSION INFORMATIONAL ITEMS.

NOTE: This item was postponed until the end of the May 16, 1989 meeting, but is reported here to maintain numerical sequence of the minutes.

The Executive Secretary stated that this item had been scheduled for the Commission to receive informational items from its staff and to afford the Commission the opportunity to discuss items with the Department. Neither staff nor the Commissioners had any informational items it needed to bring up at this time.

Commissioner Murdy asked the Department about the lifetime hunting and fishing licenses. He pointed out that the Commissioners had expressed interest in the purchase of those licenses and that they had heard nothing from the Department for several months. Deputy Director Jensen indicated that the Department would provide a status report to each Commissioner prior to the next Commission meeting.

4. DEPARTMENT STATUS REPORT RE: ANGLING ACCESS AT FALL RIVER, SHASTA COUNTY.

The Assistant Executive Secretary reminded the Commission that this item had been discussed previously and that the Department was available to provide a status report on its efforts to obtain permanent angling access at Fall River, Shasta County. He pointed out that the Commissioners had been provided with a copy of the Department's letter to Richard May, California Trout, regarding this issue.

Acting Deputy Director Naylor reported on the Department's efforts to negotiate a lease with Mr. Martin to provide access across his land to PG&E's property adjacent to the Fall River. He noted that the Department's Wildlife Conservation Board (WCB) had negotiated a five-year lease with Mr. Martin and that he would sign if Cal Trout would drop its lawsuit concerning the access problem. The Commission raised several concerns regarding the shortness of the lease and the amount of money which would be charged under the lease. Acting Deputy Director Naylor indicated that the landowner wished to review the situation after five years to determine how it was working. He noted that the Department would have the first right to buy the property if it was to be sold.

Commissioner Taucher asked if a determination had been made which required PG&E to provide access under its Federal Energy Regulatory Commission (FERC) license. Mr. Naylor read the two license terms related to that aspect and noted that, if the lease was signed, then the Department would send a letter to FERC to discuss the issue. Commissioner Taucher asked if Mr. Van der Naillen could research PG&E's responsibility under their FERC license to provide access for the anglers. Commissioner Murdy suggested that an Iron Ranger could be set up to collect an access fee from the anglers using the area to help defray the lease costs. He indicated that he was concerned about the open-endedness of the five-year lease.

President Bryant suggested that the Commission's Freshwater Subcommittee meet with Cal Trout and the Department to discuss the issue of Cal Trout dropping its lawsuit if this lease was signed and to get an interpretation from the Attorney General's office regarding PG&E's responsibilities under its FERC license. The Commission then directed staff to write a letter to Cal Trout to set up a meeting to discuss these issues. President Bryant next requested that this agenda item be rescheduled for the Commission's June meeting in Lone Pine to discuss the outcome of the subcommittee meeting and to receive the report from Deputy Attorney General Van der Naillen regarding PG&E's requirements under their FERC license.

5. RECEIPT OF DEPARTMENT REPORT RE: RESERVATION SYSTEM FOR STATE-OPERATED PUBLIC HUNTING AREAS.

Mr. Treanor reminded the Commission that in 1986, it instituted a revised reservation system for handling waterfowl hunters on state-operated public hunting areas. He noted that, at the time the system was imposed, the Commission requested that the Department report back to it on an annual basis concerning implementation of that program with an evaluation of the impact of that system on waterfowl hunting within the state. He pointed out that this would be the third annual report received from the Department on this matter, and that the Commissioners had been provided copies of that report.

Red Hunt stated that there was a 12 percent decline in the total number of applications received for the state operated hunting areas in 1988-89. He explained that there may be a combination of causes for the decline, such as lower bag limits and predictions of low duck numbers which could be responsible for a decrease in opening day applications. He pointed out that there was one bright spot, with the second opener of the split season resulting in an increase in applications during that time period over last year. He noted that the reduction in the total number of available duck hunting days was likely to be the ultimate cause for the overall decline.

Commissioner Biaggini asked about the procedures for the reservation system and advertisement of the hunting areas. Mr. Hunt stated that the areas were advertised through the news media, word of mouth, and through the license agents. Commissioner Biaggini suggested that the Department look at new ways to increase public exposure to the hunting areas and that an advertisement campaign could be beneficial to increasing the use of those areas.

President Bryant asked for any information on the use of the areas for pheasant hunting. Mr. Hunt indicated that there were very few applications received during the period when the wildlife areas were closed to duck hunting, but open only for goose or pheasant hunting. Commissioner Bryant also suggested that the Department consider an aggressive advertising campaign to increase public use of the state areas.

The Commission also raised several questions regarding the proposed shooting hours for 1989-90 and the bag limits for waterfowl. Eldridge Hunt indicated that the Department was supportive of changing the shooting hours back to one-half hour before sunrise and to increase the bag limit for sprig. He noted, however, that the federal government had indicated that they would not entertain any changes in the shooting hours or bag limits. He noted that there would be no discussion of this issue until a public hearing was held later this year in Washington, D.C. The Commission was concerned that the federal government was making its decision without complete information on the population levels of the waterfowl. Commissioner Murdy recommended that the Commission send a letter to the federal government requesting a change in the shooting hours to one-half hour before sunrise and increasing the bag limit to two sprig. The Commission concurred with that recommendation and directed staff to write that letter.

6. U.S. FISH AND WILDLIFE SERVICE PROPOSALS FOR STEEL SHOT ZONES FOR THE 1989-90 WATERFOWL SEASON.

The Assistant Executive Secretary indicated that the purpose of this agenda item was to inform the public of the Commission's intent to include those nontoxic shot zones for the 1989-90 waterfowl regulations. He pointed out that the Commissioners had been provided with a copy of that proposal which included the counties of Fresno, Napa, Santa Clara, and the remainder of Siskiyou County. He noted that those counties had a harvest of at least ten waterfowl per square mile. He then reminded the Commission that the federal government intended to have the entire nation under the nontoxic shot zones by the year 1992.

Red Hunt briefly summarized the nontoxic shot issue for the Commission and reiterated that the counties to be incorporated into the nontoxic shot zones for 1989-90 waterfowl season were: Fresno, Napa, Santa Clara and the remainder of Siskiyou County.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. TAUCHER, THAT  
THE FISH AND GAME COMMISSION HEREBY AUTHORIZES ITS STAFF  
TO PUBLICIZE ITS INTENT TO APPROVE, UNDER PROTEST, AT  
ITS LATE AUGUST MEETING, THE PROPOSED NONTOXIC SHOT  
ZONES FOR THE 1989-90 WATERFOWL REGULATIONS.

PASSED UNANIMOUSLY.

7. RECEIPT OF DEPARTMENT REPORT RE: STATUS OF U.S. FISH AND WILDLIFE SERVICE'S PROGRAM TO ESTABLISH AN EXPERIMENTAL POPULATION OF SOUTHERN SEA OTTERS AT SAN NICOLAS ISLAND, VENTURA COUNTY.

The Assistant Executive Secretary stated that this item had been scheduled to afford the Commission with an update on the status of the U.S. Fish and Wildlife Service's program to establish an experimental population of southern sea otters at San Nicolas Island, Ventura County. He pointed out that the Commissioners had been provided with a copy of the Weekly Status Report of March 27-31, 1989 from the USFWS. He noted that the Department was prepared to respond to any questions the Commission may have on this item.

Al Petrovich, Chief of the Marine Resources Division, stated that during the past two years, 103 sea otters had been translocated from the mainland to San Nicolas Island, with 34 of those being moved between September 1988 and February 6, 1989. He pointed out that 16 sea otters were known to have voluntarily returned to the mainland range and one additional sea otter was taken back to the mainland range. He indicated that 10 sea otters were known to have died, those being in the first year between August 1987 and August 1988. He pointed out that the fate of 46 sea otters was unknown, 12 of which were translocated this past year. President Bryant asked for the number of sea otters now at San Nicolas Island. Mr. Petrovich stated that, as of February 1989, there were 30 sea otters counted at San Nicolas Island.

