

State of California
FISH AND GAME COMMISSION

MINUTES, NOVEMBER 7-8, 1996

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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 7-8, 1996

Pursuant to the call of the President, the Commission met at the Ahwahnee Hotel, Yosemite National Park, Yosemite, California, on November 7, 1996. The meeting was called to order at 10:18 a.m. by President McGeoghegan.

Persons present:

FISH AND GAME COMMISSION

| | |
|------------------------|----------------|
| Douglas B. McGeoghegan | President |
| Richard T. Thieriot | Vice President |
| Frank D. Boren | 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 |
| DeWayne Johnston | Chief, Wildlife Protection Division (WPD) |
| Jack Edwards | Deputy Chief, Wildlife Protection Division |
| Christopher Patin | Regional Patrol Chief, Region 4 |
| Bob Hulbrock | Aquaculture Coordinator |
| Debra Hamilton | Wildlife Protection Division |
| Liz Schwall | Fish and Game Warden/Sacramento |
| Dana Finney | Fish and Game Warden/Mariposa |

The following persons were also present and heard:

| | |
|--------------------|--|
| Hank Snyder | Yosemite National Park |
| G. Lynn Sprague | USFS, Regional Forester |
| Charlie Moss | CalTIP Review Board Member |
| Harold Edgar | CalTIP Review Board Member |
| Alfred "Bud" Adams | CalTIP Review Board Member |
| Ken Beer | The Fishery |
| John Buckley | Central Sierra Environmental Resource Center |
| Paul Weakland | Abalone Diver |
| Robert McMillen | Abalone/Sea Urchin Diver |

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

1. WELCOMING COMMENTS BY HANK SNYDER, CHIEF, RESOURCE MANAGEMENT, YOSEMITE NATIONAL PARK.

Summary of Issue

Mr. Hank Snyder, Chief of Resource Management at Yosemite National Park, will open the Commission meeting by welcoming the Fish and Game Commission, the Department of Fish and Game, the U.S. Forest Service representatives and members of the public to the Park.

Action

Executive Director Treanor introduced Mr. Snyder who welcomed the Commission to Yosemite National Park. Mr. Snyder provided a history of Yosemite National Park and reported that in the recent Sierra Nevada Ecosystem Project it was found that of the 16 percent of the old growth forest left in the state, 97 percent was found either in Yosemite or Sequoia-Kings Canyon National parks. He then discussed northern goshawks as an indicator species, the reintroduction of bighorn sheep in the Tioga Pass area, the peregrine falcon population, deer migration through the Park, and the need for control of mountain lions. He also reported that Yosemite National Park had 400 bears, with approximately 800 bear incidents a year. He explained the Park's procedures for relocating bears.

2. RECOGNITION OF CALTIP PROGRAM'S 15-YEAR ANNIVERSARY.

Summary of Issue

The Department requests that an agenda item be scheduled to afford it and the Commission an opportunity to recognize the success and effectiveness of the Department of Fish and Game's CalTIP Program over the past 15 years of operation. Deputy Chief Jack Edwards, Wildlife Protection Division, will summarize the history of the Program and explain its goals. A certificate will be presented to each of the currently active, original CalTIP Board members.

Action

Executive Director Treanor introduced the item. President McGeoghegan read and then presented a resolution to four of the original CalTIP Citizens Review Board Members, namely, Charlie Moss, Alfred "Bud" Adams, and Harold Edgar (Berger Benson was not present).

Deputy Chief Edwards provided background information and indicated the program started in 1981 and had raised and distributed over \$127,000 in reward money. He then read and presented letters to the CalTIP Board Members from Governor Wilson and the Department of Fish and Game's Director.

Warden Schwall gave an overview of CalTIP and noted that 600 cases had been reviewed since its inception. She commended the Board Members and then presented each with a plaque of recognition for their efforts.

On behalf of the Board Members, Charlie Moss thanked the Commission for the awards and for taking time to acknowledge the CalTIP program. He discussed the program briefly and noted that an important indicator of its success is the fact that in the first three years of the program only 60 percent of the citizen informants requested rewards, while currently less than three percent request rewards.

3. U.S. FOREST SERVICE ANNUAL REPORT RE: "STATUS OF RESOURCE MANAGEMENT ON NATIONAL FOREST LANDS."

Summary of Issue

This item is scheduled to receive the U.S. Forest Service's (USFS) Annual Report regarding the "Status of Resource Management on National Forest Lands." Mr. G. Lynn Sprague, the Regional Forester for the Pacific Southwest Region, will be present to summarize the USFS's report and answer any questions the Commission may have regarding the report or any actions taken by the USFS. The Department will also be present and provide its analysis of the Forest Service's report and will report on its working relationship with the USFS.

As background, the Commission adopted a policy in November 1984 to enhance effective communications and understanding between the Commission, the Department and the USFS. The USFS's report summarizes plans, management practices and policies on the National Forest Lands in California that have or may have impacts on the State's fish and wildlife resources or their habitat.

Copies of the U.S. Forest Service's Annual Report are inserted in the front of each Commissioner's folders. Additional copies will be available at the meeting.

Action

Executive Director Treanor introduced the item and provided a brief summary.

Mr. Lynn Sprague provided an overview of the annual report and emphasized that progress was being made in several areas including: (1) fish stocking in wilderness lakes; (2) cross-training between USFS and DFG on fisheries and wilderness management issues; (3) Coordination with Department employees relating to wildland fire control, reseeding and rehabilitation; (4) management of deer winter range; and (5) identifying potential cumulative effects of suction dredge activity.

Commissioner Thieriot mentioned that while the USFS is working with the Department, the issue of the state's deer herds should be elevated in importance. He suggested arranging a workshop on the subject and encouraged the development of a related plan. Mr. Sprague and Deputy Director Petrovich agreed to a future meeting to discuss the issue.

4. U.S. FOREST SERVICE REPORT RE: ITS PROGRAM FOR FOREST AND RANGELAND RESOURCES: A LONG-TERM STRATEGIC PLAN.

Summary of Issue

This item is to provide the U.S. Forest Service (USFS) an opportunity to report on its Program for Forest and Rangeland Resources: A Long-Term Strategic Plan. Mr. G. Lynn Sprague will also provide the Commission with background and future strategies related to this program. Commissioners were provided with copies of background information on the USFS report.

Action

Mr. Sprague reported that the Resources Planning Act (RPA) directs the preparation of renewable resource assessments every 10 years and the assessments are to be used to prepare natural resource management programs for renewable resources at five-year intervals. He stated that the last assessment was completed in 1993 and reported the following important findings: (1) following two decades of decline, the total area of forest lands have stabilized, and that increased reforestation of harvested lands was off-setting development of forested lands; (2) total tree growth declined by about two percent from 1986 to 1991 and continuing increased demand for wood products would sustain pressures to continue this trend and increase imported wood; (3) forest and rangeland health remains a serious concern and a considerable portion of these lands were in unsatisfactory condition; and (4) continued declines in wetlands, riparian areas, and old-growth forests are resulting in increased concerns for biodiversity. He noted that the next resource management plan has four goals: (1) to protect ecosystems; (2) to restore deteriorated ecosystems; (3) to provide multiple human benefits within ecosystem capabilities; and (4) to ensure organization effectiveness.

Commissioner Thieriot asked what was the major goal of the USFS and were they trying to increase timber/tree production. Mr. Sprague replied that the goal was to maintain/protect ecosystem integrity and the USFS does develop reforestation plans. In response to President McGeoghegan's question, Mr. Sprague reported that the USFS has an MOU with the National Park Service and has a tremendous amount of interaction and coordination on use, controlled fires, fire prevention, ecosystem planning, and etc.

5. REVIEW OF WHITE STURGEON BROODSTOCK COLLECTION PROGRAM AND CONSIDERATION OF PERMIT RENEWALS.

Summary of Issue

This item is scheduled to receive the Department's report regarding a review of the 1996 White Sturgeon Broodstock Collection Program. The Commission was provided with copies of the summary of the ninth annual report of Domestic White Sturgeon Broodstock Research Development Program from the Aquaculture and Fisheries Program at the University of California, Davis. The Department will be prepared to discuss its report and recommendations at the Commission meeting.

Department Recommendation

"We request that the Commission review the 1996 White Sturgeon Broodstock Collection Program at its November 7, 1996, meeting in Yosemite and consider authorization of permits for the 1997 season.

"Progress in Broodstock Development

"Progress in the spawning of domestic female broodstock continued this year when, for the first time, no wild fish were collected. All fry produced by the aquaculturists came from domestic fish. Including spawning at a total of four farms and at the University of California at Davis (U.C. Davis), a total of 1,800,000 larvae were produced from domestic fish this year. Sea Farm produced around 523,000, Sierra Aquafarms 244,000, and The Fishery 361,000 larvae from domestic females this year. Spawning of additional females in 1996 is still scheduled at Sea Farms.

"California continues to lead the world in efforts to domesticate the white sturgeon. Research results this year helped confirm that maintaining female broodstock at temperatures below 15 degrees C for a period of time overwinter is critical for spawning success. All three farms are now conducting their own egg development monitoring at the farms to determine the females' readiness to spawn. University efforts this year focused on development of optimal hormone treatments for the spawning process. All three aquaculturists applying for permits in 1997 are participating in broodstock development activities through rearing of broodstocks and all are active in, and contributed financially to, the research program at U.C. Davis.

"The industry-university cooperative research has been essential to progress toward development of domestic white sturgeon broodstock and to the collection permit program. Results of last year's research efforts will be described in the Ninth Annual Report of Domestic White Sturgeon Broodstock Research and Development Program from the Aquaculture and Fisheries Program at U.C. Davis. A preliminary report is attached.

"This is the first year that no wild fish were collected, as research efforts have continued to increase the reliability of domestic spawning. This progress has reduced the number of fish needed to be collected from the wild, so that there is no impact on the wild sturgeon resource (last year only one fish was collected). The ability to collect wild broodstock, however, remains important to the industry as an essential back-up to domestic spawning and as a source of genetic diversity. U.C. Davis has requested that wild broodstock collection continue to be authorized for at least the term of their four-year research project on 'White Sturgeon Domestic Broodstock Management.'

"The research efforts directed toward producing domestic broodstock have also provided the opportunity for growers to conduct preliminary work on egg production for caviar. All three farms have made progress in production and marketing of caviar produced from farm raised fish.

"1996 Collection Activities

"Three registered aquaculturists were approved for white sturgeon broodstock collection in 1996 but did not collect any wild fish. Each of the three farms was able to produce all of its needed fry from domestic fish.

"The table below shows the domestic broodstocks being maintained by the three applicants for 1997 permits.

Broodstock on Hand by Yearclass

| Permittee | 1996 | 1995 | 1994 | 1993 | 1992 | 1991 | 1990 | 1989 | 1988 | 83-87 |
|----------------|------|------|------|------|------|------|-------|------|------|-------|
| The Fishery | | | | 500 | | | 322** | | | 176* |
| Sea Farm | 2000 | 2000 | 2000 | 2000 | 1500 | 1000 | 450 | 100 | 40 | 105 |
| Sierra Aquafms | 200 | 192 | 200 | 99 | 56 | 47 | 0 | 62 | 0 | 33 |

*Represents 1983-89 yearclass fish
** " " 88-91 yearclass

"Sturgeon Broodstock Development Plans

"Sea Farm, The Fishery, and Sierra Aquafarms all submitted adequate plan updates (attached) required for 1997 permit consideration.

"No other plans or updates were received.

"Recommendations

"The Department recommends that:

- "1. The White Sturgeon Broodstock Collection Program be continued for 1997. 1997 permits to be valid from date of issue to September 30, 1997.
- "2. No changes be made in the permit terms and conditions. A proposed draft of the 1997 permit is attached.
- "3. The Broodstock Development Plan updates of The Fishery, Sea Farm, and Sierra Aquafarms be approved.
- "4. The Fishery, Sea Farm, and Sierra Aquafarms be authorized for broodstock collection in 1997."

Commissioners were provided with copies of the referenced attachments.

Action

Executive Director Treanor introduced Item Numbers 5 and 6 as they are closely related. Mr. Bob Hulbrock provided the Department's annual report on the status of the program. He reported that the white sturgeon program reached a milestone this year in that the growers produced all fish from domestic broodstock, and that no fish were collected from the wild.

Mr. Ken Beer provided specifics on how the program has developed over the last 16 years. He reported that white sturgeon in captivity mature and spawn sooner than wild fish. He pointed out that the purpose of the program was to create a domestic broodstock which has been a tremendous success. He identified potential reasons why wild fish might need to be collected in the future: genetics, virus resistance, and a potential need to collect fish from the wild. There was then a discussion regarding the planting of domestically reared white sturgeon into the wild.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE RENEWAL
OF THE WHITE STURGEON BROODSTOCK COLLECTION AND BREEDING
PERMITS ISSUED TO THE FISHERY, GALT; SEAFARMS, HERALD; AND SIERRA
AQUAFARMS, ELVERTA, SUBJECT TO THE TERMS AND CONDITIONS
RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

6. REVIEW OF STRIPED BASS BROODSTOCK COLLECTION PROGRAM AND
CONSIDERATION OF PERMIT RENEWALS.

Summary of Issue

This item is scheduled to receive the Department's report regarding a review of the Striped Bass Broodstock Collection Program for 1996. The Department's report follows:

**DEPARTMENT OF FISH AND GAME
Bay-Delta and Special Water Projects Division**

**PRIVATE STRIPED BASS BROODSTOCK COLLECTION AND REARING PROGRAM:
1996 ACTIVITIES AND PROGRESS REPORT**

October 16, 1996

HISTORY

Striped bass broodstock collection permits have been granted each year beginning in 1982 to registered aquaculturists who demonstrated a desire to rear striped bass to develop a domestic broodstock. When the program began, there were no contracts to rear striped bass for mitigation or enhancement purposes, and the sole purpose of collecting wild broodstock was to eventually develop a private domestic broodstock. Section 5503 of the Fish and Game Code, which provides the authority for collecting wild broodstock, states: "It is unlawful to take any fish for the sole purpose of removing its eggs for the purpose of developing a broodstock for aquaculture purposes...".

