

State of California
FISH AND GAME COMMISSION

Minutes, Meeting of August 29-30, 1996

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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of August 29-30, 1996

Pursuant to the call of the President, the Commission met in the City Council Chambers, 1900 Lake Tahoe Boulevard, South Lake Tahoe, California, on August 29, 1996. The meeting was called to order at 10:00 a.m. by President McGeoghegan.

Persons present:

FISH AND GAME COMMISSION

Douglas B. McGeoghegan	President
Richard T. Thieriot	Vice President
Frank D. Boren	Member
Margie J. Phares	Member

COMMISSION STAFF

Robert R. Treanor	Executive Director
Ronald J. Pelzman	Assistant Executive Director
Sandy J. Daniel	Executive Secretary

OFFICE OF THE ATTORNEY GENERAL

Randall Christison	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Jacqueline E. Schafer	Director
Al Petrovich	Deputy Director, Policy
Tim Farley	Chief, Inland Fisheries Division (IFD)
DeWayne Johnston	Chief, Wildlife Protection Div. (WPD)
Alan Baracco	Assistant Chief, Inland Fisheries Division (IFD)
Ken Zanzi	Assistant Chief, Wildlife Management Division (WMD)
Rob Allen	Fish and Game Patrol Warden

The following persons were also present and heard:

Dick Daniel	CalFED Bay-Delta Program
Alan Berger	Animal Protection Institute
George Krejci	Salmon Fisherman
Joe Bonanno	Salmon Fisherman
Mrs. Joe Bonanno	Salmon Fishermen's Wife
Andrew J. CaPestro	Attorney
Dan Owyang	Herring Fisherman
Philip E. Rosellini	Attorney
August Felando	Attorney
Kirk Michael Portocarrero	Licensed Guide
Mark Pawlicki	Simpson Timber Company

President McGeoghegan introduced members of the Commission, its staff, Directorate and Randall Christison of the Attorney General's Office.

1. PRESENTATION ON CALFED'S BAY-DELTA PROGRAM, ITS ALTERNATIVES AND ITS ECOSYSTEM RESTORATION COMMON PROGRAM BY DICK DANIEL, ASSISTANT DIRECTOR FOR HABITAT RESTORATION.

Summary of Issue

Mr. Dick Daniel, Assistant Director for Habitat Restoration with the CALFED's Bay-Delta Program, will discuss CALFED's Bay-Delta Program, its alternatives and the Ecosystem Restoration Common Program. The overview will last approximately 15-20 minutes, with time available for questions and answers.

Action

Executive Director Treanor introduced the item and reported that the Commission was highly interested in the Bay-Delta area and water transport system and felt it would be beneficial to have a briefing by the CALFED Program.

Dick Daniel provided handouts to the Commission and Directorate and gave a slide presentation on the CALFED's Bay-Delta Program. He reported when the Accord was signed in December 1994, three elements were established: 1) a water quality plan for the Delta with at least a three year shelf life; 2) a newly created organization called CALFED Operational group representing professionals from all agencies involved who meet monthly and monitor the system; and 3) the CALFED Bay-Delta Program which is charged with developing a long-term water transport and environmental protection solution for the Delta.

Mr. Daniel reported that Phase I was the identification of problems and solicitation of objectives which has now been narrowed to three alternatives, Phase II is the preparation of the Environmental Impact/Statement Document which expects to be ready for signature and certification by late summer 1998, and Phase III the implementation of the various actions called for in the preferred alternative. Mr. Daniel described the three alternatives: 1) relying on existing facilities, canals and pumping plant with some additional storage north of the Delta; 2) improved "through" Delta water transport system which is an enlargement of channels in the Delta and considerable additional storage (2 or 3 million acre-feet) both north and south of the Delta on the San Joaquin system and off the aqueduct south of the Delta; and 3) a dual system where existing facilities would be combined through the Delta

and isolated facilities (Peripheral Canal) that would range in size from 5,000 cfs, roughly 1/3 of the amount of water conveyed from the Delta now, up to a full isolated facility which would be 15,000 cfs.

There was discussion between the Commissioners and Mr. Daniel on many issues including the export of water and the decline in fisheries, levees in the Delta, water usage, desalination, reverse osmosis, and the status of salinity clean up at Kesterson National Wildlife Area.

Mr. Daniel reported they are evaluating four primary resource areas: species dependent on the system and habitat, ecosystem recovery, water supply and water quality.

Mr. Daniel closed by emphasizing that when completed this would be the largest, most complex ecosystem restoration program on the planet.

President McGeoghegan suggested that periodic updates would be beneficial for the Commission and Mr. Daniel agreed to keep the Commission informed with periodic briefings and indicated he would place all Commissioners on CALFED's mailing lists for meetings, etc.

2. ESTABLISHMENT OF CRITERIA FOR CONSIDERING APPEALS ON PERMANENT REVOCATIONS OF A COMMERCIAL LICENSE/PERMIT.

Summary of Issue

The Commission, at its August 1, 1996, meeting in Ontario, indicated that the issue of appeals of permanent revocations of commercial licenses and/or permits necessitated the establishment of criteria which may allow individuals an opportunity to appeal their revocations to the Commission. At that time, the Commission instructed its legal counsel, Randall Christison, to develop some draft criteria outlining the procedure for such appeals. Mr. Christison will be prepared to discuss the draft criteria on August 29 in South Lake Tahoe.

Action

Executive Director Treanor explained the rationale for the proposed criteria and introduced Mr. Christison.

Deputy Attorney General Christison provided information regarding the basis for establishing qualifying criteria which may allow individuals an opportunity to appeal their revocations. He recommended that an appeal only be permitted when there is a strong reason to believe that the request falls within one of the three following criteria: 1) extrinsic fraud - where the person is not able to understand the nature of the proceeding (Intrinsic fraud where there is an allocation that the testimony was purged or invalid in any way. Intrinsic fraud is traditionally not an acceptable

basis for challenging a prior criminal proceeding.); 2) a mistake-deprives party of a fair hearing such as a wrong code section cited; or 3) newly discovered evidence-information that could not have been found at the time of hearing and may cause a different result.

Mr. Christison reported that procedurally only items that are substantial should be put on the agenda. He recommended establishing a process whereby the Commission's legal counsel screens requests to determine if substantial evidence exists to warrant a hearing. He explained that substantial evidence would be established when legal counsel makes a finding that one of the three qualifying criteria has been satisfied. He recommended that once a finding has been made the request would be placed on a meeting agenda. He further suggested incorporating Section 748, Title 14, California Code of Regulations Re: Procedure for License or Permit Revocation, into the criteria. Mr. Christison wasn't sure whether the criteria should be adopted as a policy or regulation and requested guidance from the Commission on whether he should investigate the proposal for reinstatement based upon rehabilitation. Mr. Christison indicated that he would provide written criteria at the next meeting.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT
THE FISH AND GAME COMMISSION HEREBY ANNOUNCES ITS INTENT
TO ADOPT CRITERIA TO ESTABLISH PROCEDURES FOR APPEALS OF
PERMANENT REVOCATIONS OF COMMERCIAL LICENSES/PERMITS.

PASSED UNANIMOUSLY.

3. PUBLIC FORUM.

Summary of Issue

This item is scheduled to afford any member of the public the opportunity to address and/or ask questions of the Commission relating to the implementation of its policy or to any matter within the jurisdiction of the Commission. That issue need not be related to any item on the current agenda. Not more than five minutes per individual should be allocated to receive this public input. The Commission has the option of requesting additional study or response by the Department, or it may direct its staff to schedule an agenda item to address the issue at a future meeting.

Action

Executive Director Treanor introduced the item.

Allen Berger reminded the Commission that he was reporting back pursuant to its direction to meet with the Department relative to a bear incident last year and the associated complaints about the Department's bear policy. He reported that the Department had cooperated in a series of meetings dealing with the issue and, in his opinion, now had a policy more progressive than similar policies in other states. He then reported that his group was in the process of negotiating a joint venture relationship to rehabilitate all orphaned bear cubs and that he would like to see the Department try to minimize wildlife/human conflict and develop programs for public education and community involvement.

Executive Director Treanor asked if there was anyone else in the audience who wished to speak to the item, and there was no response.

4. REQUEST OF RAMIRO SOARES, SAN PEDRO, FOR REINSTATEMENT OF AN EXPIRED GENERAL GILL AND TRAMMEL NET PERMIT AND DRIFT GILL, NET SHARK AND SWORDFISH PERMIT.

Summary of Issue

Mr. Ramiro Soares of San Pedro, requests reinstatement of an expired general gill and trammel net permit and drift gill net shark and swordfish permit. In a letter received in the Commission office on July 5, 1996, Mr. Soares provides the following information:

"My name is Ramiro Soares. In early March of 1996, I had a severe injury to my lower spinal cord while off loading my Gill Net from my truck. Due to this injury I was incapacitated physically as well as mentally and was unable to travel or return to my place of residence for three months.

"I would ask you please to renew my 1996-1997 General Gill Net Permit and my 1996-1997 Swordfish and Shark Drift Permits. Thank you."

Department Recommendation

"Fish and Game Code Section 8568 (FGC §8568) requires drift gill net permit holders to have held a valid permit during the preceding season, and to have landed at least 2,500 pounds of swordfish or 1,000 pounds of shark, or land shark or swordfish for which the permittee was paid at least one thousand dollars (\$1,000), in one of the two preceding

permit years to maintain their permits. The drift gill net permit renewal deadline is April 30 (FGC §8562) with a late renewal fee of \$50 payable if the permit is renewed in May (FGC §7852.2). A general gill net permit is required in order to purchase a drift gill net permit (FGC §8568), but no renewal deadline or minimum landings are stipulated.

"Mr. Soares's most recent drift gill net permit and general gill net permit (L-26184) expired March 31, 1996. A review of his landing records indicates he made the minimum landing requirements during the 1995/96 permit year and is therefore eligible to renew his permit. However, he states that he did not meet the renewal deadline due to a back injury. He did not provide medical documentation to substantiate his claim but we have sent him a note requesting he bring it to the Commission meeting.

"Based on the above, the Department recommends conditional approval for renewing his drift gill net permit providing he submits adequate medical justification to the Department verifying he was unable to renew his permit by May 30. If his doctor substantiates his inability to renew by May 30, the Department recommends he not be required to pay the \$50 late fee. However, if it appears he could have renewed his permit prior to May 30, the Department recommends he be assessed the \$50 late fee. He is eligible to renew his general gill net permit until March 31, 1997 without having to appeal to the Commission."

Action

Executive Director Treanor introduced the item, noted that Ramiro Soares was not present and informed the Commission that the Department recommended conditional approval of Mr. Soares' request for reinstatement of his expired general gill and trammel net permit and drift gill net shark and swordfish permit.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF RAMIRO SOARES, SAN PEDRO, FOR REINSTATEMENT OF AN EXPIRED GENERAL GILL AND TRAMMEL NET PERMIT AND DRIFT GILL NET SHARK AND SWORDFISH PERMIT, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

5. REQUEST OF GEORGE KREJCI, SAN JOSE, FOR REINSTATEMENT OF AN EXPIRED COMMERCIAL SALMON VESSEL PERMIT.

Summary of Issue

Mr. George Krejci of San Jose, requests reinstatement of his expired commercial salmon vessel permit. In a letter received in the Commission office on June 13, 1996, Mr. Krejci provides the following information:

"In accordance with the above subject, I wish to appeal this action of Section 8235 of the Fish and Game Code.

"My reasons for not complying to and not reviewing this document by April 30, 1966 [sic] was due to my medical problems, namely, Macular Degeneration, an age related vision loss. Attempting to fish with this problem is impossible.

"My current plans are to list the boat for sale. Later I will attempt to sell it complete with my ID number 29774.

"Please advise what documents and/or monetary charges will be required to complete this transaction."

The Commissioners were provided with copies of a recent letter from Mr. Krejci dated July 16, 1996, as well as letters from his physicians, Dr. Shoptaw and Dr. Brodney.

Department Recommendation

"Mr. George Krejci, San Jose, is requesting the commercial salmon vessel permit be reinstated for the F/V Riba I (FG 29774).

"Mr. Krejci states in his letter (see above), 'My reasons for not complying to and not reviewing this (renewal) document by April 30 (1996) was due to my medical problems...an age-related vision loss.' The medical substantiation comes from Dr. Edwin E. Boldrey for the vision problems and Dr. George L. Shoptaw for the hearing problems.

"According to Fish and Game Code Section 8235 (f), '...the department shall not renew a permit for which the application for renewal is not received, or, if mailed, is received or postmarked after expiration of the permit.'

"The exceptions to this are found in Section 8246.7 (a)(1): 'The commission shall...order the permit renewed...if...the failure to renew a permit...was due to death, physical illness, mental incapacity, or being called to active military duty, and the person was not reasonably able to have an agent renew the permit.'

"Based on the information submitted by Mr. Krejci, the Department cannot support the reinstatement of this commercial salmon vessel permit unless Mr. Krejci can show current medical documentation regarding his vision loss and why there was no agent to renew the permit on his behalf."

Action

Executive Director Treanor introduced the item, noted that George Krejci was present and informed the Commission that the Department recommended denial of Mr. Krejci's reinstatement of his commercial salmon vessel permit unless he could show current medical documentation regarding his vision loss and explain why an agent did not renew the permit on his behalf.

Mr. Krejci pled his case and reported he could only drive in the daytime, his wife could not drive at all, and stated he was just trying to get his permit renewed so he could sell his boat and stop fishing because his eyesight was too bad.

Deputy Director Petrovich reported that, in the Department's opinion, Mr. Krejci did not meet the statutorily prescribed criteria for reinstatement.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF
GEORGE KREJCI, SAN JOSE, FOR REINSTATEMENT OF HIS EXPIRED
COMMERCIAL SALMON VESSEL PERMIT, SUBJECT TO THE TERMS AND
CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY
THE COMMISSION.

PASSED UNANIMOUSLY.

6. REQUEST OF JOE BONANNO, MONTEREY, TO APPEAL DEPARTMENT DENIAL OF TRANSFER OF COMMERCIAL SALMON VESSEL PERMIT FROM F/V VICTORY TO F/V TOMMY JO II.

Summary of Issue

Mr. Joe Bonanno, Monterey, requests an appeal of the Department's denial to transfer the commercial salmon vessel permit from the F/V Victory to F/V Tommy Jo II. In a letter dated July 31, 1996, Mr. Bonanno provides the following information:

"I am in receipt of a letter from TR Pagel dated June 25, 1996, (Commissioners were provided with copies) wherein she states that my request to transfer the commercial salmon vessel permit from the F/V Victory (F&G 08626), to the F/V Tommy Jo II (F&G 28585) has been denied from the Review Board.

"I wish to appeal this decision, as I feel that it needs to be clarified further as to why this transfer is being asked for. Please let me know when your next meeting is, as I wish to appear before the Commission to pursue this transfer request further. I feel that if given a chance to speak before the Commission they will realize that this transfer is a forced necessity, as I lost my fishing vessel in April of this year.

"I will await your prompt reply as to when I may appear before the Commission."

Department Recommendation

"Mr. Joe Bonanno, Monterey, is requesting a commercial salmon vessel permit be transferred from the F/V Victory, a 39-foot vessel, to the F/V Tommy Jo II, a 45-foot vessel.

"Mr. Bonanno states in his letter (see above), 'this transfer is a forced necessity, as I lost my fishing vessel (F/V Victory) in April of this year'.

"According to Fish and Game Code Section 8246.7 (a)(4): 'The Commission shall...order the approval of a permit transfer only if...the denial of the permit transfer was arbitrary or capricious'.

"The Commercial Salmon Review Board (Board) compared the characteristics of both vessels and found the F/V Tommy Jo II to be longer and wider and generally to have better salmon-catching ability than the F/V Victory. Even with the unfortunate sinking of the F/V Victory, the Board has to consider both vessels and whether the permit transfer would increase the fishing potential.

"Additionally, statistics from the Pacific Fishery Management Council show the average salmon catch by vessel lengths indicate that vessels in the 41-45-foot range catch more salmon than vessels in the 35-40-foot range.

"Given the larger size and capability of the F/V Tommy Jo II, the Department recommends the Commission deny this transfer. Mr. Bonanno may submit to the Board another transfer application with a vessel that more closely matches the F/V Victory."

Action

Executive Director Treanor introduced the item, noted that Joe Bonanno was present and informed the Commission that the Department recommended denial of Mr. Bonanno's request to transfer his commercial salmon vessel permit.

Mrs. Bonanno presented her husband's request for reinstatement. After considerable discussion, no action was taken by the Commission. President McGeoghegan recommended that this matter regarding the capacity of the boat go back to the Salmon Review Board for reconsideration.

The Commission adjourned for lunch at 12:30 p.m. and then reconvened at 1:30 p.m.

7. REQUESTS OF ROBERT WALLEN, OJAI, AND ERIC F. WILCOX, REDWAY, FOR REINSTATEMENT OF EXPIRED COMMERCIAL SEA URCHIN DIVING PERMITS.

Summary of Issue

Mr. Robert Wallen of Ojai and Mr. Eric F. Wilcox of Redway, request reinstatement of expired commercial sea urchin diving permits.

A. Mr. Robert Wallen, Ojai

In a letter received in the Commission office on August 5, 1996, Mr. Wallen provides the following information:

"It has become necessary for me to place this appeal with your Commission.

"I have been denied the re-issuance of the sea urchin permit that I have held for 10 years. The basis for that denial, by the clerk of Long Beach, is that by their official count I have 19 fish tickets, ONE FISH TICKET SHORT of the requirement of 20. Under the strictest of interpretations that is a fact I cannot dispute.

"What I hope to do is offer an explanation for that error. And hope that explanation falls within the scope of the Commissions discretion to grant, with reasonable cause, the permit under question.

"I am acutely aware of the 20 landing rule and its intent. I was an active participant at those early meetings throughout the State that formed most of the present sea urchin rules.

"My present situation was caused by my own gross oversight. That oversight was simply (as with a simple mind) picking up the wrong piece of paper and placing that wrong piece of paper in the wrong file folder. Once in that file folder that one piece of paper was incorrectly counted, time and time again, as one of the required number of those 20 landings.

"It took an extreme effort for me to reach what I believed to be the required landings. Believe me, I would not have knowingly, after almost 10 years of diving, stopped just ONE TRIP short of such an important requirement.

"As proof of that I would like you to consider that the last three fish tickets, dated 2-23, 2-27, and 2-28-95 are for more than 600 pounds each. Had I been aware that I needed ONE more fish ticket it would have been very easy for me to split the load, selling 300 pounds each to different buyers and getting more than the required 20 fish tickets. Further that instead of stopping at the end of Feb. I had almost 30 days to get that ONE TICKET, if I had known that I still needed it.

"While it may not be a valid point for you to consider, I would like to also point out that my total poundage for that year exceeded the amount required under the minimum fish ticket requirement by over 2000 pounds.

"To recap; This issue is nothing more than a filing error, the incorrect placement of one piece of paper in a file folder. Failing to timely detect, and correct, that innocent error was a big mistake on my part but it was an honest and human error and does not violate the intent or purpose of the 20 landing rule.

"I can only hope that with these points to consider your Commission can bring such a minor error into its proper perspective and return my license to me."

The Commissioners were provided with copies of a letter dated July 31, 1996, from the Department of Fish and Game's Long Beach office and copies of fish landing receipts (fish tickets).

Department Recommendation

"Pursuant to Section 120.7, Title 14 (California Code of Regulations), commercial sea urchin diving permittees are required to meet the minimum landing requirements of 20 landings of 300 pounds each once every two years, and to renew their permits annually no later than June 30. Section 7852.2 of the Fish and Game Code allows late renewal of any permit (up to a maximum of 30 days) upon payment of a \$50 late fee.

"Mr. Wallen's most recent sea urchin diving permit (L-51226) expired March 31, 1996. He mailed his application for renewal by June 30 but was advised by the Department that he was not eligible to renew because he failed to make the required landings. He searched his records and discovered that he had misfiled a landing receipt and was short one landing. A review of Department records verified that

he made 19 landings in the 1994/95 permit year, and only 2 landings in the 1995/96 permit year. If he had made a full 20 landings during 1994/95, he would have been eligible to obtain a 1996/97 permit.

"Because he was only one landing short, had adequate time to make the final landing had he realized his error, has not requested a landing waiver in the past, and has no citation record, the Department recommends approval of waiver of landings for the 1994/95 permit year, thereby authorizing him to renew his commercial sea urchin diving permit. However, he will need to meet the minimum requirements during this permit year (1996/97) to be eligible to obtain a 1997/98 commercial sea urchin diving permit. He should not be required to pay a late fee for the 1996/97 permit since he submitted his application to the Department prior to June 30. He should, however, be required to renew his permit within thirty days of notification of approval by the Commission."

Action

Executive Director Treanor introduced the item, noted that Robert Wallen had been notified that he need not be present and informed the Commission that the Department recommended approval of Mr. Wallen's waiver of the landing requirements for reinstatement of an expired commercial sea urchin diving permit.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF ROBERT WALLEN, OJAI, FOR A WAIVER OF THE LANDING REQUIREMENTS FOR COMMERCIAL SEA URCHIN PERMITS AND FOR REINSTATEMENT OF AN EXPIRED COMMERCIAL SEA URCHIN DIVING PERMIT, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

B. Mr. Eric F. Wilcox, Redway

In a letter dated July 23, 1996, Mr. Wilcox provides the following information:

"My name is Eric Wilcox. I am an urchin diver. My license number is L 08650. I have been diving since August of 1989 when I won my license through the Apprenticeship Lottery. My last day of diving was January 3 of 1995. At this time I decided it would be best to check into a recovery program. I checked into Singing Trees Recovery Center in Garberville, California. At the request of counselors, I remained there for a year and moved into the town of Redway on February of 1996.