Steve Rebuck, Save Our Shellfish, noted that there were now Navy restrictions around San Nicolas Island which were not enforced until the translocation of the sea otters. He indicated that there was a telephonic system arranged whereby the fishermen could call to determine which areas were open to fishing. He also explained that the MOU signed by the Department and USFWS stated that sea otters found in the management zone would be immediately captured. He pointed out that in a recent monthly report the USFWS indicated that one had been sighted, but they were just observing that sea otter at this time. He requested that the Commission instruct the USFWS to live up to the terms and conditions of the MOU. He also pointed out that Santa Rosa Island, he believed, was a forging area for sea otters because there were numerous broken abalone shells located just offshore.

The Assistant Executive Secretary stated that the Commission would receive the USFWS's Annual Report at its early August meeting in Santa Rosa and that USFWS would address these concerns at the early August meeting.

8. RECEIPT OF DEPARTMENT REPORT RE: STATUS OF COMPLIANCE OF PLANTING REQUIREMENTS ON AQUACULTURE LEASE M-614-01, LOCATED IN MORRO BAY, IN THE NAME OF WILLIE T. WILLIAMS, SEAL BEACH.

The Assistant Executive Secretary stated that by a letter dated February 24, 1989, the Department had informed Mr. Willie T. Williams, Seal Beach, that the planting requirements of aquaculture lease

No. M-614-01, located in Morro Bay, had not been met. He pointed out that when the Commission transferred the lease to Mr. Williams in March 1988, Mr. Williams agreed to assume the planting deficit of 3,142 cases of seed-bearing shells incurred by Qualman Oyster Company and that this deficit would be fully removed by July 31, 1989. He noted that the Department records indicated that Mr. Williams had only planted the equivalent of 177 standard oyster cases during the period from March 4, 1988 to the present.

Willie T. Williams stated that he had a problem with his sales of oysters because of the water pollution problem in Morro Bay. He explained that the pollution problem had been remedied, and he was now getting the capital to plant the remaining seed. He noted that he did have some seed on stock, and he was also taking lessons on the proper way of setting out the seed.

Al Petrovich indicated that the Department had talked to Mr. Williams and it was discussed that the lease area may be too large for Mr. Williams to handle. He indicated that there was a possibility that the Department may recommend that the acreage be reduced to 237 acres. He noted that the Department was willing to sit down with Mr. Williams to delineate the areas which would remain in the lease. The Executive Secretary suggested that the Department fully evaluate aquaculture lease No. M-614-01 to determine which areas would be productive. He recommended that the Department take one year to evaluate those areas and then report back to the Commission at that time. Commissioner McCracken concurred with that suggestion, as he indicated the Commission did not want to see Mr. Williams plant oysters in areas where there would be no productivity.

Commissioner Taucher stated that both he and Commissioner Bryant had observed Mr. Williams' lease and felt that Mr. Williams was doing a satisfactory job in cleaning up the lease site and planting the seed stock. He noted, however, that Mr. Williams needed to plant more seed stock and to live up to the terms and conditions of his lease. Bud Laurent, Marine Biologist, explained how the cleanup of the lease was being accomplished as well as the planting of the new seed stock. He also requested that the Commission remind Mr. Williams to keep in contact with the Department's Morro Bay office regarding the lease requirements and progress being made on cleanup and restocking.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY DIRECTS THE DEPARTMENT TO EVALUATE AQUACULTURE LEASE NO. M-614-01, LOCATED IN MORRO BAY, TO DETERMINE THE AREAS OF PRODUCTIVITY AND REPORT TO THE COMMISSION AT ITS MAY 1990 MEETING. FURTHER, THE COMMISSION DIRECTS WILLIE T. WILLIAMS, SEAL BEACH, TO CONTINUE PLANTING HIS SEED STOCK ON AQUACULTURE LEASE M-614-01 AND ABIDE

BY ALL TERMS AND CONDITIONS OF HIS AQUACULTURE LEASE,  
EXCEPT THAT THE COMMISSION WAIVES FOR ONE YEAR HIS  
PLANTING REQUIREMENT.

PASSED UNANIMOUSLY.

9. REQUEST TO RENEW FOUR EXPERIMENTAL GEAR PERMITS TO USE BEAM, OTTER  
AND PAIR TRAWL NETS IN FISH AND GAME DISTRICT 10 UNTIL MAY 1, 1990.

Mr. Treanor indicated that the Department had requested authorization to renew four experimental gear permits to use beam, otter and pair trawls in Fish and Game District 10, until January 1, 1990. He pointed out that the Commissioners had been provided with a copy of the Department's memorandum dated April 10, 1989 concerning this matter; a letter from Howard Landreth, Forestville, requesting renewal of his experimental trawl permit; a letter from Stephanie Thornton of the Coastal Fisheries Foundation, San Rafael, in support of these requests; a letter dated April 27, 1989 from Patrick Flanagan, Standard Fisheries Corporation, San Francisco, protesting the issuance of these permits, as well as a letter from their attorney protesting renewal of these four experimental gear permits.

Al Petrovich stated that this would be the third year of testing under the alternative gear program that was directed by legislation, AB 2915, Chapter 910, Statutes 1986 and SB 40, Chapter 1298, Statutes 1987. He noted that the Department anticipated a completion date for the data analysis and Department recommendations, by May 1990. He pointed out that the Department recommended the four permits be renewed for Bob Mathes, San Francisco area, a beam trawl; Ranch Lee, Bodega Bay area, an otter trawl; Mike Mitchell, San Francisco area, an otter trawl and Howard Landreth, Bodega Bay area, a pair trawl.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. MURDY, THAT  
THE FISH AND GAME COMMISSION HEREBY APPROVES THE  
DEPARTMENT'S REQUEST FOR RENEWAL OF THE FOUR  
EXPERIMENTAL GEAR PERMITS WHICH AUTHORIZE THE USE OF A  
BEAM, OTTER AND PAIR TRAWL NETS IN FISH AND GAME  
DISTRICT 10 UNTIL MAY 1, 1990.

PASSED UNANIMOUSLY.

10. REQUEST FOR BLANKET AUTHORITY TO ISSUE EXPERIMENTAL GEAR  
PERMITS TO USE VERTICAL SET LINES (PORTUGUESE SET LINES) IN  
FISH AND GAME DISTRICTS 6, 7, 10, 17, 18 AND 19 TO TAKE ROCKFISH.

The Assistant Executive Secretary stated that, by memorandum dated April 5, 1989, the Department had requested that the Commission grant it blanket authority to issue experimental gear permits to use vertical set lines (Portuguese set lines) in Fish and Game Districts 6, 7, 10, 17, 18 and 19 to take rockfish. He pointed out that the Commissioners had been provided with a copy of the Department's April 5 memorandum.

Al Petrovich stated that the vertical (Portugese) set lines were inadvertently eliminated from the definition of set lines (Fish and Game Code Section 8601) last year as a result of legislation (AB 4055, Chapter 1009, Statutes 1988) enacted to clarify the difference between set lines and drift longlines. He noted that the definition of set lines now required the gear to be anchored to the bottom at both ends. He pointed out that vertical set lines are anchored to the bottom at only one end and extend vertically to the sea surface where the line is buoyed or attached to the boat. He explained that a new definition of vertical set lines is being developed for addition to the Fish and Game Code and would be enacted in Department legislation, AB 1080, prior to January 1, 1990. He noted that, in the interim, the Department was requesting blanket authority to issue experimental gear permits to use vertical set lines, which would allow fishermen to continue to fish pending enactment of the aforementioned legislation to clarify the oversight. He estimated that at least 40 commercial fishermen may utilize this method.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. MCCRACKEN, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE DEPARTMENT'S REQUEST FOR BLANKET AUTHORIZATION TO ISSUE EXPERIMENTAL GEAR PERMITS, UNTIL JANUARY 1, 1990, TO USE VERTICAL SET LINES (PORTUGUESE SET LINES) IN FISH AND GAME DISTRICTS 6, 7, 10, 17, 18 AND 19 TO TAKE ROCKFISH SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

11. REQUEST OF JOHN KONATICH, NASKI ENTERPRISES, INC., PT. REYES, FOR RENEWAL OF EXPERIMENTAL GEAR PERMIT NO. X-1111 RE: USE OF HYDRAULIC DREDGE TO HARVEST CLAMS IN OCEAN WATERS OFF NORTHERN CALIFORNIA.