The collection of wild striped bass for broodstock purposes requires Fish and Game Commission authorization (Section 243, Title 14, CCR). Permits are then issued by the Department of Fish and Game (DFG), and permittees are required to submit written reports of their activities each year prior to issuance of a new permit. Information for this report was obtained from reports submitted by the permittees and from biologists associated with the program.

Collection of wild broodstock for aquaculture purposes was originally intended to be approximately a five-year program (1982-1986). The take of spawning adult bass from wild populations was not intended to continue indefinitely, and the permittees were ultimately expected to be the source of broodstock for other aquaculturists.

The DFG's Central Valley's Hatchery could produce a maximum of only 300,000 fingerling/yearling bass which was insufficient for fishery mitigation or enhancement. In 1984, therefore, the State began awarding contracts to private aquaculturists to rear striped bass to be planted into the Sacramento-San Joaquin Estuary. Pacific Gas and Electric Company began purchasing yearling striped bass in 1986-87 as part of mitigation requirements for operating their Contra Costa and Pittsburg power-generating plants. Additional mitigation stocking of hatchery-reared bass was provided by the Department of Water Resources

commencing in May 1988. Stocking hatchery-reared striped bass yearlings and fingerlings formed about 26 percent of the 1993 adult (larger than 18") striped bass population estimate of 604,000 fish. However, preliminary data for the 1994 population suggests this percentage has declined to about 9%. Such a decline is consistent with the cessation of stocking hatchery-reared striped bass ceased in 1992 due to concern over potential predation on the endangered winter-run chinook salmon.

1996 Activities

The Fish and Game Commission approved (December, 1995) issuance of Striped Bass Broodstock Collection Permits to two private aquaculturists for 1996. One aquaculturist (The Fishery) did not apply for a permit. The other (Professional Aquaculture Services [PAS]) was issued a permit operated one electrofishing boat, and fished three days (May 18, 24, 31). PAS captured 20 bass, 15 females, and five males.

The growers remain interested in possible domestic bass broodstock development and mitigation and restoration efforts, and the Department recommends that they be granted broodstock collection permits in 1997 if they request them.

The DFG overview is that two private aquaculturists electrofishing on the Sacramento River under 1996 permit conditions create no harmful effects on either the striped bass population and other aquatic species, or on fishing success for striped bass and other fishes.

Department Recommendation

"Attached is our report (see above) on the subject agenda item including review of 1996 activities, program progress, conclusions, and recommendations.

"We conclude that:

- "1. The striped bass broodstock collection program has no documented adverse effects on either the striped bass population or on angling success for striped bass or other fishes.
- "2. Two private aquaculturists can be allowed to electrofish in the Sacramento-San Joaquin Estuary and Sacramento River without causing problems for anglers or striped bass spawning activity.

"We recommend that:

- "1. The striped bass broodstock collection program be continued to 1997.
- "2. No changes be made in the permit terms and conditions. A proposed draft of the 1997 permit is attached.
- "3. The Commission authorize the Department to issue striped bass broodstock collection permits for 1997 to Professional Aquacultural Services, Chico, California and The Fishery, Galt, California."

Action

Mr. Hulbrock provided the Department's annual report and recommendation to continue the program.

Commissioner Thieriot inquired why the Department was not planting striped bass in light of its apparent decline. Deputy Director Petrovich explained that the Department is involved in a Section 10 consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service on winter-run chinook salmon and Delta smelt with the intent to once again plant striped bass. He also pointed out that striped bass and salmon once coexisted successfully.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE RENEWAL OF THE
STRIPED BASS BROODSTOCK COLLECTION AND BREEDING PERMITS TO
PROFESSIONAL AQUACULTURAL SERVICES, CHICO, AND THE FISHERY, GALT,
SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE
DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

7. REQUEST OF JIM ROBERTS, MCKINLEYVILLE, FOR AN EXPERIMENTAL GEAR PERMIT TO BEGIN A HERRING ROE-ON-KELP FISHERY IN HUMBOLDT BAY.

Summary of Issue

Mr. Jim Roberts, McKinleyville, requests an experimental gear permit to begin a herring roe-on-kelp fishery in Humboldt Bay. In a letter faxed to the Commission office on October 4, 1996, Mr. Roberts provides the following information:

"At the advice of Mr. Frank Henry of the Dept. of Fish and Game in Menlo Park, I am writing to request that I be placed on the agenda for the November 7-8 meeting at Yosemite with my proposal for an experimental herring roe-on-kelp harvest in Humboldt Bay. I have included a draft of the proposal for your review. I will submit a complete proposal as soon as I get the final input from all the interested parties that have encouraged this project. Hopefully, the finished copy will be in your hands by Friday, Oct. 11. I have proposed what I think to be a unique approach to the 'experimental' aspect of a fishery project, and if successful, will provide funding for further research in the fishery without passing the burden to the department's budget or to the taxpayer.

"I am a professional fisherman by trade, and have a vital interest in the continuation of fish and fish product harvesting in the State. The future of the business of harvesting seafood in California waters is dependant on the forward-thinking managers and fishermen alike, and I hope that I, with my proposal for an experimental fishery that

return the profit to the Department, can be a positive influence on that future.

"Thank you for any attention you can give this matter."

Commissioners were provided with a copy of Mr. Roberts' experimental gear proposal, additional information regarding the fishery and a letter in support of Mr. Roberts.

Department Recommendation

"Mr. Roberts, the holder of a permit to fish herring in Humboldt Bay with gill nets, has requested that he be allowed to conduct a herring egg-on-seaweed harvesting operation in Humboldt Bay, similar to the same type of fishery now conducted in San Francisco Bay. Section 164, Title 14 (California Code of Regulations), authorizes the take of herring eggs for commercial purposes under a revocable, nontransferable permit from waters of San Francisco Bay only. There are no regulations to provide for the take of herring eggs in Humboldt Bay. However, Section 8606, Fish and Game Code, authorizes the Fish and Game Commission to issue an Experimental Gear Permit for the use of existing gear in areas otherwise closed to that use. This section further states that the Commission shall not authorize the issuance of such a permit for more than four consecutive years.

"The Department staff have worked cooperatively with Mr. Roberts over a two-year period, advising him on this matter, and the proposal submitted with his request is well-crafted and adequately considers the biological, social, and economic implications of the proposed activity.

"The request is for an allocation of one ton of eggs-on-kelp product, an approximate equivalent to 4.5 tons of whole fish, each year for three consecutive years, beginning in January 1997 and ending in March 2000. Mr. Roberts also indicated that he will work with local government authorities to site his operation where there will be no interference with navigation or fishing operations.

"Mr. Roberts has also stated that he would surrender his gill net herring permit for Humboldt Bay if this experiment ultimately proves successful.

"As stated above, the Department believes that Mr. Roberts' proposal is well thought out and has merit. Generally, we view the herring eggs-on-seaweed fishery as having less of an impact on herring populations than the take of adult spawners, and believe that the herring egg-on-seaweed fishery should be encouraged. Therefore, the Department recommends approval of subject request."

Action

Executive Director Treanor introduced the item and noted that Mr. Jim Roberts was present. Mr. Roberts made a presentation on his proposed harvesting approach. Deputy Director Petrovich indicated that a letter had been received from Mr. Bates recommending

specific areas where Mr. Roberts should not work. Mr. Roberts responded that did not pose a problem and it could be included as a condition of his permit.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF JIM ROBERTS, MCKINLEYVILLE, FOR AN EXPERIMENTAL GEAR PERMIT TO BEGIN A HERRING ROE-ON-KELP FISHERY IN HUMBOLDT BAY, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

8. REQUEST OF SIDNEY SHAW, SAN DIEGO MESA COLLEGE, TO ADD HEDGEHOGS AND FERRETS TO ITS DETRIMENTAL SPECIES PERMIT FOR EDUCATIONAL PURPOSES.

Summary of Issue

Mr. Sidney Shaw, San Diego Mesa College, requests an amendment to San Diego Mesa College's Detrimental Species Permit to add hedgehogs and ferrets for educational purposes. In a letter dated October 2, 1996, Mr. Shaw provides the following information:

"I sent a letter to the Fish and Game requesting information on amending our present Detrimental Species permit (#2379) to add a Hedgehog and an additional Ferret. It was forwarded to the permit section, [sic] Lori Heier contacted me. She stated we need to send to her department the \$30.00 Application fee, a resume of an individual with two years experience with Hedgehogs and that we also needed to contact the Commission for approval.

"San Diego Mesa College Animal Health Technology is a two year program awarding an Associates Degree in Animal Health Sciences and also qualifies the student to sit for the State Board for Registered Veterinary Technician. They are instructed in veterinary care on both Domestic and Exotic animals. Though these species are illegal in California, they are being seen more and more in Vet. Clinics and Hospitals. The hands on experience the students get is invaluable.

"The Application Fee has been requested and resumes of myself and a long time instructor, who is also the lead tech at the San Diego Zoo hospital with many years experience with these animals, will be forwarded to the permit section.

"If you would please let me know what information, forms, etc. is required for approval of these two animals by the commission, I would appreciate it."

Commissioners were provided with copies of additional information provided by San Diego Mesa College.

Department Recommendation

"The Department of Fish and Game recommends denial of this request.

"San Diego Mesa College's current permit allows the possession of only two ferrets received in September 1993. The permit specifically states the acquisition of additional ferrets is not authorized. Mr. Shaw has not provided a compelling argument why the college must use prohibited species in their Animal Health Technology Program. San Diego Mesa College can provide its students the education in proper handling, husbandry and nursing skill using animals other than detrimental species. In addition, Mr. Shaw has not provided sufficient documentation of his qualifications to handle hedgehogs."

Action

Executive Director Treanor introduced the item and indicated that no one from Mesa College was able to attend today's meeting and that they had requested that their written submittals be utilized as their testimony. He then reported that the Department was recommending denial.

WPD Chief Johnston stated that to be consistent with a recently adopted Commission policy to not allow the use of detrimental species for educational purposes, the Department was recommending denial of this request. He added that there are other animals that could be used for educational purposes and that the hedgehogs could become "another ferret" issue.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF
SIDNEY SHAW, SAN DIEGO MESA COLLEGE, TO ADD HEDGEHOGS AND
FERRETS TO ITS DETRIMENTAL SPECIES PERMIT FOR EDUCATIONAL
PURPOSES.

PASSED UNANIMOUSLY.

9. REQUEST OF DEBORAH M. WARRICK, SOUL OF THE WOLF WILDLIFE SANCTUARY AND EDUCATION FOUNDATION, INC., AGOURA, FOR AN AMENDMENT TO HER RESIDENT EXHIBITOR'S PERMIT TO ADD BINTURONGS, LEMURS, BEARS AND HEDGEHOGS.

Summary of Issue

Ms. Deborah M. Warrick, Soul of the Wolf Wildlife Sanctuary and Education Foundation, Inc., Agoura, requests an amendment to her Resident Exhibitor's permit to add binturongs, lemurs, bears and hedgehogs. This request was originally scheduled for the Commission's October 4, 1996, meeting in San Diego. At the Department's request, Ms. Warrick's request was continued to the Commission's November meeting.

In a letter dated August 26, 1996, Ms. Warrick provides the following information:

"I would like to be placed on the agenda for your October 3 and 4 commission meeting, with your permission. I've spoken with Jim Zobel who has been assisting me in obtaining permits for various species, to include binturongs, lemurs, bears, etc. I currently have permits for wolves, foxes, tigers, lions, and cougars. He suggested I go before the Commission to ask your permission for such animals.

"The exotics I desire would be used for educational purposes. I visit schools regularly; the children are thrilled with wolf pups and baby tigers, but would also like to see hedgehogs, binturongs, lemurs, etc. I do not plan to breed any of the animals in question. I am experienced with tigers, lions and wolves. I would have absolutely no problem caring for other, smaller exotics such as those mentioned above."

Department Recommendation

"The Department of Fish and Game recommends denial of this request.

"Based on Ms. Warrick's past permit-related activities we have determined that approval of her request may be detrimental to agriculture, native wildlife, the public health or safety, or the welfare of the animals.

"Ms. Warrick has had a permit to possess wolves since 1992. On her 1994 application for renewal the veterinarian's signature appeared to be a fake.

"In October of 1994 Wardens investigated and the Ventura County District Attorney filed charges against Ms. Warrick for violation of Fish and Game Code Section 1052(b), use a permit obtained by fraud, and California Code of Regulations, Title 14, Section 671.1(a)(2), falsely certifying that her wild animal facilities had been inspected as required by Commission regulations. During the investigation Ms. Warrick consistently withheld information or provided erroneous information to the Warden regarding the inspection of her wild animal facilities.