"In trying to renew my license in June of 1996, I have come to realize that I only have 18 fish tickets of 300 pounds or more for the 1994-1995 season. This information was made available to me by Joanne Eres of the Long Beach Department of Fish and Game.

"The fish tickets are currently being sent to me via the mail. I can supply these in a short time, however I wanted to inform you of the situation before the end of the renewal period. Also, if needed, I can supply a letter for character references attesting to the fact of my sincerity."

The Commissioners were provided with copies of fish landing receipts (fish tickets) and a letter dated July 30, 1996, from the Singing Tree Recovery Center.

Department Recommendation

"Pursuant to Section 120.7, Title 14 (California Code of Regulations), commercial sea urchin diving permittees are required to meet the minimum landing requirements of 20 landings of 300 pounds each once every two years, and to renew their permits annually no later than June 30. Section 7852.2 of the Fish and Game Code allows late renewal of any permit (up to a maximum of 30 days) upon payment of a \$50 late fee.

"Mr. Wilcox's most recent sea urchin diving permit (L-08650) expired March 31, 1996. He contacted the Department prior to June 30 to request copies of his landing receipts so he could apply for a 1996/97 sea urchin diving permit or appeal to the Fish and Game Commission for a landing waiver. Between May 3, 1994 and December 23, 1994, he made 18 qualifying landings, and shortly afterward was admitted to a rehabilitation center because of drug abuse. According to his program counselor, he was not permitted to dive during his 12 months in the recovery program. Department records indicate he has not requested a landing waiver in the past.

"Based on the above, the Department recommends approval of waiver of landings for the 1994/95 permit year, thereby authorizing him to renew his commercial sea urchin diving permit. However, he will need to meet the minimum requirements during this permit year (1996/97) to be eligible to obtain a 1997/98 commercial sea urchin diving permit. He should not be required to pay a late fee for the 1996/97 permit since he contacted the Department prior to June 30. He should, however, be required to renew his permit within thirty days of notification of approval by the Commission."

Action

Executive Director Treanor introduced the item, noted that Eric Wilcox had been notified that he need not be present and informed the Commission that the Department recommended approval of Mr. Wilcox's waiver of the landing requirements for reinstatement of an expired commercial sea urchin diving permit.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF ERIC F. WILCOX, REDWAY, FOR A WAIVER OF THE LANDING REQUIREMENTS FOR COMMERCIAL SEA URCHIN PERMITS AND FOR REINSTATEMENT OF AN EXPIRED COMMERCIAL SEA URCHIN DIVING PERMIT, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

8. REQUESTS OF DOMINIC GRILLO, MONTEREY, AND ED BARLOW AND DAN OWYANG, SAUSALITO, TO APPEAL DEPARTMENT DENIAL OF THEIR LATE APPLICATIONS FOR HERRING EGGS-ON-KELP PERMITS (SECTION 164, TITLE 14, CCR).
-

Summary of Issue

Messrs. Dominic Grillo, Monterey, and Ed Barlow and Dan Owyang, Sausalito, request an appeal of the Department's denial of their late applications for herring eggs-on-kelp permits. Mr. Grillo and the partnership of Barlow and Owyang failed to submit their renewal applications by the August 1 deadline. The Commission's authority to consider these appeals is pursuant to Section 164(1), Title 14, CCR. The Commission should be aware that Mr. Robert Glenovich has submitted an application for a herring eggs-on-kelp permit in case one became available. (The Commissioners were provided with copies.)

Department Recommendation

"According to Title 14, CCR, Section 164(g)(1) '... each applicant for a herring eggs on kelp permit shall completely fill out and submit the required Department application form...applications shall include a performance deposit as specified in subsection (h), and shall be delivered to the Department's Menlo Park Office... or postmarked no later than 5 p.m. on August 1 of each year.' Neither Mr. Grillo, Mr. Barlow, nor Mr. Owyang submitted their applications by the required date. Therefore, the Department declined to issue the subject permits.

"It is the responsibility of the permittee to ensure that their permit application is submitted to the Department pursuant to Title 14, CCR, Section 164(g)(1), and that they meet all of the permit conditions pursuant to Section 164(F)(1-2). The deadline date for submitting the

herring-eggs-on-kelp permit application has not changed since Section 164 was created prior to the 1989-90 season.

"The regulations clearly establish a deadline for submitting herring-eggs-on-kelp applications. Based on the regulations (Title 14, CCR, Section 164(f) and Section 164(g)), the Department has no choice but to recommend that Mr. Grillo, Mr. Barlow, and Mr. Owyang be denied permits for the 1996-97 herring-eggs-on-kelp season."

Action

Executive Director Treanor introduced the item and noted that the Commissioners were provided with handout material received today from Dominic Grillo's attorney.

Andrew CaPestro, attorney representing Mr. Grillo, explained the circumstances surrounding Mr. Grillo's failure to renew his application. He stated that Mr. Grillo appeared and paid the required renewal fees at the Department of Fish and Game's Menlo Park Office one day after the permit renewal deadline, but before the arrival of the U.S. Mail and August 2. Mr. CaPestro provided the Commission with copies of declarations and letters from Mr. Grillo's doctors.

Executive Director Treanor pointed out that two permittees had failed to renew their permits by the August 1 deadline and that there was another individual in the audience that had submitted a timely application and would like to obtain a permit. Mr. Treanor pointed out that only ten permits may be issued under Section 164, Title 14, California Code of Regulations.

Deputy Director Petrovich emphasized that the regulations of Section 164 are clear that applications are due no later than August 1 and that timely renewal is the responsibility of the permittee.

Mr. CaPestro noted that there are no provisions for dealing with late applications.

Dan Owyang, speaking on behalf of himself and his joint permit holder Ed Barlow who was not present, claimed that they did not receive a renewal application from the Department and thought the deadline was August 31 instead of August 1.

Philip E. Rosellini, attorney representing Robert Glenovich who was present, reported that Mr. Glenovich had submitted a timely application, with required fees, and requested that Mr. Glenovich be granted one of the herring eggs-on-kelp permits.

Commissioner Boren suggested that Mr. Grillo's attempt to renew his permit was timely because he appeared at the Menlo Park Office before a letter would have arrived postmarked on August 1.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF DOMINIC GRILLO, MONTEREY, FOR RENEWAL OF HIS HERRING EGGS-ON-KELP PERMIT, AS HIS APPLICATION IS DEEMED TIMELY.

PASSED UNANIMOUSLY.

AND

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF ED BARLOW AND DAN OWYANG, SAUSALITO, FOR RENEWAL OF THEIR HERRING EGGS-ON-KELP PERMIT, AS THEIR APPLICATION WAS NOT TIMELY.

PASSED UNANIMOUSLY.

AND

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION PURSUANT TO SECTION 164, TITLE 14, CCR, HEREBY APPROVES THE REQUEST OF ROBERT GLENOVICH, BELLINGHAM, WASHINGTON, FOR A HERRING EGGS-ON-KELP PERMIT VACATED BY MR. OWYANG AND MR. BARLOW.

PASSED UNANIMOUSLY.

9. CONSIDERATION OF SUSPENSION OF COMMERCIAL LOBSTER PERMIT OF CURTIS LEE HOUGH, OCEANSIDE.

Summary of Issue

The Department requests that the Commission suspend the Commercial Lobster Permit of Curtis Lee Hough, Oceanside, for a period of three months from October 2, 1996 through January 1, 1997, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. Hough notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on January 25, 1996, in the San Diego Municipal Court, Mr. Hough pled guilty to a violation of Section 8252 of the Fish and Game Code, take and possession of twenty (20) undersized lobsters. As background, on October 6, 1995, Warden Allen contacted Mr. Hough at the Oceanside Harbor as he was off loading his catch of lobsters. Warden Allen measured the lobsters and found Mr. Hough to be in possession of 20 undersized lobsters and he also did not possess a lobster logbook as required.

Mr. Hough was fined \$1030.00, sentenced to two (2) years' probation and the lobsters were seized by the Department of Fish and Game.

The Commission's authority to take this action is pursuant to Section 8256 of the Fish and Game Code.

The Commissioners were provided with copies of the Commission's letter dated July 10, 1996, to Mr. Curtis Lee Hough; the Department's request dated February 21, 1996; the citation; the arrest report; the court record and a letter from Mr. August Felando, Mr. Hough's attorney, who will appear for Mr. Hough on August 29.

Action

Executive Director Treanor summarized the item and noted that Curtis Lee Hough and his attorney, August Felando, were present. Mr. Treanor reported that a certified letter had been sent to Mr. Hough notifying him of possible action to be taken by the Commission. Mr. Treanor noted that the agenda analysis should correctly read that 10 undersized lobsters were taken instead of 20. He then reported that letters from Mr. Felando and a signed affidavit from Mr. Hough were provided to the Commissioners at the meeting.

Mr. Felando explained that Mr. Hough had hired an inexperienced deck hand and suggested that there was a discrepancy between Warden Allen's report and what actually happened. Mr. Felando requested that if the Commission decided to suspend Mr. Hough's lobster fishing privileges to not suspend them at the beginning of the season but rather at the end.

WPD Chief Johnston summarized the Commission's history in dealing with persons taking undersized lobsters and read the Department's proposed findings requesting a suspension of 90 days starting on the first day of lobster season.

Warden Allen provided a summary of the case.

Mr. Hough explained that he depends on the lobster fishery for his livelihood and pleaded with the Commission to not suspend his license in the early part of the season.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE COMMERCIAL LOBSTER PERMIT OF CURTIS LEE HOUGH, OCEANSIDE, FOR A PERIOD OF FORTY-FIVE (45) DAYS FROM OCTOBER 2, 1996, THROUGH DECEMBER 15, 1996, PURSUANT TO THE FOLLOWING FINDINGS:

- 1) Curtis Lee Hough pled guilty on January 25, 1996, in the San Diego Municipal Court of a violation of Section 8252 of the Fish and Game Code, take and possession of undersized spiny lobster.

- 2) The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to obey all commercial fishing regulations for spiny lobsters is of utmost importance in the proper management of the spiny lobster resource.
- 3) Section 8256, Fish and Game Code, allows the Commission to suspend a commercial lobster permit for up to one year for a violation of the terms or provisions of the laws relating to the taking spiny lobsters by the permittee, his agent, servant, employee or those acting under his direction and control.
- 4) Curtis Lee Hough's actions in pleading guilty to possessing ten (10) undersized lobsters do not warrant the suspension of his commercial lobster permit for the maximum period of time, but do warrant a ninety (90) day suspension.
- 5) The mitigating evidence Mr. Hough and his attorney provided to the Commission was sufficient to dissuade the Commission from suspending his commercial lobster permit for ninety (90) days, but the Commission did decide to suspend his permit for the first forty-five (45) days of the season. Mr. Hough must take responsibility for failing to obey all commercial fishing regulations for spiny lobsters because of the important public policy involved.

PASSED UNANIMOUSLY.

10. CONSIDERATION OF SUSPENSION OF COMMERCIAL PASSENGER FISHING BOAT PERMIT OF THOMAS S. BRINTON, GARDENA.

Summary of Issue

The Department requests that the Commission suspend the Commercial Passenger Fishing Boat Permit of Thomas S. Brinton, Gardena, for a period of two months from August 30, 1996 through October 29, 1996, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. Brinton notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on September 13, 1995, in the Long Beach Municipal Court, Mr. Brinton pled nolo contendere to a violation of Section 190(b) of Title 14, CCR, failure to complete fishing activity records. As background, on May 12, 1995, while investigating the illegal sale of sport caught fish from the F/V "Sharpshooter", Warden Ron Hoffman asked Mr. Brinton to show him his fishing activity log for the day. Mr. Brinton had not filled out the day's fishing activity log.

Mr. Brinton was fined \$2,100.00 and sentenced to three (3) years' probation.

The Commission's authority to take this action is pursuant to Section 8026(b) and 12002 of the Fish and Game Code.

The Commissioners were provided with copies of the Commission's letter dated July 10, 1996, to Mr. Thomas S. Brinton, Gardena; the Department's request dated March 28, 1996; the citation; the arrest report; and the court record.

Action

Executive Director Treanor introduced the item and reported that a certified letter had been sent to Thomas Brinton notifying him of possible action to be taken by the Commission. Mr. Treanor asked if Mr. Brinton was present, and there was no response.

WPD Chief Johnston reported that the Department was having a serious problem with log book violations and read the Department's proposed findings.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE COMMERCIAL PASSENGER FISHING BOAT PERMIT OF THOMAS S. BRINTON, GARDENA, FOR A PERIOD OF TWO MONTHS OR UNTIL OCTOBER 29, 1996, PURSUANT TO THE FOLLOWING FINDINGS:

- 1) Thomas S. Brinton pled nolo contendere on September 13, 1995, in the Long Beach Municipal Court, for a violation of Section 190(b), Title 14, CCR, failure to complete fishing activity records.
- 2) Section 12158.5 of the Fish and Game Code states:

"For the purpose of invoking any provision of this code, or any rule, regulation, or order made or adopted under this code, relating to the suspension, revocation, or forfeiture of any license or permit, a plea of nolo contendere or 'no contest' to, or forfeiture of bail from, a charge of a violation of any provision of this code, or any rule, regulation, or order made or adopted under this code, is a conviction of a violation thereof."

Therefore, it is the Commission's view that Mr. Brinton's nolo contendere plea to a violation of Section 190(b), Title 14, CCR, is a conviction

of the violation as charged.

- 3) The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to complete all fishing activity records and obey all fishing regulations is of utmost importance in the proper management of the marine resource.
- 4) Section 8026(b), of the Fish and Game Code, allows the Commission to revoke or suspend a commercial passenger fishing boat permit for up to one year for failure to keep and submit fishing activity records by the permittee.
- 5) Thomas S. Brinton's actions in failing to complete fishing activity records warrant the suspension of his commercial passenger fishing boat permit for two months.
- 6) Thomas S. Brinton did not appear at the Commission meeting on August 29, 1996, to present mitigating evidence sufficient to dissuade the Commission from suspending his commercial passenger fishing boat permit for two months or from August 30, 1996 through October 29, 1996. Mr. Brinton must take responsibility for failing to obey all regulations related to the operation of a commercial passenger fishing boat because of the important public policy involved.

PASSED UNANIMOUSLY.

11. CONSIDERATION OF SUSPENSION OF COMMERCIAL SEA URCHIN DIVING PERMIT OF SEAN ROGER MCGRATH, SANTA BARBARA.

Summary of Issue

The Department requests that the Commission suspend the commercial sea urchin diving permit of Sean Roger McGrath, Santa Barbara, for a period of one year from August 30, 1996 through August 29, 1997, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. McGrath notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on April 2, 1996, in the Ventura Municipal Court, Mr. McGrath pled nolo contendere to a violation of Section 120.7, (p)(1), Title 14, CCR, take and possession of more than 30 undersized red sea urchins. As background, on August 21, 1995, Mr. McGrath had 325 red sea urchins smaller than the minimum size limit of 3.25 inches in a total load of 454 pounds. Mr. McGrath was placed on three years' probation, fined \$1,350 and his sea urchins were forfeited to the Department of Fish and Game.

Mr. Sean Roger McGrath also has a prior violation for the same offense [Section 120(p)(1), Title 14, CCR]. He pled guilty on February 16, 1994, and was fined \$800.

The Commission's authority to take this action is pursuant to Section 120.7(k), Title 14, CCR.

The Commissioners were provided with copies of the Commission's letter dated July 29, 1996, to Mr. Sean Roger McGrath; the Department's request dated May 1, 1996; the citation; the arrest report; the court record; copies of Mr. McGrath's prior citation; and a letter dated August 26, 1996, from Mr. McGrath to the Commission.

Action

Executive Director Treanor introduced the item and reported that a certified letter was sent to Sean McGrath notifying him of possible action to be taken by the Commission. Mr. Treanor asked if Mr. McGrath was present and there was no response. He then reported that Mr. McGrath indicated he might have difficulty in attending today's meeting but would try to attend the meeting on the following day. The Commission decided to postpone any action until the next day of the meeting to allow Mr. McGrath an opportunity to appear.

Executive Director Treanor introduced the item on Friday, August 30, 1996, and Mr. McGrath was present.

Mr. McGrath pled his case and requested a reduction in the time of suspension because a full year suspension would be a serious financial hardship and would bankrupt him. Mr. McGrath stated that his undersized urchins were all within $\frac{1}{4}$ inch of the legal size. He explained that he realized that his eye sight was decreasing, but tried to compensate by wearing special contacts and even a prescription mask at one time.

WPD Chief Johnston pointed out this was Mr. McGrath's second violation for undersized sea urchins and the Department was requesting a one year suspension. Chief Johnston read the Department's suggested findings.

The Commissioners had considerable dialogue regarding how severe the penalty should be. Mr. McGeoghegan initially made a motion for a six month suspension, but decided to change after additional discussion between the Commissioners and Mr. Johnston.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE COMMERCIAL SEA URCHIN DIVING PERMIT OF SEAN ROGER MCGRATH, SANTA BARBARA, FOR A PERIOD OF ONE YEAR OR UNTIL AUGUST 29, 1997, PURSUANT TO THE FOLLOWING FINDINGS:

1) Sean Roger McGrath pled nolo contendere on April 2, 1996, in the Ventura Municipal Court for a violation of Section 120.7(p)(1), Title 14, CCR, possession of 325 undersized red sea urchins.

2) Section 12158.5 of the Fish and Game Code states:

"For the purpose of invoking any provision of this code, or any rule, regulation, or order made or adopted under this code, relating to the suspension, revocation, or forfeiture of any license or permit, a plea of nolo contendere or 'no contest' to, or forfeiture of bail from, a charge of a violation of any provision of this code, or any rule, regulation, or order made or adopted under this code, is a conviction of a violation thereof."

Therefore, it is the Commission's view that Mr. McGrath's nolo contendere plea to a violation of Section 120.7(p)(1), Title 14, CCR, is a conviction of the violation as charged.

3) The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to obey the size limit for red sea urchins is of utmost importance in the proper management of the red sea urchin resource.

4) Section 120.7(k), Title 14, CCR, allows the Commission to suspend a sea urchin permit for a violation of the terms or provisions of the laws or regulations relating to the taking of sea urchins by the permittee, permittee's agent, servant, employee or those acting under permittee's direction and control.

5) In making this determination, the Commission considered Mr. McGrath's prior guilty plea on February 16, 1994, in the Ventura Municipal Court for a violation of Section 120.7(p)(1), Title 14, CCR, possession of 174 undersized red sea urchins.

6) Sean Roger McGrath's actions in possessing 325 undersized red sea urchins warrants the suspension of his sea urchin diving permit for one year.

- 7) The mitigating evidence Mr. McGrath provided to the Commission at its August 30, 1996, meeting was insufficient to dissuade the Commission from suspending his commercial sea urchin diving permit for one year. Mr. McGrath must take responsibility for possession of 325 undersized red sea urchins because of the important public policy involved.

PASSED UNANIMOUSLY.

12. CONSIDERATION OF SUSPENSION OF GUIDE LICENSE PRIVILEGES OF KIRK MICHAEL PORTOCARRERO, REDDING.

Summary of Issue

The Department requests that the Commission suspend the guide license privileges of Kirk Michael Portocarrero, Redding, for a period of up to three years from the date of his last conviction, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. Portocarrero notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on April 30, 1996, in the Redding Municipal Court, Mr. Portocarrero pled nolo contendere to a violation of Section 502, Title 14, CCR, taking Canada Geese during a closed season. Mr. Portocarrero was placed on three years' probation, fined \$370 and 20 days of community service in lieu of jail.

The Commission's authority to take this action is pursuant to Section 2546 of the Fish and Game Code and Section 745(c), Title 14, CCR.

The Commissioners were provided with copies of the Commission's letter dated July 12, 1996, to Mr. Kirk Michael Portocarrero; the Department's request dated May 22, 1996; the complaint; the arrest report; and the court record.

Action

Executive Director Treanor introduced the item, noted that Kirk Portocarrero was present and informed the Commission that the Department recommended suspension of Mr. Portocarrero's guide license privileges for a period of up to three years from the date of his last conviction.

Mr. Portocarrero pled his case and reported he was not guiding when the violation occurred and requested suspension of his hunting license only and not his fishing or guide license.

The Commissioners had considerable dialogue regarding the severity of the violation.

Commissioner Boren commented that guides need to be held to at the highest standards relative to obeying and enforcing fish and wildlife laws since they are, in effect, the stewards of wildlife.

WPD Chief Johnston stated that in light of the circumstances that Mr. Portocarrero was sport hunting and not guiding, and based on previous similar cases, the Department recommended a six month suspension of his guide license privileges.

The Commissioners discussed ways in which Mr. Portocarrero could participate and demonstrate his dedication to the resources.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE GUIDE LICENSE PRIVILEGES OF KIRK MICHAEL PORTOCARRERO, REDDING, FOR A PERIOD OF SIX MONTHS OR UNTIL MARCH 1, 1997, PURSUANT TO THE FOLLOWING FINDINGS:

1) Kirk Michael Portocarrero pled nolo contendere on April 30, 1996, in the Redding Municipal Court, to a violation of Section 502, Title 14, CCR, taking Canada Geese in a closed season.

2) Section 12158.5 of the Fish and Game Code states:

"For the purpose of invoking any provision of this code, or any rule, regulation, or order made or adopted under this code, relating to the suspension, revocation, or forfeiture of any license or permit, a plea of nolo contendere or 'no contest' to, or forfeiture of bail from, a charge of a violation of any provision of this code, or any rule, regulation, or order made or adopted under this code, is a conviction of a violation thereof."