The Assistant Executive Secretary stated that the Commission office had been contacted by Naski Enterprises, Inc., requesting that this item be withdrawn. He noted, therefore, that there was no Commission action necessary.

12. RECEIPT OF DEPARTMENT REPORT RE: IMPLEMENTATION OF DEPARTMENT'S WILDLANDS PROGRAM.

Mr. Treanor stated that this item had been scheduled to afford the Department the opportunity to provide the Commission with a status report concerning the implementation of the Department's "Wildlands Program." He reminded the Commission that this item had been scheduled for its April 6, 1989 meeting in Sacramento but, due to time constraints, this item was postponed until its May 15 meeting.

Deputy Director Jensen indicated that the Department had provided the Commission with a press package which had been distributed concerning the "Wildlands Program." He pointed out that the Department was "beefing up" its marketing of the program to promote the sale of the annual stamp for the program. He indicated that Director Bontadelli had met with the

Audubon Society requesting their support of the program and outlined the Department's aggressive advertising campaign. He also noted that Colonel Chuck Yeager had agreed to do a video on the program.

Commissioner Taucher stated that the "Wildlands Program" was beneficial and suggested that when the Department marketed this program, it include both the hunting and fishing licenses and the annual stamp for the "Wildlands Program."

13. RECEIPT OF DEPARTMENT STATUS REPORT RE: CONDOR CAPTIVE BREEDING AND ANDEAN CONDOR SURROGATE RELEASE PROGRAMS.

The Assistant Executive Secretary stated that this item had been scheduled to receive the Department's status report regarding the implementation of the Condor Captive Breeding and Andean Condor Surrogate Release Programs. He pointed out that the Commissioners had been provided with a copy of that status report.

Red Hunt stated that the Department was pleased to report that the number of California condors had increased by one since last month. He indicated that the latest addition was a chick hatched on April 19, bringing the population total now to 29 condors. He noted that three more hatchlings were expected between May 17 and June 4 from eggs laid by two other breeding pairs. He noted that the season for egg laying for this year was now over and that seven eggs were laid between February 20 and April 9. He reminded the Commission that one egg laid by an immature female was broken by a male condor in the nest box immediately after it had been laid. He reported that the other six eggs were laid by breeding age birds (6 years old or older) and all were removed by zoo staff immediately after laying and placed in incubation facilities at the San Diego Wild Animal Park. He noted that four of the eggs were fertile.

Commissioner McCracken asked for the cost of the program to the State each year. Mr. Hunt indicated that he did not have the exact figures at hand, but to his recollection it was approximately \$200,000 per year. He noted that the Department did not have a full time biologist on staff for the condor program and that the money was spent at the Los Angeles and San Diego zoos for the Captive Breeding Program. He pointed out that the federal government also provided money for this program. President Bryant requested the timetable for when the first California condor was to be released back into the wild. Mr. Hunt indicated that the time schedule called for release of California condors into the wild in 1991.

14. RECEIPT OF DEPARTMENT STATUS REPORT RE: TOXIC PROBLEMS OF CALIFORNIA OCEAN FISH AND WILDLIFE AND THE ROLE OF THE DEPARTMENT OF FISH AND GAME.

The Assistant Executive Secretary stated that this item was scheduled to receive the Department's status report regarding toxic problems of California ocean fish and wildlife and the role of the Department of Fish and Game. He pointed out that the Commissioners had been provided with a copy of the Department's status report, dated February 27, 1989, regarding

toxic problems of California's fish and wildlife. He noted that the Department was prepared to answer any questions at this time regarding their report. He indicated that, in summary, the report discussed toxic issues related to California's bays, estuaries and nearshore coastal waters and their indigenous wildlife resources. He reported that the purpose of the report was to address the issues of: (1) present toxic status of California marine waters; (2) marine contract toxicology studies; (3) existing and potential health warnings in marine waters; and (4) study needs for toxics in fish and wildlife. He reminded the Commission that President Bryant had requested this report.

The Commission asked several questions relating to: (1) the types of studies completed; (2) priority of protecting resources and the users; (3) which agencies were involved; (4) who had the lead; (5) how the agencies would be funded; and (6) the areas of highest priority for data collection. Dr. Mike Martin answered the the Commission's questions and indicated that the report focused on the protection of the users. He indicated that the two studies completed to date (Santa Monica Bay and Monterey Bay) had indicated that there were problems in Santa Monica Bay, but the fish in Monterey Bay were clean. He noted that there needed to be an increased effort to collect information on toxic problems statewide. He pointed out that the problems focused mainly on fish and wildlife resources in the ocean and that EPA and the State Water Resources Control Board listened to the Department's recommendations in these matters but, unfortunately, in the past the Department did not have enough data to support their recommendations. He explained that the different agencies were working through the Legislature to get their budgets augmented in order to carry out the recommendations of the toxic report. He noted that the Department was working on getting new positions and money for the 1990-91 fiscal year. He also indicated that, in his opinion, the studies initially should focus on urban areas because that was where the largest need existed at this time. The Commission thanked Dr. Martin for answering its questions and encouraged the Department to pursue funding to carry out its responsibilities in this area.

15. REQUEST OF PATRICK SLATTERY, MISSION VIEJO, AND MIKE CHARLES AND SHARON JACQUES, SAN JOSE, FOR AUTHORIZATION TO POSSESS RACCOONS FOR PET PURPOSES.

The Executive Secretary stated that Mr. Patrick Slattery, Mission Viejo, and Mike Charles and Sharon Jacques, San Jose, had requested authorization to possess raccoons for pet purposes. He noted that currently these three individuals unlawfully possessed raccoons for pet purposes. He explained that pursuant to the Commission's January 9, 1987 policy direction, the Department denied animal welfare permits to these individuals and that they were appealing that decision.

Patrick Slattery

Mr. Cribbs pointed out that the Commissioners had been provided with a copy of Mr. Slattery's letter concerning this matter. Patrick Slattery stated that he had received the raccoon as a gift when it was two to three weeks old. He indicated that the animal was now one year old. He pointed

out that the raccoon had been neutered and had all of its shots. He stated that he had devoted a lot of time to this animal. He realized it was a mistake to keep the animal without a permit, but it is his understanding the animal could not be put back into the wild because it had been neutered. He stated that it would not serve any purpose to have the animal destroyed. He pointed out that he did not have anything else to add at this time, as it was all contained within his letter.

DeWayne Johnston stated that the Department recommended denial to uphold the Commission's policy direction. He noted that the Department would try to have the animal rehabilitated at a licensed rehabilitation facility or ship the animal out of state. He pointed out that the Department had been provided copies of letters to the Commission from the Departments of Public Health and Food and Agriculture, which supported the denial of Mr. Slattery's request. Commissioner Taucher stated that it was a tough decision, but he agreed with the Department's recommendation. He was concerned for the animal and wondered what could be done with it after it had been neutered.

The Executive Secretary reminded the Commission of its decision to reduce the number of exotic animals held for pet purposes within California and to reduce the number of appeals brought before the Commission. He indicated that the animal could be placed in a rehabilitation facility or with a junior museum, which could utilize the animal for educational purposes. Mr. Slattery reiterated that he did not believe that it was in the best interest of the animal to have it released into the wild, nor to have another person care for the animal that he had raised from an infant. The Executive Secretary stated that in similar circumstances, the Department tried to find a home for the animal where it could be cared for properly.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. MCCRACKEN, THAT  
THE FISH AND GAME COMMISSION HEREBY DENIES  
THE REQUEST OF PATRICK SLATTERY, MISSION VIEJO, FOR  
AUTHORIZATION TO POSSESS A RACCOON FOR PET PURPOSES,  
PROVIDED THAT THE DEPARTMENT COULD FIND A FACILITY TO  
PROPERLY CARE FOR THE ANIMAL.