"The matter was not adjudicated because in February of 1995 her attorney convinced the D.A. and the Department she was leaving the State. She still maintains her wild animal facilities at the same Ventura County address.

The statute of limitations for the original violations prevents the charges from being refiled."

Action

Executive Director Treanor introduced the item. He noted that Ms. Warrick's request had been carried over from the October meeting in San Diego to allow the Department time to follow up on new information it had just received, and that Deborah Warrick would not be present. Commissioners were provided with a copy Ms. Warrick's letter in response to the Department's letter of denial.

WPD Chief Johnston recommended denial of Ms. Warrick's request for amendment to her resident exhibitor permit to add additional prohibited species. He explained the Department's concerns that exhibiting cute, cuddly prohibited species in front of children gives them the desire to obtain such animals as pets.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF DEBORAH M. WARRICK, SOUL OF THE WOLF WILDLIFE SANCTUARY AND EDUCATION FOUNDATION, INC., AGOURA, FOR AN AMENDMENT TO HER RESIDENT EXHIBITOR'S PERMIT TO ADD BINTURONGS, LEMURS, BEARS AND HEDGEHOGS.

PASSED UNANIMOUSLY.

10. CONSIDERATION OF REQUEST FOR A PRIVATE LANDS HABITAT ENHANCEMENT AND WILDLIFE MANAGEMENT AREA LICENSE (1996-2001) AND 1996-97 MANAGEMENT PLAN FOR THE WILDTOO RANCH, YUBA COUNTY. (THE APPLICATION SUBMITTED FOR THIS ITEM HAS BEEN ANALYZED BY DEPARTMENT STAFF AND A DETERMINATION MADE THAT IT IS 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 Wildtoo Ranch, Yuba County, requests a Private Lands Habitat Enhancement and Wildlife Management Area (PLM) license (1996-2001) and approval of its 1996-97 Management Plan. The required application and management plan has been submitted to the Department. The license period would be for five years to run from 1996-2001. The Department has determined that the plan conforms 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. The Commission was provided with a summary of this proposal and the Department's recommendations. Should the Commission desire a complete packet which was included with the application, please contact the Commission office.

Commissioners were provided with copies of a letter from Mr. and Ms. Henwood, adjacent landowners, regarding the request of Wildtoo Ranch and copies of additional correspondence related to the Wildtoo Ranch application.

Department Recommendation

"The Department of Fish and Game has reviewed the initial Management Plan and application for the 8,000-acre Wildtoo Ranch in Yuba 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 employees unlimited access to the area for the purposes of 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 Yuba County on and around the Wildtoo Ranch. The goals and objectives outlined in the Management Plan are compatible with the Mother Lode Deer Herd Management Plan.

"Wildlife habitat improvement projects proposed for the 1996-1997 license year include: elimination of all livestock grazing; shoreline riparian planting on one dredger pond; spread top-soil piles and plant a minimum of five sites (totaling not less than 15 acres) with forage crops including dryland alfalfa, dryland clovers, and wheat grasses; spring fertilization of planted upland sites; irrigation of planted upland sites; determine which dredger ponds are suitable for constructing wildlife watering ramps prior to beginning construction (scheduled for two sites per year once suitable sites are selected); construct a minimum of ten waterfowl nesting structures (may include nesting cones, goose platforms, wood duck nest boxes).

"Deer herd composition counts for the Mother Lode deer herd (zone D-3) showed 57 bucks and 45 spring fawns per 100 does. Buck ratios are above and fawn ratios are within the goals contained within the Mother Lode Deer Herd Management Plan.

"As a result of newspaper notification and/or notification of adjoining landowners of its intent to enter the PLM Program, the Department has received eight letters of opposition from six different groups or individuals. The Department reviewed, in detail, the issues raised by the individuals and responded, in writing, to all of their concerns (see attached letters and responses). 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 Wildtoo Ranch Wildlife Management Area Plan and grant the license under the following conditions:

- "1. No deer tags or upland game seals are requested for the 1996-1997 hunting season under the Private Lands Wildlife Habitat Enhancement and Management Area Program, however, hunting may occur on the Wildtoo Ranch during seasons authorized by Title 14, California Code of Regulations."

Action

Executive Director Treanor reported that this item had been removed from the agenda at the request of the applicant and the Department to work out details on land ownership boundaries. He noted that the item may be re-scheduled for the December 1996 meeting in Eureka.

11. SELECTION OF THE WATERFOWL SPECIES FOR THE 1997-98, 1998-99 AND 1999-2000, CALIFORNIA DUCK STAMPS.

Summary of the Issue

The Commission traditionally selects the waterfowl species to be used on the State Duck Stamp. This item is to consider the selection of the waterfowl species for California Duck Stamps for the 1997-98, 1998-99 and 1999-2000, California Duck Stamp.

Department Recommendation

Pursuant to Fish and Game Code subsection 3700(d), the Commission shall determine the form of the duck stamp. By tradition, the Commission has historically selected the species of waterfowl to be featured for the upcoming year during the winter of the previous year. The Department of Fish and Game recommends that the selection be made earlier this year and for multiple years to allow additional time for qualified artists to produce the original art for consideration through the competitive process.

In an effort to provide advanced notice of the Commission's selection for future years and to eliminate the need for annual selection, the Department recommends that the species for the next four years be selected at this meeting. The proposed species for the next four years are as follows:

| | |
|------|-------------------|
| 1997 | Pintail |
| 1998 | Green-winged teal |
| 1999 | Wood duck |
| 2000 | Canada goose |

The Department, with input from successful artists, waterfowl conservation organizations, and art industry representatives, has determined that these species have the

greatest potential to generate revenue. They also represent California's diverse waterfowl resources. Should the Commission wish to select less than four species at this time, the Department will revise future plans accordingly.

Action

Executive Director Treanor introduced the item and pointed out that year 2000 would be the 30th anniversary of the California Duck Stamp and it was the Department's proposal and intent to have all the states within the Pacific Flyway to have the same species on their state duck stamp, namely, the Canada goose.

President McGeoghegan recommended approval of the proposed species for 1997, 1998 and 1999 but requested additional information on the plans for the year 2000 duck stamp and how it would fit into the plans for the other Pacific Flyway states.

Deputy Director Petrovich agreed to provide additional information at a future meeting.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY SELECTS THE PINTAIL AS THE
WATERFOWL SPECIES FOR 1997-98, THE GREEN-WINGED TEAL AS THE
WATERFOWL SPECIES FOR 1998-99 AND THE WOOD DUCK AS THE
WATERFOWL SPECIES FOR 1999-2000, CALIFORNIA DUCK STAMPS.

PASSED UNANIMOUSLY.

12. 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 indicated two individuals had indicated they wished to speak.

John Buckley expressed concerns that more work was needed regarding grazing at high elevations along streambanks and wet meadows and off-highway vehicle use in critical deer winter range in national forest lands and that the Department sometimes signs off on mitigation projects that have negative impacts on deer winter range.

Paul Weakland reported that the devastating die off in the abalone resource continues, pink abalone were making a small comeback and requested protection of the flat abalone. He contended that data was being hidden and withheld by the Marine Resources Division of the Department. He also contended that the results of the 10 year (1974-1984) Abalone Enhancement Program were being concealed from the public and believed the data shows the source of the abalone sabellid infestation. He then requested that the Abalone Enhancement Program data be provided to university systems so the information could be made available to the public.

President McGeoghegan clarified that Mr. Weakland was requesting the origin of the foreign introduced abalone that were used in the enhancement program, why did the suspension of out-planting take so long and was also requesting data regarding abalone diseases and out-plantings.

Deputy Director Petrovich reported that there was a program to determine the feasibility of artificially enhancing abalone populations because they have been on the decline. He stated he was not aware of any withholding of information and would look into the issue.

13. REQUEST OF ROBERT MCMILLEN, SANTA BARBARA, FOR REINSTATEMENT OF EXPIRED COMMERCIAL ABALONE AND SEA URCHIN DIVING PERMITS.

Summary of Issue

Mr. Robert McMillen, Santa Barbara, requests reinstatement of expired commercial abalone and sea urchin diving permits. At Mr. McMillen's request, this matter was continued to the Commission's November meeting.

In a letter dated September 3, 1996, Mr. McMillen provides the following information:

"I'm writing you about getting my abalone and urchin permit back. I was just released from Federal prison after serving six years for pot smuggling. I started commercial diving for abalone in 1959 and continued for twenty five years without a violation of any kind. I was the person who first started the urchin business in California. I was the highliner in the business until I got involved in the smuggling business. I also started the abalone association. I am, and always have been a staunch environmentalist. I formed, and was the president of the Mendocino Environmental Association for ten years. I was the person who first lobbied for limited permits in the abalone and urchin business. I was the founder of the Mendocino whale war, which was the very first group to initiate the battle to save the whales. I also fought Georgia Pacific lumber

company, stopping their indiscriminate spraying of herbicides around the north coasts salmon rivers. I won that fight. I also stopped them from logging next to the rivers and destroying the marine resources.

"Now that I'm back on track again, I would dearly love to dive commercially again. I can assure you, given the change to get a permit, I would be an attribute to the business. Abalone and urchin diving is the only occupation I know.

"Would you be kind enough to tell me how to go about getting my permits back. My Federal probation officer, Alan Costa, said he would assist me in my efforts. His phone number is: 805-963-3575. I had a flawless record while I was incarcerated, and look forward to becoming attribute to society again.

"Barbara, I have personally worked with Governor Brown, Bill Keir, The State environmental policy specialist, Charlie Moon, Fish and Game, and many other government employees. I showed the State biologists how to reproduce abalone back in the sixties.

"Thank you for your consideration. I would value a second change at doing something I love so much. If you ever need a marine consultant, I have over three and a half years of my life under water, and I have an extensive education in marine biology and malacology."

The Commission was provided with copies of correspondence received in support of Mr. McMillen's request.

Department Recommendation

The Department's recommendation dated September 23, 1996, is as follows:

"The Department recommends denial of this request. Mr. McMillen voluntarily removed himself from the fishery when he decided to engage in illegal drug activities.

"Also, we believe the abalone resource is in critical condition and that granting this request is unfair to current permittees and poses an unnecessary risk to the resource. This recommendation is made without prejudice and future requests by Mr. McMillen will be evaluated in light of the condition of the abalone resource at that time."

The Department's October 24, 1996, memo is as follows:

"The Department recommends denial of this request. Please see attached documentation." (The referenced attachment is the above memo dated September 23, 1996.)

Action

Executive Director Treanor introduced the item and noted it had been put over from the October meeting in San Diego to allow Robert McMillen the opportunity to appear. He reported that copies of a letter were provided to the Commission from Mr. Alan Costa, Mr. McMillen's Probation Officer, recommending reinstatement of the two permits.

Mr. McMillen presented his case pointing out that he had never had a violation and was requesting reinstatement of either one or both commercial abalone and sea urchin diving permits.

There was discussion regarding the limited entry provisions for the fisheries and how they related to this case.

WPD Chief Johnston recommended denial of this request and indicated that Mr. McMillen could become a crew member now and become eligible for a permit through the lottery process.

Commissioner Boren pointed out that people had been eliminated from the fishery based on violations and suggested establishing consistency in how the Commission deals with these revocation/reinstatement items. Commissioner Thieriot responded that it was the Commission's responsibility to protect the resource and would prefer that the Commission not hear these cases but the law requires it.

WPD Chief Johnston pointed out that the Director has appointed a committee to review the limited entry approach.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. MCGEOGHEGAN, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF
ROBERT MCMILLEN, SANTA BARBARA, FOR REINSTATEMENT OF EXPIRED
COMMERCIAL ABALONE AND SEA URCHIN DIVING PERMITS.

AYES: COMMISSIONERS BOREN AND MCGEOGHEGAN
ABSTAINED: COMMISSIONER THIERIOT

MOTION PASSED.

14. CONSIDERATION OF ACCEPTANCE OF A STIPULATED COMPROMISE SETTLEMENT AGREEMENT OR THE SUSPENSION OF COMMERCIAL HERRING PERMIT OF JOHN THOMAS TARANTINO, CORTE MADERA.

Summary of Issue

The Department requests that the Commission suspend the commercial herring permit of John Thomas Tarantino, Corte Madera, for the first 14 days (commencing January 1997 for 14 fishing days), of the 1996-97 commercial herring season, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. Tarantino notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on March 7, 1996, in the Marin County Municipal Court, Mr. Tarantino forfeited bail on a violation of Section 163(f)(2)(C), Title 14, California Code of Regulations, setting or operating nets within 300 feet of specified piers and jetties (Fort Baker). As background, on January 29, 1996, Mr. Tarantino, the authorized substitute permittee, set his gill net within the 100-yard closure area around the public fishing pier at East Fort Baker, Marin County. The end of the net that was closest to the pier was measured to be only 84 feet from the pier. Mr. Tarantino was fined \$500.00.

Pursuant to Section 163.5, Title 14, CCR, Mr. Tarantino was sent a Stipulated Compromise Settlement Agreement for \$600.00 to pay a monetary penalty in lieu of receiving a suspension of his commercial herring permit. The Commissioners were provided with a copy of Section 163.5, Title 14, CCR, for their information.

The Commission's authority to take this action is pursuant to Section 163(i), Title 14, CCR.

The Commission was provided with a copy of the Commission's letter dated September 16, 1996; the Stipulated Compromise Settlement Agreement; the Department's request dated July 29, 1996; the citation; Mr. Tarantino's 1995-96 Limited Entry Herring Permit application; and the court record.