Therefore, it is the Commission's view that Mr. Portocarrero's nolo contendere plea to a violation of Section 552, Title 14, CCR, is a conviction of the violation as charged.

3) The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to

obey all hunting and fishing laws, especially by licensed guides, is of the utmost importance in the proper management of our wildlife resources.

- 4) Section 745(c), Title 14, CCR, allows the Commission to suspend Mr. Portocarrero's guide license privileges for up to three years from the date of the last conviction.
- 5) Kirk Michael Portocarrero's actions in the unlawful take of Canada Geese, as well as his initial denial of taking any geese when contacted by Warden Szody, warrant the suspension of his guide license privileges for a period of up to three (3) years.
- 6) The mitigating evidence Mr. Portocarrero provided to the Commission on August 29, 1996, was sufficient to dissuade the Commission from suspending his guide license privileges for a period of up to three years. The Commission hereby suspends Mr. Portocarrero's guide license privileges for six (6) months or from August 30, 1996 until March 1, 1997. As a licensed guide, he must take responsibility for failing to obey all hunting regulations because of the important public policy involved. In addition, the Commission requires Mr. Portocarrero to assist the Department in proofreading the waterfowl regulations for the 1996/97 season and to participate in a Department Town Hall meeting or a hunter safety class.

AYES: MCGEOGHEGAN, PHARES AND BOREN
NAYS: THIERIOT

MOTION PASSED.

13. WORKSHOP ON PROPOSED GUIDELINES AND CRITERIA FOR CREDIT ALLOCATION AND HIRING RE: SALMON AND STEELHEAD TROUT HABITAT RESTORATION AND IMPROVEMENT PROJECTS PURSUANT TO AB 2925 (SHER; CHAPTER 1296, 1994).

Summary of Issue

Legislation was passed in 1994, which became law without the Governor's signature, that provides for a tax credit for salmon and steelhead habitat restoration and improvement projects. Among other things, the law requires the Department to establish criteria for determining the amount of credit to which a taxpayer is entitled, accept applications for credit allocation and certification, issue certifications regarding credit allocation amounts, and provide an annual listing to the Franchise Tax Board of those taxpayers who were issued a certification and of the amount of any credit authorized. The Department has held several meetings with interested parties to help develop the guidelines

and criteria for the credit allocations. The law requires the Commission to adopt the guidelines at a noticed meeting and after one or more public workshops.

Commissioners were provided with a copy of the legislation.

Department Recommendation

"The passage of AB 2925 (Sher; Chapter 1296, 1994) provides a tax credit to private land owners and companies who do habitat restoration in streams or watersheds used by salmon and steelhead. Priority is given to watershed used by coho salmon. AB 2925 modified the State Revenue and Taxation Code (Code), Section 17053.66(e)(2) and others. It requires the Department to establish criteria for tax credit allocation and to establish credit application guidelines which assure that applicants hire unemployed persons from the commercial fishing or the forest products industry to do this work. The Code also requires the Commission to adopt these credit application guidelines after one or more workshops are held.

"The Department has already held informational meetings with various stakeholder groups, including the Fish, Farm, and Forest Policy Committee, several local and regional Resource Conservation District organizations, several Coordinated Resource Management Plan organizations, and the Deer Creek Watershed Conservancy. Though these meetings were not labeled as workshops, they could be considered as such. The proposed guidelines were discussed and positive comments were received. No opposition was received.

"The Department's proposed application and hiring guidelines are attached along with criteria for allocation of credit amounts in the case where more than \$500,000 in credits are requested.

"The Department is now requesting the Commission to schedule a workshop on the Timber Tax Credit Program at the late August 1996 meeting.

"The Department has developed an extensive list of potential applicants. We can assist the Commission in contacting these interested parties for notification of the workshops.

"At the October 1996 meeting, the Department plans to provide recommendations regarding the adoption of the guidelines."

Action

Executive Director Treanor introduced the item and reported

Commissioners were provided with copies of two letters of support from Thomas Weseloh, Northcoast Manager for California Trout, and Tom Thompson, Resource Manager for Louisiana-Pacific Corp. He noted that an individual from Simpson Timber Company was present to provide comments.

IFD Chief Farley reported that this was an administrative item and that no action was required. Mr. Farley reported that the statutory provisions being implemented were amended by subsequent legislation, effective January 1, 1997. He explained that the new statutes did not include any required action by the Commission. He then provided an overview of the new law and the Department's modified and simplified proposal.

Mark Pawlicki asked if Simpson Timber Company would still qualify for a tax credit if it did no hiring; and questioned whether there would be any retroactivity for projects worked on in 1995 and 1996 since money was available at that time. Mr. Farley responded he would check into Mr. Pawlicki's concerns.

Executive Director Treanor asked if anyone else from the audience wished to speak on the item, and there was no response.

14. RECEIPT OF DEPARTMENT REPORT RE: LEGISLATION.

Summary of Issue

This item is scheduled to afford the Commission an opportunity to receive the Department's Legislative Report. The Department will be prepared to discuss this item and respond to any questions the Commission may have at the August 29, 1996, meeting.

Action

Executive Director Treanor introduced the item and noted that the Commissioners were provided with a copy of the Department's Legislative Report. There was no discussion between the Commission and Department on this item.

15. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.

Summary of Issue

This item is set aside to afford the Department an opportunity to present the Commission with informational items.

Executive Director Treanor introduced the Department's information items.

A. QUARTERLY REPORT ON THE MORRO MANZANITA
REGIONAL PLANNING EFFORT.

The Commission was provided with a copy of the Department's quarterly report and there was related discussion between Commissioner Boren, Deputy Director Petrovich and Director Schafer.

B. QUARTERLY REPORT ON THE ACTIVITIES OF
THE GAME BIRD HERITAGE PROGRAM (GBHP).

The Commission was provided with a copy of the Department's report.

C. UPDATE ON DUCK STAMP PROJECTS.

The Commission was provided with a copy of the Department's report.

D. STATUS REPORT ON BUTT VALLEY RESERVOIR,
PLUMAS COUNTY.

The Commission was provided with a copy of the Department's report.

E. CALTIP CASE.

WPD Chief Johnston reported that the two wardens who testified on the sea urchin case made a CALTIP deer case while en route to the meeting.

F. LAW ENFORCEMENT HIRING.

WPD Chief Johnston reported the Department had received an exemption from the Governor's hiring freeze and would be hiring 30 new wardens. He reported three officers have already been hired for positions in Moss Landing, Ventura and Los Angeles and the goal is to fill all 30 of the positions by February 1997.

G. MARINE RESOURCES PROTECTION ACT - RESERVES
RESEARCH GRANT APPROVAL.

Action

Deputy Director Petrovich reported that the Department and Sea Grant have developed a program schedule to ensure that qualified research grants are implemented in a timely fashion. Copies of the schedule were provided to the Commissioners.

Executive Director Treanor informed the Commission that Sea Grant would be transmitting grant applications

to the Commission's Research Grant Subcommittee on January 16, 1997, allowing up to four weeks for review and comment. He said that Sea Grant would then have an opportunity to review the applications and make recommendations back to the Commission's subcommittee on May 9, 1997. Subcommittee members Commissioner Boren and Commissioner Phares agreed to this procedure.

H. DESIGN OF NEW HUNTING LICENSE.

Action

Deputy Director Petrovich indicated that the Commissioners had before them a copy of the new format design for the hunting license. He reported that it was easily folded, would fit into a wallet, was made from tyvex (waterproof material), and was 55 percent smaller in terms of square inches.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY RATIFIES THE NEW HUNTING LICENSE DESIGN AND DIRECTS THE DEPARTMENT TO IMPLEMENT THE NEW LICENSE.

PASSED UNANIMOUSLY.

16. RECEIPT OF COMMISSION INFORMATIONAL ITEMS.

Summary of Issue

This item is scheduled for the Commission to receive informational items from its staff and to afford the Commission an opportunity to discuss items of interest with the Department.

A. SUBCOMMITTEE REPORTS.

No subcommittee reports were given at this time.

B. BRIEFING ON COMMISSIONER'S UPDATED
CESA WORKBOOK.

Action

Executive Director Treanor introduced the item. Assistant Executive Director Pelzman handed out updated Commission workbooks on the California Endangered Species Act (CESA) to Commissioners and the Directorate and provided a briefing on the development of the workbook and how it could be used. He explained that the workbook would be used in concert with a slide presentation to introduce new Commissioners to CESA. He indicated that the new workbook would be provided to members of the public and to Department personnel involved with CESA.

17. RECEIPT OF LEGAL COUNSEL INFORMATIONAL ITEMS.

Summary of Issue

This item is scheduled for the Commission's Legal Advisor to discuss any informational items and certain legal issues or procedures with the Commission. In addition, the Commission may wish to provide its legal counsel with suggested informational item topics for future meetings.

Action

Deputy Attorney General Christison related that he was having doubts about whether it was appropriate for the Commission to proceed with its consideration of a regulatory change that would legalize ferrets in California. He indicated that he had been reviewing the related statutes and that the basis for a regulatory change generally came down to a determination of whether ferrets should be considered wild or domestic animals in California. He said that Section 2116, Fish and Game Code, provides the Commission with the power to determine what is wild and what is domestic. He pointed out that Section 2118, Fish and Game Code, lists a number of animals that are illegal, except by permit beginning with the phrase "any wild animal of the following species" and relates a number of different taxons by class, order and family, including the Family Mustelidae. He continued that all members of Mustelidae, including ferrets, European pole cats, and mink, etc, were declared prohibited by the legislature because such animals are undesirable and a menace to native wildlife, the agriculture interests of the state and the public health and safety. Mr. Christison stated that this is the basic legislative direction given to California and to the Commission. He emphasized that the power of a regulation is limited, and that delegation of quasi-legislative power to specific commissions and other governmental bodies to adopt regulations has limitations, in that a regulation must meet

two criteria. It must be consistent with the enabling statute and it must carry out the purpose of the statute. Mr. Christison stated that he had some concerns about how the Commission could be consistent with the statutes and make a determination that the ferret is a domestic animal.

Commissioner Thieriot restated Mr. Christison's concerns that because of the statutory language it would be difficult for the Commission to legalize ferrets. Mr. Christison responded that it would be difficult to adopt such a regulation.

Commissioner Boren stated that the Commission apparently lacks the necessary authority to legalize ferrets and should not have had all the hearings on the matter.

Mr. Christison reported that the adoption of a regulation to legalize ferrets may not be approved by the Office of Administrative Law because the adoption would not satisfy the criteria of carrying out the purpose of the statute.

Commissioner Phares inquired if the other Commissioners had received a letter from the ferret people complaining that the last eight months had been wasted by appearing before the Commission. Commissioners indicated they had received the letter. Commissioner Phares indicated for the record that of the Commissioners present, she was the only one who voted not to go forward on the ferret issue.

Mr. Christison indicated that it was appropriate to agendize this matter for October's meeting and that he would prepare a briefing paper for the Commissioners.

Commissioner Thieriot pointed out that if the matter is agendized, an effort must be made to notify the supports of ferrets as a matter of courtesy.

Deputy Director Petrovich asked if the Department should stop working on the environmental document that would be needed before the Commission would begin the regulatory process. Commissioner Boren stated that he would agree to stopping work on the environmental document, but that would be the Director's decision.

Mr. Christison mentioned that there have been two recent federal court cases dealing with the issue of whether ferrets are domestic or wild and both of those cases found that they are wild and dangerous. He said one was the New York City Friends of Ferrets vs. City of New York, filed in federal court in Manhattan.

There being no further business, the meeting adjourned at 4:55 p.m.

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EXECUTIVE SESSION
August 29, 1996

No Executive Session held.

PENDING LITIGATION TO WHICH THE COMMISSION IS A PARTY:

- (A) CALIFORNIA DOMESTIC FERRET ASSOCIATION vs. FISH AND GAME COMMISSION, ET AL., RE: FERRETS.
 - (B) MOUNTAIN LION FOUNDATION, ET AL., vs. FISH AND GAME COMMISSION, ET AL., RE: MOHAVE GROUND SQUIRREL.
 - (C) NATURAL RESOURCES DEFENSE COUNCIL, ET AL., vs. FISH AND GAME COMMISSION RE: CALIFORNIA GNATCATCHER.
 - (D) TOM HAYDEN, ET AL., vs. FISH AND GAME COMMISSION RE: SACRAMENTO RIVER SPRING-RUN CHINOOK SALMON.
 - (E) C. LLOYD LEMKE, ET AL., vs. FISH AND GAME COMMISSION AND DEPARTMENT OF FISH AND GAME RE: CAPTIVE REPTILE BREEDING PERMIT.
 - (F) POSSIBLE LITIGATION INVOLVING THE COMMISSION.
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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of August 30, 1996

Pursuant to the call of the President, the Commission met in the City Council Chambers, 1900 Lake Tahoe Boulevard, South Lake Tahoe, California, on August 30, 1996. The meeting was called to order at 8:35 a.m. by President McGeoghegan.

Persons present:

FISH AND GAME COMMISSION

Douglas B. McGeoghegan	President
Richard T. Thieriot	Vice President
Frank D. Boren	Member
Margie J. Phares	Member

COMMISSION STAFF

Robert R. Treanor	Executive Director
Ronald J. Pelzman	Assistant Executive Director
Sandy J. Daniel	Executive Secretary

OFFICE OF THE ATTORNEY GENERAL

Randall Christison	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Al Petrovich	Deputy Director, Policy
Dick Bernheimer	Deputy Director, Administration
Tim Farley	Chief, Inland Fisheries Division (IFD)
DeWayne Johnston	Chief, Wildlife Protection Div. (WPD)
Ken Zanzi	Assistant Chief, Wildlife Management Division (WMD)
Banky Curtis	Regional Manager, Rancho Cordova
John Anderson	Senior Biologist, Long Beach Office
Frank Henry	Senior Biologist, Menlo Park Office
Connie Ryan	Associate Biologist, Menlo Park Office
Diana Watters	Associate Biologist, Menlo Park Office
Keith Long	Fish and Game Patrol Lieutenant

ELECTED OFFICIALS

Dominic Cortese	State Assemblyman, District 23
Rod Olsen	Field Representative, Senator Tim Leslie
Tim Murphy	Field Representative, Senator Tim Leslie

The following persons were also present and heard:

Dennis Diver	Mayor, City of Oroville
Larry Vivano	President, West Coast Bass, Inc.
Don Reighley	United Anglers
John Ascuaga	Rancher and Concerned Citizen
Jeff Hunewill	Hunewill Ranch
Zeke Grader	Pacific Coast Fed. of Fishermen's Association
Joe Atkinson	California Hawking Club
Bill Gaines	California Waterfowl Association
Stew Ellison	LFSI
Sal Papetti	Commercial Herring Fisherman
Tammie Shrader	Nonresident Herring Gill Netters
Joseph Criccihi	Commercial Herring Fisherman
Tim Fields	Commercial Herring Fisherman
Anthony Lonero	Commercial Boat Owner
Luis Grossi	Commercial Herring Fisherman
Joe Catalano	Commercial Herring Fisherman
Frank J. Campo	Commercial Herring Fisherman
Frank Noto	Commercial Herring Fisherman
Bill Schoening	Commercial Herring Fisherman
Mike Mitchell	Fisherman
Bob Miller	President, Crab Boat Owners Assn.
Sam Mercurio	Commercial Boat Owner
William Salvatore	Commercial Fisherman
Sal Vermi	Commercial Fisherman
Dominic Papetti	Commercial Fisherman
Joseph Papetti	Commercial Fisherman
Andy Stock	Commercial Fisherman
Peter Dentice	Commercial Fisherman
Vince Giammanco	Commercial Fisherman
Eddie Genovese	Commercial Fisherman
Peter Coniglio	Attorney, Round Haul Permittees
Frank Hester	San Francisco Bay Round Haul Assn.
William Schoening Sr.	Commercial Herring Fisherman
Jim Williams	San Francisco Roe on Kelp Assn.
John Malnati	San Francisco Roe on Kelp Assn.
Bud Janero	Commercial Gill Net Fisherman
Perry Potratz	President, Flagship Fisheries, Ltd.

President McGeoghegan introduced members of the Commission, its staff, the Directorate, Randall Christison of the Attorney General's Office and Assemblyman Dominic Cortese.

18. BRIEFING BY DEPARTMENT ON ITS 1996-97 BUDGET AND PROJECTIONS FOR FISCAL YEAR 1997-98.

Summary of Issue

Mr. Richard Bernheimer, Deputy Director, Administration, will brief the Commission on the Department's 1996-97 budget and discuss projections for FY 1997-98. Handouts will be made available at that time.

Action

Due to time constraints, this item was put over to the October Commission meeting in San Diego. Handouts were provided to the Commission.

19. REQUEST OF DON REIGHLEY, BLACK BASS ACTION COMMITTEE; CITY OF OROVILLE; AND OROVILLE CHAMBER OF COMMERCE FOR COMMISSION CONSIDERATION OF AN AMENDMENT TO SECTION 230, TITLE 14, CCR, TO ALLOW FOR A VARIANCE OF THE SLOT LIMIT FOR BASS TOURNAMENTS AT LAKE OROVILLE, BUTTE COUNTY.

Summary of Issue

Mr. Don Reighley, Black Bass Action Committee, the City of Oroville, and the Oroville Chamber of Commerce, request Commission consideration of an amendment to Section 230, Title 14, CCR, to allow for a variance of the slot limit for bass tournaments at Lake Oroville, Butte County.

"SUBJECT: To hear further testimony on Section 230, Title 14 of the California Code of Regulations, Sub Section D.

"We would like to request that this matter be heard at the August 29 or 30, 1996, meeting at South Lake Tahoe. We would like the Game Commission to reconsider this legislation due to its negative economic impact on communities involved."

Mr. Reighley has submitted several letters of support which were provided to the Commission.

Department Recommendation

"The Department plans to address this item with an oral presentation on August 30.

"Our presentation will cover the following:

- "• the Department's black bass management objectives
- "• background leading to the current regulations
- "• the distinction between 'annual' and 'event' tournaments

- "• biological impacts of tournament fishing (immediate and delayed mortality of hooked and released fish)
- "• socioeconomic considerations
- "• possible enforcement problems related to tournament exemptions

"Following the presentation, the Department will be prepared to answer any questions the Commission may have regarding these issues."

Action

Executive Director Treanor introduced and summarized the item.

IFD Chief Farley provided background information and indicated this was not a biological issue. He explained that an event permit, used by the larger organizations, was for large tournaments with more than 50 participants or offering prize money of more than \$1,000; whereas, the annual permit, used by the smaller clubs, was for tournaments with less than 50 participants or offering prize money of \$1,000 or less. Mr. Farley indicated that with the annual permit a group could conduct up to twelve tournaments each year. Mr. Farley reported that based on Department studies, fish mortality resulting from these types of tournaments was insignificant. He then indicated that there were some enforcement concerns about nontournament anglers keeping fish within the slot limit during tournaments and possible dissatisfaction of unattached anglers from an equity perspective.

Rod Olsen and Dennis Diver urged the Commission to grant a slot limit waiver for tournaments at Lake Oroville.

President McGeoghegan proposed a motion for a waiver of the slot limit this year only with a review of the issue to occur during next year's sport fishing regulations setting process (August 1997).

Mr. Farley reported the Department recommended that the waiver not be given to the annual permits but only to the event permits.

Larry Viviano opposed the waiver for only one year and requested a waiver period of three to five years because the tournaments are scheduled one year in advance.

Don Reighley supported the proposed waiver, but with no time limit constraints.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION HEREBY GRANTS A WAIVER OF THE SLOT LIMIT PROVISION OF SECTION 230, TITLE 14, CCR, FOR EVENT TOURNAMENTS AT LAKE OROVILLE AND AUTHORIZES ITS STAFF TO SUBMIT A REGULATORY NOTICE TO THE OFFICE OF ADMINISTRATIVE LAW TO AMEND SECTION 230 ACCORDINGLY.

PASSED UNANIMOUSLY.

20. PRESENTATION BY U.S. FOREST SERVICE REGARDING ITS PROGRAM FOR FOREST AND RANGELAND RESOURCES: A LONG-TERM STRATEGIC PLAN.

Summary of Issue

The U. S. Forest Service (USFS) will provide a short presentation regarding its program for Forest and Rangeland Resources: A Long-Term Strategic Plan, after which the Department will provide a summary of its comments to the USFS regarding its proposal.

Action

Executive Director Treanor reported that this item was postponed until the November 7-8, 1996, Commission meeting in Yosemite. Mr. Treanor stated that the U.S. Forest Service would also provide its annual report to the Commission at that time.

21. AMENDMENT OF SECTION 550, TITLE 14, CCR, TO ADD EAST WALKER RIVER WILDLIFE AREA, MONO COUNTY.

Summary of Issue

The Commission, at its May 6, 1996, meeting in Sacramento, authorized its staff to publish notice of Commission intent to amend Sections 550-552, Title 14, CCR, regarding State and Federal Wildlife Areas. The adoption hearing was held on August 2, 1996, in Ontario. At that time, the California Cattlemen's Association requested that the Commission postpone designating the East Walker River property as a wildlife area until it could provide comments on the historic State grazing uses of this property. The Commission did continue the designation of the East Walker River Wildlife Area until its August 30, 1996, meeting. This meeting is to receive the Cattlemen's comments, as well as the Department's recommendation for approval.