AYES: COMMISSIONERS BIAGGINI, MCCRACKEN, AND MURDY.  
ABSTAINED: COMMISSIONER TAUCHER.

#### Mike Charles

Mr. Cribbs pointed out that the Commissioners had been provided with a letter from Mike Charles/Sharon Jacques, San Jose, in which they requested authorization to possess a raccoon which they unlawfully had in their possession. He indicated that Sharon Jacques had recently notified the Commission office that they would be unable to attend this meeting because of transportation problems and requested that the matter be postponed until its early August meeting in Santa Rosa. DeWayne Johnston stated that the Department recommended denial of Mike Charles/Sharon Jacques' request.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. TAUCHER, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF MIKE CHARLES/SHARON JACQUES, SAN JOSE, FOR AUTHORIZATION TO POSSESS A RACCOON FOR PET PURPOSES UNTIL THEY APPEAR, BEFORE THE COMMISSION, WHICH MUST BE NO LATER THAN THE COMMISSION'S AUGUST 3-4, 1989 MEETING IN SANTA ROSA.

PASSED UNANIMOUSLY.

16. REQUEST OF NANCY MCKENZIE, SACRAMENTO, FOR AUTHORIZATION TO POSSESS A FERRET FOR PET PURPOSES.

The Executive Secretary stated that Ms. Nancy McKenzie, Sacramento, had requested authorization to possess a ferret for pet purposes. He pointed out that the Commissioners had been provided a copy of Ms. McKenzie's lengthy letter dated March 28, 1989 concerning this matter. Mr. Cribbs indicated that Ms. McKenzie had notified the Commission office that she would be unable to attend this meeting because she was attending the Police Academy. He stated that Ms. McKenzie requested that her letter be utilized as her testimony in this matter. DeWayne Johnston stated that the Department sympathized with Ms. McKenzie, but recommended that her request be denied. He pointed out that the Commissioners had been provided letters from the Departments of Public Health and Food and Agriculture recommending denial of Ms. McKenzie's request.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. MCCRACKEN, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF NANCY MCKENZIE, SACRAMENTO, FOR AUTHORIZATION TO POSSESS A FERRET FOR PET PURPOSES.

PASSED UNANIMOUSLY.

#### LICENSE AND PERMIT CONSIDERATIONS

17. REQUESTS FOR WAIVERS OF 1988-89 COMMERCIAL ABALONE LANDING REQUIREMENTS.

The Executive Secretary reminded the Commission that Section 100(b)(1)(A), Title 14, CCR, required any person who applied for an abalone diving permit to have held such a permit for the previous season and that further, he/she shall have landed at least 6,000 pounds of abalone or made 20 landings for each of which an official receipt (pink ticket) was received by the Department. He stated that those failing to meet the minimum requirements were denied a permit by the Department with the opportunity to appeal such a denial to the Commission. Mr. Cribbs indicated that Mr. Gary Hoffman, Santa Barbara, had notified the Commission office requesting a waiver for the 1988-89 commercial abalone landing requirements. DeWayne Johnston stated that if Mr. Hoffman could certify that he had met the landing requirements for the last five years, the

Department would recommend approval. Mr. Gary Hoffman stated that he had his landing receipts with him and made those available to the Department for its review. Mr. Johnston stated that Mr. Hoffman had met the landing requirements for the previous five years.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. MCCRACKEN, THAT  
THE FISH AND GAME COMMISSION HEREBY APPROVES THE  
REQUEST OF GARY HOFFMAN, SANTA BARBARA, FOR A WAIVER OF  
THE COMMERCIAL ABALONE LANDING REQUIRMENTS FOR THE  
1988-89 SEASON.

PASSED UNANIMOUSLY.

18. REQUEST OF ALAN MOOTNICK, SAUGUS, FOR RENEWAL OF HIS SCIENTIFIC  
CAPTIVE RAPTOR BREEDING PERMIT.

The Executive Secretary stated that Mr. Alan Mootnick, Saugus, had requested renewal of his scientific captive raptor breeding permit. He pointed out that the Department had sent a letter to Mr. Mootnick, dated March 9, 1989, itemizing areas where Mr. Mootnick had failed to comply with the terms and conditions of his current scientific captive raptor breeding permit. He pointed out that the Commissioners had been provided with a copy of the Department's letter.

Mr. Mootnick indicated that he had transferred ownership of the Cinereous vulture to the Buffalo Zoo in June of 1983 and had provided a copy of that transfer request to the Commission office. He provided a copy of his June 10, 1983 letter and a copy of the Commission's June 21, 1983 letter, indicating that it had transmitted a copy of his June 10 letter to the Department of Fish and Game. Mr. Mootnick stated that he had also submitted his breeding activity report a month late in 1988 to the Department. He also pointed out that he had a computer copy of his October 27, 1988 letter submitting his \$11.00 money order for the transfer permit to the Buffalo Zoo, but that he did not have the original since he had sent it to the Department. Mr. Mootnick stated that he had not conducted any breeding to date because he was trying to breed rare birds and could not find any mates to the birds he had in his project.

DeWayne Johnston stated that the Department had not seen any activity under Mr. Mootnick's projects since the permit was issued. He also pointed out that, as a scientific breeder, that person needed to know the regulations and Mr. Mootnick appeared not to understand it was necessary to comply with all terms and conditions of his permit. Mr. Johnston noted that it took a large amount of staff time to maintain the records and to review annual reports, if they were submitted; and therefore, the Department recommended denial of Mr. Mootnick's request. Alan Mootnick requested that his permit be considered inactive until he was able to locate and transfer some birds to his breeding project.

The Executive Secretary stated that Section 678, Title 14, CCR, consisted of two areas: general falconers and scientific breeders. He noted that the scientific breeders must maintain a higher standard of accountability and conduct appropriate scientific studies.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. TAUCHER, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF ALAN MOOTNICK, SAUGUS, FOR RENEWAL OF HIS SCIENTIFIC CAPTIVE RAPTOR BREEDING PERMIT.

PASSED UNANIMOUSLY.

19. REVOCATION OF COMMERCIAL HERRING PERMITS OF DANIEL V. CRIVELLO, NOVATO; JOSEPH CRESCI, JR., FORT BRAGG; ROBERT EDWARD DILLARD, ALAMEDA; DONALD KENT KOSER, SEBASTOPOL; AND DUKE MATTHEW MARTIN, SALINAS.

The Executive Secretary indicated that Mr. Sal Balisteri had contacted the Commission office and had informed the staff that he had the guilty pleas set aside for the five commercial herring fishermen. He noted that, therefore, there would be no action necessary by the Commission at this time, until these five fishermen had appeared in court and the court process had been completed.

20. REQUEST OF PETER HALMAY, LAKESIDE, FOR REINSTATEMENT OF HIS COMMERCIAL LOBSTER FISHING PRIVILEGES.

The Executive Secretary stated that Mr. Peter Halmay, Lakeside, had requested an opportunity to appear before the Commission to show cause why his commercial lobster fishing privileges should be reinstated. He noted that Mr. Halmay's lobster privileges were revoked by the Commission on May 28, 1976. He pointed out that the Commissioners had been provided with a copy of Mr. Halmay's request, as well as the background information on his revocation.

Peter Halmay stated that he would abide by all the laws and regulations concerning commercial lobster fishing, that he respected the resources and would not violate any laws in the future. DeWayne Johnston stated that Mr. Halmay's commercial lobster fishing privileges were revoked in 1976 for failure to fill out his daily logs. He noted that the revocation was for one year and that before Mr. Halmay could get his permit reinstated, he must appear before the Commission. He noted that, based on the fact that Mr. Halmay had been out of the fishery for 13 years, the Department recommended approval of his request.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. TAUCHER, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF PETER HALMAY, LAKESIDE, FOR REINSTATEMENT OF HIS COMMERCIAL LOBSTER FISHING PRIVILEGES.