The Commission office received Mr. Tarantino's signed agreement and check on October 2, 1996.

Action

Executive Director Treanor introduced the item and reported that John Tarantino's signed Stipulated Settlement Agreement and monetary penalty of \$600.00 had been received.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE PROVISIONS OF SECTION 163.5, TITLE 14, CCR, HEREBY ENTERS INTO A STIPULATED COMPROMISE SETTLEMENT AGREEMENT WITH JOHN THOMAS TARANTINO, CORTE MADERA, TO PAY A MONETARY PENALTY OF \$600.00 RATHER THAN AN IMPOSITION OF A SUSPENSION OF HIS COMMERCIAL HERRING PERMIT.

PASSED UNANIMOUSLY.

15. REQUEST OF ALFRED STROMBERG, SAN DIEGO, TO APPEAL DEPARTMENT'S DENIAL OF HIS APPLICATION TO RENEW HIS FINFISH TRAP PERMIT.

Summary of Issue

Mr. Alfred Stromberg, San Diego, wishes to appeal the Department's denial of his application to renew his finfish trap permit. In a letter dated May 27, 1996, Mr. Stromberg provides the following information:

"I've been a commercial urchin diver for 15 yrs. I've also had a cucumber license and trap permit for three years. I've been acquiring trap gear for awhile to trap live fish. But this year when I renewed by trap permit, the fish and game said I needed a fish landing for 1996, which I don't have. I didn't know about this requirement. I would like to appeal my case before the Fish and Game Commission in August at Ontario, CA."

Department Recommendation

"The Department recommends denial of this request. We denied Mr. Stromberg's request for a 1996-97 finfish trap permit because he did not land any finfish taken by traps in 1995-96. Fish and Game Code Section 9001.5 authorizes the Department to issue finfish trap permits only to persons who held a finfish trap permit in 1995-96 and who landed finfish taken in traps during the 1995-96 permit year.

"Mr. Stromberg is appealing the denial of his permit based on his intent to use traps to take finfish as evidenced by having acquired trap gear to trap live fish. Section 9001.5(c) provides that any person who is denied a permit may appeal to the Commission within 60 days. Mr. Stromberg made his appeal within 60 days of denial.

"In addition, Section 8101 provides that a person may appeal denial of a limited-entry permit during the initial year of the fishery. This is the first initial permit year (1996-97) that issuance of finfish trap permits have been restricted. However, the person must have had a commercial fishing license in California for at least 20 years, and have participated in the fishery affected for at least one of those 20 years. Mr. Stromberg does not meet these two requirements.

"Department records verify that Mr. Stromberg has held a commercial fishing license in 14 of the past 16 years with no known violations. During this period he has been active primarily as a diver for sea urchins but has also landed a few sea snails and sea cucumbers. He had a trap permit authorizing the take of finfish in 1994-95 and 1995-96, but has not landed any finfish taken in traps to date. He does not qualify under either section 9001.5 or 8101.

"The Department is concerned that recent rapid growth in the finfish trap fishery requires management measures to conserve the resource and promote an orderly development of the fishery. The changes in trap permit issuance were contained in 1995 legislation and are intended to stabilize fishing efforts, while the Department completes its assessment of the resource and fishery, and develops further management recommendations. For these reasons we recommend denial of this request."

Action

Executive Director Treanor introduced the item. He asked if Alfred Stromberg was present, and there was no response. He noted that Commissioners were provided with a copy of Mr. Stromberg's letter dated May 27, and that the Department recommended denial.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF
ALFRED STROMBERG, SAN DIEGO, TO RENEW HIS FINFISH TRAP PERMIT.

PASSED UNANIMOUSLY.

CONSENT CALENDAR

Items 16 through 21 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 calls for approval or modified approval by the Commission. Any item may be removed from the consent calendar by the Commission or upon the 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 and asked if there was anyone from the audience who wished to speak on an item, and there was no response.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES ITS
NOVEMBER 7, 1996, CONSENT CALENDAR, ITEMS 16 THROUGH 21.

PASSED UNANIMOUSLY.

16. REQUEST OF PAT DERBY, PERFORMING ANIMAL WELFARE SOCIETY, GALT, TO
AMEND ITS RESIDENT EXHIBITOR'S PERMIT TO INCLUDE VARIOUS SPECIES OF
EXOTIC HOOFSTOCK.
-

Summary of Issue

Ms. Pat Derby, Performing Animal Welfare Society, Galt, requests an amendment to its Resident Exhibitor's permit to include various species of exotic hoofstock. In a letter dated September 23, 1996, Ms. Derby provides the following information:

"The Performing Animal Society (PAWS) is a California licensed Sanctuary for captive wildlife and has held permits for captive wildlife in California for over 20 years.

"Recently, PAWS has entered into an agreement with the Sacramento Municipal Utilities District (SMUD) to open a second facility at Rancho Seco Park. This facility, which will be called the Amanda Blake Memorial Wildlife Refuge, will be populated by hoofstock only. We are currently in the process of erecting fencing and shelter/feed stations there.

"This letter is to request that you place PAWS on the Commission's agenda for the November 7-8 meeting to amend our current permit to include the following: eland, blackbuck, oryx, Barbados sheep, Norwegian white mountain deer, buffalo, ostrich, emu, rhea, and wallaby.

"I am in contact with the Fish and Game veterinarians and will ensure that all livestock have had the necessary tests for diseases and that everything is in compliance and approved by our veterinarian.

"I am enclosing other informational material on this project.

"Thank you for your consideration in this matter.

Commissioners were provided with copies of additional information provided by Ms. Derby regarding her facility.

Department Recommendation

"The Department of Fish and Game recommends approval to add eland, blackbuck, oryx, Barbados sheep, Norwegian white mountain deer, and buffalo, under the following conditions:

- "• The applicant provides documentation in the form of a resume which outlines qualifying experience with each species as specified in Section 671.1(b)(2)(A)(2), Title 14, California Code of Regulations (CCR);
- "• The applicant provides a letter of recommendation from the facility/facilities where the experience for each species was gained as specified in Section 671.1(b)(C), Title 14, CCR;
- "• The appropriate holding facilities are in compliance with Sections 671.2-671.3, Title 14, CCR, and appropriate handling/restraining facilities are available within the fenced enclosure to ensure injured/sick animals can be examined and treated;
- "• Availability of most often used narcotics (carfentanil and etorphine) used to chemically immobilize exotic ungulates or the availability of a 'wildlife' veterinarian;
- "• All male species of simitar-horned oryx and blackbucks be neutered;
- "• All imported exotic ungulates must be tested for and determined negative to tuberculosis and brucellosis, free of other infectious diseases, and accompanied by a health certificate;
- "• Provide a contingency plan for recapture of escaped animals;
- "• Concurrence from the departments of Health Services and Food and Agriculture; and
- "• Payment of the \$30.00 permit amendment fee."

17. REQUEST OF JOHN GUTH, CALIFORNIA LOBSTER & TRAP FISHERMEN'S ASSOCIATION, VISTA, FOR COMMISSION CONSIDERATION OF AN AMENDMENT TO SECTIONS 120.3 AND 180.1(a), TITLE 14, CCR, RE: FOR COMMERCIAL SPOT PRAWN FISHING SEASON.

Summary of Issue

Mr. John Guth, California Lobster & Trap Fishermen's Association, requests the Commission consider amending the commercial spot prawn fishing season so that the trawl and trap fisheries have the same closure dates. In a letter dated September 20, 1996, Mr. Guth provides the following information:

"On behalf of the California Lobster & Trap Fishermen's Association, I am writing to formally request that the Commission amend Section 180-1(a) and 180-1(c)(c) of Title 14, governing management of the spot prawn fishery south of Point Arguello. Specifically, we wish to see the closure for prawn trapping run concurrently with the closure for prawn trawling. Currently, the trawl closure in this region runs from November 1 through January 15, followed by the trap closure, which runs from January 16 through March 31.

"As the attached correspondence indicates, there is minimal biological reason for separate closures for the two fisheries--a position supported by the Department. In fact, conversations with CDFG staff biologist Mary Larson, a recognized expert in the prawn field, indicate that switching the trap closure to match the trawl closure may help protect egg-bearing females that appear most prevalent during November, December and January.

"Initially, the primary reason for separate closure was to allow consistent flow of prawns to market. This does not appear to be a problem anymore, considering the abundant supply of prawns from other sources such as British Columbia, plus increased production north of Point Arguello. Conservation measures (protecting egg-bearing females), we believe, far outweigh market concerns.

"If your schedule permits, we would like this matter reviewed at the Commission's December meeting in Eureka. Mr. Mick Kronman, fisheries consultant, will appear on behalf of our association. Thank you for considering our request."

Department Recommendation

"The California Lobster and Trap Fisherman's Association has requested that the Commission publish notice of intent to amend the spot prawn fishing regulations by closing the spot prawn trap season concurrently with the prawn trawl fishing closure. Currently, the trawl fishery is closed from November 1 through January 15 of the following year, and the trap fishery is closed from January 16 through March 31.

"The Commission adopted amendments to the spot prawn fishing regulations effective November 14, 1995, to provide additional protective measures for this resource and fishery.

"The primary intent of those amendments was to restrict fishing effort at a time when egg-bearing female prawns are especially vulnerable and, at the request of the spot prawn trap fishing industry, to create a closure that separated trawl and trap gear types, as a means of supplying a consistent flow of prawns to market.

"In the year since the adoption of those amendments, the spot prawn fishing industry has recognized the overriding value of the conservation measure of having a single closed season for both trawl net and trap gear types.

"In March of this year, the Department provided a response to the Commission to questions raised by the California Lobster and Trap Fishermen's Association. At that time we indicated we could support a proposal for a uniform fishery closure, including all gear types, from November 1 to January 31 of each season.

"The Department does not see any biological reason why we cannot support such a change in the regulations. However, instead of the requested closed season of November 1 through January 15, we recommend a closed season of November 1 through January 31 for all gear types south of Point Arguello, Santa Barbara County."

Commissioners were provided with a copy of the Department's response to the Commission to questions raised by the California Lobster and Trap Fishermen's Association.

18. REQUEST OF NEIL AND NICK GUGLIELMO, SAN PEDRO, FOR RENEWAL OF EXPERIMENTAL GEAR PERMIT NOS. X-1831 AND X-1832 TO HARVEST LOBSTERS AND CRABS WITHIN THE CONSTRUCTION SITE OF PIER 400, LOS ANGELES HARBOR, FOR COMMERCIAL PURPOSES.

Summary of Issue

Messrs. Neil and Nick Guglielmo, San Pedro, request renewal of their Experimental Gear Permit Nos. X-1831 and X-1832 to harvest lobsters and crabs within the construction site of Pier 400, Los Angeles Harbor, for commercial purposes. In a letter dated October 6, 1996, Messrs. Guglielmo provide the following information:

"First of all, my brother and I would like to again thank you and Mr. Dave Parker, Dept. Of Fish & Game for giving us the opportunity to trap lobster and crab in the Port of Los Angeles' Pier 400 landfill project area currently under construction. The project is a great benefit to protecting our natural resources as well as helping our livelihoods.

"The subject permits granted us permission to trap in this area with the understanding that we save and relocate the juvenile lobster from this massive landfill effort and permitted us to sell the adult lobster. We believe the operation was highly successful

due to our commitment to the Agency and our experience as fishermen. To date, we trapped and released 3,824 juvenile lobster and sold 671 adult lobster.

"In as much as the Port of Los Angeles' massive landfill project encountered unexpected construction delays, the final phase is now scheduled to begin in December, 1996. Our dilemma is that our subject permits expire November 15, 1996. For this reason, we would appreciate your consideration to extend the subject permits for an additional four months to 4/1/96 or until the landfill aspect of the project is completed, whichever happens first.

"Again, we would like to thank you for this opportunity. By working together through this partnership we have been able to protect our natural resources by relocating the juvenile lobster who otherwise would have been crushed by the massive project, and also by allowing us to sell the adult lobster that helped our business.

"We appreciate your consideration and look forward to hearing from you. Thank you."

Department Recommendation

"Messrs. Neil and Nick Guglielmo, San Pedro, request renewal of their Experimental Gear Permit Nos. X-1831 and X-1832 to harvest lobsters and crabs within the construction site of Pier 400, Los Angeles Harbor, for commercial purposes. In a letter dated October 6, 1996, the applicants reported they had trapped and released 3,824 sublegal lobster and retained 671 legal lobster.

"They said the project construction schedule had experienced unexpected delays and, therefore, have asked for an extension beyond the November 15, 1996, ending date for subject permits.

"The Department recommends renewal of subject permits, with the stipulation that the permits will expire upon the close of the 1996-97 commercial lobster season, March 19, 1997."

19. DEPARTMENT REQUEST FOR AUTHORIZATION TO ACCEPT INTEREST IN LAND AS A CONDITION OF MITIGATION FOR THE FOLLOWING FIVE PROJECTS:

- 1) ALPHA-IRECO CONSERVATION EASEMENT, KERN COUNTY, 29± ACRES;
 - 2) GLEN ANNIE GOLF COURSE CONSERVATION EASEMENT, SANTA BARBARA, .8± ACRES;
 - 3) EVERGREEN PROJECT CONSERVATION EASEMENT, YOLO COUNTY, 120± ACRES;
 - 4) WOODBRIDGE PROJECT CONSERVATION EASEMENT, YOLO COUNTY, 20± ACRES; AND
 - 5) KERN WATER BANK AUTHORITY CONSERVATION EASEMENT, KERN COUNTY, 530± ACRES.
-

Summary of Issue

The Department requests authorization to accept interest in land as a condition of mitigation for the following five projects: (1) Alpha-Ireco Conservation Easement, Kern County, 29± acres; (2) Glen Annie Golf Course Conservation Easement, Santa Barbara, .8± acres; (3) Evergreen Project Conservation Easement, Yolo County, 120± acres; (4) Woodbridge Project Conservation Easement, Yolo County, 20± acres; and (5) Kern Water Bank Authority Conservation Easement, Kern County, 530± acres.