Department Recommendation

"The purpose of this memorandum is to provide additional information and to address public comments related to the Department's proposal to designate the subject parcels as a Wildlife Area. As a result of concerns with the Department's Management Summary for the East Walker River property raised by the California Cattlemen's Association (CCA), the Commission held over the designation until its August 29-30, 1996, meeting in South Lake Tahoe.

"The Department's staff in both Wildlife Management Division and Region 5 have reviewed the issue with the Commission's staff. We have also been in contact with Ms. Sheila Massey, Senior Director of Government Affairs, CCA. Both correspondence provided by Ms. Massey and telephone communication with her on August 7, 1996, indicate that the CCA does not object to the designation of the East Walker River property as a Wildlife Area. The concern was with the language in the Management Summary accompanying the proposal requesting designation that describes anticipated management actions for the area. Specifically, CCA was concerned with the potential that livestock grazing would be eliminated or significantly reduced and that traditional cattle drives would be required to comply with U.S. Forest Service time schedules.

"Our review with your staff and Region 5 Wildlife Management personnel on August 7, 1996, confirmed that it is not now nor has it been the Department's intent to restrict traditional movement of livestock across the area. The property includes a historic, legal cattle drive way that will remain available to livestock operators. The Department also intends to provide for over-night resting during the livestock drive(s). Adherence to U.S. Forest Service time schedules for the movement of livestock over the property was an unfortunate choice of language and will not be the standard imposed on the wildlife area.

"CCA is additionally concerned that they should be involved in the review of the management plan for the East Walker River Wildlife Area, and that livestock grazing be considered as an element in that management plan. The Department's Region 5 staff has indicated that when the management plan is drafted, it will contain livestock grazing options. Interested individuals and organizations, including CCA, will have an opportunity to review and comment on the draft plan during the formal public review period. Until the draft management plan is completed, including public review, interim measures to allow for livestock grazing, consistent with Department of General Services, Grazing Lease rules, will be developed by the Department as soon as practical.

"Given that CCA is not objecting to the designation of the East Walker River property as a Wildlife Area, I recommend that the Commission retain the East Walker River Wildlife Area proposal in the final adoption of the 1996-97 Regulations for State and Federal Areas. The separate issue of determining the specific activities to be authorized under the Wildlife Area Management Plan will be dealt with through the plan review process in place within the Department. CCA and others will have an opportunity to review and comment on the draft management plan actions proposed for the East Walker River Wildlife Area."

Action

Executive Director Treanor summarized the item, indicating the intent was to add the East Walker River Wildlife Area, Mono County, to Section 550, Title 14, California Code of Regulations. Mr. Treanor noted that the item had been carried over from the previous meeting because at that time there was some concern regarding the grazing element on the wildlife area. He added that the Department would be preparing a management plan for the area.

WMD Assistant Chief Zanzi reported that the Department would prefer the Commission to designate the East Walker River as a wildlife area now, so there would be some regulatory authority on public uses while the management plan is being developed. He reported that the Department would not interfere in the use of the designated livestock driveway for moving cattle from Nevada to California to summer and winter ranges and would also enter into a short-term livestock grazing permit in the interim between the designation and development of a management plan. He reported that there was a proposal to reclaim a stretch of the East Walker River which had been diverted in the construction of a highway by Caltrans.

Tim Murphy reported that Senator Leslie was not opposed to the designation of this area but emphasized that there should be a permanent provision in the management plan for livestock grazing for the East Walker River area.

John Ascuaga supported the designation of the wildlife area but wanted to ensure that livestock grazing be continued and that the meadow be protected. He opposed moving the river back to its original channel.

Jeff Hunewill supported including livestock grazing as part of the management plan.

Mr. Zanzi reported that the associated management plan was currently under internal review at the Department's regional office and that it would go out for public review in the near

future. Commissioner Boren inquired if the local citizens were involved in the scoping sessions on the management plan. John Anderson indicated that the Department had received public input and was aware of the local citizens' concerns.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 202, 355, 713, 1526, 1528, 1530 AND 10504 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 355, 1526, 1528, 1530, 1570-1572 AND 10504 OF SAID CODE HEREBY AMENDS SECTION 550, TITLE 14, CCR TO ADD THE EAST WALKER RIVER WILDLIFE AREA AS FOLLOWS:

(2426) East Walker River Wildlife Area (Mono County) (Type C);

PASSED UNANIMOUSLY.

22. AMENDMENT OF SECTION 147, TITLE 14, CCR RE: COMMERCIAL ANCHOVY FISHERY.

Summary of Issue

The Commission, at its June 21, 1996, meeting in Bridgeport, authorized its staff to publish notice of Commission intent to amend Section 147, Title 14, CCR, Re: Commercial Anchovy Fishery. That legal notice has been published. The Commissioners were provided with a copy of the Department's Pre-publication of Notice and Pre-adoption Statements as well as the text of the regulations in strikeout/underline format.

The Department's proposed regulation change can be summarized as follows:

"Under existing law (Section 147, Title 14, CCR), northern anchovy may be taken for commercial purposes only under a quota as established by National Marine Fisheries Service, within the federal government, under provisions of the Northern Anchovy Fishery Management Plan. Pursuant to 50 Code of Federal Regulations Section 662.20, an announcement of harvest quotas will be made by notice in the Federal Register on or about August 1 of each year. Current regulations specify: the total tonnage reserved for a northern and southern permit area, and the establishment of harvest quotas that shall be the same as those established by National Marine Fisheries Service.

"National Marine Fisheries Service has filed its intention to withdraw and remove the Northern Anchovy Fishery Management Plan (Plan), and removal of regulations implementing the Plan (Federal Register, Volume 61, Number 59, Tuesday, March 26, 1996, Proposed Rules). This

federal rulemaking is in accordance with President Clinton's Regulatory Reinvention Initiative. The removal of this Plan will leave the management of the northern anchovy resource to the State of California. Therefore, current regulations, which refer to a quota established by National Marine Fisheries Service, will be groundless when the federal regulations are withdrawn.

"Under existing law vessels operating under a declaration of intent to take anchovies for reduction purposes may also take anchovies for live bait purposes in the Southern Permit Area only. The Southern Permit Area includes the waters of the Pacific Ocean between the United States-Mexico International Boundary and a line extending due west from Point Buchon, San Luis Obispo County. The Northern Permit Area includes the waters of the Pacific Ocean between the California-Oregon border and a line extending due west from Point Buchon, San Luis Obispo County.

"The proposed regulatory changes will establish an annual harvest quota if the Department of Fish and Game or its designee does not produce an annual northern anchovy biomass estimate on or about August 1 each year. Other changes relate to an August 1 establishment date for a harvest quota, the allocation of the quota between northern and southern permit areas, and allowing for the reduction of excess anchovies taken for live bait purposes in the Northern Permit Area. These changes are recommended to provide for the efficient harvest and orderly conduct of the fishery and for the protection of the resource. The following is a summary of the changes proposed for Section 147, Title 14, CCR.

- "- Provide for a 5,000 ton annual harvest quota if the Department of Fish and Game or its designee does not produce an annual northern anchovy biomass estimate.
- "- Establish the harvest quota on or about August 1 each year.
- "- Allocates the harvest quota evenly between northern and southern permit areas.
- "- Allow for the reduction of excess anchovies taken for live bait purposes in the Northern Permit Area.
- "- Adds the Department of Fish and Game's Yountville office to list of locations where notification and written declarations are filed."

Action

Executive Director Treanor summarized the item. He noted that the National Marine Fisheries Service (NMFS) had filed its intent to withdraw and remove the Northern Anchovy Fishery Management Plan, including the regulations implementing the plan.

Deputy Director Petrovich reported that if NMFS withdraws the plan, management will revert to the State and for this reason, the Department was proposing a minimum quota fishery.

Zeke Grader supported the proposed regulations.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION PURSUANT TO THE AUTHORITY VESTED BY SECTION 7708 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 8076 AND 8190 OF SAID CODE AND 50 CFR, SECTION 662.5, HEREBY AMENDS SECTION 147, TITLE 14, CCR, RE: COMMERCIAL ANCHOVY FISHERY. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

23. CONSIDERATION OF FINAL CERTIFICATION OF ENVIRONMENTAL DOCUMENT, ADOPTION OF FINDINGS AND PROPOSED PROJECT (OR ALTERNATIVE), AND FINAL ADOPTION OF THE 1996-97 MIGRATORY WATERFOWL REGULATIONS - SECTION 502, 507, 508 AND 600.4, TITLE 14, CCR.

Summary of Issue

This is the time and place for the Fish and Game Commission hearing on the adoption of the proposed 1996-97 Migratory Waterfowl Regulations - Sections 502, 507, 508 and 600.4, Title 14, CCR. The Department has prepared an environmental document relating to this matter which was made available to the public for a 45-day comment period commencing on June 21, 1996, and ending on August 2, 1996. Today, the Commission is scheduled to review the final environmental document and to consider the materials and comments that have been presented by individuals, groups and other public agencies. There will be no formal public testimony received here today on the environmental document. The Commission will, however, have the option to request information and responses from staff and may have questions related to the public comments and responses presented in the environmental document. The process to be used at this certification and adoption meeting will be to consider certification of the final environmental document and adoption of the proposed project (or an alternative) followed by consideration of the adoption of the proposed regulations for Sections 502, 507, 508 and 600.4, Title 14, CCR, regarding migratory waterfowl regulations for 1996-97.

Under separate cover, the Commission has been provided with the final environmental document as well as the responses to public comments concerning the document. It would be appropriate

for the Commission to make a motion concerning certification of the environmental document prepared by the Department. The proposed motion is as follows:

1. Certification of the Document.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION CERTIFIES THAT THE FINAL ENVIRONMENTAL IMPACT DOCUMENT (EID) ON MIGRATORY WATERFOWL HAS BEEN COMPLETED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IN THAT IT WAS PRESENTED TO THE COMMISSION AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED IN THE FINAL EID PRIOR TO APPROVING THE PROJECT. THE CERTIFIED EID PROVIDES THAT THERE ARE NO SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS RESULTING FROM THE PROPOSED PROJECT. THE COMMISSION FINDS THAT ON THE BASIS OF FACTS IN THE RECORD AND THE ENVIRONMENTAL DOCUMENT THAT THE PROPOSED PROJECT AND ALTERNATIVES WILL HAVE NO SIGNIFICANT ADVERSE IMPACT.

PASSED UNANIMOUSLY.

2. Summary of Proposed Project (and Alternatives).

Commissioners have been provided with copies of the proposed migratory waterfowl regulations as discussed at the August 2, 1996, meeting in Ontario. Department staff will summarize the proposed project and alternatives relative to Sections 502, 507, 508 and 600.4, Title 14, CCR, regarding migratory waterfowl regulations followed by public testimony. The Commission will then have an opportunity to adopt the proposed project, or an alternative, as identified in the environmental document and conforming to the federal framework, and then the regulations consistent with its above determination.

Commissioners were provided with a copy of the Department's Pre-publication of Notice Statement. A copy of the proposed federal framework and the Department's Pre-adoption Statement with the proposed regulatory language in strikeout/underline format was provided at the Commission meeting. The Commissioners were also provided with copies of any correspondence received on this matter.

The proposed waterfowl regulations can be summarized as follows:

Section 502:

"Existing duck hunting regulations provide bag and possession limits of six per day and 12 in possession. The proposed regulatory change increases the bag and possession limits on ducks to seven and 14.

"Within the duck bag limits, there are also limits of two pintail ducks per day and four in possession. The original proposal increased these limits on pintail to three per day and six in possession. The modified proposal retains the limit to two per day and four in possession.

"Existing regulations provide for a 93 consecutive day duck season. The original proposal was for one extra hunting day outside of the regular waterfowl season for junior hunters. The date proposed was two weeks prior to the general opener in all zones except the Colorado River Zone. The modified proposal would establish a youth waterfowl hunting day one week prior to the general opener in all zones except the Colorado River Zone where it would be the following Saturday (January 25, 1997) following the general season closure.

"The original proposal allowed for a one day junior (16 years of age or younger) hunting day, the modified proposal specifies youth hunters ages 15 years or under and that the youth hunter must be accompanied by a non-hunting adult 18 years of age or older.

"Existing regulations provide a goose season that is within the duck season. The proposed regulation would shift the season one week later to allow for a concurrent closure of the duck and goose season. This should decrease regulation complexity and allow for expanded recreational opportunity."

Section 507:

"The existing State regulations related to the prohibition against baiting for migratory birds relies on adoption of Federal regulations. The proposed regulations would establish language identical to that of the Federal sections in State regulations.

"The existing State regulations under Section 507 do not ban the use of bait to take migratory birds. State regulations instead depend upon the adoption of Federal regulations under Section 509, to govern baiting issues. The proposed regulations would move in total those relevant Federal regulations dealing with the use of bait for migratory birds, into State regulations Section 507.

"This will allow prosecution in State court for those individuals violating baiting laws. State Wildlife Protection Officers will be able to have their cases heard in State court as well as having fines increase State revenues to support management programs."

Section 508:

"Existing regulations under Section 508 provide for a licensing program for areas that want to hunt ducks and geese in close proximity to areas where they are feeding waterfowl. The proposed action would repeal this entire Section because it has been judged to be illegal by the U.S. Fish and Wildlife Service after changes in policy and regulations pertaining to the sphere of influence of bait. The repeal of this Section will reduce regulation complexity for the public by eliminating a non-operable section."

Section 600.4:

"Existing regulations, under subsection(k), provide for a special licensing provision to allow the hunting of loosely controlled domesticated migratory game birds. Under this program, adopted in 1987, a licensee can harvest the birds released by another licensee a number of miles away. These regulations were adopted in conflict with statutes found in Fish and Game Code (sections 3304, 3306, and 3307) from powers granted to the Fish and Game Commission under Section 219 of the Fish and Game Code. A law change effective in January 1, 1992, limited the time period to 12 months that a regulation adopted under Section 219 of the Fish and Game Code can be in effect. Under this law change the existing regulation was automatically repealed January 1, 1993. The proposed amendment deletes that affected subsection."

Action

Executive Director Treanor introduced and summarized the item. The Commission then certified the Final Environmental Document.

Commissioner Thieriot raised the issue of an additional hen sprig in the daily bag limit and discussed problems with holding the youth hunts before the regular hunting season. He suggested the possibility of decreasing the number of blinds available at wildlife areas so there would be less negative impact on the birds relative to the opening day of the season.

WMD Assistant Chief Zanzi summarized the dates and bag limits and explained the youth hunt proposal. He stated that the youth hunts would be on the Saturday preceding the opening of each zone, except the Colorado River zone. He then added that the youth hunting day would come out of the total of 107 days allowed by the Federal guidelines. Mr. Zanzi reported that the youth waterfowl hunting day would necessitate a reduction in the number of days falconers are allowed to fly for waterfowl. He said that the Department was proposing to remove one day at the

end of the falconry season.

Mr. Zanzi reported that the Department was proposing to include the federal baiting regulations as part of Section 507, Methods Authorized for Taking Migratory Game Birds, Title 14, California Code of Regulations.

WPD Chief Johnston explained the need to include the federal baiting regulations as part of the State's regulations.

Bill Gaines urged the Commission not to adopt the federal baiting regulations.

Joe Atkinson recommended staying at an overall 107-day falconry season by removing a day at the beginning of the falconry season instead of the end.

Mr. Zanzi reported that the Department was agreeable to modifying the proposal to take one day off the falconry season at the beginning of the season.

Executive Director Treanor asked if anyone else in the audience wished to speak on the item, and there was no further discussion.

After further analysis by staff, it was determined that to stay within the 107-day framework, it was necessary to remove a day at the end of the falconry season.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION, PURSUANT TO SECTION 21080.5 OF THE PUBLIC RESOURCES CODE HEREBY ADOPTS THE PROPOSED PROJECT FOR THE PROPOSED REGULATORY ACTION RELATING TO SECTIONS 502, 507, 508 and 600.4, TITLE 14, CCR, REGARDING MIGRATORY WATERFOWL.

AND

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 355 AND 3000 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 355, 356 AND 3000 OF SAID CODE, HEREBY AMENDS SECTIONS 502, 507, 508 and 600.4, TITLE 14, CCR, REGARDING THE 1996-97 MIGRATORY WATERFOWL REGULATIONS EXCEPT THAT THE FEDERAL BAITING REGULATIONS ARE NOT MADE A PART OF THESE REGULATIONS AND ONE DAY IS REMOVED FROM THE END OF THE EXISTING FALCONRY SEASON. FURTHER, THE COMMISSION DIRECTS STAFF TO PREPARE A

NOTICE OF DETERMINATION CONSISTENT WITH THE APPROVAL AND ADOPTION OF ASSOCIATED REGULATIONS. THIS NOTICE OF DETERMINATION IS TO BE FILED WITH THE SECRETARY FOR RESOURCES, PURSUANT TO SECTION 781.5, TITLE 14, CCR, AND SECTION 21080.5 OF THE PUBLIC RESOURCES CODE. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

24. CONSIDERATION OF FINAL CERTIFICATION OF ENVIRONMENTAL DOCUMENT, ADOPTION OF FINDINGS AND PROPOSED PROJECT (OR ALTERNATIVE), AND FINAL ADOPTION OF THE 1996-97 COMMERCIAL HERRING REGULATIONS - SECTIONS 163 AND 163.5, TITLE 14, CCR.

Summary of Issue

This is the time and the place for the Fish and Game Commission hearing on the adoption of the proposed 1996-97 Commercial Herring Regulations (Section 163, Title 14, CCR). The Department of Fish and Game has prepared a draft environmental document regarding herring fishing. This document was made available for a 45-day public comment period commencing on June 17, 1996, and ending on August 2, 1996.

Today the Commission is scheduled to review the final environmental document and to consider the materials and comments that have been presented by individuals, groups and other public agencies. The process to be used at this certification and adoption meeting will be to consider certification of the final environmental document and adoption of the proposed project (or an alternative) followed by consideration of adoption of proposed regulations for the commercial herring fishery (Section 163) and the harvesting of herring eggs (Section 164).

The Commission has been provided with the final environmental document as well as responses to the public comments concerning the document. It would be appropriate for the Commission to make a motion concerning certification of the environmental document prepared by the Department. The proposed motion is as follows:

1. Certification of Document.

Action

Executive Director Treanor reported that this item was to consider certification of the environmental document, adoption of findings and proposed project or alternative and final adoption of 1996-97 commercial herring regulations.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION CERTIFIES THAT THE FINAL ENVIRONMENTAL IMPACT DOCUMENT (EID) ON COMMERCIAL HERRING FISHERY HAS BEEN COMPLETED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IN THAT IT WAS PRESENTED TO THE COMMISSION AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED IN THE FINAL EID PRIOR TO APPROVING THE PROJECT. THE CERTIFIED EID PROVIDES THAT THERE ARE NO SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS RESULTING FROM THE PROPOSED PROJECT. THE COMMISSION FINDS THAT, ON THE BASIS OF FACTS IN THE RECORD AND THE ENVIRONMENTAL DOCUMENT, THAT THE PROPOSED PROJECT AND ALTERNATIVES WILL HAVE NO SIGNIFICANT ADVERSE IMPACT.

AYES: BOREN, PHARES, THIERIOT
(MCGEOGHEGAN NOT PRESENT FOR THE VOTE)

MOTION PASSED.

2. Summary of Proposed Project and Alternatives.

As a reminder, the Commission, at its June 21, 1996, meeting in Bridgeport, authorized its staff to publish notice of its intent to amend Section 163, Title 14, CCR, to provide for the commercial herring fishery for 1996-97. That legal notice has been published. The Commission scheduled receipt of public comments on these proposed changes at its August 2, 1996, meeting in Ontario.

The Commission was provided with a copy of the Department's Pre-publication of Notice and Pre-adoption Statements with the text of the regulations in strikeout/underline format as well as correspondence received on this issue. The Department's Final Environmental Document on the commercial herring fishery has been provided to the Commissioners under separate cover.

The Department's proposal can be summarized as follows:

- "- Provide for a 14,850-ton fishing quota in San Francisco Bay and for an initial 260-ton fishing quota in Tomales Bay.
- "- Require all fees, overage payments, release of property forms, and crew lists from prior seasons to be submitted before a permit will be issued.
- "- Require all landing receipts to be immediately available to the Department.
- "- Increase penalties for certain fishing violations.

"- Allow three San Francisco Bay gill net permittees to participate in a Department-sponsored mesh size study.

"In addition, the Commission is provided the option for San Francisco Bay of allowing only one permit to be fished on a vessel during each gill net platoon (i.e., fishing group)."

Department staff will summarize the proposed project and alternatives relative to the commercial herring fishery, followed by receipt of public comments.

Action

Executive Director Treanor suggested that the Department provide an overview of the commercial herring fishery at the beginning of the discussion and stated that the Commission would consider the proposed regulation changes and the round haul phase out issue separately.

Note: Due to Assemblyman Cortese's schedule, he spoke at the beginning of the meeting.

Assemblymember Cortese expressed concern about the economic impacts to fishermen in changing their gear from round haul to gill nets and that the proposed regulation changes could put fishermen out of business. He questioned the need to make regulatory changes, considering the substantial increase in stock biomass. He also recommended a moratorium on implementing the round haul conversion regulation.

Senior Biologist Frank Henry provided an overview of the State's herring fisheries and described the principle regulatory changes being proposed for the 1996/97 season.

WPD Chief Johnston emphasized that the proposed regulation changes did not include a change in mesh net size, only a change in the method of measuring the mesh. Lieutenant Keith Long demonstrated the Department's new method of measuring nets. He showed how a net is placed on a measuring board and stretched with a one-pound weight to determine if the mesh size is legal.