PASSED UNANIMOUSLY.

21. REQUEST OF EDWARD LEE BARLOW, CLAYTON, NEW YORK, FOR REINSTATEMENT OF HIS SALMON VESSEL PERMIT.

Mr. Cribbs stated that Ms. Sue Gouge Williams had contacted the Commission office stating that she represented Mr. Edward Lee Barlow of Clayton, New York, and requested that this item be postponed until the Commission's August 4 meeting in Santa Rosa. The Executive Secretary stated that, therefore, there was no Commission action necessary at this time.

The Executive Secretary then asked the Commission to suspend its rules to consider an additional item.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. TAUCHER, THAT  
THE FISH AND GAME COMMISSION HEREBY SUSPENDS ITS  
RULES TO HEAR AN ADDITIONAL ITEM.

PASSED UNANIMOUSLY.

21a. CLARIFICATION OF TERMS AND CONDITIONS (AREA/TIME CLOSURES) OF EXPERIMENTAL GEAR PERMITS RE: USE OF LONGLINE TO TAKE SHARKS.

The Executive Secretary reminded the Commission that at its February 2-3, 1989 meeting in Long Beach, it approved the renewal of experimental gear permits which authorized the use of longlines to take sharks. He pointed out that the Commissioners had been provided with a copy of the background material on this issue. He noted that subsequent to the February meeting, a question had arisen as to the issue of area/time closures. He explained that those opposed to the issuance of these permits maintain that the area closures were for the total permit timeframe and that the permittees maintain that the area closures were for the months of July and August only and that the area was open to longlining during May and June. He noted that after the Department summarized the issue, each side would be afforded ten minutes to present their arguments.

Al Petrovich summarized the issue and the areas covered at the Commission's February meeting concerning the longline issue. He pointed out that on February 2, when an agreement was not reached on the issue, the Commission directed the Department to meet with the two factions and report back at the February 3 meeting. He reported that, based on that meeting, he did not sense an agreement on all issues, but there was no actual poll taken on the different terms and conditions. He did explain that the Department's recommendation at the February meeting was for the closures to remain the same as last year and that the reason for the time closure in that one area was because of the possible interaction between the commercial and sport fishermen who were fishing for marlin and the possibility of the commercial fishermen taking incidental marlin during their shark fishing activities. He noted that based on the data collected last year, no marlin were taken by the commercial longliners and that there was no conflict with the sport fishermen. He indicated that, based on

discussions he had with other individuals at the February meeting, there was some confusion on the time closure issue. He pointed out that some went away with the idea that the closure was for the entire fishing period, but others felt that the closure was only for the same period as last year.

Ken Kukuda stated that, to his recollection, a partial opening of the closure area was never discussed, it was always a total closure. He pointed out that the recreational fishermen had submitted several letters concerning the closure areas being a nursery area for the mako shark. He provided a letter from an individual who was at the meeting and his interpretation of the Commission meeting and the meeting between the recreational and commercial fishermen held by the Department on February 3. He pointed out that this gentleman indicated that it was a total time closure.

Ilson New, attorney for the longline fishermen, stated that based on the record of the February 2-3 meeting, there were two closures discussed: one, geographical and one, time. He provided the Commissioners with an exhibit which included a transcript of the meeting tape. He pointed out that in the Department's opening remarks at the February 2-3 meeting, it discussed the geographical closure and the time period closure for that area. He pointed out that Mr. Kukuda's testimony at that meeting was solely on the area closure, not the time closure. He then read Mr. McCracken's motion and felt that it was clear that motion included both geographical and time closures and was to remain the same as last year as recommended by the Department.

Ken Kukuda stated that in his letters to Mr. Cribbs and Mr. Petrovich, he indicated that the area and season closures were for the entire season and that was why he did not distinguish between the two. He pointed out that Mr. Petrovich and Mr. Cribbs had indicated that his February 6 letter was correct. Mr. New stated that the reason he provided the Commissioners with a copy of the transcript of the tapes was not to rely on someone's memory, but the actual discussion.

Commissioner Murdy stated that it was his understanding of the proceedings that the reason he recommended a quota was to allow fishing in the closure area.

Peter Van der Naillen indicated that if the record was discernable, then the record would stand on its own and everything else was irrelevant. He stated that his advice was for the Commission to determine if the record was discernable and then stick by it, but if it was impossible for them to discern their action on February 3, then they should open a new hearing on the issue to allow each side the opportunity to present testimony on the time closure. The Executive Secretary asked Mr. Van der Naillen if the Commission could allow the permit terms and conditions to stand and then schedule a hearing at the next Commission meeting to address the issue of the time closure but, in the interim, the time closure would be as the Commission decided on February 3. Mr. Van der Naillen stated that would be appropriate as long as the issue to be clarified at the next Commission meeting was on the time closure issue and that the Commission would hear from all sides again and then decide what action it would like to take.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. TAUCHER, THAT THE FISH AND GAME COMMISSION HEREBY AFFIRMS ITS DECISION MADE ON FEBRUARY 3, 1989 IN LONG BEACH TO ALLOW THE USE OF DRIFT LONGLINES TO TAKE SHARKS IN THE CLOSURE AREA DURING THE MONTHS OF MAY, JUNE AND JULY AND THAT, AS OF AUGUST 1, THE AREA SO DESIGNATED WOULD BE CLOSED TO LONGLINE FISHING, AND ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME AS APPROVED ON FEBRUARY 3, 1989. FURTHER, THE COMMISSION SCHEDULES THE ISSUE OF CLARIFICATION OF THE TIME CLOSURE ISSUE REGARDING THE USE OF DRIFT LONGLINES TO TAKE SHARKS IN SOUTHERN CALIFORNIA FOR THE COMMISSION'S JUNE 13, 1989 MEETING IN SACRAMENTO.

PASSED UNANIMOUSLY.

There being no additional items before the Commission, the meeting was recessed at 5:30 p.m. to be reconvened at 8:00 a.m. on May 16, 1989 in the City Council Chambers, 990 Palm Street, San Luis Obispo, California.

State of California  
FISH AND GAME COMMISSION

Minutes, Meeting of May 16, 1989

Pursuant to the call of the President, the Commission met in the City Council Chambers, 990 Palm Street, San Luis Obispo, California, on May 16, 1989. The meeting was called to order at 8:10 a.m. by President Bryant.

Persons present:

FISH AND GAME COMMISSION

Robert A. Bryant	President
Albert C. Taucher	Member
E. M. McCracken, Jr.	Member
Benjamin F. Biaggini	Member

COMMISSION STAFF

Harold C. Cribbs	Executive Secretary
Robert R. Treanor	Assistant Executive Secretary

ATTORNEY GENERAL'S OFFICE

Peter Van der Nailen	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Paul Jensen	Deputy Director
Spike Naylor	Acting Deputy Director
Ed Willis	Assistant Director, Administration
Robert Rawstron	Chief, Inland Fisheries Division
Eldridge Hunt	Chief, Wildlife Management Division
DeWayne Johnston	Chief, Wildlife Protection Division
Al Petrovich	Chief, Marine Resources Division
Mike Grima	Warden Captain

The following persons were also present and heard:

John Merz	Sacramento River Preservation Trust
Jim Lecky	National Marine Fisheries Service
Mike Maier	Waterfowl Habitat Owners Alliance
Don Gilbert	Maritech
Joseph W. Maynard	Exotic Feline Breeding Compound
Charles Cannon	Commercial Fisherman
Harold Walker	Commercial Fisherman
Nello Castagnola	Commercial Fisherman
Donald Kusar	Commercial Fisherman
Joe Craciccolo	Commercial Fisherman
Steven Greystock	Commercial Fisherman

President Bryant introduced members of the Commission, its staff, Deputy Director Paul Jensen and Peter Van der Nailen of the Attorney General's office.