In a memo dated October 17, 1996, the Department provides the following information:

"The Department of Fish and Game (DFG) requests your authorization to accept a conservation easement as a condition of mitigation for the following five projects:

"(1) Alpha-Ireco Conservation Easement, Kern County, 29± acres;

"This easement is required by Kern County as a condition of approval for the Alpha-Ireco explosive facility near Saltdale, Kern County. The easement property is located approximately two miles from the project site in the Mojave Desert. The property will provide habitat for desert tortoise.

"(2) Glen Annie Golf Course Conservation Easement, Santa Barbara, .8± acre;

"This easement is required pursuant to Fish and Game Code Section 1600 for the purposes of mitigating the negative impacts of construction of the Dos Pueblos Partnership Golf Course. Construction includes an 18 hole golf course, driving range, putting course and green, and installation of a water pipeline. The conservation easement will encompass three parcels of land which meander throughout the golf course.

"(3) Evergreen Project Conservation Easement, Yolo County, 120± acres;

"This easement is required pursuant to Fish and Game Code Section 2081 for the purposes of mitigating the negative impacts of the Evergreen Project resulting in permanent loss of 120 acres of suitable foraging habitat for the Swainson's hawk and other species. The Evergreen Project is a principally residential planned development to develop approximately 717 residential units consisting of 357 single-family units, 180 apartment units, 180 senior housing units, 3 acres of commercial retail, and 12 acres of park and neighborhood greenbelts. The easement is located adjacent to County Road 102 and north of County Road 29, Yolo County.

"(4) Woodbridge Project Conservation Easement, Yolo County, 20± acres;

"This easement is required pursuant to Fish and Game Code Section 2081 for the purposes of mitigating the negative impacts of the Woodbridge Project resulting in permanent loss of 20 acres of potential habitat for the Swainson's hawk.

The Woodbridge Project is a residential planned development to develop approximately 65 single-family residential units, 1± acres of multi-family housing, .4± acre mini-park, 4± acres of neighborhood greenbelts and recreational areas, and a 3± acre nature area adjacent to Putah Creek located south of El Macero Drive and the terminus of La Paz Drive and San Marino Drive in the City of Davis, Yolo County. The easement area is located adjacent to the Evergreen Project Conservation Easement area (see above) and will complete the protection of a 140± acre tract of land.

"(5) Kern Water Bank Authority Conservation Easement, Kern County, 530± acres;

"The Department of Water Resources (DWR) has engaged in certain environmental mitigation and compensation activities concerning the protection of blunt-nosed leopard lizards for five development projects in Kern County. DWR is the owner of approximately 20,000 acres of land (Water Bank Lands) in Kern County, in an area known as the Kern Water Bank. DWR has entered into a purchase agreement to sell the Water Bank Lands to Kern County Water Agency (KCWA) with KCWA subsequently transferring the property to the Kern Water Bank Authority (KWBA). KWBA will assume DWR's obligation to transfer the 530-acre conservation easement to DFG. The conservation easement area is located southwest of the junction of Interstate 5 and State Highway 43, Kern County in an area known as the Kern Fan.

"Maps depicting the property locations over which the above conservation easements will lie are attached for your information.

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

Commissioners were provided with maps depicting the property locations over which the above conservation easements will lie.

20. DEPARTMENT REQUEST FOR AUTHORIZATION TO TRANSFER PRAIRIE CREEK FISH HATCHERY TO THE NATIONAL PARK SERVICE (NPS).

Summary of Issue

The Department requests authorization to transfer Prairie Creek Fish Hatchery to the National Park Service (NPS). The Department's October 17, 1996, memo provides the following information:

"The State of California deeded its hatchery to the County of Humboldt (County) in 1961, providing the County run the facility as a hatchery. If the County discontinued the hatchery operation, the facility would revert to the State.

"In 1992, the County notified the State of its intent to discontinue operations and began the process to return this site to the State. At the Fish and Game Commission meeting of February 1993, the Commission accepted the reversion of the hatchery.

"Since this period, the Department of Fish and Game (DFG) and the United States Department of the Interior, NPS have entered into a 'Memorandum of Understanding' wherein NPS will manage the facility as an addition to its Prairie Creek Redwoods State Park (which surrounds the hatchery site on three sides), and upon NPS and DFG's approval, will accept the site permanently.

"No acquisition costs will be paid by NPS for the facility. However, NPS will pay for Department of General Services' review costs.

"It is therefore requested that the Commission approve the transfer of this facility to NPS.

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

21. APPROVAL OF MINUTES.

Summary of Issue

The minutes of the May 6, 1996, meeting have been distributed to members of the Commission. Commission staff knows of no errors therein and suggests that the minutes be approved as distributed.

There being no further business, the meeting recessed at 1:37 p.m. There was no Executive Session.

NO EXECUTIVE SESSION

November 7, 1996

Pursuant to the authority of Government Code Section 11126(q), the Commission will meet in closed Executive Session to consider the following items:

PENDING LITIGATION TO WHICH THE COMMISSION IS A PARTY:

- (A) MOUNTAIN LION FOUNDATION, ET AL., vs. FISH AND GAME COMMISSION, ET AL., RE: MOHAVE GROUND SQUIRREL.
- (B) TOM HAYDEN, ET AL., vs. FISH AND GAME COMMISSION RE: SACRAMENTO RIVER SPRING-RUN CHINOOK SALMON.
- (C) EDWARD BARLOW, ET AL., vs. FISH AND GAME COMMISSION, ET AL., RE: DENIAL OF HERRING ROE-ON-KELP PERMIT.
- (D) POSSIBLE LITIGATION INVOLVING THE COMMISSION.

State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 7-8, 1996

Pursuant to the call of the President, the Commission met at the Ahwahnee Hotel, Yosemite National Park, Yosemite, California, on November 8, 1996. Commissioner Thieriot was not present but connected via teleconference from 44 Montgomery Street in San Francisco. The meeting was called to order at 8:30 a.m. by President McGeoghegan.

Persons present:

FISH AND GAME COMMISSION

| | |
|------------------------|-------------------------------------|
| Douglas B. McGeoghegan | President |
| Richard T. Thieriot | Vice President (via teleconference) |
| Frank D. Boren | 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 |
| DeWayne Johnston | Chief, Wildlife Protection Division (WPD) |
| Christopher Patin | Regional Patrol Chief, Region 4 |

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

22. AMENDMENT OF 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

The Commission, at its August 30, 1996, meeting in South Lake Tahoe, authorized its staff to publish notice of Commission intent to amend Section 230, Title 14, CCR, to allow for a variance of the slot limit for bass tournaments at Lake Oroville, Butte County. That legal notice has been published. The proposed change can be summarized as follows:

"Current regulations governing black bass fishing contests (tournaments) require tournament sponsors to obtain permits from the Department.

"Sponsors of contests offering prizes worth more than \$1,000 or with more than 50 contestants (Type A Contests) must obtain a separate permit for each contest (an Event Permit).

"The regulations also provide that the Department, as part of Event Permit conditions (Class A Contests) may authorize an exemption to new regulations which impose an increased minimum size limit larger than 12 inches, a slot size limit, or a reduced bag limit less than five fish. The regulations currently provide that such exemptions shall be considered for a specific body of water only during the five-year period following the effective date of the increased size limit for that body of water.

"Sport Fishing regulations for Oroville Lake (Butte County) provide for a slot limit (no black bass between 12 and 15 inches may be taken). Because the current slot limit at Oroville Lake has been in effect for more than five years, the current provisions in the tournament regulations do not allow the Department to authorize an exemption there.

"Some members of the public contend that the current Oroville Lake slot limit regulations are discouraging large bass fishing tournaments at Oroville, and thereby harming the local economy. In response to requests from the public, the Commission is proposing to adopt regulation changes which will allow the Department to authorize exemptions at Oroville Lake.

"For clarification, minor editorial changes to the regulation are also proposed."

Commissioners were provided with copies of the Department's Pre-publication of Notice and Pre-adoption Statements as well as the text of the regulations in strikeout/underline format, copies of correspondence and recommendations from Mr. Tom Van Gelder, Chairman, Lake Oroville Fish Enhancement Committee, and Mr. L. Kevin Mineo.

Action

Executive Director Treanor briefed the Commission on the item. He noted that the Commission had requested that the Department report on the slot limit variance at its late August 1997 meeting. Mr. Treanor reported that Mr. Don Reighley was present should there be any questions. He then asked if there was anyone in the audience who wished to speak on the item, and there was no response.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 1050 AND 2003 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 711, 713, 1050 AND 2003 OF SAID CODE, HEREBY AMENDS SECTION 230, TITLE 14, CCR, TO ALLOW FOR A VARIANCE OF THE SLOT LIMIT FOR BASS TOURNAMENTS AT LAKE OROVILLE, BUTTE COUNTY. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

23. AMENDMENT OF SECTIONS 1.74; 2.00; 6.31; 6.33; 6.36; 7.50(b)(68), (156), (158) AND (163); 27.60; 27.65; 28.55; 705 AND 706, TITLE 14, CCR, AND REPEAL OF SECTION 7.50(b)(123), TITLE 14, CCR, RE: SPORT FISHING REGULATIONS.

Summary of Issue

The Commission 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 scheduled to consider adoption of those proposals brought to the Commission during the "off-year."

Commissioners were provided with copies 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 proposed regulations can be summarized as follows:

"Section 1.74. Salmon Punch Card and Steelhead Report Card Requirements: The Department is proposing to make minor changes to this section for clarification. The words 'in length' should be replaced with the words 'total length'. The river salmon punch card reporting requirement should be changed from 22 to 24 inches to reflect 1996 changes to Klamath River sportfishing regulations. The boundary 'Point Delgada' should be replaced with 'Horse Mountain' to make the boundary in Section 1.74 consistent with the boundary specified for ocean salmon fishing (Section 27.80).

"The Department is recommending new language to Section 2.00 to clarify that children younger than 16 are exempt from the two-rod stamp requirement. They may fish with up to two rods in lakes and reservoirs, but no stamp is required.

"In subsection 7.50(b)(123), the department is proposing elimination of an Oct. 16 - Nov. 15 fishing closure for Moccasin Creek. There is no biological justification for the closure. Moreover, the change will increase angling opportunity and simplify the regulations by making the open season for Moccasin Creek the same as that for most other streams in the Sierra District.

"The Department is recommending changes to sections 705 and 706 (Title 14, CCR) regarding hunting and fishing license applications. The proposed changes will remove the requirements related to validating stamps and requirements for drivers' license or Department of Motor Vehicles Identification Card Numbers on applications. These changes are needed to conform regulations to actual issuing practices. Fishing and hunting license formats have been altered to eliminate the use of validation stamps. Applications are no longer required.

"The Department is also recommending numerous small editorial changes to correct errors and eliminate confusion. They include corrections to the North Coast, South Central and Valley District definitions, new language to clarify landmarks, and correction of other word-processing errors.

"Specific proposed editorial changes are:

"Sections 6.31, 6.33 and 6.36, the definitions for the North Coast, South Central, and Valley Districts: These sections all contain word processing errors (portions of sentences which were inadvertently dropped). The Department is proposing changes which will correct the errors.

"Subsection 7.50 (b)(68)(C). Feather River from Highway 70 Bridge to a point 100 yards upstream from Thermalito Afterbay Outlet: The bag limit was erroneously omitted from this regulation. The bag limit should be 2.

"Subsections 7.50(b) (156) (G) and (I). Sacramento River: Add language to clarify that Bend Bridge is near the town of Red Bluff (many anglers are unsure of the location of Bend Bridge).

"Subsection 7.50(b)(158)(B). Salinas River and Tributaries. The bag limit should be changed to '2, or 5 trout, 0 salmon' in recognition of the fact that salmon are not found in these waters. (Depending upon the stream reach, the current bag limits are either '2, or '5, but only 2 salmon.')

"Subsection 7.50(b)(163). San Benito River and Tributaries. The bag limit should be changed to '5 trout 0 salmon' in recognition of the fact that salmon are not found in these waters. (The current bag limit is '5, but only 2 salmon.')

On October 28, 1996, the Department informed the Commission office that the Pacific Fishery Management Council decided not to establish a Federal bag limit for bocaccio rockfish; therefore, the Commission did not have to establish a bag limit.