Stew Ellison reported that no nets are manufactured in the United States and it would be impossible to purchase nets that would be within the tolerance limit all the time. He stated that it takes four to six months lead time to obtain a net from the manufacturer, so it would be impossible for the fishermen to change gear until next year. He then suggested that the nets be measured while wet.

Sal Papetti reported that all of his 30 nets measure and stretch differently and recommended against the mesh size provision. He stated that manufacturers have a 3-5 percent size variance in nets, so it is difficult to obtain a perfect net.

Tammie Shrader, representing 75 nonresident fishermen, supported retaining the two gill net permits/one boat provision. She also recommended adopting a one-year grace period for implementing new mesh size change; supported establishing maximum points for penalties; supported retaining the existing system until everyone has access to the new measuring device; supported a sliding scale system for nets (one fathom over-one penalty point, two fathoms over-two penalty points, and over five fathoms over-ten penalty points); and suggested that closed areas be better defined and clarified by enforcement before imposing the maximum penalty.

Deputy Director Petrovich recommended a one-year phase in period for the new method of measuring nets.

WPD Chief Johnston reported that using a one pound weight, vs. a five pound weight which is used in Alaska, gives a truer and more consistent reading of the mesh size. He then stated that the nets are used wet and should be measured wet.

Joseph Cricchio recommended not imposing a mesh size restriction and opposed a one gill net permit/one boat fishery and the use of a one pound weight for measuring mesh size.

Tim Fields opposed the new wedge method of measuring nets because he did not believe it to be accurate. He recommended a 3/8" tolerance for one year and supported a one gill net permit/one boat provision.

Zeke Grader reported that AB 2601, which would create a herring stamp to provide additional funds to the Department, was on the Governor's desk and would hopefully be signed. He stated that the proposed 14,850 ton quota was inappropriate and recommended a more conservative quota of around 12,000 tons or less. He also recommended allowing more boats in good quota years (one gill net permit/ one boat fishery).

Anthony Lonerio, Luis Grossi, Frank Campo, Joe Catalano, Frank Noto, Bill Schoening, Mike Mitchell, Bob Miller, Sam Mercurio, William Salvadore, Sal Vermi, and Peter Dentice, representing a permit owner, all supported a one gill net permit/one boat fishery.

Dominic Papetti supported a two gill net permit/one boat fishery to avoid boat congestion and the need for leniency in the closed area.

Joseph Papetti supported a two gill net permit/one boat fishery and requested a one-year phase in period for the new method of measuring nets because suppliers cannot meet the demand in time.

Andy Stock indicated he had no problem with the new measuring technique.

Vince Giammanco recommended adopting a one-year grace period for implementing the new mesh size measuring system and retaining existing regulations.

Eddie Genovese opposed changing the way mesh size is measured but was agreeable to the proposed quota.

President McGeoghegan asked when the "stacking" of permits (two gill net permits/boat) was enacted. Deputy Director Petrovich indicated that the "stacking" of permits was started in 1993 and was brought on because of boat congestion, economic issues, and declines in biomass. Mr. Petrovich summarized what he concluded from the previous speakers was not an argument against the stacking of permits but the abuses that occur from stacking permits.

President McGeoghegan asked if Mr. Ellison could get a better product from the manufacturers. Mr. Ellison responded that generally speaking the tolerances are better than 3 percent and he, as a supplier, would uphold any net within that range.

Associate Biologist Connie Ryan provided a slide presentation and reported that the Department was opposed to suspending the round haul conversion program.

Associate Biologist Diana Watters provided a slide presentation and reported that from a biological perspective the round haul conversion program improves the fishery in two ways. She stated that it dramatically reduces the number of young, two and three year old fish harvested and eliminates sources of undocumented mortality that are associated with the use of round haul gear. She added that the conversion increases the reproductive capability of the population by allowing two and three year old fish to spawn.

Commissioner Boren recommended that this item not be put on the agenda every year unless there was new and compelling information.

Peter Coniglio, representing 26 round haul permittees, stated that there was new information to show that there was no reason to eliminate the round haul method of harvesting herring. He argued that the fishery is in good shape and the round haul gear has not damaged the resource. He urged the Commission to review the existing regulation because it is unfair to the fishermen.

Dr. Frank Hester commented that taking only older fish may not be desirable in that this removes a cushion that helps the fishery get through poor years. He stated that in his opinion there was no basic scientific reason to prefer one type of gear over the other in this fishery.

Diana Watters explained that the Department based its decision on studies conducted in a number of years and did not agree with Dr. Hester's conclusions which was based on just the most recent years.

Mr. Henry reported that since 1994, six of the original 32 round haul permittees have converted to gill nets and that all permittees must convert by November 1998.

William Schoening supported the round haul conversion regulation.

The Commissioners agreed not to make any changes in the phase out of the round haul gear type.

There was discussion between Mr. Henry and Commissioner Boren regarding the 14,850 ton quota for San Francisco Bay for all permittees.

WPD Chief Johnston emphasized the Department was not proposing a change in mesh size but recommending the adoption of regulations requiring a new method of measuring nets with a one pound weight. This included a provision that nets be measured wet with a three percent variance for one year.

The Commissioners agreed to not change the two gill net permit/one boat provision.

Jim Williams and John Malnati opposed the proposed 14,850 ton quota; and Bud Janero supported the 14,850 ton quota.

Perry Potratz reported that the value to the fishermen would be the same with a 14,850 ton quota or a 12,000 ton quota.

For the record, the following individuals did not speak at the meeting but submitted speaker cards indicating that they supported a two gill net permit/one boat fishery: Dan Coichico, Victor Galli, Joe Spadaro, Sam Papetti and Joseph M. Aliotti. Mr. Aliotti was also in support of reducing the quota for San Francisco Bay.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION, PURSUANT TO SECTION 21080.5 OF
THE PUBLIC RESOURCES CODE, HEREBY ADOPTS THE PROPOSED
PROJECT FOR THE PROPOSED REGULATORY ACTIONS RELATING TO THE
COMMERCIAL HERRING FISHERY.

PASSED UNANIMOUSLY.

AND

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION, UNDER THE AUTHORITY VESTED BY SECTIONS 1050 AND 8550 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTIONS 8550, 8553, 8554, 8556, 8557 AND 8559 OF SAID CODE, HEREBY AMENDS SECTION 163, TITLE 14, CCR, TO PROVIDE FOR THE COMMERCIAL HERRING FISHERY FOR 1996-97. FURTHER, THE COMMISSION HEREBY DIRECTS STAFF TO PREPARE A NOTICE OF DETERMINATION CONSISTENT WITH THE APPROVAL OF THIS PROJECT AND ADOPTION OF ASSOCIATED REGULATIONS. THIS NOTICE OF DETERMINATION IS TO BE FILED WITH THE SECRETARY FOR RESOURCES PURSUANT TO SECTION 781.5, TITLE 14, CCR, AND SECTION 21080.5 OF THE PUBLIC RESOURCES CODE. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

25. AMENDMENT OF SECTION 164, TITLE 14, CCR, RE: HARVESTING OF HERRING EGGS.

Summary of Issue

The environmental document certified in Item No. 24 regarding the commercial herring fishery also covers the Commission's proposed action in amending Section 164, Title 14, CCR, regarding harvesting of herring eggs; therefore, no further action is necessary regarding the environmental documentation for this proposed regulatory change.

As a reminder, the Commission, at its June 21, 1996, meeting in Bridgeport, authorized its staff to publish notice of its intent to amend Section 164, Title 14, CCR, regarding harvesting of herring eggs. That legal notice has been published. The Commission scheduled an agenda item for its August 2, 1996, meeting in Ontario to receive public comments on the proposed changes in Section 164.

The Commissioners were provided with a copy of the Department's Pre-publication of Notice and Pre-adoption Statements with the text of the regulations in strikeout/underline format.

In summary, the Department has proposed regulation changes as follows:

"Under existing law, herring-eggs-on-kelp may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. In addition, every person taking herring eggs

must pay a royalty, as the Commission may prescribe, of not less than fifty dollars (\$50) per ton of herring eggs taken. Current regulations specify: permit numbers; permit qualifications; method of take; season; permit areas; permit limitations; landing and processing requirements; fishing quotas; gear restrictions; harvesting requirements; monitoring requirements; and a royalty fee of \$500 per ton of herring eggs taken.

"The proposed amendments to Section 164, Title 14, CCR, for the 1996-97 herring-eggs-on-kelp season will: establish a fishing quota of 26 tons for round haul permittees, 6 tons for gill net permittees, and 26 tons for permittees with "CH" permits; clarify the definition of San Francisco Bay where herring-eggs-on-kelp may be harvested to include the waters of Fish and Game District 2 known as Richardson Bay; clarify the requirements for the identification of assist boats; clarify the requirements for the marking of bins and totes used in the herring-eggs-on-kelp fishery; clarify the requirements for when weight tally sheets and landing receipts are to be completed."

Action

Executive Director Treanor asked if anyone in the audience wished to speak on this item, and there was no response. Mr. Treanor then indicated that a separate motion was in order for adoption of the proposed changes to Section 164.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION, UNDER THE AUTHORITY VESTED BY SECTION 8389 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTIONS 8389 AND 8550-8556 OF THE SAID CODE, HEREBY AMENDS SECTION 164, TITLE 14, CCR, REGARDING HARVESTING OF HERRING EGGS. FURTHER, THE COMMISSION DIRECTS STAFF TO PREPARE A NOTICE OF DETERMINATION CONSISTENT WITH THE APPROVAL OF THIS PROJECT AND ADOPTION OF ASSOCIATED REGULATIONS. THIS NOTICE OF DETERMINATION IS TO BE FILED WITH THE SECRETARY OF RESOURCES, PURSUANT TO SECTION 781.5, TITLE 14, CCR, AND SECTION 21080.5 OF THE PUBLIC RESOURCES CODE. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

CONSENT CALENDAR

Items 26 through 33 have been placed on the Commission's consent calendar. Your staff knows of no opposition to these proposals at this time other than as specified in the analysis. The Department has provided a recommendation on each of these items which either calls for approval or modified approval by the Commission. Any item may be removed from the consent calendar by the Commission or upon request of the Department or someone in the audience who would like to speak to that item. Your staff has prepared a summary of consent items which will be made available to the audience. One overall motion is appropriate for approval of these items.

Action

Executive Director Treanor introduced the Consent Calendar items and asked if anyone from the audience wished to comment. There was no response.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES ITS
AUGUST 30, 1996, CONSENT CALENDAR, ITEMS 26 THROUGH 33.

PASSED UNANIMOUSLY.

26. CONFIRMATION OF COMMISSION'S MAY 21, 1996, EMERGENCY ACTION TO AMEND SECTION 7.50(b)(30), TITLE 14, CCR, RE: FISHING CLOSURE, BUTT CREEK AND BUTT CREEK ESTUARY, PLUMAS COUNTY.

Summary of Issue

On May 21, 1996, the Commission took emergency action to amend Section 7.50(b)(30), Title 14, CCR, to close fishing in Butt Creek and its estuary, Plumas County. The Department provided a status report on August 29 regarding PG&E's seismic work on Butt Creek Dam. This item is to continue the fishing closure while PG&E finishes its dam repair work.

The Commissioners were provided with a copy of a letter from California Trout.

Action

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY CONFIRMS ITS MAY 21,
1996, EMERGENCY ACTION TO AMEND SECTION 7.50(b)(30),
TITLE 14, CCR, RE: FISHING CLOSURE, BUTT CREEK AND BUTT
CREEK ESTUARY, PLUMAS COUNTY.

PASSED UNANIMOUSLY.

AND

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 200, 202, 205, 215, 220, 240 AND 315 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 200, 205, 206 AND 215 OF SAID CODE, HEREBY AMENDS SECTION 7.50(b)(30), TITLE 14, CCR, REGARDING BUTT CREEK AND BUTT CREEK ESTUARY, PLUMAS COUNTY. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

27. RECEIPT OF DEPARTMENT RECOMMENDATIONS RE: URGENCY CHANGES IN THE SPORT FISHING REGULATIONS. (ADOPTION HEARING SCHEDULED FOR THE NOVEMBER 8, 1996, MEETING IN YOSEMITE. NO PUBLIC RECOMMENDATIONS THIS YEAR. PUBLIC RECOMMENDATIONS FOR SPORT FISHING REGULATIONS ARE HEARD EVERY TWO YEARS AND WILL BE RECEIVED AT THE COMMISSION'S AUGUST 29, 1997, MEETING IN SACRAMENTO.)
-

Summary of Issue

As the Commission may recall, it adopts its sport fishing regulations on a two-year cycle (odd-numbered years.) In even-numbered years, the Department may bring changes to the Commission which are resource protection oriented. This item is set aside for the Department to provide its recommendations for changes in the sport fishing regulations during the off year. These changes will be provided at the meeting.

Department Recommendation

"The Department requests that this item be removed from the Consent Calendar in order to facilitate a discussion of a proposed Federal bag limit for bocaccio rockfish.

"At its August 20-23, 1996, meeting in Portland, Oregon, the Pacific Fishery Management Council (PFMC) received input on the status of west coast groundfish stocks for use in setting 1997 Federal groundfish regulations. The stock assessment for bocaccio rockfish produced in an Acceptable Biological Catch (ABC) for the species south of Cape Blanco, in southern Oregon, to the Mexico border of 270 metric tons (mt). This compares to an ABC for the species in the current year of 1,700 mt.

"Recognizing the need to slow down the harvest of bocaccio rockfish off California, the PFMC is recommending a "step-down" harvest guideline for 1997 of 420 mt, which may be reduced to 270 mt beginning in 1998.

"Several years of poor or zero recruitment of the species is the cause of the low stock assessment.

"For 1997, the PFMC is recommending consideration of a Federal bag limit for bocaccio rockfish, which would affect the California recreational fishery. Currently, no bag limit for rockfish is in effect in Federal regulations. California regulations provide for a daily bag limit of up to 15 rockfish (genus *sebastes*), all of which may be the same species.

"Marine Resources Division will be analyzing alternative bag limits for bocaccio rockfish, and their effect on the recreational catch. Currently, the recreational fishery actually harvests about 100 mt annually. To maintain the 1996 harvest proportions between the recreational and commercial fisheries, the recreational share would have to be reduced about half, to 49 mt. However, the PFMC has the option of maintaining the current recreational harvest level, thus requiring the commercial fishery to shoulder the entire reduction.

"The issue will be considered by the PFMC at its October 22-25, 1996, meeting in South San Francisco. The Commission may wish to provide input to the PFMC in advance of that meeting. Your input options include:

- "1) Status quo - no change in Federal bag limit;
- "2) Bag limit reduction recommendation of 1-15 bocaccio."

Action

Executive Director Treanor reported that this item would not be pulled off the consent calendar but was open for discussion. Deputy Director Petrovich reported that the PFMC was recommending a reduction of the commercial and recreational take for bocaccio rockfish because the resource had declined. Executive Director Treanor noted this was just authorization to go to notice and action would be taken at the November 7-8, 1996, Commission meeting in Yosemite.

28. DEPARTMENT REQUEST FOR AUTHORIZATION TO ACCEPT A DONATION OF 1.35± ACRES OF LAND LOCATED WITHIN THE HONEY LAKE WILDLIFE AREA (HLWA), LASSEN COUNTY.

Summary of Issue

The Department requests authorization to accept a donation of 1.35± acres of land located within the Honey Lake Wildlife Area (HLWA), Lassen County. In a memo dated July 16, 1996, the Department provides the following information:

"The Department of Fish and Game (DFG) requests authorization to accept 1.35± acres of land located within the boundary of The DFG's HLWA.

"The Farm Services Agency (FSA) is in the process of selling a 155-acre parcel adjacent to HLWA in Lassen County. FSA has established a conservation easement on 154 acres of the parcel, and wishes to donate the 1.35± acres to the DFG. The 1.35± acre parcel is separated from the remaining parcel by the Southern Pacific railroad tracks. This small parcel has been fenced and is currently managed by the DFG as part of the HLWA's closed zone.

"A map is attached for your information.

"Thank you for your consideration of the DFG's request."

The Commission was provided a copy of a map.

29. REQUEST OF MARTIN STRAIN, POINT REYES OYSTER COMPANY, INC., TO AMEND STATE WATER BOTTOM LEASE NO. M-430-14, TOMALES BAY, TO ALLOW PLACEMENT OF FLOATING RAFTS FOR PROPAGATION OF SEED OYSTERS, CULTURE OF MUSSELS AND WET STORAGE OF HARVESTABLE SHELLFISH.

Summary of Issue

Mr. Martin Strain, Point Reyes Oyster Company, Inc., Tomales, requests an amendment of Aquaculture Lease No. M-430-14, Tomales Bay, to allow the placement of floating rafts for propagation of seed oysters, culture of mussels and wet storage of harvestable shellfish.

In a letter received in the Commission office on June 24, 1996, Mr. Strain provides the following information:

"I would like to request the Commission consider amending lease M-430-14 in Tomales Bay, Marin County, California at the next scheduled meeting to allow the placement of floating rafts for the propagation of seed oysters, the culture of mussels and the wet storage of harvestable shellfish."

Department Recommendation

"Mr. Strain is currently authorized to cultivate bay mussels, Pacific, eastern, and European oysters, rock and Japanese scallops, and red, green, and pink abalone using the long-line method.

"The Department has reviewed this request and recommends approval, subject to the following conditions:

- "1. Floating rafts shall not be placed in or above eel grass beds.

"2. Prior to the placement of any rafts, a map, showing the proposed placement of all rafts, shall be submitted to the Department for approval.

"3. Prior approval of the deployment of the rafts shall be obtained from the California Coastal Commission."

30. APPROVAL OF PRIVATE LANDS HABITAT ENHANCEMENT AND WILDLIFE MANAGEMENT AREA LICENSES (1996-2001) AND 1996-97 MANAGEMENT PLAN FOR:

- (A) LONE RANCH, SAN BENITO COUNTY
- (B) SHAMROCK RANCH, MENDOCINO COUNTY

(APPLICATIONS SUBMITTED FOR ITEMS 30, 31 AND 32 HAVE BEEN ANALYZED BY DEPARTMENT STAFF AND A DETERMINATION MADE THAT THEY ARE WITHIN THE SCOPE OF THE HUNTING PROGRAM ENVIRONMENTAL DOCUMENTS PREPARED FOR THE AFFECTED SPECIES PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.)

Summary of Issue

The following applicants have requested a Private Lands Habitat Enhancement and Wildlife Management Area (PLM) license (1996-2001) and approval of its 1996-97 Management Plan. The required applications and management plans have been submitted to the Department. The license period would be for five years to run from 1996-2001. The Department has determined that these plans conform to the regulations provided in Section 601, Title 14, CCR, and to the Commission's policy related to Private Lands Wildlife Management Areas. The Department has reviewed the annual report for this ranch and recommends that the Commission approve the Management Plan for the coming year. A summary of this proposal and the Department's recommendations were provided to the Commission. Should the Commission desire a complete packet which was included with the application, please contact the Commission office.

The Commission was provided with a copy of a letter from Mr. Ronald A. Rodrigues, Supervisor for the County of San Benito, regarding the request of Lone Ranch, and correspondence related to the Shamrock Ranch application.

- (A) LONE RANCH, SAN BENITO COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the initial management plan and application for the 12,711-acre Lone Ranch near Hernandez Reservoir in southern San Benito County. The owner is applying for an initial license under Fish and Game Commission regulations pursuant to Section 601, Title 14, California Code of Regulations. A public notice was published in a local newspaper, and

certified letters were mailed to adjacent landowners with notification of the applicant's intent to enter the program. The applicant has identified the location where records will be kept and made available for inspection. The operator agrees to allow Department of Fish and Game employees access to the area for purposes of license compliance verification. Access to public lands will not be diminished under implementation of the management plan. The management plan is in compliance with Commission policy requirements for private lands management. The habitat improvements performed under this plan will help to enhance and maintain wildlife habitat in San Benito County on and around the Lone Ranch. The goals and objectives outlined in the management plan are compatible with the San Benito Deer Herd Management Plan.

"Wildlife habitat improvement projects proposed for 1996 include planting a minimum of 10 acres of perennial grasses and/or dryland alfalfa and clover in two areas; plant seedlings of browse species; remove all cattle from 1,500-2,500 acres, that is used primarily by elk; maintain current grazing of 300 cow-calf units on remainder of ranch; clean or develop at least one pond or spring; mechanically clear at least 30 acres of brush and burn 100 acres; and install elk crossings in fences.

"To comply with Commission regulations, no elk hunting is proposed during the initial year of this five year plan. A harvest proposal for elk will be developed for the 1997 license year. While deer are not part of this initial management plan, habitat improvement and an appropriate harvest program will be considered by the licensee and Department for inclusion in the management plan in 1997.

"The estimated herd size of the Southern San Benito Elk Herd is 100-125 animals. The proposed post-season bull ratio for the Lone Ranch is 30 bulls per 100 cows, with 15 percent of the bulls to be harvested annually after the targeted ratio is reached.

"The Department recommends that the Commission approve the Lone Ranch Private Lands Management Area Program and grant the PLM Area license."

(B) SHAMROCK RANCH, MENDOCINO COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the initial management plan and application for the 16,750-acre Shamrock Ranch near Laytonville in Mendocino County. The owner is applying for an initial license under Fish and Game Commission regulations pursuant to Section 601, Title 14, California Code of Regulations. A public

notice was published in a local newspaper, and certified letters were mailed to adjacent landowners with notification of the applicant's intent to enter the program. The applicant has identified the location where records will be kept and made available for inspection. The operator agrees to allow Department of Fish and Game employees access to the area for purposes of license compliance verification. Access to public lands will not be diminished under implementation of the management plan. The management plan is in compliance with Commission policy requirements for private lands management. The habitat improvements performed under this plan will help to enhance and maintain wildlife habitat in Mendocino County on and around the Shamrock Ranch. The goals and objectives outlined in the management plan are compatible with the Mendocino Tule Elk Management Plan (MTEMP).