DISCUSSION ITEMS (continued)

22. DISCUSSION OF DEPARTMENT'S 1989-90 AND 1990-91 BUDGET PROPOSALS.

The Executive Secretary stated that the purpose of this agenda item was to discuss the Department's proposed budget for the next two years. He pointed out that the Commissioners had been provided with a copy of the Department's proposed 1989-90 budget and additional background information on the budget process. He indicated that the Department was prepared to respond to any questions that the Commission may have regarding the Department's 1989-90 and 1990-91 budget proposals.

Ed Willis, Assistant Director, Administration, summarized the Department's 1989-90 proposed budget. He also pointed out that there had been a decline in the license sales for both sport fishing and hunting licenses for the past year and the Department was facing a \$4-6 million dollar deficit. He explained some of the actions taken by the Department to reduce spending and to freeze hiring of certain positions to make up that deficit for the current fiscal year. He itemized briefly for the Commission the areas of importance regarding funding of new positions and equipment for the 1990-91 budget.

Commissioner McCracken asked for the status of the 1989-90 budget in the Senate Finance and Assembly Ways and Means Committees. Mr. Willis stated that, to date, there had been nothing agreed upon on either side of the Legislature and that the main topic of the Department's budget review was fiscal management. He noted that the Department was due to appear before the Legislature on Monday and Tuesday, May 22 and 23. He stated that the Department felt confident that their budget would be approved as is, although there may be some minor items deleted, but he did not foresee any major changes in the Department's proposed budget. Commissioner McCracken indicated that one way to increase revenue was for the Department to finalize the lifetime licenses which it was authorized to sell, starting January 1, 1989. Mr. Willis stated that the Department was within a month of having all of the documents printed to begin the sale of those lifetime licenses. He did point out, however, that the Department had been taking orders on those licenses.

Commissioner Taucher asked if there was any license revenue which had not been collected from the license agents. Mr. Willis indicated that there may be some, but the Department's collection of those fees and interests had been very good this past year; in fact, it was the best that had ever been done. He noted that any outstanding balances were not significant. Commissioner Taucher also asked about the upland game program. Eldridge Hunt indicated that the program was a continuation from last year's budget change and that there was \$500,000 appropriated last year for that program. Commissioner Bryant asked if there was a breakdown of that money in the Department's budget. Mr. Hunt indicated that there was not a breakdown of the specifics regarding upland game in the overall budget of Wildlife Management Division, in the material that had been provided to the Commission at this time.

Commissioner Biaggini stated that the Department needed a long-range plan for its hatcheries. Robert Rawstron stated that the Department was reviewing a report that had been completed on that question and that the Department's response to that report would be completed by January 1, 1990. Commissioner Biaggini stated that as the population increased, the Department needed more production from its hatcheries, but it also needed to protect against habitat loss.

The Executive Secretary thanked the Department for working with Commission staff to provide additional monies and positions to the Commission to fulfill its staffing needs. Ed Willis stated that a concern that had been raised by the Commission previously was whether or not Pittman Roberts funds were being used for nongame programs. He stated that the answer to that question was no; that the funds were coming from the Wildlands Program. He also pointed out that, in response to the concerns of Commissioners Taucher and Bryant regarding the upland game program, if there was a particular program of interest to the Commission, he would break down the budget for that program and provide that information to the Commission.

### 23. REVIEW OF COMMISSION POLICIES.

The Executive Secretary pointed out that in compliance with Commission direction, this item had been scheduled in conjunction with the budget discussions. He indicated that Commission staff had worked closely with the Department to review the Department's implementation of Commission policies over the past year. He pointed out that the Commissioners had been provided with a copy of the Commission's current policies and the Department's report on the adherence to those policies. Mr. Cribbs stated that the Department was prepared to discuss each policy and the implementation of that policy, as well as make recommendations concerning deletions of policies it believed no longer valid, or for a modification of some policies which needed updating or revision. He suggested that, should the Commission concur in the Department's recommendation, it consider the matter for final adoption at its June 22-23, 1989 meeting in Lone Pine. He noted that this would afford the public an opportunity to review the suggested changes in Commission policy prior to final action by the Commission.

Deputy Director Jensen stated that the Department recommended amending two of the Commission's policies, one on warmwater game fish stocking and the other one on wild trout waters. He then provided the Commission with a copy of those proposed changes. The Executive Secretary stated that these changes would be made available to the public and that the Commission would consider amending these two policies at its June 22-23, 1989 meeting in Lone Pine. Mr. Jensen also indicated that the Department anticipated the completion of its fish and wildlife plan by the fall of 1989. He noted that in regard to the Hardwoods Policy, the California Department of Forestry and Fire Protection had contracted with academic research and private consultants to study the effects on breeding birds and mammals due to distribution and densities of blue oak, live oak, canyon live oak and black oak, with anticipated completion dates of spring 1990.

Commissioner Taucher explained that the Commission was interested in pursuing an Upland Game Policy and hoped that the Department would also promote such a policy. He noted that a draft had been provided to the Department for its review and comment. The Executive Secretary indicated that the Commission would also consider adopting this policy at its June 22-23, 1989 meeting in Lone Pine.

24. DISCUSSION OF THE DEPARTMENT'S 1989 ANNUAL ENDANGERED SPECIES REPORT.

The Executive Secretary reminded the Commission that at its April 6-7, 1989 meeting in Sacramento, it formally received the Department's 1989 Annual Endangered Species Report. He noted that the purpose of this agenda item was to afford the Commission an opportunity to discuss the content of that report with the Department. He pointed out that the Commissioners were provided with a copy of that report for its review. He indicated that the Department was prepared to respond to any questions the Commission may have on this matter at this time. The Commission indicated that the report was well done and that they did not have any questions at this time.

25. CONSIDER DEPARTMENT RECOMMENDATION AND MAKE COMMISSION FINDING RE: REQUEST TO LIST THE SACRAMENTO RIVER WINTER-RUN KING SALMON (Oncorhynchus tshawytscha) AS THREATENED.

The Executive Secretary reminded the Commission that at its April 27, 1989 meeting in Sacramento, it received the Department's recommendation regarding the proposal to list the Sacramento River winter-run king salmon (Oncorhynchus tshawytscha) as a threatened species. He pointed out that the Commissioners had been provided with a copy of that recommendation and that the matter before the Commission was for its consideration of making a finding that the Sacramento River winter-run king salmon warranted listing as a threatened species.

Robert Rawstron reminded the Commission that the Department's April 27, 1989 recommendation was to not list the Sacramento River winter-run chinook salmon as threatened. He explained that subsequent to that recommendation the Department had completed additional review of the spawning stock for this year and based on the estimate of May 6, 1989 of a total run of 550 fish, the Department now recommended that the species be listed as threatened. He further pointed out that the Department was concerned that the hatchery acceleration and augmentation program conducted by the U.S. Fish and Wildlife Service (USFWS) was off to a shakey start. He noted that from a total of 42 winter-run salmon taken at the Keswick and Red Bluff Diversion traps, 24 succumbed to the rigors of handling and transporting, leaving only 18 as of May 12 to produce eggs. He emphasized that the Department's target was 100 fish, which would have yielded 100,000 smolts. He noted that of the total on hand, about 50 percent were expected to be females, which should provide 25,000 to 35,000 eggs and 15,000 to 20,000 smolts for rearing. Mr. Rawstron also indicated that one of the more important studies, the temperature tolerance test, funded by the National Marine Fisheries Service and conducted by the USFWS, would have to be reduced in scope to about 10 percent of the planned activity or postponed until later years when eggs were more available. He noted that over the next year the Department intended to continue to strengthen the Ten-Point Agreement and monitor the environmental conditions, escapement and smolt production.

John Merz, Sacramento River Preservation Trust, supported the Department's recommendation, but was disappointed that it had taken two years for the Department to realize that the winter-run salmon was endangered and/or threatened.