Action

Executive Director Treanor reported that the Department was withdrawing its proposed change in the bocaccio rockfish bag limit because the Pacific Fishery Management Council had declined to establish a bag limit, but that all other Department recommendations remained. He then asked if there was anyone in the audience who wished to speak on the item, and there was no response.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 200, 202, 203, 205, 210, 215, 219, 220, 240, 315, 1050 AND 1055, 4331 AND 7380, OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 70, 200-205, 206, 210, 215, 220, 221, 240, 713, 1050-1110, 2012, 3007, 3031, 3031.5, 3034, 3037, 3038, 3049, 3050, 3052, 3053, 3055, 3060-3063, 4331, 7145-7150.5, 7380 AND 7381 OF SAID CODE, HEREBY AMENDS SECTIONS 1.74; 2.00; 6.31; 6.33; 6.36; 7.50(b)(68),(156),(158) AND (163); 705 AND 706, TITLE 14, CCR, AND REPEAL OF SECTION 7.50(b)(123), TITLE 14, CCR, RE: SPORT FISHING REGULATIONS. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

24. COMMISSION LEGAL COUNSEL'S REPORT RE: POSSIBLE COMMISSION ACTION RELATIVE TO FERRETS. (COMMISSION ACTION ONLY. NO PUBLIC TESTIMONY.)

Summary of Issue

This item is scheduled to receive the Commission's legal counsel's, Randall Christison, Deputy Attorney General, opinion concerning the Commission's authority regarding ferrets. Mr. Christison will be prepared to discuss his report at the Commission meeting. His draft report will be faxed to the Commissioners prior to the November meeting.

Action

Executive Director Treanor introduced the item and reported it was for Commission consideration and action only, no public testimony would be heard. Mr. Treanor indicated that Mr. Randall Christison, Commission's legal advisor, had provided a written report to the Commissioners. The written report will be included as an appendix in the Commission Office Master Minutes.

Deputy Attorney General Christison provided his report to the Commission and stated that the question was whether the Commission had the authority to consider amending existing regulations to legalize domestic ferrets. Deputy Attorney General Christison reported he had researched the issue and a copy of his legal analysis is attached as an appendix. He explained that it was his opinion that the Legislature had not given the Commission clear authority to legalize ferrets. He emphasized that this was a legislative matter and that it should be taken off the Commission's agenda. He concluded that it was appropriate for the Legislature to provide guidance and clarification to the Commission in order to decide the issue. Mr. Christison reported that he had received and considered correspondence from five different Deputy Attorney Generals.

Commissioner Boren agreed that the statutes are not clear and recommended that the Commission appoint a subcommittee to meet with the Legislature to discuss the vagueness and obtain clarification. President McGeoghegan concurred with Commissioner Boren and agreed that a subcommittee be appointed. It was agreed that the subcommittee consist of Commissioner Boren, Executive Director Treanor and Deputy Attorney General Christison.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY ACCEPT LEGAL COUNSEL'S
OPINION THAT THE COMMISSION DOES NOT HAVE CLEAR AUTHORITY TO
AMEND REGULATIONS LEGALIZING FERRETS IN CALIFORNIA, REMOVE THE
ITEM FROM THE COMMISSION'S AGENDA, AND TO APPOINT A SUBCOMMITTEE
TO WORK WITH THE LEGISLATURE.

PASSED UNANIMOUSLY.

25. 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.

A. NATURAL COMMUNITY CONSERVATION PLANNING
PROGRAM (NCCP) QUARTERLY REPORT.

The Commission was provided with a copy of the Department's quarterly status report on the Natural Community Conservation Planning Program (NCCP).

B. UPDATE ON COHO SALMON LISTING BY THE NATIONAL MARINE FISHERIES SERVICE.

The Department will provide the Commission with an update on the Coho salmon listing by the National Marine Fisheries Service ((NMFS).

Deputy Director Petrovich reported that NMFS had recommended the coho salmon for threatened status in the Central California Evolutionarily Significant Unit (ESU), Punta Gorda in the north to the San Lorenzo River in the South. He explained that the listing would become effective 30 days after announcement, which would be at the end of November, and the prohibition on take would go into affect 30 days after, which would be January 1, 1997. He added that since it would be listed as a threatened status, options were a special 4d rule and Section 10 permits, but those take an average of 12-18 months to implement. Deputy Director Petrovich reported that the listing decision for the ESU to the north (California's Del Norte and Humboldt counties) had been delayed for six months.

C. MITTEN CRABS

Deputy Director Petrovich reported that the first Chinese mitten crabs were found in 1992 in south San Francisco Bay. He added that since 1993 juvenile mitten crabs have been found further upstream in creeks leading to the south bay and in 1996 were found in the Delta. He reported that there were problems related to these crabs which are: (1) lung flukes with a freshwater snail as an intermediary host and transmitted by eating raw crabs, (2) burrowing into flood protection levees and (3) damaging rice crops by consuming the young shoots and burrowing into levees of rice fields. Deputy Director Petrovich also reported that the Department had been monitoring the crabs and indicated that the Departments of Food and Agriculture and Health Services needed to become involved because of the potential threats. He added that these crabs are catadromous, which means they spawn in saltwater and rear in freshwater. He noted that they mature in one to five years depending on water temperature, spawning thousands of eggs once a year.

D. FARMING FOR WILDLIFE

Deputy Director Petrovich reported that this had been a three year project and represented a clear message to the farming community that the Department appreciates the habitat that farms provide for wildlife and describes various techniques which would enhance wildlife benefits without significantly affecting farm resources. He also handed out a report highlighting the program.

E. REDESIGN OF HUNTING LICENSE

Deputy Director Petrovich reported that the hunting license needed to be redesigned because it was too thick to fold and creased the stamps when folded. He added that if the license was designed differently, it would allow the USFWS to scan the license for the hunter/harvest information and reduce the Department's workload.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE
DEPARTMENT'S REQUEST TO REDESIGN THE HUNTING LICENSE FOR
THE 97/98 LICENSE YEAR.

PASSED UNANIMOUSLY.

26. 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.

Action

Executive Director Treanor asked if the Commissioners had any informational items. Commissioner Boren requested a report of the accomplishments of Commissioner McGeoghegan's year as President. Commissioner Thieriot concurred and thought the concept was a good idea and that it would assist new Commissioners.

Executive Director Treanor brought up a problem with the meeting site for the March 6-7, 1997, meeting in Crescent City. It was agreed to change the location of the March meeting to Sacramento. It was also agreed that the early August meeting in Santa Barbara would be July 31 - August 1.

27. 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.

There was no discussion.

28. ANNOUNCEMENT OF FUTURE MEETINGS.

1996 FISH AND GAME COMMISSION MEETINGS

DATE

MEETING SITE

December 5-6

Board of Supervisors Chambers
825 Fifth Street, Eureka

DRAFT 1997 MEETING SCHEDULE

| DATE | LOCATION |
|---|-----------------|
| February 6-7 | Monterey |
| March 6-7 | Sacramento |
| April 3-4 | Alturas |
| May 5-6 (Joint Meeting with Board of Forestry) | Sacramento |
| June 12-13 | Bridgeport |
| July 31-August 1 | Santa Barbara |
| August 28-29 Receive Sport Fishing Recommendations | Sacramento |
| October 2-3 | San Diego |
| November 6-7 | Redding |
| December 4-5 Adopt Sport Fishing Regulations | Long Beach |

There being no further business, the Fish and Game Commission meeting was adjourned at 9:30 a.m.

Section 230, Title 14, CCR is amended to read:

230. Issuance of Permits for Contests Offering Prizes for the Taking of Game Fish.

(a) Definition of Contests.

(1) Type A Contest. Type A contests are those events offering prizes totaling more than \$1,000 in value or with more than 50 participants. Type A contests may not exceed three days in duration and no more than one Type A event may be held at any water on the same day for the same game fish category listed in subsection 230(b)(1) of these regulations. If two or more applicants have requested a permit for the same date for a water, the application received first shall be given priority.

(See subsection 230(e) re: additional restrictions for black bass events.)

(2) Type B Contest. Type B contests are those events offering prizes of \$1,000 or less and with 50 or fewer participants.

(b) Issuance of Permits.

(1) Revocable permits to conduct fishing contests (including tournaments, derbies or tagged fish contests) may be issued by the department to any person (as defined by section 67, Fish and Game Code) authorizing the permittee to offer prizes or other inducements for the taking of game fish. The department shall issue such permits if it determines the proposed contest(s) would not be detrimental to the resource. For the purposes of this section, game fish are defined as the following: white sturgeon and green sturgeon; American shad; salmon and trout--all species; goldfish; common carp; hardhead; Sacramento squawfish; western sucker; catfish and bullheads--all species; striped bass; white bass; black bass and sunfish--all species; tilapia--all species; sargo; bairdiella; and orangemouth corvina.

(2) Application shall be made on a standard form provided by the department (APPLICATION FOR PERMIT TO OFFER PRIZES FOR TAKING GAME FISH, FG 775 (6/90)), which is incorporated by reference herein), and shall include the name, address and phone number of the sponsoring person and organization, if any, and for each contest: the location and date of the event, total value of the prizes, and expected number of participants. Applications for Type B contests should be submitted to the regional office (see map and addresses of Regional offices attached to application form FG 775 (6/90)) nearest to the applicant. Applications for Type A permits must be submitted to the department regional office for the region where the contest(s) is proposed.

(3) The application shall be submitted to the department at least 30 days prior to the proposed contest(s).

(4) Applications will not be accepted prior to July 1 of the year preceding the calendar year in which any contest is proposed.

(5) The department will consider requests for adjustments to approved Type A contest dates, if such requests are received by the issuing regional office not later than 30 days prior to the contest date to be changed.

(6) Permits are not transferable.

(7) Event and Annual Permits.

(A) An Event Permit will be issued for each Type A contest (see subsection 230(a)(1)).

(B) An Annual Event Permit will be issued on a calendar year basis to cover all Type B Contests (see subsection 230(a)(2)) proposed for that year.

(8) Cost of permit: See subsection 699(b) of these regulations for the fee for this permit.

(c) Observer Requirement. An employee of the department may be assigned as an observer and be present at any contest. The applicant shall reimburse the department \$100 per day for the cost of the observer's services and all associated administrative and incidental costs.

(d) Compliance with Sport Fishing Regulations.

(1) No provisions of these regulations exempt any participant in a contest from the sport fishing regulations, except that the Department, as part of an Event Permit conditions, may authorize an exemption to new regulations which impose an increased minimum size limit larger than 12 inches, a slot size limit, or a reduced bag limit less than five fish.

(2) Such exemptions for increased size or slot size limits shall be considered for a specific water by the Department only during the five-year period following the effective date of the increased size or slot size limit for that water. Notwithstanding the provisions of subsection 230(d)(2), the department may authorize the exemptions provided in subsection 230(d)(1) at Oroville Lake.

(3) To prevent the movement of live fish from one body of water to another, the Department also may establish permit conditions governing the movement of live fish associated with tournament activities.

(e) Additional Restrictions for Type A Black Bass Contests.

(1) Insofar as possible, all fish shall be returned to the water alive and in good condition, except the department may for scientific or management purposes, take possession of any fish caught during the contest and provide for retention of unusually large fish by participants. The department shall notify the permittee or his designated representative of such exceptions prior to the start of the contest.

(2) All contestants shall have facilities for keeping bass alive and in good condition. The contest or department officials shall have the authority to disqualify any individual from competing if suitable facilities are not available.

(3) Only artificial lures may be used.

(f) Special Conditions. The department may impose special conditions not specifically covered herein for any contest. These special conditions are limited to providing for the welfare of fish populations or individual fish.

(g) Submission of Reports. Permittees shall complete and return a report on a standard form (attached to application form FG 775(6/90)) provided by the department, or an equivalent form, within 30 days after the completion of each contest. The permittee shall answer all the questions thereon relating to the contest, so that department personnel may monitor the impact of such events on fisheries resources.

(h) Revocation or Denial of Permits. Failure of a permittee to comply with the provisions of this section, and any special conditions applied under this section, can result in the revocation of current permits or denial of applications for future permits, as determined by the department.

NOTE

Authority cited: Sections 1050 and 2003, Fish and Game Code. Reference: Sections 711, 713, 1050 and 2003, Fish and Game Code.

Section 1.74, Title 14, CCR, is amended to read as follows:

1.74. Salmon Punch Card and Steelhead Trout Catch Report Card Requirements.

(a) Anglers must have a nontransferable punch card issued by the department in their possession while fishing for salmon in ocean waters north of ~~Point Delgada~~ Horse Mountain or in waters of the Klamath River system. Anglers must immediately upon taking and retaining an adult salmon over 20 inches in total length in ocean waters, and over ~~22~~ 24 inches in total length in the river system, make a hole in the punch card in one of the designated locations and record the month, day, area of catch and species of salmon in the spaces provided adjacent to the punch.

A punch card shall be valid for the calendar year. No person may purchase or possess more than one punch card or any punch card other than his own. Upon purchase of the punch card, the card number shall be entered in ink on the back of the angler's sport fishing license. The sport fishing license number shall be entered on the punch card in the appropriate box.

Anglers must return punch cards to the department within 30 days of the close of the calendar year. The department may charge a fee for each punch card issued to defray printing and related administrative costs. The amount of said fee shall be \$1.00 as adjusted pursuant to sections 713 and 1055 of the Fish and Game Code.

(b) Anglers must have a nontransferable Steelhead Trout Catch Report-Restoration Card issued by the department in their possession while fishing for steelhead trout in anadromous waters. For purposes of this regulation, a steelhead trout is defined as any rainbow trout found in anadromous waters that is greater than 16 inches in length. Anglers must record in ink, the month, day, catch area, number of steelhead caught and kept, and number of steelhead caught and released.

A report-restoration card shall be valid for the calendar year. When the card becomes completely filled-in, a person may purchase another card. Anglers are not required to return the card to the department. A random sample of anglers will be chosen and contacted by the department to provide catch and angling information. Anglers must retain their card until March 31 of the following year.