"Wildlife habitat improvement projects proposed for 1996 include developing and maintaining two springs, development of five acres of irrigated permanent pasture, placement of mineral blocks in areas used by elk, development initiation of a prescribed burning program.

"To comply with Commission regulations, no elk hunting is proposed during the initial year of this five year plan. A harvest proposal will be developed for the 1997 license year. Habitat benefits for deer and upland game species will be evaluated by the Department in subsequent years.

"The MTEMP contains a minimum objective bull ratio of at least 25 bulls per 100 cows, as measured after hunting. Currently, bull ratio for the Laytonville subherd of the Mendocino Tule Elk herd is approximately 67 bulls per 100 cows with a total estimated population of 85-100. The bull ratio is above the minimum objective ratio contained within the MTEMP.

"As a result of the notification of the adjoining landowners of its intent to enter the PLM Program, the Department has received two letters of concern/opposition. The Department reviewed, in detail, the issues raised by the individuals and responded, in writing, to all of the concerns. Based on its analysis, the Department believes that the issues have been clarified and the concerns addressed. Therefore, the Department recommends that the Commission approve the Shamrock Ranch Wildlife Management Area Plan and grant the PLM Area license."

31. APPROVAL OF ANNUAL REPORT AND 1996-97 PRIVATE LANDS HABITAT ENHANCEMENT AND WILDLIFE MANAGEMENT AREA PLANS FOR:

- (A) BELL'S RANCH, TEHAMA COUNTY
 - (B) ECKLAND RANCH, MODOC COUNTY
 - (C) RANCHO GARATE, LASSEN COUNTY
 - (D) SNOWSTORM RANCH, LASSEN COUNTY
 - (E) TOMS CREEK RANCH, MODOC COUNTY
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Summary of Issue

The following applicants have requested renewal of their Private Lands Habitat Enhancement and Wildlife Management Area (PLM) licenses and approval of their 1996-97 Management Plans. The Department has reviewed the annual report for each of these ranches and recommends that the Commission approve the Management Plans for the coming year. The Department has determined that the activities on the ranches unless otherwise specified, have been completed as proposed in the 1995-96 objectives.

The Commissioners were provided with copies of background information on each of these ranches and the Department's recommendations. Copies of the complete annual reports and full Management plans are available for the Commissioners upon request.

(A) BELL'S RANCH, TEHAMA COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the annual report, management plan, and renewal application for the 12,500-acre Bell Ranch in southeastern Tehama County. The ranch is currently licensed under Fish and Game Commission regulations in Section 601, Title 14, California Code of Regulations. Full payment was made for all tags used in 1995 and all habitat work was completed. The applicant has identified the location where records will be kept and made available for inspection. The habitat improvements accomplished under this plan will enhance and maintain wildlife resources of Tehama County on and around the Bell Ranch. The goals and objectives outlined in the management plan are compatible with the East Tehama Deer Herd Management Plan. In addition, public access to public lands will not be diminished under implementation of this management plan.

"Habitat enhancement projects completed in 1995 included maintaining reduced livestock levels and deferred grazing on the ranch to improve food availability for wildlife, providing mineral supplements, planting forage species

(clover and alfalfa) exclusively for wildlife, and restricting off-road vehicle use to reduce damage to new habitat areas or disturbance to the deer herd.

"Habitat enhancement projects proposed for 1996 include maintaining reduced livestock grazing levels and deferred grazing, providing mineral supplements, restricting off-road vehicle use to reduce damage to new habitat areas and limiting disturbance to the deer herd, planting additional forage species exclusively for wildlife, and maintaining all previous projects.

"Fall herd composition counts in 1995 for the East Tehama Deer Herd were 14 bucks and 46 fawns per 100 does. Composition counts are currently below the objectives outlined in the East Tehama Deer Herd Management Plan. However, analysis using these ratios and the proposed 1996 harvest for the ranch show no potential impacts to the herd resulting from the recommended hunting program.

"Historical harvest levels on the ranch were 27-30 bucks per year. In 1995, the ranch was authorized 14 buck and three antlerless deer tags and harvested ten buck and two antlerless deer. For 1996, the applicant is requesting a slight increase in buck deer tags in response to deer increases resulting from improved forage conditions.

"The Department recommends that the Commission approve the Bell Ranch Wildlife Management Plan and the 1996 harvest program under the following conditions:

- "1. Issue 15 buck deer tags to take forked horn or better buck deer for the period of October 19 through November 30, 1996.
- "2. Issue three antler less deer tags for the period of October 19 through November 30, 1996."

(B) ECKLAND RANCH, MODOC COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the management plan, annual report, and renewal application for the 2,040-acre Eckland Ranch near Alturas in Modoc County. The ranch is currently licensed under Fish and Game Commission regulations in Section 601, Title 14, California Code of Regulations. Full payment was made for all tags in 1995, and all habitat work was completed. The applicant has identified a location where records will be kept and made available for inspection. The plan is in compliance

with Commission policy requirements for private lands management. The habitat improvements performed under this plan will help to enhance and maintain wildlife habitat in Modoc County on and around the ranch. The goals and objectives outlined in the management plan are compatible with the Warner Mountains Deer Herd Management Plan and the Northeastern California Pronghorn Antelope Management Plan. In addition, public access to public lands will not be diminished under implementation of this management plan.

"Wildlife habitat improvement projects completed in 1995 included installing three miles of perimeter fencing to help eliminate trespass livestock. All fencing was constructed using a "wildlife friendly" design. The ranch also cleared five acres of junipers to encourage forage understory recruitment. Livestock exclosures planned for 1996-1998 will not be completed because livestock have been excluded from the entire ranch.

"Wildlife habitat improvement projects proposed for 1996 include maintaining all previous projects, replacing one mile of existing fence to ensure soundness and eliminate stray trespass livestock, thinning an additional ten acres of juniper to encourage understory forage recruitment, and initiating instream enhancements to decrease water velocities lessening impacts on unstable banks.

"Deer herd composition counts for the Warner Mountains Deer Herd show 19 postseason bucks and 56 fawns per 100 does. These ratios are currently within the ratio goals of the Warner Mountains Deer Herd Management Plan. In 1995, the ranch was authorized three buck and three antlerless deer tags; one buck and zero antlerless deer were taken.

"The Department recommends that the Commission approve the Eckland Ranch Wildlife Management Plan and 1996 harvest program under the following conditions:

- "1. Issue three buck deer tags to take forked horn or better buck deer for the period of October 5 through November 24, 1996.
- "2. Issue three antler less deer tags for the period of October 5 through November 24, 1996.
- "3. No person may take more than one buck deer."

(C) RANCHO GARATE, LASSEN COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the annual report, new management plan, and application for the 25,735-acre Rancho Garate Ranch in Lassen County. The

ranch acquired an additional 17,635 acres of land increasing its size from 8,100 to 25,735 acres in 1996. The ranch was previously licensed under Fish and Game Commission regulations in Section 601, Title 14, California Code of Regulations. Full payment was made for all tags used in 1995. The applicant has identified the location where records will be kept and made available for inspection. Access to public lands will not be diminished under implementation of this management plan. The management plan is in compliance with Commission policy requirements for private lands management. The habitat improvements accomplished under this plan will enhance and maintain wildlife resources on and around the Rancho Garate Ranch. This plan provides for habitat enhancements to summer range for the East Lassen Deer Herd and the Madeline Flats Pronghorn Antelope subherd by increasing forage quality and fawning cover. The goals and objectives outlined in the management plan are compatible with the East Lassen Deer Herd Management Plan and the Northeastern California Pronghorn Antelope Management Plan.

"Habitat enhancement projects completed in 1995 included maintaining 3,000 protective devices on young class bitterbrush plants; maintaining water sources for wildlife including completely rebuilding one guzzler; reducing livestock grazing on over 2,000 acres; and maintaining fences to eliminate trespassing livestock.

"Habitat enhancement projects proposed for 1996 include maintaining 3,000 bitterbrush protective devices to recruit young plants for deer forage; building check dams to raise water table levels to restore a channelized wet meadow, fencing a riparian area below a spring complex to improve fawning cover, modifying 1.5 miles of fence for easier pronghorn antelope movement, maintaining all previous water source developments and all past projects.

"The 1995 postseason herd composition ratios for the East Lassen Deer Herd showed 30 bucks and 76 fawns per 100 does. Ratios are currently consistent with herd goals for the area. The improved fawn ratios reflect the results of improved forage conditions and low winter mortality.

"In 1995, Rancho Garate Ranch was authorized 14 buck deer tags to take no more than seven buck deer; two buck deer were taken. While this plan does not request season dates extending past the regular season, it does request a season starting two weeks earlier than the regular deer season. This is to help ensure that deer raised on the area are harvested on the area. For 1996, the applicant is requesting an increase in harvest to coincide with increased acreage and improved habitat conditions and recruitment.

"The Department recommends that the Commission approve the Rancho Garate Ranch Wildlife Management Plan and the 1996 harvest program under the following conditions:

- "1. Issue 20 buck deer tags to take no more than ten forked horn or better bucks for the period of September 21 through October 20, 1996.
- "2. No person may take mor than one buck deer."

(D) SNOWSTORM RANCH, LASSEN COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the annual report, management plan, and renewal application for the 3,000-acre Snowstorm Ranch in Lassen County. The ranch is currently licensed under Fish and Game Commission regulations in Section 601, Title 14, California Code of Regulations. Full payment was made for all tags used in 1995. The applicant has identified the location where records will be kept and made available for inspection. The plan is in compliance with Commission policy requirements for private lands management. Access to public lands will not be diminished under implementation of this management plan. The habitat improvement accomplished under this plan will enhance and maintain wildlife resources in Lassen County on and around the Snowstorm Ranch. The goals and objectives outlined in the management plan are compatible with the East Lassen Deer herd Management Plan.

"Habitat enhancement projects completed in 1995 included maintaining over 80 acres of livestock exclosures, planting 220 willows to create montane riparian habitat within exclosures, maintaining wire cages on 500 bitterbrush plants to allow regrowth during periods of high public allotment livestock grazing, placing protective screening on 25 willow trees to help increase cover values, and improving a water control structure restoring approximately 30 acres of wetlands.

"Habitat enhancement projects proposed for 1996 include maintaining all past projects and livestock exclosures, installing protective screening around additional willows, planting 100 willows in a 30-acre livestock exclosure, and maintaining 500 wire protective devices on bitterbrush.

"Deer herd composition counts in 1995 showed 23 bucks and 67 fawns per 100 does. The current buck ratio is slightly below herd goals, however, analysis using these ratios and the proposed 1996 harvest for the ranch show no potential impacts to the herd resulting from the recommended hunting program. These herd composition estimates were made off

site as deer are not present on the ranch during the appropriate time to collect herd composition data due to migration.

"In 1995, 10 tags were authorized to harvest a maximum of three buck deer; one buck deer was harvested. The ranch is requesting an increase in the number of tags authorized and bucks to be harvested in 1996 as a result of slightly increased recruitment within Zone X-5a.

"The Department recommends that the Commission approve the Snowstorm Ranch Wildlife Management Plan and the 1996 harvest program under the following conditions:

"1. Issue 15 buck deer tags to take no more than four buck deer, forked horn or better, for the period of October 5 through November 17, 1996.

"2. No person may take more than one buck deer."

(E) TOMS CREEK RANCH, MODOC COUNTY

Department Recommendation

"The Department of Fish and Game has reviewed the management plan, annual report, and renewal application for the 1,235-acre Toms Creek Ranch near Canby in Modoc County. The ranch is currently licensed under Fish and Game Commission regulations in Section 601, Title 14, California Code of Regulations. Full payment was made for all tags used in 1995, and all habitat work was completed. The applicant has identified the location where records will be kept and made available for inspection. The plan is in compliance with Commission policy requirements for private lands management. Access to public lands will not be diminished under implementation of this management plan. The habitat improvements performed under this plan will help to enhance and maintain wildlife habitat in Modoc County on and around the ranch. The goals and objectives outlined in the management plan are compatible with the Adin Deer herd Management Plan.

"Wildlife habitat improvement projects completed in 1995 included improving and maintaining seven miles of perimeter fencing to prevent uncontrolled grazing by trespass livestock, thinning junipers for understory browse improvement, creating four brush piles using thinned junipers as cover for smaller wildlife species, and planting forage crops of rye, clover, and wheat exclusively for wildlife.

"Wildlife habitat improvements proposed for 1996 include modifying existing fencing to allow unrestricted wildlife movement, continuing juniper thinning for understory recruitment and brush pile construction from thinned junipers, and maintaining secure perimeter fencing to control trespass livestock from nearby public land allotments.

"Deer herd composition counts for the Adin Deer herd showed 17 bucks and 57 fawns per 100 does which is currently above the goals outlined in the Adin Deer Herd Management Plan. Ratios on the ranch are consistent with herd ratios. In 1995, the ranch was authorized three buck and two antlerless deer tags; one buck and two antlerless deer were harvested.

"The Department recommends that the Commission approve the Toms Creek Ranch Wildlife Management Plan and 1996 harvest program under the following conditions:

- "1. Issue three buck deer tags to take forked horn or better buck deer for the period of October 5 through November 24, 1996.
- "2. Issue two antlerless deer tags for the period of October 5 through November 24, 1996.
- "3. No person may take more than one buck and one antlerless deer."

32. REQUEST TO MODIFY PRIVATE LANDS HABITAT ENHANCEMENT AND WILDLIFE MANAGEMENT AREA LICENSE CONDITIONS FOR THE MILLER-ERICKSEN RANCH, MENDOCINO COUNTY.

Summary of Issue

Miller-Ericksen Ranch has requested modification of its Private Lands Habitat Enhancement and Wildlife Management Area Plan. The Commission, at its May 6, 1996, meeting, approved the take of 17 bucks and six antlerless deer by archery only method of take. Subsequent to that approval, the applicant requested a modification of its plan to allow the use of archery and firearms for the taking of antlerless deer. The use of firearms will increase the success of the antlerless harvest, especially for junior hunters. All other terms and conditions would remain the same. The Department has reviewed the latest request and recommends that the Commission approve the modification to include the use of firearms to take antlerless deer.

Department Recommendation

"At the Commission's May 6, 1996, meeting, the Miller-Eriksen plan was approved for 1996 to take 17 bucks and six antlerless deer by archery only method of take. Subsequent to that approval, the applicant requested a modification of the plan to allow the use of archery and firearms for the taking of antlerless deer. The use of firearms will increase the success of the antlerless harvest, especially for junior hunters. All other terms and conditions would remain unchanged.

"We recommend approval of the request to modify the plan to allow the use of firearms to take antlerless deer."

33. REQUEST OF DOUG MCNAIR, NATURAL RESOURCES CONSULTANTS, SEATTLE, WASHINGTON, FOR FOUR EXPERIMENTAL GEAR PERMITS TO TEST DIFFERENT GEAR TYPES TO AVOID COHO SALMON WHEN HARVESTING CHINOOK SALMON.

Summary of Issue

Mr. Doug McNair, Natural Resources Consultants, Seattle, Washington, requests four experimental gear permits to test different gear types to avoid Coho salmon when harvesting Chinook salmon. The Commissioners were provided with copies of Mr. McNair's August 14, 1996, letter providing further information.

Department Recommendation

"The permits are to conduct at-sea tests of different troll gear configurations during the month of September to avoid silver (coho) salmon when harvesting king (chinook) salmon. The retention of coho salmon in California's commercial fisheries has been disallowed since 1993 because of low stock abundances. The study is to test the efficacy of using fewer spreads per main troll line to reduce encounters of coho salmon in commercial chinook-only fisheries. Four boats are involved in the at-sea research fishing four different gear-array combinations. The current study is being conducted out of the southern Oregon port of Brookings, at the request of the Oregon Department of Fish and Wildlife (ODFW), and is funded through the Pacific States Marine Fisheries Commission. The researchers currently have permits from both ODFW and the National Marine Fisheries Service (NMFS). Because of the proximity of the current study to the Oregon-California border, they would like to have the boats extend their operations into California waters during the commercial fishery that will be operating during the first two weeks of September (or 6,000 chinook quota) between the Oregon-California border and Humboldt South Jetty.

"The permits from the ODFW and the NMFS require that all coho and sublegal chinook be released. Legal chinook may be retained only during regularly scheduled fisheries, and landings are subject to regulations in place for scheduled fisheries. These same restrictions will apply to their operations in California waters in addition to terms included in the attached draft of the Experimental Gear Permit.

"The results of a similar study conducted six years ago off central Oregon changed salmon management for that fishery by restricting commercial fishers to four spreads per line to reduce coho impacts in the chinook-only fishery. California's commercial troll fisheries north of Point Arena have been severely constrained this decade, in part, by concerns for coho impacts during chinook-only fisheries because of depressed coho abundances. This study could provide managers with data that would result in improved salmon management, and the possibility of additional fishing opportunities in areas where commercial salmon fishing has been prohibited for several years. Therefore, the Department recommends the Commission approve subject request."

34. ANNOUNCEMENT OF FUTURE MEETINGS.

1996 MEETING SCHEDULE

DATE	LOCATION
October 3-4 (Thurs./Friday)	Hubbs-Sea World Research Instit. 2595 Ingraham Street San Diego
November 7-8 (Thurs./Friday)	Ahwahnee Hotel Yosemite National Park Yosemite
December 5-6 (Thurs./Friday)	Board of Supervisors Chambers 825 Fifth Street Eureka

There being no further business, the Fish and Game Commission meeting was adjourned at 2:45 p.m.

AMENDMENTS TO SECTION 147, TITLE 14, CCR

(1) Subsection (a) (3) (E) of Section 147, Title 14, CCR, is amended to read:

(E) Declaration of Intent to Take, Possess, Land or Transport Anchovies for Reduction Purposes:

1. The provisions of subsection (a) (3) (E) shall apply only to vessels taking anchovies for reduction purposes ~~in the Southern Permit Area~~ as described in subsection (a) (3) (F) 1. and 2.

2. No vessel shall be operated to take, carry or deliver anchovies for reduction purposes unless a declaration of intent has been filed regarding said vessel in accordance with these regulations.

3. Before a vessel operator can file a declaration of intent as required by subsection (a) (3) (E) he must be the operator of a vessel duly registered as provided by section 7890 of the Fish and Game Code, and must possess a valid commercial fishing license.

4. No vessel operating under the authority of a declaration of intent filed pursuant to these regulations shall take, carry or deliver anchovies for any purpose other than reduction except when taking anchovies for canning or live bait purposes as provided in subsection (a) (3) (E) 12 of these regulations, or when operating pursuant to an exception filed in accordance with subsection (a) (3) (E) 5 of these regulations. When operating under the authority of an exception, no anchovies may be taken for reduction purposes.

5. During the period for which the declaration is in force and effect, a named vessel may be used to take, carry and deliver anchovies for other than reduction purposes if, and only if, operator files an exception in accordance with the following provisions-:

a. When the operator intends to use said vessel to take anchovies for purposes other than reduction, he shall so notify the Long Beach or Yountville offices of the department, either by letter or telegram, prior to the commencement of fishing. This notice shall be posted or sent prior to the commencement of fishing and shall be effective only on the vessel named.

b. The notice shall contain the following information: the calendar days for which the exception is to be effective; the purpose for which the anchovies are to be taken; and the name and registration number of the vessel.

6. Declaration of intent shall be filed with the department during normal working hours at the Yountville, San Diego or Long Beach office of the department. The declaration of intent shall be filed on forms furnished by the department.

7. Each declaration of intent shall specify the vessel to which it applies. Only one vessel may be specified on any one declaration, but a qualified applicant may file separate declarations for more than one vessel.

8. Except as otherwise provided, any declaration of intent filed pursuant to these regulations shall be in force only during the open season, or if filed after the beginning of such term, for the remainder thereof.

9. A copy of each declaration filed under subsection (a) (3) (E) to take anchovies shall be carried aboard the vessel to which it relates and shall be exhibited upon demand to the authorized representative of any reduction plant to which said vessel is delivering anchovies and upon demand to any officer of the department.

10. No vessel which has filed a declaration of intent to take, carry and deliver anchovies for purposes of reduction and has filed no exception thereto shall place any net in the water for the purpose of taking anchovies in any unauthorized area. In the event of any violation of this section, the operator of said vessel shall be deemed in violation thereof.

11. Whenever anchovies are possessed aboard a vessel for which declaration of intent to take, carry and deliver anchovies for reduction purposes has been filed and such declaration is in full force and effect, and not then subject to any notice of exception pursuant to subsection (a) (3) (E) 5, it shall be conclusively presumed that said anchovies were taken and were being carried for reduction purposes.

12. Notwithstanding the other provisions of subsection (a) (3) (E), vessels operating under a declaration of intent to take anchovies for reduction purposes may also take anchovies for canning purposes, pursuant to the appropriate sections of the Fish and Game Code and of this section, and may also take anchovies for live bait purposes, providing that all conditions, laws, and regulations pertaining to the reduction fishery are adhered to while so engaged in live bait fishing.