Jim Lecky, National Marine Fisheries Service (NMFS), indicated that his organization was doing everything it could in working with the Bureau to get more water down the Sacramento River and to have the Red Bluff Diversion Dam gates up during the winter months. President Bryant asked Mr. Lecky if the NMFS had clout to get things done quicker. Mr. Lecky indicated that NMFS could not order the Bureau to raise the dam gates or release more water, but that the NMFS was committed to continue implementing the Ten-Point Agreement.

Commissioner Taucher stated that he was ready to make a motion to list the Sacramento River winter-run chinook salmon as an endangered species. Commissioner McCracken requested information on the difference between listing the species as threatened or endangered. Deputy Director Jensen stated that, under the California Endangered Species Act, there was not much difference. Peter Van der Naillen stated that for all practical purposes there was no difference. He noted that during the environmental review of a project, closer attention was normally paid to an endangered species. He also explained that before a state or local project was initiated, the Department would have to be consulted as to whether or not the project would put the endangered species in jeopardy. Jim Lecky stated that the NMFS had opted not to list the winter-run king salmon and that decision was challenged in court. He pointed out that NMFS won the first round and that the federal court decision had been appealed to the Ninth Circuit Court of Appeals, with the hearing date scheduled for June 6, 1989. Mr. McCracken asked if there would be any negative impact on the Ten-Point Plan if the state listed the winter-run salmon as an endangered species. Mr. Lecky stated he was not certain, but that NMFS was still committed to fulfill the obligations of the Ten-Point Agreement since it was a four-year program. Deputy Director Jensen stated that the Bureau may not keep the Red Bluff Diversion Dam gates open during the winter months if the federal government listed the winter-run salmon as an endangered species.

Mr. Rawstron indicated that the Commission should know the difference between the State and Federal Endangered Species Acts concerning the take of salmon. He noted that, under the Federal Act there was some take allowed for a threatened species, but under the endangered species category, there was a question if some take would be allowed and if there would be an impact on sport and commercial fishing, if the federal government listed the winter-run salmon as an endangered species. Commissioner McCracken stated that everyone wanted to do what was best for the winter-run salmon. He stated that he was concerned that if the winter-run was listed as endangered, the federal government may do things politically that would hurt the fish biologically. Commissioner Taucher stated that there were too many "ifs" in this whole program and could not see the federal government doing something which would generate a lot of negative heat at them for that decision.

Commissioner Bryant then read the following statement:

"In taking action under the California Endangered Species Act to list any species as endangered or threatened, the Commission recognizes that there may, in some cases, be long-term potential economic impact to the people and State of California.

"The Commission, however, under the legal criteria for listing set forth in the Act, is not authorized to give consideration to potential economic losses, present or future in making true factual determination as to whether listing is warranted. Both the determination of such economic impacts and the resolution of such conflicts are left to other agencies under California law on a case-by-case basis.

"The Commission's position is that, in implementing the California Endangered Species Act, it is not legally permitted to consider economic impacts and no implication should be drawn from this action, that it has such authority or that it has exercised it."

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF THE SACRAMENTO RIVER PRESERVATION TRUST TO LIST THE SACRAMENTO RIVER WINTER-RUN KING SALMON (*Oncorhynchus tshawytscha*) AS ENDANGERED AND MAKES THE FOLLOWING FINDINGS:

- (1) The 1989 population of Sacramento River winter-run king salmon above the Red Bluff Diversion Dam (RBDD) dropped from recent years' population levels of about 2,000 adults to an estimated 550.
- (2) The hatchery acceleration and augmentation program conducted by the United States Fish and Wildlife Service (USFWS) is well under expectations. From a total of 42 winter-run king salmon taken at the Keswick and the Red Bluff Diversion trap, 24 succumbed to the rigors of handling and transporting, leaving only 18, as of this date, to produce eggs. The target was 100 fish which would have yielded 100,000 smolts. Of the total on hand, about 50 percent are expected to be females which should provide 25,000-35,000 eggs and 15,000-20,000 smolts for rearing.
- (3) One of the more important studies, the temperature tolerance test, funded by the National Marine Fisheries Service and conducted by the USFWS, will have to be reduced in scope to about 10 percent of planned activity or postponed until later years when eggs are more available.
- (4) The program of 4-year old, winter-run king salmon seen at RBDD is greater than normal, suggesting a failure of the usually dominant 3-year old class and further indicating a small run size.

- (5) The weekly helicopter flights indicate an unusually low level of winter-run spawning activity.
- (6) The design, funding and installation of a water temperature control device for Shasta Dam that would provide suitable downstream temperatures for salmon life history requirements, is uncertain due to engineering difficulties encountered by the Bureau of Reclamation.

PASSED UNANIMOUSLY.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY AUTHORIZES ITS STAFF TO PUBLISH NOTICE OF ITS INTENT TO AMEND SECTION 670.5, TITLE 14, CCR, TO LIST THE SACRAMENTO RIVER WINTER-RUN KING SALMON (Oncorhynchus tshawytscha) AS AN ENDANGERED SPECIES.

PASSED UNANIMOUSLY.

26. AMENDMENT OF SECTION 508, TITLE 14, CCR, RE: FEEDING OF MIGRATORY WATERFOWL.

The Executive Secretary reminded the Commission that on March 21, 1989, it telephonically authorized its staff to publish notice of its intent to amend Section 508, Title 14, CCR, regarding regulations governing waterfowl feeding clubs. He pointed out that the Commissioners had been provided with a copy of the pre-publication of notice and pre-adoption statements, as well as the text of the proposed regulations in strikeout-underline format. He noted that the proposed change to Section 508 would require a written habitat management plan for production of natural waterfowl foods to be approved by the Department before a license would be issued. Mr. Cribbs stated that clubs would be ineligible to obtain a feeding license if they failed to implement the previous year's management plan. He pointed out that the Department had requested that the Commission act on this proposed change at its May 16, 1989 meeting to afford sufficient time to have the regulations reviewed by the Office of Administrative Law, so that they could become effective on or about July 1, 1989. He noted that the Commissioners had also been provided with a letter from Mike Maier, Waterfowl Habitat Owners Alliance, which related to this item.

Eldridge Hunt stated that the U.S. Fish and Wildlife Service (USFWS) had not finalized its position on the feeding club issue and whether or not the program would continue. He stated that, under the previous Administration, there would be one year of grace before the program would be discontinued. He stated that the Department had heard rumors that the new director of the USFWS may modify that position, but he had been unavailable for any meetings with the Department. He noted that Director Bontadelli wanted the regulations to be adopted to provide the state with

the strongest position, if the USFWS ever took them to court on this issue. Mr. Hunt reminded the Commission that at the last meeting it had requested that Deputy Attorney General Denis Smaage review the original court case which the Department and the Commission had filed against the USFWS many years ago. He noted that, in his review, Deputy Attorney General Smaage had uncovered a recent court case in the south which could have a bearing on the state's position.

Mike Maier noted that there was a misconception that waterfowl feeding clubs did not participate in the enhancement of natural feed. He pointed out that some clubs had tried to grow natural feed and that money was no object, but because of the soil conditions they were unable to provide any natural feed for waterfowl. He suggested that the regulations allow those feeding clubs be provided an exemption if they could not grow the natural habitat. The Executive Secretary pointed out that the regulations would require that management plans be developed and that those management plans could explain the steps taken for the enhancement of natural habitat and approval of those plans would be at the discretion of the Department. Deputy Attorney General Peter Van der Naillen agreed with Mr. Cribbs. He noted that the management plans would be reviewed on a case-by-case basis by the Department and that the only problem which could develop, was if the club's program did not relate to the management plan.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION PURSUANT TO THE AUTHORITY VESTED BY SECTION 3806 OF THE FISH AND GAME CODE, TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SAID SECTION OF SAID CODE, HEREBY AMENDS SECTION 508, TITLE 14, CCR, REGARDING THE FEEDING OF MIGRATORY WATERFOWL AS FOLLOWS:

Section 508, Title 14, CCR, is amended to read:

508. Feeding of Migratory Waterfowl.

In order to aid in relieving crop depredations and to provide further protection to migratory waterfowl under the provisions of Section 7 of the Migratory Bird Treaty Act, any person or group of persons, individually or collectively, may apply to the Department of Fish and Game for a special license to feed waterfowl upon land or water owned or operated by him or them in accordance with the following rules and regulations.