Revenue received from the sale of the cards may only be expended to monitor, restore, or enhance steelhead trout resources and to administer the report-restoration card program. The card shall contain a statement explaining potential uses of the funds received.

The department may charge a fee for each card issued to defray printing and related administrative costs and to provide funds to monitor and restore California's steelhead populations. The amount of said fee shall be \$3.00 as adjusted pursuant to sections 713 and 1055 of the Fish and Game Code.

NOTE

Authority cited: Sections 200, 202, 205, 210, 240, 1050, 1055 and 7380, Fish and Game Code.

Reference: Sections 200, 202, 205, 210, 240, 713, 1050, 1055, 7380 and 7381, Fish and Game Code.

FINAL REGULATIONS
APPROVED BY OAL

Section 2.00, Title 14, CCR, is amended to read as follows:

2.00. Fishing Methods--General.

All fish may be taken only by angling with one closely attended rod and line or one hand line with not more than three hooks nor more than three artificial lures (each lure may have three hooks attached) attached thereto. Anglers in possession of a valid two-rod stamp and anglers under 16 years of age may use up to two rods in lakes and reservoirs. See District Trout, Salmon and Special Regulations for exceptions.

NOTE

Authority cited: Sections 200, 202, 205, 219 and 220, Fish and Game Code. Reference: Sections 200, 202, 206 and 220, Fish and Game Code.

Section 6.31, Title 14, CCR, is amended to read as follows:

6.31. North Coast District Definition.

The North Coast District consists of the inland waters of all of Trinity, Humboldt and Del Norte counties and the portion of Siskiyou County northwest of a line drawn between Mt. Eddy and the Black Butte Summit railroad crossing of Interstate 5 and west of Interstate 5 between the railroad crossing and Weed, and west of Highway 97 between Weed and the Oregon border.

NOTE

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

Section 6.33, Title 14, CCR, is amended to read as follows:

6.33. South Central District Definition.

The South Central District consists of the inland waters of all of Monterey, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Clara and Santa Cruz counties; all of Alameda County west of Interstate 680, and that portion of Alameda County which is both east of Interstate 680 and south of Interstate 580; all of and Contra Costa County west of Interstate 80, and that portion of Contra Costa County which is both south of Highway 4 and west of Interstate 680.

NOTE

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

Section 6.36, Title 14, CCR, is amended to read as follows:

6.36. Valley District Definition.

The Valley District consists of all of Butte, Colusa, Glenn, Kern, Kings, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Yolo and Yuba counties; Tulare County west of the west boundaries of Sequoia National Forest and Sequoia National Park; Fresno County west of the west boundaries of Sierra and Sequoia National Forests (including all of Pine Flat Lake); Madera County west of the west boundary of the Sierra National Forest; Amador, Calaveras, El Dorado, Mariposa, Nevada, Placer and Tuolumne counties west of Highway 49 (including all of Don Pedro, McClure and New Melones lakes); that portion of Alameda County which is both east of Interstate 680 and north of Interstate 580; and east of Interstate 680; and all of Contra Costa County east of Interstate 680 and that portion of Contra Costa County which is both north of Highway 4 and east of Interstate 80; and all of Black Butte Lake.

NOTE

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

Subsection (b) (156) of Section 7.50, Title 14, CCR, is amended to read as follows:

| <i>Body of Water</i> | <i>Open Season and Special Regulations</i> | <i>Daily Bag and Possession Limit</i> |
|---|--|--|
| (156) Sacramento River main stem and Sacramento River tributaries (Butte, Colusa, Contra Costa, Glenn, Sacramento, Shasta, Siskiyou, Solano, Sutter, Tehama and Yolo Cos.). Also see Special Salmon Fishing Restrictions Sierra District General Regulations (see section 7.00(b)). (A) Sacramento River TRIBUTARIES ONLY between Box Canyon Dam and Shasta Lake. | Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used. | 0 |
| (B) Sacramento River from Box Canyon Dam downstream to the Scarlett Way bridge in Dunsmuir. | Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used. | 0 |
| (C) Sacramento River from Scarlett Way bridge downstream to the mouth of Soda Creek. | Last Saturday in Apr. through Nov. 15. Only barbless hooks may be used. | 5 per day 10 in possession |
| (D) Sacramento River from the mouth of Soda Creek downstream to Shasta Lake. | Last Saturday in Apr. through Nov. 15. Only artificial lures with barbless hooks may be used. | 0 |
| (E) Sacramento River from Keswick Dam to 650 feet below Keswick Dam. | Closed to all fishing all year. | |
| (F) Sacramento River from 650 feet below Keswick Dam to the Deschutes Road bridge. (Also see (J) below.) | All year. Only barbless hooks may be used (also see Section 2.03). | 1 trout 0 salmon |
| (G) Sacramento River from the Deschutes Road bridge to Bend Bridge (<u>approximately 5 miles upstream from the town of Red Bluff</u>). (Also see (J) below.) | Aug. 1 through Jan. 14. Jan. 15 through July 31. | 3 trout 2 salmon 3 trout 0 salmon |
| (H) Sacramento River from 500 feet upstream from Red Bluff Diversion Dam to 1,375 feet below the Dam. | Closed to all fishing all year. | |

(I) Sacramento River from Bend Bridge (approximately 5 miles upstream from the town of Red Bluff to the Carquinez Bridge (includes Suisun Bay, Grizzly Bay and all tributary sloughs). (Also see (J) below.)

July 16 through Jan. 14.

3 trout

2 salmon

Jan. 15 through July 15.

3 trout

0 salmon

(J) DURING THE PERIOD SEPTEMBER 1 THROUGH FEBRUARY 28, NO RAINBOW TROUT OR STEELHEAD OVER 22 INCHES TOTAL LENGTH MAY BE POSSESSED IN THE SACRAMENTO RIVER FROM KESWICK DAM DOWNSTREAM TO THE MOUTH OF THE FEATHER RIVER.

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.

Subsection (b) (158) of Section 7.50, Title 14, CCR, is amended to read as follows:

| <i>Body of Water</i> | <i>Open Season and Special Regulations</i> | <i>Daily Bag and Possession Limit</i> |
|---|---|--|
| (158) Salinas River and tributaries (Monterey and San Luis Obispo Cos.). | | |
| (A) Salinas River from mouth to Chualar River Road bridge. | Nov. 16 through Feb. 28, but only on Sat., Sun., Wed., legal holidays and opening and closing days. | 2 <u>trout</u> 0 <u>salmon</u> |
| (B) Salinas River and tributaries (includes Arroyo Seco, Nacimiento and San Antonio drainages). | Last Saturday in Apr. through Nov. 15. | 5, but only 2 <u>salmon</u> <u>trout</u> 0 <u>salmon</u> |

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.

Subsection (b) (163) of Section 7.50, Title 14, CCR, is amended to read as follows:

| <i>Body of Water</i> | <i>Open Season and Special Regulations</i> | <i>Daily Bag and Possession Limit</i> |
|--|--|--|
| (163) San Benito River and tributaries (San Benito Co.). | Last Saturday in Apr. through Nov. 15. | 5, but only 2 <u>salmon</u> <u>trout</u> 0 <u>salmon</u> |

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.

Section 705, Title 14, CCR, is amended to read as follows:

705. Hunting and Fishing Licenses, Application for.

The following procedure shall be followed in issuing hunting or sport fishing licenses:

(a) ~~An application for a~~ A hunting or sport fishing license, except as provided in subsection 705 (b), Title 14, CCR, shall contain the following information about the applicant licensee ~~before the appropriate validating stamp is affixed~~ being issued to the licensee:

(1) True name

(2) Residence address

(3) Date of Birth

(4) Height

(5) Color of eyes

(6) Color of hair

(7) Weight

(8) Sex

~~(9) Driver's license number or Identification Card number issued by the California Department of Motor Vehicles or by the entity issuing driver's licenses in the licensee's state of domicile, or a substitute identification number issued by the Department of Fish and Game.~~

(b) A sport fishing license issued pursuant to subsections 7149(a)(3) and 7149(c) of the Fish and Game Code shall contain the date of validity.

(c) Notwithstanding the provisions of Fish and Game Code Section 1053, a person may purchase a hunting or sport fishing license, license tags or license stamps for another person, as long as the application contains the licensee's true name and residence address. Prior to using any license or license stamps, the licensee shall complete the application license so that it contains all of the information required in subsection (a) above.

NOTE

Authority cited: Sections 1050 and 4331, Fish and Game Code. Reference: Sections 1050, 3031, 4331, 7145, 7149, 7149.2 and 7150, Fish and Game Code.

Section 706, Title 14, CCR, is amended to read as follows:

706. Hunting and Fishing License, Validation of.

Except as provided in subsection 705(b) above, every hunting or sport fishing license to be valid shall contain the information required in Section 705 above, and it shall be signed by the licensee and the license ~~or validation stamp~~ shall show the date of issue.

NOTE

Authority Cited: Section 200, 202, 203 and 205, Fish and Game Code. Reference: Sections 70, 200-205, 220, 221, 1050-1110, 2012, 3007, 3031, 3031.5, 3034, 3037, 3038, 3049, 3050, 3052, 3053, 3055, 3060-3063 and 7145-7150.5, Fish and Game Code.

Memorandum

To : President McGeoghegan and Members
of the Fish and Game Commission
of the State of California

Date : November 6, 1996

Telephone: CALNET (8) 740-2201
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From : Randall B. Christison
Deputy Attorney General
Natural Resources Law Section
Office of the Attorney General - San Diego

Subject : Legal Analysis (1) Commission power to designate "wild animals,"
and (2) Limitations, if any, of adoption of regulations

The questions presented are (a) whether Fish and Game Code sections 2116, 2116.5, and 2118 provide a basis for the commission to declare a specified animal, *Mustela furo*, a "domestic species," and (b) whether the commission may, by adopting regulations, render the species unregulated at least as far as this division of the Fish and Game Code is concerned.

It has been argued that there is a significant body of evidence supporting the finding that the animal is a domesticated one, and that California is alone, or nearly so, in prohibiting private possession of these animals as domestic pets in the same fashion as dogs or cats. The first issue then is, presuming the factual accuracy of these arguments, has the Legislature delegated this power to the commission, or is this a question which the Legislature has retained for itself. The second issue is whether the Legislature's statements of intent and purpose restrict the exercise of discretion in adoption of a regulatory change.

A. Further Public Presentations

The question has been raised as to whether this should be a hearing allowing further presentations by members of the public. It should be noted that this issue has been on calendar and the subject of substantial public participation on several occasions in 1995 and 1996. Government Code section 11125.7 provides there shall be a hearing on each matter, and that *additional* hearings should be held if there is such a substantial

change to so require. Because this is a question of legal analysis only, specifically of statutory interpretation, there is no need and no reason for a further public hearing.

B. Basic Rules of Statutory Analysis

In determining the meaning of a statute, the goal is to determine the intent of the Legislature. To do so requires application of the rules of statutory construction. It will be my approach to follow several of the rules to see what results we reach.

The first step in statutory interpretation is always the plain language of the statute itself. On first blush, this seems to be a simple problem of a statute setting out a definition, applying the definition to the remaining code sections, and then assessing the applicability of the statute to our presented facts.

Section 2116 states:

As used in this chapter, "wild animal" means any animal of . . . class Mammalia (mammals), . . . which is not normally domesticated in this state as determined by the Commission.

Thus it would seem the Legislature has delegated plenary authority of determining which animals among the specified classes are wild and which are domestic.

Fish and Game Code section 2116.5 sets out the legislative intent to protect California from the ill effects of wild animals and to protect the animals themselves.^{1/} Because section 2116.5 talks of the effects of wild animals, not domesticated ones, the Legislature's findings and statements of intent would then be irrelevant to animals found not to be wild.

1. § 2116.5. Legislative findings and intent

The Legislature finds and declares that . . . that some wild animals are a threat to the native wildlife or agricultural interests of this state; and that some wild animals are a threat to public health and safety. It is the intention of the Legislature that the importation, transportation, and possession of wild animals shall be regulated to protect the health and welfare of wild animals captured, imported, transported, or possessed . . . to protect the native wildlife and agricultural interests of this state against damage from the existence at large of certain wild animals, and to protect the public health and safety in this state.

Fish and Game Code section 2118^{2/} sets out a general prohibition on the importation and possession of wild animals. Because section 2118 begins with a statement of applicability to wild animals and because wild animals are those found by the commission to be wild, then it would seem only animals so determined would be subject to the statute.

This simple solution, however, runs into a few statutory interpretation problems which makes this a considerably more difficult issue. Among the relevant rules of construction are: (1) an interpretation which renders any language of the statute mere surplusage shall be avoided; (2) where the statute creates an exception of a particular thing from the purview of the general expression, such indicates the thing excepted would have been otherwise included; (3) the purposes underlying the statute must be met; and (4) the contents of a statute delegating legislative power shall be complied with fairly strictly.

1. Surplusage Issue

Section 2118 contains in it a number of listed orders of animals, with specifications which of these are to be excluded. If the section were to apply only to wild animals within the listed orders, then there would have been no need to list an exception for domestic dogs and cats. For the Legislature to have listed such unquestioned domestic animals as exceptions to the list of carnivores if the list were only to include wild carnivores, would be to render those exceptions mere surplusage. The same pattern is used by the Legislature with respect to a large number of other unquestioned domestic animals: rabbits, hamsters, guinea pigs, rats, mice, horses, pigs, sheep, goats, and cattle.