(2) Subsection (a) (3) (F) 3. of Section 147, Title 14, CCR, is amended to read:

3. Quotas. ~~The total tonnage reserved for the northern permit area and the total tonnage for the southern permit area shall be the same as those established by the National Marine Fisheries Service under the provisions of the Northern Anchovy Fishery Management Plan. Pursuant to 50 Code of Federal Regulations Section 662.20, an announcement of harvest quotas will be made by notice in~~

the Federal Register on or about August 1 of each year. If the department or department's designee does not produce a northern anchovy biomass estimate, total tonnage reserved for a harvest quota is 5,000 tons and is established on August 1 of each year. This quota is allocated evenly between northern and southern permit areas.

NOTE

Authority: Sections 202 and 7708, Fish and Game Code.
References: Sections 8076 and 8190, Fish and Game Code
and ~~50 CFR Section 662.5.~~

Section 502, Title 14, CCR, is amended to read:

502. Waterfowl, Migratory; Common Snipe; American Coot and Common Moorhen (Common Gallinule).

(a) Definitions.

(1) Dark geese. Dark geese include Canada geese, cackling geese and white-fronted geese ("specklebelly").

(2) Canada geese. Canada geese include western Canada geese ("honker") and lesser Canada geese ("lessers").

(3) Cackling geese. Cackling geese are small (about the size of a mallard) white-cheeked geese identical in appearance to Canada geese. For purposes of these regulations, cackling geese are not Canada geese.

(4) Aleutian geese. Aleutian geese are medium-sized, white-cheeked geese which are fully protected in California. For purposes of these regulations, Aleutian geese are not Canada geese.

(5) White geese. White geese include Ross' geese and snow geese.

(b) Waterfowl Hunting Zones.

(1) Northeastern California Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west on Forest Service Road 46N05 to its junction with Forest Service Road 46N10; south and east along Forest Service Road 46N10 to its junction with County Road 7K007; south and west on County Road 7K007 to its junction with Forest Service Road 45N22; south and west along Forest Service Road 45N22 to its junction with Highway 97 at Grass Lake Summit; south and west along Highway 97 to its junction with Interstate 5 at the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to the junction with Highway 49; east and north on Highway 49 to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines; west along the California-Oregon state line to the point of origin.

(2) Southern San Joaquin Valley Zone: All of Kings and Tulare counties and that portion of Kern County north of the Southern California Zone.

(3) Southern California Zone: In that portion of southern California (but excluding the Colorado River zone) lying south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 166 near the City of Santa Maria; east on Highway 166 to the junction with Highway 99; south on Highway 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California-Nevada state line.

(4) Colorado River Zone: In those portions of San Bernardino, Riverside, and Imperial counties lying east of the following lines: Beginning at the intersection of Highway 95 with the California-Nevada state line; south along Highway 95 to Vidal Junction; south through the town of Rice to the San Bernardino-Riverside county line on a road known as "Aqueduct Road" in San Bernardino County; south from the San Bernardino-Riverside county line on road known in Riverside County

as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on Interstate 10 to its intersection with the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to its intersection with the Ogilby and Tumco Mine Road; south on this road to Highway 80; east seven miles on Highway 80 to its intersection with the Andrade-Algodones Road; south on this paved road to the intersection of the Mexican boundary line at Algodones, Mexico.

(5) Balance of State Zone: That portion of the state not included in Northeastern California, Southern California, Colorado River or the Southern San Joaquin Valley zones.

(A) Special Management Areas

1. North Coast. All of Del Norte and Humboldt counties.
2. Humboldt Bay (South). Beginning at the intersection of the north boundary of Table Bluff County Park and the South Jetty Road; north along the South Jetty Road to the South Jetty; west along the South Jetty to the mean low water line of the Pacific Ocean to its intersection with the north boundary of the Table Bluff County Park; east along the north boundary of the Table Bluff County Park to the point of origin.
3. Sacramento Valley. Beginning at the town of Willows; south on Interstate 5 to the junction with Hahn Road; east on Hahn Road and the Grimes-Arbuckle Road to the town of Grimes; south on the Sacramento River to the Tisdale Bypass; east on the Tisdale Bypass to O'Banion Road; east on O'Banion Road to Highway 99; north on Highway 99 to the junction of the Gridley-Colusa Highway in the town of Gridley; west on the Gridley-Colusa Highway to its junction with the River Road; north on the River Road to the Princeton Ferry; west across the Sacramento River to Highway 45; north on Highway 45 to its junction with Highway 162; north on Highway 45-162 to the town of Glenn; west on Highway 162 to the point of beginning.
4. Sacramento Valley (West). That portion of the area described in the Sacramento Valley Special Management Area lying west of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; east along the Cherokee Canal and North Butte Road to West Butte Road; south on West Butte Road to Pass Road; east on Pass Road to West Butte Road; south on West Butte Road to Highway 20; west along Highway 20 to the Sacramento River, and south along the Sacramento River to the town of Grimes on the Grimes-Arbuckle Road.
5. Morro Bay. That portion of Morro Bay lying south and east of the following line: Beginning at a point 200 yards offshore from the mean high tide line at the end of Inyo Street in Cuesta-by-the-Sea; north and east along a line to a point 200 yards offshore from the mean high tide line at the end of Santa Ysabel Avenue in Baywood Park; and then north and east along a line 200 yards offshore from the mean high tide line to the offshore west boundary of Morro Bay State Park; then north along the Morro Bay State Park boundary to a point 400 yards south from the mean high tide line at the west end of White Point; then continuing west and north along a line to a point 300 yards west from the mean high tide line at the end of White Point; and then continuing north along a line toward the red number "20" channel marker to the Morro Bay city limit offshore from Fairbank Point.
6. San Joaquin Valley. Beginning at the City of Modesto; west on Highway 132 to the junction of Interstate 5; south on Interstate 5 to the junction of Highway 152; east on Highway 152 to the junction of Highway 165; north on Highway 165 to the junction of Highway 99; north and west on Highway 99 to the point of beginning.
7. Martis Creek Lake. The waters and shoreline of Martis Creek Lake, Placer and Nevada counties.

(c) Statewide Seasons and Bag and Possession Limits for American Coots, Common Moorhens, Black Brant and Common Snipe.

(1) Species	(2) Season	(3) Daily Bag and Possession Limits
American Coot and Common Moorhen.	Concurrent with duck season(s) and during the period between segments of split duck seasons.	25 per day, 25 in possession, either all of one species or a mixture of these species.
Black Brant	From November 1 through November 30.	Two per day, four in possession.
Common Snipe	From the first Saturday in October extending for 107 days. <u>(October 5 - January 19)</u>	Eight per day, 16 in possession.

(d) Seasons and Bag and Possession Limits for Ducks and Geese by Zone.

(1) Northeastern California Zone		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers).	From the first Saturday in October extending for 93 days. <u>(October 5 - January 5)</u> and <u>One day for youth hunters 15 or under (September 28). Youth hunters must be accompanied by a non-hunting adult 18 years of age or older.</u>	Daily bag limit: 6 7 Daily bag limit makeup: <ul style="list-style-type: none"> • Up to sixseven mallards but not more than one female. • two pintails • only one canvasback • only two redheads of either sex. Possession limit: double the daily bag limit.
Geese other than White-fronted and Cackling Geese White-fronted and Cackling Geese.	From the first Saturday in October extending for 93 days. <u>(October 5 - January 5)</u> From the first Saturday in October extending for 23 days. <u>(October 5 - October 27)</u>	Daily bag limit: 3 Daily bag limit makeup: <ul style="list-style-type: none"> • Three may be white geese • two may be dark geese (see definition) • only one cackling goose. Possession limit: double the daily bag limit.
Aleutian Geese	Take prohibited	

(2) Southern San Joaquin Valley Zone		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers).	From the third Saturday in October extending for 93 days. <u>(October 19 - January 19)</u> and <u>One day for youth hunters 15 or under (October 12).</u> <u>Youth hunters must be accompanied by a non-hunting adult 18 years of age or older.</u>	Daily bag limit: 6 7 Daily bag limit makeup: • Up to six seven mallards but not more than one female. • two pintails • only one canvasback • only two redheads of either sex. Possession limit: double the daily bag limit.
Geese other than White-fronted and Cackling Geese White-fronted and Cackling Geese.	From the fourth first Saturday in October November extending for 79 days. <u>(November 2 - January 19)</u> From the fourth first Saturday in October November extending for 65 days. <u>(November 2 - January 5)</u>	Daily bag limit: 3 Daily bag limit makeup: • Three may be white geese • only one dark goose, except two dark geese may be taken if they are both Canada geese (see definitions). Possession limit: same as daily bag limit.
Aleutian Geese	Take prohibited	

(3) Southern California Zone		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers). " "	From the third Saturday in October extending for 93 days. <u>(October 19 - January 19)</u> and <u>One day for youth hunters 15 or under (October 12).</u> <u>Youth hunters must be accompanied by a non-hunting adult 18 years of age or older.</u>	Daily bag limit: 6 7 Daily bag limit makeup: • Up to six seven mallards but not more than one female. • two pintails • only one canvasback • only two redheads of either sex. Possession limit: double the daily bag limit.
Geese	From the third Saturday in October extending for 93 days. <u>(October 19 - January 19)</u>	Daily bag limit: 5 Daily bag limit makeup: • Three may be white geese • two may be dark geese, but only one may be a cackling goose (see definitions). Possession limit: 8 Possession limit makeup: • Six may be white geese • two may be dark geese.
Aleutian Geese	Take prohibited	

(4) Colorado River Zone		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers).	From the Friday after the first Saturday in October extending for ten days. <u>(October 11 - October 20)</u> and From the fifth Tuesday of October extending for 83 days. <u>(October 29 - January 19)</u> and one day for youth hunters 15 or under <u>(January 25)</u> . Youth hunters must be accompanied by a non-hunting adult 18 years of age or older.	Daily bag limit: 67 Daily bag limit makeup: • Up to six seven mallards but not more than one female or Mexican duck. • two pintails • only one canvasback • only two redheads of either sex. Possession limit: double the daily bag limit.
Geese	From October 22 18 through the Sunday closest to January 20. <u>(October 18 - January 19)</u>	Daily bag limit: 5 Daily bag limit makeup: • Up to three white geese • up to two dark geese (see definitions) Possession limit: double the daily bag limit.
Aleutian Geese	Take prohibited	
(5) Balance of State Zone (NOTE: SEE SUBSECTIONS (D) BELOW FOR SPECIAL SEASONS AND CLOSURES.)		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers).	From the third Saturday in October extending for 93 days. <u>(October 19 - January 19)</u> and One day for youth hunters 15 or under <u>(October 12)</u> . Youth hunters must be accompanied by a non-hunting adult 18 years of age or older.	Daily bag limit: 67 Daily bag limit makeup: • Up to six seven mallards but not more than one female. • two pintails • only one canvasback • only two redheads of either sex. Possession limit: double the daily bag limit.
Geese other than White-fronted and Cackling Geese White-fronted and Cackling Geese.	From the fourth first Saturday in October November extending for 79 days. <u>(November 2 - January 19)</u> From the fourth first Saturday in October November extending for 65 days. <u>(November 2 - January 5)</u>	Daily bag limit: 3 Daily bag limit makeup: • Three may be white geese • only one dark goose except two dark geese may be taken if they are both Canada geese. (See definitions). Possession limit: same as daily bag limit.
Aleutian Geese	Take prohibited	

(D) Special Management Areas		
Area	Species	Season
1. North Coast	Canada Geese, Aleutian Geese and Cackling Geese	Closed all year.
2. South Humboldt Bay	All species	Closed November 1 through November 30.
3. Sacramento Valley	White-Fronted Geese	Closed after December 14.
4. Sacramento Valley (West)	Canada Geese and Cackling Geese	Closed all year.
5. Morro Bay	All species	Closed all year.
6. San Joaquin Valley	Canada Geese and Cackling Geese	Closed after November 22.
7. Martis Lake	All species	Closed until November 16.

(e) Take of Ducks (including Mergansers), Geese, American Coots, Common Moorhens and Common Snipe by Falconry.

(1) Statewide Provisions		
(A) Species	(B) Season	(C) Daily Bag and Possession Limits
Ducks (including Mergansers), Geese, American Coot and Common Moorhen.	<ol style="list-style-type: none"> Northeastern California Zone. Open one day, <u>September 28 and then opens concurrently with duck season and extending for 1076 days. (October 5 - January 18)</u> Balance of State Zone. Open one day, <u>October 12 and then opens concurrently with duck season and extending for 1076 days. (October 19 - February 1)</u> Southern San Joaquin Zone. Open one day, <u>October 12 and then opens concurrently with duck season and extending for 1076 days. (October 19 - February 1)</u> Southern California Zone. Open one day, <u>October 12 and then opens concurrently with duck season and extending for 1076 days. (October 19 - February 1)</u> Colorado River Zone. Open concurrent with the duck season and extending for 14 days thereafter and <u>February 1-13. Falconry goose season concurrent with the general goose season. (October 18 - January 19)</u> 	<p>Daily bag limit: 3 Daily bag limit makeup: • Either all of one species or a mixture of species allowed for take.</p> <p>Possession limit: 6</p>
Common Snipe	All zones. From the first Saturday in October extending for 107 days. <u>(October 5 - January 19)</u>	

NOTE

Authority: Section 202 and 355, Fish and Game Code. Reference: Sections 202, 355 and 356, Fish and Game Code.

Section 507, Title 14, CCR, is amended to read:

507. ~~Methods Authorized for Taking Migratory Game Birds. Provisions Related to the Taking of Migratory Game Birds.~~

~~Only the following may be used to take migratory game birds:~~

- ~~(a) Falconry;~~
- ~~(b) Bow and arrows or crossbows. Only arrows or crossbow bolts with flu-flu fletching may be used except that conventionally fletched arrows may be used to take waterfowl sitting on the water from scullboats or similar watercraft. Archers hunting during any archery season may not possess a firearm while in the field engaged in archery hunting during an archery season;~~
- ~~(c) Muzzle loading shotguns;~~
- ~~(d) Shotguns 10 gauge or smaller using shot shells only and incapable of holding more than three shells in the magazine and chamber combined. If a plug is used to reduce the capacity of a magazine to fulfill the requirements of this section, the plug must be of one piece construction incapable of removal without disassembling the gun;~~
- ~~(e) Shotgun shells may not be used or possessed that contain shot size larger than No. BB in lead or T shot in steel or other nontoxic shot approved by the U.S. Fish and Wildlife Service. All shot shall be loose in the shell;~~
- ~~(f) Electronic or mechanically operated calling or sound reproducing devices prohibited when attempting to take migratory game birds;~~
- ~~(g) The use of live decoys is prohibited when attempting to take migratory game birds.~~

~~Exception: Morro Bay. In areas open to hunting on, over or adjacent to the waters of Morro Bay, San Luis Obispo County, no shotgun larger than 12 gauge shall be used.~~

~~(h) Dogs may be used to take and retrieve migratory game birds.~~

(a) Authorized Methods. Only the following methods may be used to take migratory game birds:

(1) Falconry.

(2) Bow and Arrows or Crossbows. Only arrows or crossbow bolts with flu-flu fletching may be used except that conventionally fletched arrows may be used to take waterfowl sitting on the water from scullboats or similar watercraft. Archers hunting during any archery season may not possess a firearm while in the field engaged in archery hunting.

(3) Muzzle-loading Shotguns.

(4) Shotguns 10 Gauge or Smaller. Shotguns 10 gauge or smaller using shot shells only and incapable of holding more than three shells in the magazine and chamber combined may be used, except no shotgun larger than 12 gauge shall be used in areas open to hunting on, over or adjacent to the waters of Morro Bay, San Luis Obispo County. If a plug is used to reduce the capacity of a magazine to fulfill the requirements of this section, the plug must be of one piece construction incapable of removal without disassembling the gun. Shotgun shells may not be used or possessed that contain shot size larger than No. BB in lead or T shot in steel or other nontoxic shot approved by the U.S. Fish and Wildlife Service. All shot shall be loose in the shell.

(b) Use of Dogs. Dogs may be used to take and retrieve migratory game birds.

(c) Prohibition on Electronic or Mechanically-operated Devices.

Electronic or mechanically-operated calling or sound-reproducing devices are prohibited when attempting to take migratory game birds.

(d) Live Decoy Prohibition. The use of live decoys is prohibited when attempting to take migratory game birds.

NOTE

Authority cited: Section 355, Fish and Game Code. Reference: Sections 355, 356 and 3005, Fish and Game Code.

Section 508, Title 14, CCR, is repealed 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 for 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 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.~~

~~(e) Requirements of Licensees.~~

~~(1) No licensee shall establish a feeding zone within 200 yards of any building. No licensee shall establish a feeding zone within 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 of 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 shocked 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, of 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 the 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.~~

~~(e) Requirements for Flooding. Licensees are required to flood a minimum of 15 percent of the area available for ponding as determined by sketch maps submitted with the feeding application. This flooding is required to have been completed by September 15 and shall be maintained through March 1. Flooding is defined as the presence of visible surface water. In areas where water is not available for such purpose on September 15th, flooding may be delayed until water is available but not later than September 30th. All flooding is subject to mosquito abatement statutes and regulations. Feeding operations between September 15th and the start of the waterfowl season and the close of the waterfowl season and March 1st, shall be so conducted in conjunction with these flooded areas that they will be attractive to waterfowl.~~

~~(f) Agencies Exempted. These regulations are not applicable to any agency of the United States, the State of California, any county, city or city and county, and such agencies are authorized to feed at any time without a special license as herein provided for.~~

~~(g) Feeding Without a License, Conditions. Any person is hereby authorized to feed migratory waterfowl at any time, under the authority of these regulations, without applying for or obtaining the special license provided hereinabove, provided:~~

~~(1) The area in which such feeding is done is an area where the hunting of waterfowl is not contemplated or done; or~~

~~(2) That where the hunting of waterfowl is contemplated or done such feeding shall cease and all food put out shall have been consumed or removed at least ten days prior to the opening of the waterfowl season and such feeding may not be resumed until one day after the close of said season.~~

~~(h) The department may refuse to issue a license to an applicant who has~~

~~failed to comply with the provisions of this section, or to issue a license for a previously licensed area where a violation of this section has occurred. An applicant whose license is denied may appeal such denial to the commission.~~

~~A feeding license may be revoked by the Commission upon a finding by the department that the terms of the license have not been met, or upon conviction of any person authorized by the licensed feeding club to hunt thereon for a violation of any provision of the Fish and Game Code or regulations made pursuant thereto, provided notice and a hearing has been given to the licensee.~~

~~(i) Record of Waterfowl Taken. Licensees shall maintain, on forms to be provided by the department, an accurate daily record for each day hunting occurs on the licensed area. Such record shall show the number of hunters using the area, and the number and species of waterfowl taken. The licensee shall keep the record at or near the area headquarters on all hunting days, and shall present the record for inspection upon the request of any department representative. Within thirty days after the close of the waterfowl season, or at any time prior thereto upon demand of the department, the licensee shall submit the daily records for the entire season to the department.~~

NOTE

Authority cited: Sections 240, 355 and 3806, Fish and Game Code. Reference: Sections 240, 355 and 3806, Fish and Game Code.

Section 600.4, Title 14, CCR, is amended to read:

600.4. Licensed Domesticated Migratory Game Bird Shooting Areas.

Pursuant to the provisions of Section 3300 of the Fish and Game Code, licenses to operate licensed domesticated migratory game bird shooting areas may be issued by the Department of Fish and Game on the following terms:

(a) Application Requirements.

(1) If the application indicates that the property upon which a licensed domesticated migratory game bird shooting area is to be operated does not belong to the applicant, he shall declare in the application that he has acquired from the landowner exclusive hunting rights on the said property during the license period. The department may at its discretion require the applicant to provide written verification that he has acquired such hunting rights.

(2) Application shall be made on forms supplied by the department.

(3) Applications 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 he is doing business.

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

(5) License Withdrawal. The department may, in its discretion upon written application by the licensee, allow the licensee to withdraw from his license. In the application the licensee shall state the reasons for his request. The license fee shall not be refunded once the license has been issued.

(b) Suitability of Area for Use as Licensed Domesticated Migratory Game Bird Shooting Area. No license for a licensed domesticated migratory game bird shooting area shall be issued until an investigation has been completed by the department and the department has determined that the property is suitable for the purpose of a licensed domesticated migratory game bird shooting area. The department shall base its determinations on whether or not the proposed shooting area will cause conflicts with wild migratory game bird hunting, that the establishment of

the shooting area will be in the public interest, and that the operation of a licensed domesticated migratory game bird shooting area at the location specified in the application will not have a detrimental effect upon wild migratory game birds. In the event the license is refused by the department the applicant shall have the right of appeal to the Fish and Game Commission.

(c) Signs. Licensed domesticated migratory game bird shooting area signs shall be posted by the licensee as required by Section 3301 of the Fish and Game Code. Such signs shall be removed prior to September 15 of the succeeding year if no license is granted for that year.

(d) Inspection of Licensed Premises and Domesticated Migratory Game Birds.

(1) The premises where domesticated migratory game birds are held for the purpose of shooting shall be inspected by the Department of Fish and Game for health of birds and sanitation of facilities. Licensees shall pay the department an inspection fee of two cents (\$0.02) for each migratory game bird raised or imported for shooting purposes.

(2) Every person who brings or causes to be brought into this state live domestically reared migratory game birds for shooting purposes shall have such birds inspected for disease and health conditions at the point of origin by a licensed veterinarian. A certificate stating that the birds are disease free and signed by a licensed veterinarian, and endorsed by a federal veterinarian, will be forwarded to the Department of Fish and Game for each shipment of birds. Any shipment of birds not accompanied by a certificate of inspection shall be destroyed or returned to the place of origin by the importer at his sole cost and responsibility.

(e) Shooting Season. The season during which shooting shall be permitted shall be for the period September 1 through May 31.