Licenses permitting the feeding of migratory waterfowl shall be issued only for feeding areas situated in the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

Nothing in these regulations shall be construed as a license to violate the federal migratory bird hunting regulations pertaining to the placement of feed. It is further provided that nothing in these regulations shall be construed as a license to develop or maintain any public nuisance that may result from the creation of a breeding place for mosquitoes.

(a) Fee. Three hundred dollars (\$300) annually.

(b) Application Requirements.

Upon compliance with the following conditions a feeding license will be issued:

(1) The application shall show the name and address of the applicant or applicants and whether applicant owns or leases the land, and a description of the property with reference to sections, range, and township, and shall be submitted in quadruplicate. If property is leased, owner's name and address must be shown.

The application shall be signed by the applicant. If the applicant is a corporation the application shall be signed by any one or more duly authorized officers of the corporation. If the applicant is a partnership, the application shall be signed in behalf of the partnership by any one or more of the general partners. If the applicant is a natural person doing business under a fictitious name, the application shall be signed by such natural person accompanied by a statement of the fictitious name under which such person is doing business.

Appearance of Representative of Applicant. Whenever it appears to the commission on information furnished by the department, that a licensee has not satisfactorily complied with the terms and conditions of the license, no license shall be issued to such person for the following year unless such person or an authorized representative appears before the commission and presents evidence which, in the opinion of the commission, constitutes a justifiable excuse for failure to satisfy the conditions of the license during the preceding license year. Unless the commission is thus satisfied, no license shall be issued to the applicant of the period covered by the application.

(2) Four sketch maps attached to the application shall show the exterior boundary lines, and location of property with respect to roads, towns, or other landmarks, with route of access, or headquarters, on area, the approximate location of proposed feeding zone or zones, and the location of each shooting blind or shooting stand in relation to the feeding zone or zones. The sketch maps shall also clearly show all ponds or other areas which will be flooded at any time during the effective period of the license applied for. If, in the opinion of the department, shooting blinds or stands, either on the applicant's

property or the immediately adjacent property, are so placed in relation to the feeding zone or zones that migratory waterfowl may pass within shooting range of the hunter in order to reach the feeding zone, the department may refuse to issue the applicant a migratory waterfowl feeding license, or if issued, to cancel a license where the intent of this clause is not being observed.

(3) The application shall include, A a habitat management plan, indicating measures to be taken to produce natural food on the club, and a feeding plan, indicating the amount of feed to be placed in the feeding zone and the time of feeding. The habitat management and feeding plans must be approved by the department prior to the issuance of a license.

(4) Application for the license must be received by the department regional office of the region in which the club is located not later than July 15 each year.

(5) For the purpose of this section, "area" is defined as the property controlled by applicant or applicants upon which the feeding of migratory waterfowl is contemplated and for which application is made.

(6) For the purpose of this section, "feeding zone" is defined as the immediate area in which feed for migratory waterfowl is placed.

(7) For the purpose of this section, "No Shooting Zone" is defined as the 200-yard perimeter from the outer edge of the feeding zone.

(c) Requirements of Licensees.

(1) No licensee shall establish a feeding zone within 200 yards of any building. No licensee shall establish a feeding zone with 200 yards of the exterior boundary of the property under his control unless he has obtained notarized written permission to do so from the adjoining landowner, such notarized written permission shall be submitted with the application, nor shall such licensee establish a feeding zone within 200 yards of any public right-of-way or navigable waterway open to public use.

Feeding zones and "No Shooting Zones" shall be posted no later than September 15 with signs of a size not less than 12 by 18 inches with printing no smaller than 12-line (two inch high) gothic type. Feeding zone signs shall state "Waterfowl Feeding Zone-Shooting Within 200 Yards Prohibited." Feeding zone signs must be posted at intervals surrounding the feeding zone so as to be visible from any direction. The no shooting zone signs shall be placed 200 yards from the outside boundary of the feeding zone, to be spaced not more than 50 yards apart, stating "Waterfowl Feeding Area No Shooting Zone--No Shooting Beyond This Sign." Signs shall be white with black printing and posted in such a manner as to be visible above any vegetation in the feeding zone and no shooting zone.

Subsequent to issuance of a feeding license, there shall be no change in location of feeding zone without approval of the department.

(2) The licensee shall contain the water in a feeding zone in such a manner as to prevent the escape of grain or other feed. Construction of retaining dikes or walls shall be earth, wood or other suitable material. No licensee shall permit or allow grain or other feed to escape from a feeding zone. In the event any feed escapes from the feeding zone, no person shall hunt on the licensed area until ten days after all feed outside the feeding zone has been removed.

(3) The licensee, or the licensee's agent in the absence of the licensee, shall inform all members and guests of the locations of feeding zones and no shooting zones, and of all rules and regulations governing hunting on the licensed area.

(4) Feeding shall commence on or before September 15 of each year and shall continue through March 1 including the interim between split seasons, if any. The minimum daily amount of feed shall be no less than 100 pounds available for consumption by waterfowl on each day for the period covered by the license. Feed shall consist of high-quality grains or other agricultural products suitable for use as waterfowl feed. The department will retain the right to determine the suitability and quality of feed within the feed zone. Prior to the opening of the waterfowl seasons feeding may be done anywhere on the license area, provided that all food put out in places other than the designated feeding zones shall have been consumed or removed at least ten days prior to the opening of each waterfowl season. Thereafter no feed shall be placed anywhere except in the designated feeding zones. On any day during which hunting takes place upon the licensed area feed shall not be placed in the feeding zones until after the completion of all such hunting activity. As used in these regulations, feeding shall not be construed as including salt blocks, properly shucked corn, standing crops (including aquatic), flooded standing crops, flooded harvested croplands, or grains found scattered solely as a result of normal agricultural practices.

(5) No person shall shoot or hunt within a "feeding zone" or a "no shooting zone" at any time or for any purpose, nor shall any person on foot or by any other means of transportation or conveyance enter or pass through such a zone while any other person is hunting on the licensed area; except that these restrictions shall not prohibit a hunter from making a reasonable effort to retrieve dead or injured waterfowl which have fallen into a "no shooting zone" nor the use of vehicles engaged in normal agricultural operations. In addition to any other action by the department, violation of this section by the licensee, his agent, club members, or guests shall be grounds for automatic revocation of the feeding license by the department.

(6) No person shall hunt from any blind within 250 yards of the designated feeding zone. For the purpose of this section a "blind" is any place of full or partial concealment, artificial construction or natural vegetation. Any blind located within 250 yards of the designated feeding zone shall be rendered incapable of use. Natural vegetation within 250 yards of the feeding zone is considered an operable blind only when used for that purpose.

(7) Within thirty days after the close of the feeding season, the licensee shall submit to the department a report giving the approximate amount and type of feed distributed. These reports shall be submitted on forms furnished by the department.

(d) Inspection and Revocation.

(1) Licensed areas shall be open to inspection at all times by an authorized representative of the Department of Fish and Game and/or the U.S. Fish and Wildlife Service.

(2) Prior to issuance of a feeding license, department representatives will make an inspection of the feeding zone and no shooting zone, to determine if the posting requirements have been complied with to the department's satisfaction. If at the time of the inspection the posting requirements have not been met to the satisfaction of the department's representative, the feeding license may be denied upon recommendation of the inspecting officer. Applicants shall be notified in writing of the results of the inspection.

(3) Until reinstated by the commission, the department may suspend any license for failure to comply with these regulations or the terms of the license.