Further along in section 2118, there is a paragraph listing a large number of mammalian orders as being restricted for welfare of the animals, and lists only two

2. § 2118. Importation, transportation, possession and release of specified wild animals; permit

It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

(b) Class Mammalia (mammals)

Order Carnivora (carnivores)

All species, except domestic dogs (*Canis familiaris*) and domestic cats (*Felis catus*).

families of animals as being "undesirable and a menace"3/ Under the plain language approach, there would be no reason to have these provisions. Thus this language would be surplusage.

2. Exclusion of Domestic Animals Issue

The Legislature's specification of numerous animals whose domesticity is unquestioned, e.g., dogs and cattle, as exceptions, evidences a finding by the Legislature that, were it not for the exception, these animals would have been included in the general clause. Were this section applicable only to wild animals, then there would be no need for this expression. In fact, this is a well-settled rule of statutory construction "that the exception of a particular thing from the purview of the general expressions of a statute indicates that in the opinion of the law-making body, the thing excepted would have been included within the general clause if the exception had not been made."^{4/}

In other words, this listing of undoubted domestic animals in a section supposedly listing only wild animals suggests the Legislature intends something other than the layman's definition of wildness and domesticity.

3. Legislative Purpose Issue

The inclusion of the paragraph identifying animals in the Mustelid family as undesirable is presumably a statement of legislative purpose to aid in interpreting the remaining provisions in that section. The stated purpose is that "animals," not merely "wild animals," of that family are a menace to important public interests of California. It is interesting to note that in every other use of the word "animal" in sections 2116, 2116.5 and 2118, it is modified by the word "wild." This omission as to only mustelids and viverrids implies an intent and legislative purpose to treat those specific animals in a fashion differently than any others.

3. *Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora* are restricted for the welfare of the animals, *except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.* (Emphasis added.)

4. *Tognazzini v. Jordan* (1913) 165 Cal. 19, 23; *All Points Traders, Inc. v. Barrington Associates* (1989) 211 Cal.App.3d 723, 728 n.2.

4. *In Pari Materia* Issue

The legislative finding of the undesirability of mustelids in section 2118, is to be read together with sections 2120 and 2150. Section 2120 commands that regulations be designed to prevent the very kind of damage described in section 2118. Section 2150 limits the power of the commission and department in the issuance of permits for animals determined not to be detrimental in the fashion described in section 2118.

It is thus fair to conclude that the plain meaning approach to determining the legislative intent does not adequately answer the question before us.

To further explore this problem, we will examine two other methods of ascertaining legislative intent: (1) legislative history, and (2) administrative construction.

C. Legislative History

The current statute is derived from a 1933 act, which prohibited in § 1 by *species* names a number of wild animals. The "ferret, *Mustela furio*" was one of those prohibited by species. The Legislature conferred on the commission the power to expand the list to other undesirable and menacing animals.^{5/} In § 7, the definition of "wild animal" is little different from the current one, "not normally domesticated, or not normally native within this State." The apparent omission of a power vested in the commission to determine which animals were wild seems to have been more apparent than real. In fact, what occurred was the Legislature specified a handful of animals as prohibited and left it to the commission to add to the list as it saw fit.

In 1953, following a 1937 amendment to other parts of the statute, the 1933 act was restructured and codified as Fish and Game Code sections 1165-1168. Former § 7 was moved essentially unchanged to section 1165. Former § 1 was moved, essentially

5. Stats 1933 Chap 76, § 1 provided in applicable part:

6 "It is unlawful to import or transport alive into this state, except as provided in § 2, any wild bird or animal of the following species or groups:

. . . weasel, *Mustela nevalis*; stoat, *Mustela erminea*; ferret, *Mustela furio*; . . .; and such other species of wild bird or animal which may be subsequently designated by the F & G Commission when such species are proved undesirable and a menace to the native wild life or to the agricultural interests of this state . . ."

unchanged, to section 1165.2. Part of the significance of this enactment was the fact that since at least 1945, the relevant commission-adopted regulation provided that ferrets were absolutely prohibited. Where the Legislature has amended or enacted a statute on a topic given an administrative construction, the Legislature's retention of the same language evinces legislative adoption and approval of that construction.

The 1953 version retained the species-by-species approach.

In 1961, the Legislature changed from the species approach to a family approach. In place of *Mustela furo* was inserted "Family Mustelidae (weasels, ferrets) All species" and moved the relevant provisions to their current location in the Fish and Game Code. Former § 7 became section 2116, and kept a similar definition of "wild animal," "either not normally domesticated in this State or not normally native." The few legislative history documents available to me do not further explain these changes. It does seem fair to infer the legislative intent was not to eliminate potential coverage for animals which had been for 28 years legislatively designated as prohibited, but instead to keep those prohibitions and to expand them to animals presenting similar problems. In other words, the expansion from *Mustela furo* to its family did not free *Mustela furo*, but instead prohibited it and its family mates.

We do, however, have such documentation accompanying a similar increase in taxonomic levels in the 1974 act. It would seem safe to infer the intent to change from species to family is the same as from family to order.

In 1974 the Legislature adopted amendments to sections 2116 and 2118, plus a number of other amendments and enactments. The bill, instead of dropping any previously listed animals from the list, "expands designated listing of mammals and specifies which mammals are restricted for the welfare of the animal and which are restricted because they are undesirable and a menace" (Senate Committee Report, 4-18-74, p. 2.)

That the language was meant to expand coverage was stated again by the author in his June 19, 1974, comments. "It is the purpose of SB 1766 to broaden the regulatory mandate of the Department of Fish & Game"

The Legislative Analyst's July 26, 1974, analysis concurs that the intent is to expand coverage by use of more inclusive scientific ranking (orders in place of families).

In the author's August 2, 1974, letter to the Senate Committee, he notes the broad definition of wild animals would prohibit the guinea pig, and therefore was going to amend the bill to remove it from the list of restricted animals.

In a number of places then, the bill sought only to expand the reach of the prohibition. Conspicuous by its absence is any indication that animals previously listed by species name as prohibited would in some fashion no longer be covered. The only fair conclusion from this aspect of the historical development of the language is that the Legislature intended from 1933 through the 1961 expansion to family-level restrictions, and through the 1974 order-level restrictions to keep in place all prior restrictions.

The specific language contained in section 2118, subdivision (k), provides that the commission has power only to delete those which are "in addition those listed in this section." There is a notable absence of any authority to delete an animal which is legislatively designated. Under settled rules of statutory construction, the expression of a power to act in a specified instance implies a legislative intent to withhold the power in other instances. The author suggested in a letter to the Senate committee dated August 2, 1974, that the Legislature gave the commission the power to delete animals from the statutory enumeration. This suggestion, however, did not make it into the language of the statute.

The message from the Legislature, however, is considerably muddled by the fact of the change in the language from the pre-1974 version, which in effect held there were two sources of designation: the statute and the commission's expansion thereof, and the post-1974 version which said it is the commission's determination. In fact, the original version of the bill contained a Committee Report stating, "This bill repeals the statutorily (Fish and Game Code) established list of wild animals requiring a permit for importation, transportation, possession or release. The bill maintains the existing definition of "wild animal" but requires the Fish and Game Commission to determine which animals are not normally domesticated or native." Although there were a number

of intervening changes to the bill, the final version was very close to the original version in this provision.

Add to that the administrative construction of the statute, where the commission shortly after the effective date of the statute made specific findings that the animals listed in the then California Administrative Code were not normally domesticated in California. Together, it seems likely, but hardly clear, the Legislature has delegated the power of determination of domesticity or wildness to the commission.

What is far from clear is that the commission is to use a layman's definition of domesticated. Rather, the intent as set out in the remaining portions of sections 2116.5, 2118, 2120, and 2150 is that one of the strong factors to be used is whether the animal presents a threat to California interests. The development of an exact definition for this determination will require further analysis and consultation.

D. Administrative History

One of the strongest aids in statutory interpretation is that of the construction given to a statute by the administrative agency empowered to enforce the statute. Such constructions shall be given great weight as to the meaning of that statute. Since 1945, the commission has consistently found that all members of the Mustelid family (with the exception of certain river otters) are in the category of wild animals which pose a threat to important California resources.

This aid to construction is greatly strengthened when the Legislature amends part of the statute but leaves unamended that part administratively interpreted. In fact, such an act by the Legislature serves as an implied adoption of the administrative act.

In 1945, the commission held that ferrets were absolutely prohibited and that permits will not be issued under any circumstances. (14 CAC 700 (1945).)

In November 1945, ferrets were permitted only for direct use in research and diagnostic laboratories. This rule was kept through the 1954 and 1959 amendments to the regulations.

Following the 1974 amendments, the commission adopted a new regulation,^{6/} finding that ferrets both were not normally domesticated and were "undesirable and a menace" to important interests of the state.^{7/} Although there have been some changes to the extent of the reach of the regulation as to other animals, specifically cheetahs and river otters, there has been no change in the status of ferrets.

What is important about that consistency is that during the same twenty-plus years, there have been a number of amendments to the statute, but no change to the portion of the statute reflected in these regulations, evidencing a legislative adoption of the regulatory scheme.

E. The Relevant Statutory Authority Set Out in Fish and Game Code Sections 2116 et seq., Constitute a Legislative Finding That Mustelids Are Presumptively Prohibited Species

Although the commission is a constitutional body, its powers are in the form of delegated ones from the Legislature. (Art IV, § 20 (b).) Throughout the Fish and Game Code are provisions setting out the power of the commission to manage, control and protect wildlife in the public interest.

As discussed above, the apparent *carte blanche* section 2116 gives to the commission is more apparent than real. The Legislature instead has seen fit to give substantial guidance to the commission as to which animals are particularly of concern, and to greatly restrict that discretion.

6. The following animals were "determined to be not normally domesticated in this state, and shall not be imported [etc.] The mammals of family Mustelidae are . . . undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety
(b)(11) Order Carnivora--Raccoons . . . Weasels, Ferrets, Skunks, Polecats, Stoats, . . .
(B) All other species except [American raccoon], [domestic dogs] and [domestic cats]--Prohibited. (14 Calif. Admin. Code, § 671 (1976).)

7. Several persons have suggested the commission has failed in its duty to make this finding. First, it is not at all clear there was a duty to do more than consider matters before it, and second, it is moot since as is obvious from simple inspection of the regulation, this determination was made over 20 years ago and remains in place now.

First, the Legislature has pointed out that certain animals are detrimental to other, substantial interests in the state and they should be regulated, and the implication is that they should be *closely* regulated to protect these substantial interests. (§ 2116.5.)

The Legislature has gone beyond this and has specified by taxonomic classification a number of animals that are presumptively inappropriate for possession within California. (§ 2118.)

It is the express intent of the Legislature to treat Carnivores as undesirable species, excepting specifically only domestic dogs and cats. It is a long standing rule of statutory construction, a rule to enable the reader to determine what the Legislature meant in its adoption, to treat the specific inclusion of specified items as meaning to specifically exclude others not listed. (*Expressio unius est exclusio alterius.*) Thus *all* carnivores are presumptively inappropriate to be allowed in California except under close regulation.

Any doubt as to members of the mustelid family is set out in the next paragraph of § 2118. ("*[E]xcept animals of the families . . . Mustelidae . . . are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.*") The family Mustelidae is by law set out as a group apart. The Legislature has specifically found animals in that family as exceptionally undesirable and a menace to overriding public interests.

The power of the commission in the field is further limited by subdivision (k) of section 2118. Subdivision (k) gives the commission its only power to delete, which is to delete only those which are "*in addition* to those listed in this section." Conspicuous by its absence is any authority to delete an animal which is contained in the section's listings. Again, the expression of a power to delete only in a single instance implies a legislative intent to withhold the power to delete any of the listed animals in subdivisions (a) through (h).

F. The Commission's Regulatory Power Is Limited

In giving the commission power to adopt regulations, the Legislature's directive to the commission is explicit in stating the overriding public interest.

The Commission, in cooperation with the State Department of Food and Agriculture, shall promulgate regulations governing, (a) the entry, transportation, keeping, confinement, or release of any and all wild animals which will be or which have been imported into this state pursuant to the provisions of this chapter, and (b) the possession of all other wild animals. The regulations shall be designed to prevent damage to the native wildlife or agricultural interests of this state resulting from the existence at large of any such wild animals, and to provide for the welfare of wild animals. (Fish & Game Code, § 2120.)

The purpose of delegating the power to issue regulations is to prevent damage to other public resources and protect wild animals. Any regulatory action must recognize this directive.

G. The Regulations Must Both Carry Out the Purpose of the Underlying Statutes and Be Consistent with Them.

The law governing regulations reflects that the regulatory adoption constitutes legislative action, and as such must be carefully circumscribed so that the regulations are "reasonably necessary to effectuate the purpose of the statute" (*DaVinci Group v. San Francisco Residential Rent etc. Bd.* (1992) 5 Cal.App.4th 24, 29-30) and are "reasonably designed to aid a statutory objective." (*Californians for Safe Prescriptions v. California St. Bd. of Pharmacy* (1993) 19 Cal.App.4th 1136, 1150.)

As stated above, the purpose of the statute is that certain animals have been found to be too threatening to California's interests and therefore should be prohibited or at least carefully regulated.

Any proposed regulation must therefore serve to aid and guard against hindering the stated the statutory objectives.

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