(f) Shooting Hours. Shooting hours for taking domesticated migratory game birds on licensed areas shall be from one-half hour before sunrise to sunset.

(g) Methods of Take. Domesticated migratory game birds may be taken on licensed areas only by the following weapons or methods:

(1) Shotguns 10 gauge or smaller using shotshells only and incapable of holding more than three shells in the magazine and chamber combined;

(2) Muzzle-loading shotguns;

(3) Falconry;

(4) Long bow and arrow.

(h) Reports and Records. Licensees shall maintain on forms supplied by the department an up-to-date record of the number of domesticated migratory game birds taken and the number of hunters using the area. Such original record shall be submitted to the Department of Fish and Game, Wildlife Protection Branch, 1416 Ninth Street, Sacramento, California 95814, within ten (10) days after the close of each month during the shooting season, and the licensee shall retain a legible copy of such records. Such records shall be open to inspection at the area headquarters on shooting days, at the club headquarters or in the possession of

the licensee or his agent during the balance of the shooting season, and at a location specified by the licensee for one year thereafter. Such records shall be open to the inspection at any time during these periods by authorized representatives of the department.

(i) Seals on Birds Killed.

(1) Seals, as required by Section 3309 of the Fish and Game Code, shall be affixed by the licensee or his agent to all domesticated migratory game birds taken on the licensed area before such birds are removed from the licensed area. Unused seals shall not be given to shooters. These seals shall be of a type approved by the Fish and Game Commission and shall be purchased at a cost of five cents (\$0.05) each prior to the taking of any domesticated migratory game birds on the license area.

(2) All seals must be accounted for by the licensee whenever requested by the department, and at the end of the domesticated migratory game bird shooting area season unused seals shall be returned to the department with the final report. There shall be a refund of money for all returned unused seals.

(3) Seals are not transferable and shall be used only on the licensed domesticated migratory game bird shooting area for which issued.

(j) Posting of Laws and Regulations. Each licensee shall post a complete copy of the licensed migratory game bird shooting area laws and regulations in the area headquarters where they may be read by any person using the facilities of the area. An appropriate copy of the laws and regulations will be furnished to each licensee by the department.

~~(k) Special Licensing Provisions. Licenses to operate domesticated migratory game bird shooting areas may also be issued under the following conditions:~~

~~(1) There is no minimum number of birds which must be released during the license year. (This supersedes Section 3304 of the Fish and Game Code.)~~

~~(2) There are no restrictions on licensees regarding shooting from blinds or over water and no minimum shooting distance from the release point, provided all birds are released prior to the regular waterfowl hunting season. (This supersedes Section 3306 of the Fish and Game Code.)~~

~~(3) Licensees are not required to provide a retrieving dog for all shooters. (This supersedes Section 3307 of the Fish and Game Code.)~~

~~(4) The season for waterfowl hunting on areas licensed under this subsection shall be concurrent with the general waterfowl season in effect at the location of said areas.~~

~~(5) The total duck limit on areas licensed under this subsection shall be the same as the bag and possession limit established in Section 502, Title 14, CAC. If the limit in Section 502 includes restrictions on mallards, hunters under this program may not take more wild mallards than allowed. Licensed hunters may, however, take up to the total duck limit of properly marked domestic mallards of either sex, but in no case shall the combination of domestic mallards and wild birds of any species~~

~~exceed the total duck limit established in Section 502.~~

~~(6) Licenses may only be issued for areas in the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.~~

~~(7) All other provisions of Section 3300-3311 of the Fish and Game Code and Section 600.4 of this title shall remain in effect.~~

NOTE

Authority cited: Sections 200, 202, 219, 355, 356, 3000, 3302 and 3303, Fish and Game Code. Reference: Sections 200, 202, 219, 355, 356, 3000, 3300-3311 and 3500, Fish and Game Code.

SECTION 163, TITLE 14, CCR

- 1) The first paragraph of Section 163, Title 14, CCR, is amended to read:

Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon written request by the permittee, accompanied by a copy of the current commercial boat registration of the new vessel. The fee for any approved transfer or substitution of a permit pursuant to paragraph one shall be \$50 after the issuance date of November 15. The \$50 transfer fee must be received in the department's Menlo Park office no later than five working days after written approval of any boat transfer or permittee substitution. Any permittee denied a transfer pursuant to paragraph one of this section may request a hearing before the Commission to show cause why his request should not be denied. Permittees shall have their permit in their possession and shall be aboard the vessel named on their permit at all times during herring fishing operations, except that the department may authorize a permittee to have a crewmember temporarily serve in his or her place aboard the vessel during a season. Requests for temporary permittee substitution must be submitted in writing by the permittee, accompanied by a copy of the temporary substitute's current California commercial fishing license. No permittee may simultaneously fish his or her own permit and a permit temporarily transferred to him or her. Two permits ~~of the same gill-net plateen~~ may be jointly fished on a single vessel upon written request by both permittees to the department.

- 2) Subsection (a)(5) of Section 163, Title 14, CCR is renumbered and a new subsection (5) is added to read:

(5) Have submitted lists of crewmembers assisting in fishing operations as specified in subsections (e)(2) of these regulations, release of property forms and payment for all herring landed in excess of an established individual permit

quota as specified in subsection (e) (5) of these regulations, and all fees from prior seasons.

~~(5)~~(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his permit should not be denied. Applicants disqualified under subsections (c) (1) (B) or (c) (1) (C) will be granted a hearing if the number of points claimed would have placed them in the point category from which new permits will be issued.

- 3) Subsection (b) (4) (B) of Section 163, Title 14, CCR, is amended to read:

(B) If no landings are made, demonstrate an intent to fish during the next successive herring season by providing written notice submitted through certified mail to the Department of Fish and Game, 411 Burgess Drive, Menlo Park, California 94025, by March 31. Failure to land fish during two successive seasons may result in loss of eligibility to participate in the fishery.

Subsections (a) (2) and (b) do not apply to permits issued for taking herring in ocean waters between April 1 and November 27~~30~~, or to fresh fish market permits.

- 4) The second paragraph of subsection (c) (1) of Section 163, Title 14, CCR, is amended to read:

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit areas until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 232. No new "DH" permits shall be issued until the maximum number of permits is less than 116. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all Fish and Game regulations as provided in this section, or in the Fish and Game Code, relating to herring.

- 5) Subsection (c)(2) of Section 163, Title 14, CCR, is amended to read:

(2) Fresh Fish Market. Ten permits will be issued to take herring for the fresh fish market in San Francisco Bay and five in Tomales Bay. See subsection 699(b) of these regulations for the fee for this permit. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 500 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at 411 Burgess Drive, Menlo Park, California 94025. In the event there are more applicants than the specified number of available fresh fish permits, a lottery will be held to determine the permittees. Applicants may apply for only one bay. Fresh fish market permits shall be in force from November 2 through ~~December 2~~ November 29 and April 1 through October 31.

- 6) Subsection (e)(2) of Section 163, Title 14, CCR, is amended to read:

(2) Within ~~two~~four weeks of the date an individual quota is reached, or within ~~two~~four weeks of the end of the season, the permittee shall submit to the Department of Fish and Game, 411 Burgess Drive, Menlo Park, California 94025 a list of crewmembers assisting in fishing operations during the current herring season. The list shall include the full name and California commercial fishing license number of each crewmember. Gill net permittees shall notify the department's Menlo Park office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken. Round haul permittees shall notify the department's Menlo Park office within 24 hours if they terminate fishing operations for the season prior to their individual quota being taken.

- 7) Subsection (e)(3) of Section 163, Title 14, CCR, is amended to read:

(3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It

shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, ~~boats~~ permittees may be limited to the possession and use of one shackle of net (65 fathoms). As an alternative, ~~boats~~ permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.

- 8) Subsection (e) (5) of Section 163, Title 14, CCR, is amended to read:

(5) All herring landed in excess of any established ~~vessel~~ permit quota shall be forfeited to the department by the signing of an official release of property form. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

- 9) The first paragraph of subsection (e) (7) of Section 163, Title 14, CCR, is amended to read:

(7) During the period beginning at ~~sunset~~ noon on January 2 and ending at noon on February ~~16~~14, no herring may be taken by round haul nets except designated test boats subject to the following provisions:

- 10) Subsection (f) (1) of Section 163, Title 14, CCR is amended to read:

(1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Game districts ~~11, 12 and 13~~ and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island, to the easternmost point of the Sausalito ferry dock; Tomales Bay is defined as the waters of ~~D~~district 10 lying south of a line drawn west, 252 degrees magnetic; from the western tip of Tom's Point to the opposite shore; ocean waters

are limited to the waters of Districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h) (36) of these regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 39 minutes, 30 seconds) and Sister Rocks (41 degrees, 46 minutes, 59 seconds).

- 11) Subsection (f) (2) (B) of Section 163, Title 14, CCR is amended to read:

(B) In Tomales Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/8 inches or greater than 2 1/2 inches. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/8 or greater than 2 1/2 inches, except that three permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets provided by the department with mesh less than 2 1/8 inches. The meshes of any gill net used or possessed by fresh fish permittees shall not be greater than 2 inches.

" Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically from a single peg or nail, under one-pound weight. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales and San Francisco bays, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 21 1/4 inches or greater than 25 inches. For the

1996-97 season only, in Tomales and San Francisco bays, a 3 percent tolerance will be allowed in the mesh measurement; thus, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 5/8 inches or greater than 25 3/4 inches.

- 12) Subsection (f) (2) (D) of Section 163, Title 14, CCR is amended to read:

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn from the tip of Peninsula Point to the tip of Elephant Rock. Also, no gill nets shall be set or operated from December 31 through February 14 ~~between inside the perimeter of the area bounded as follows: a line drawn from beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C) at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 43 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green at 37 degrees, 44 minutes, 24 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero) at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to from the Anchorage #9 buoy "A" (Y"A" buoy, yellow in color, flashing yellow at 37 degrees, 44 minutes, 48 seconds N, 122 degrees, 19 minutes, 24 seconds W) and then in a direct line northwesterly to the R"2" buoy Alameda N.A.S. entrance buoy #1 (G"1" buoy, green in color, flashing green at the entrance to Alameda Carrier Channel), 37 degrees, 46 minutes, 36 seconds N, 122 degrees, 20 minutes, 24 seconds W) and extending 320° magneti then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, green in color, flashing green at 37 degrees, 48 minutes, 12 seconds N, 122 degrees, 21 minutes, 24 seconds W) and then in a direct line southwesterly to the point of beginning. The northern extent of the closure will be a line drawn from Tower C, of the Oakland Bay Bridge, to the first Bar Channel buoy. The southern extent of the closure will be a line drawn from the Y"A" buoy to Point Avisadero. However, gill nets may be set in the aforementioned area provided that no portion of the net is set in waters deeper than 40 feet mean lower low water.~~

13) Subsection (g) of Section 163, Title 14, CCR is amended to read:

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall be as follows:

(A) In Tomales Bay waters a fishing quota, not to exceed ~~350~~260 tons, shall be permitted for the season. However, if spawning escapement, as determined by the department, reaches or exceeds ~~3,500~~2,600 tons prior to February 15, the quota shall be increased as follows:

1. If spawning escapement is more than ~~3,500~~2,600 tons, the total take of herring shall not exceed ~~450~~360 tons for the season.

2. If spawning escapement is more than ~~4,500~~3,600 tons, the total take of herring shall not exceed ~~550~~460 tons for the season.

3. If spawning escapement is more than 4,600 tons, the total take of herring shall not exceed 560 tons for the season.

(B) The total take of herring for the fresh fish market shall not exceed 10 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~6,000~~14,850 tons for the season. Tonnage shall be allocated on the following basis:

(A) Round haul permittees: ~~1,857~~4,095 tons. No round haul permittee shall take more than ~~47~~611 tons of herring per season.

(B) Gill net permittees (including "CH" permittees): ~~4,143~~10,735 tons; ~~1,425~~3,668 tons of the gill net vessel quota shall be allocated to permittees described in subsection

(h) (3) (A), and ~~1,458~~3,751 tons to permittees described in subsection (h) (3) (B) and ~~1,260~~3,199 tons to permittees described in subsection (h) (3) (C) of these regulations. No gill net permittee (designated by the department in writing) participating in research sponsored by the department shall take more than 27.6 tons of herring per season.

(C) The total take of herring for the fresh fish market shall not exceed 20 tons per season.

(5) Ocean Waters: Herring may not be taken for roe purposes.

14) Subsection (h) of Section 163, Title 14, CCR is amended to read:

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 10.

(2) Crescent City: The season shall be from noon on January 15 until noon on March 24.

(3) San Francisco Bay: The season shall be from sunset on December ~~3-1~~ until noon on December ~~21-20~~, and from ~~sunset~~noon on January 2 until noon on March ~~15-14~~.

(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to "even" fishing group shall be permitted to fish only on the following dates: ~~January 7-12, January 21-26, February 4-9, February 18-23, March 3-8~~ January 2-3, January 12-17, January 26-31, February 9-14, February 23-28, March 9-14.

(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to "odd" fishing group shall be permitted to fish only on the following dates: ~~January 2-5, January 14-19, January 28-February 2, February 11-16, February 25-March 1, March 10-15~~ January 5-10, January 19-24, February 2-7, February 16-21, March 2-7.

(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to "DH" fishing group shall be permitted to fish only on the following dates: ~~December 3-8, December 10-15, December 17-21~~ December 1-6, December 8-13, December 15-20. In the event permittees described under subsections (h) (3) (A) and (h) (3) (B) both reach their quotas pursuant to subsection (g) (4) (B), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.

(D) In San Francisco Bay, round haul permittees shall be permitted to fish from ~~sunset~~noon on January 2 until noon on March ~~15-14~~.

(E) No more than three gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the

direction of the department, from sunset on December 1 until noon on December 20 and from noon on January 2 until noon on March 14.

(4) In Tomales Bay, the season shall be from sunset on January 1 until noon on March ~~22~~21.

(5) Herring fishing in Tomales Bay and San Francisco Bay is not permitted from noon Friday through sunset Sunday night.

(6) Ocean Waters: The season shall be from April 1 to October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November ~~27~~30.

(7) In the event permittees described under subsections (h) (3) (A) or (h) (3) (B) reach their quota pursuant to subsection (g) (4) (B), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.

- 15) The first paragraph of subsection (j) of Section 163, Title 14, CCR is amended to read:

(j) Herring Buyer's Permit. A holder of a current primary fish receiver's license shall obtain a permit to buy herring for roe purposes for each specific location fishing area specified in subsection (f) (1) of these regulations and approved by the department. After approval of an application and payment of the \$750 filing fee (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for roe purposes may be issued subject to the following regulations:

- 16) Subsection (j) (2) of Section 163, Title 14, CCR is amended to read:

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. No herring will be taken for testing purposes that have not been weighed and recorded.

(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weighmaster or his deputy prior to commencing unloading operations of another vessel.

(B) The weighmaster or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his complete signature.

(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.

(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.

NOTE

Authority: Sections 1050, 5510, 8550, and 8553 and, Fish and Game Code.

References: Sections 8043, 8550, 8553, 8554, 8556, 8557, and 8559, Fish and Game Code.

SECTION 163.5, TITLE 14, CCR

- 1) Subsection (a) of Section 163.5, Title 14, CCR is amended to read:

(a) Pursuant to the provisions of Section 309 of the Fish and Game Code and sections 163 and 746 of these regulations, any permit issued pursuant to Section 8550 of the Fish and Game Code may be canceled or suspended at any time by the Commission for cause, after notice and an opportunity to be heard, or without a hearing upon conviction of the permittee or his/her substitute (pursuant to Section 163, Title 14, CCR) of a violation of the commercial herring regulations fishing violation by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of the commercial herring regulations may request a hearing before the Commission to show cause why his or her herring fishing or buying privileges should be restored.

- 2) Subsection (f)(2)(B) of Section 163.5, Title 14, CCR is amended to read:

(B) POINTS ASSIGNED FOR CATEGORY II VIOLATIONS ARE AS FOLLOWS:

- | | |
|---|--|
| 1. Failure to have a rigid grate covering hold hatch while loading fish (Sec. 163(e)(6)) | 6 points |
| 2. Unloading fish without recovering both nets and having them aboard vessel (Sec. 163(e)(4)) | 6 points |
| 3. Fishing in a closed area (Sec. <u>163(f)(1) and 163(f)(2)(D)</u>) | <u>612 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund</u> |

4. Failure to remove fishing gear from water by announced time terminating fishery operations (Sec. 163(e)(3))

6 points, plus 1/2 point for each hour, or portion thereof, after closing time

5. Possession or use of nets with undersized mesh (Sec. 163 (f) (2) (B))

1012 points, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund

6. Failure to immediately return all halibut, sturgeon, salmon and striped bass to the water (Sec. 163 (e) (6))

10 points

7. Possession or use of extra nets or nets which exceed maximum length restrictions (Sec. (f) (2) (A))

1012 points, plus 1/2 point for every 5 fathoms of net, or portion thereof, exceeding maximum, plus all fish and nets on the vessel at the time of the violation shall be forfeited to the department and such fish and nets shall be sold or disposed of in a manner determined by the department with the proceeds from all such sales paid into the Fish and Game Preservation Fund

8. Failure of permittee to be aboard the vessel during herring fishing operations (Sec. 163, para 1)

10 points

9. Failure to complete and maintain weight tally sheets (Sec. 163(j)(4))

10 points

10. Failure to immediately complete a Fish and Game receipt upon completion of weighing any load or lot of fish (Sec. 163(j)(2)) 15 points

NOTE

Authority cited: Sections 8553 and 8555, Fish and Game Code.
Reference: Sections 309, 8552, 8553 and 8555, Fish and Game Code.

AMENDMENTS TO SECTION 164, TITLE 14, CCR

(1) Subsection (c) for Section 164, Title 14, CCR is amended to read:

(c) For the purposes of this section, San Francisco Bay ~~includes~~ is defined as the waters of Fish and Game Districts 11, 12, and 13 and that part of district 2 known as Richardson Bay.

(2) Subsection (i) (4) (A) for Section 164, Title 14, CCR, is amended to read:

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations.

(A) The total amount of herring eggs on kelp that may be harvested by an individual possessing a roundhaul permit issued pursuant to Section 163 of these regulations shall be ~~10.6~~ 26 tons per season. The total amount of herring eggs on kelp that may be harvested by an individual possessing a gill net permit issued pursuant to Section 163 of these regulations shall be ~~2.4~~ 6 tons per season. The total amount of herring eggs on kelp that may be harvested by an individual possessing a "CH" permit issued pursuant to Section 163 of these regulations shall be ~~10.6~~ 26 tons per season.

(3) Subsection (i) (5) for Section 164, Title 14, CCR, is amended to read:

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations, shall be currently registered pursuant to Fish and Game Code Section 7787 (vessel registration), and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(4) Subsection (j) (5) for Section 164, Title 14, CCR, is amended to read:

(5) ~~Weight tally sheets shall be used when any load or lot of herring eggs is harvested prior to the completion of the Fish and Game receipt.~~ All bins or totes shall be permanently marked with

individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote. Tally sheets shall indicate the I.D. number, and tare weight of the bin or tote, and the net weight of the product (eggs on kelp), excluding the salt and brine. Filled bins or totes shall be weighed when landed on shore, or before they are moved from the premises if processing takes place on shore, and the gross weight of each bin or tote shall be included on the tally sheet. The weight tally sheet shall be retained by the permittee for one year and must be available at all times for inspection by the department.

(5) Subsection (j)(7) for Section 164, Title 14, CCR, is amended to read:

(7) Weight tally sheets and a landing receipt must be made out immediately upon completion completed upon the landing and of weighing of any single permittee's boat load of harvested herring eggs on kelp (hereinafter "load").

(A) The landing receipt for each herring eggs on kelp permittee must be completed and signed by the permittee prior to commencing unloading operations of another permittee's load.

(B) The landing receipt for each load must include all information required by Fish and Game Code Section 8043. Tally sheets shall indicate the serial number, the tare weight of the bin or tote, the net weight of the product (eggs on kelp), excluding the salt and brine and the gross weight of each bin or tote. Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore. The weight tally sheet shall be retained by the permittee for one year and must be available at all times for inspection by the department. All herring eggs on kelp landed in excess of any established permit quota shall be forfeited to the department by the signing of an official Release of Property form (Form MRR/WLP [revised 10/93], which is incorporated by reference herein). Such excess of herring eggs on kelp shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

NOTE

Authority cited: Section 8389, Fish and Game Code. Reference: Sections 8043, 8389, and 8550-8556, Fish and Game Code.

Subsection (b)(30) of Section 7.50, Title 14, CCR, is amended to read:

<i>Body of Water</i>	<i>Open Season and Special Regulations</i>	<i>Daily Bag and Possession Limit</i>
(30) Butt Creek and Butt Creek Estuary (Plumas Co.). <u>Butt Creek from Humbug Road (County Road 308) bridge downstream to Butt Valley Reservoir and for a 300-foot radius extending into Butt Valley Reservoir. This area includes the Butt Creek powerhouse tail race.</u>	<u>Closed to all fishing all year.</u>	
(A) Butt Creek:	Saturday preceding Memorial Day through Nov. 15:	5 per day 10 in possession
(B) Butt Creek Estuary from a marker at the south of Butt Creek estuary upstream to a marker at Butt Creek powerhouse.	Saturday preceding Memorial Day through Feb. 28:	2

NOTE

Authority cited: Sections 200, 202, 205, 215, 220, 240 and 315, Fish and Game Code. Reference: Sections 200, 205, 206 and 215, Fish and Game Code.

FINAL REGULATIONS
APPROVED BY OAL