

**State of California
Fish and Game Commission**

Minutes, Meeting of November 2-3, 1995

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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 2-3, 1995

Pursuant to the call of the President, the Commission met at the Holiday Inn on the Bay, 1355 N. Harbor Drive, San Diego, California, on November 2, 1995. The meeting was called to order at 10:00 a.m. by President Boren.

Persons present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

Robert R. Treanor	Executive Director
Ronald J. Pelzman	Assistant Executive Director
Marilyn H. Mearns	Word Processing Technician

OFFICE OF THE ATTORNEY GENERAL

Doug Noble	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Charles Raysbrook	Acting Chief Deputy Director
Al Petrovich	Deputy Director, Policy
Jeff Weir	Conservation Education
DeWayne Johnston	Chief, Wildlife Protection Div. (WPD)
Terry Mansfield	Chief, Wildlife Management Div. (WMD)
John Duffy	Marine Resources Division (MRD)
Bob Hulbrock	Aquaculture Coordinator
Maria Melchiorre	License and Revenue Branch
John Laughlin	Warden

ELECTED OFFICIALS

Jan Goldsmith	State Assembly, San Diego
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The following persons were also present and heard:

Floyd Carley	Calif. Domestic Ferret Association
Dick Schumachen, D.V.M.	Calif. Veterinary Medical Assoc.
Edward Hamilton	Concerned Citizen
Janet and Barry Weber	Concerned Citizens
Jeanne Carley	Calif. Domestic Ferret Association
William B. Phillips	Calif. Domestic Ferret Association
Mike Winikoff	U.S. Humane Society
Virginia Handley	The Fund for Animals
Richard McLellan	Coalition to Protect Ca. Wildlife
Jamie Ross	L.L. Wildlife Refuge/Luster Family Foundation
Alan Berger	Animal Protection Institute
August Felando	CA. Lobster & Trap Fishermen's Association
Rick Gutierrez	CA. Lobster & Trap Association
Donald Gilbert	Maritech
Steve Stanson	Commercial Sea Urchin Diver
Bob Shea	Commercial Abalone Diver
Robert L. McMahon	Commercial Fisherman
Carlos Ramirez	Sport Fisherman
Paul Weakland	Commercial Abalone Diver
Laura Fredrickson	Commercial Sea Urchin Diver
William A. Street	Commercial Sea Urchin Diver
Jay Delaney	Commercial Sea Urchin Diver
Ray Harris	Commercial Fisherman
Stephen Frantz	Attorney for Jessie Parsons
Pietro Buompensiero	Commercial Fisherman
Theresa Buompensiero	Wife of Pietro Buompensiero

President Boren introduced members of the Commission, its staff, members of the Department's Directorate and Doug Noble, Deputy Attorney General.

1. EMERGENCY ACTION TO AMEND SECTION 180.2, TITLE 14, CCR,
RE: TRAP DESTRUCTION DEVICES.

Summary of Issue

The Commission has been requested to consider taking emergency action to amend Section 180.2, Title 14, CCR, regarding trap destruction devices. In July 1994 the Commission, among several changes, amended Section 180.2 to change the twine size from 120 to No. 21 for the trap destruct panels. This change was made because the Department was informed that twine size 120 was no longer available and that twine size No. 21 was a viable option. The Department is now informed that the change in twine size was an error and causes the commercial crab fishermen severe hardship if this emergency action isn't taken.

In a letter dated October 20, 1995, Mr. Zeke Grader, Jr., Executive Director, Pacific Coast Federation of Fishermen's Association, provides the following information:

"The Pacific Coast Federation of Fishermen's Association (PCFFA), representing, among others, the majority of California's organized commercial Dungeness crabbers, supports an emergency action regarding Section 180.5 of Title 14, changing the twine size for Dungeness crab traps back to 120 twine size or less, from its current No. 21 thread or less.

"The fishing industry supports the use of destruct panels on Dungeness crab traps, to prevent them from continuing to fish if lost, and following extensive testing with the Department it was found that thread between 80 and 120 thread count was best suited for crab traps. It was heavy enough to withstand the handling of the pots and crabs could not cut through them but it would disintegrate in a year's time.

"Apparently, because of a misunderstanding or lack of communication either on the part of industry, the Department or both, a change in the thread size for the destruct panels, from 120 or less to 21 or less, was made in 1993, which has just now come to the attention of the crab fleet. The crab fleet has for the past two seasons used 120 thread or less and most of the gear that is now ready for this season is equipped with 80 - 120 thread. Without the emergency change, the industry will be forced to: 1) change the panels on all the traps; and 2) use a thread size in the destruct panels that is believed to be too light to withstand the rigors of crab fishing over a season's period.

"If there is a compelling reason for changing the thread size from the standard 120 or less, then we ask that industry be given time to sit down and work with the Department developing thread size regulations for the 1996-97 season. For this season, however, we respectfully request that Section 180.2 be amended by emergency regulation, at the Commission's 2-3 November meeting in San Diego, to comply with the standard for the Dungeness crab fishery of 120 thread or less for destruct panels on Dungeness crab traps.

"Your attention to this matter is greatly appreciated."

Department Recommendation

"The Department recommends approval of this request and will provide the suggested regulatory language at the November 2 meeting.

Action

Executive Director Treanor summarized the issue.

Deputy Director Petrovich explained the twine size problems and provided the Department's recommendation.

Mr. Treanor asked if anyone wished to speak on this item. There was no response.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MS. PHARES, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 240, 7708, 8254 AND 8500 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTIONS 240, 8254, 8500, 9003 AND 9008 OF SAID CODE, HEREBY TAKES EMERGENCY ACTION TO AMEND SECTION 180.2, TITLE 14, CCR, RE: TRAP DESTRUCTION DEVICES AS FOLLOWS:

Subsection (a)(2) of Section 180.2, Title 14, CCR, is amended to read:

(2) Cotton twine ~~size No. 21 thread or less~~ no larger than 120 thread:

PASSED UNANIMOUSLY.

Commissioner Dutton joined the meeting at this time.

2. DEPARTMENT REPORT AND CONSIDERATION OF CALIFORNIA DOMESTIC FERRET ASSOCIATION'S REQUEST FOR COMMISSION TO CONSIDER AMENDING SECTION 671, TITLE 14, CCR, RE: LEGALIZATION OF FERRETS IN CALIFORNIA.
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Summary of Issue

The California Domestic Ferret Association made a presentation to the Commission, at its August 3, 1995, meeting in Santa Rosa, requesting the legalization of ferrets in California.

After that presentation, the Commission requested that the Department review the material presented and report at the Commission's November meeting regarding its findings and recommendation.

This item is scheduled to receive the Department's report and consider the California Domestic Ferret Association's request for the Commission to consider amending Section 671, Title 14, CCR, to legalize ferrets in California.

In a letter dated September 1, 1995, Mr. Floyd L. Carley provides the following information:

"Thank you for your letter of August 10, 1995, and we did appreciate the opportunity to present to the California Fish and Game Commission the case for legalizing ferrets here in California. We will be on hand for the Commission's November 2nd meeting in San Diego, and will provide you with some additional written information by October 1st, so that the Department may have time to review it.

"Would it be possible to receive, from the Department, copies of any written information that they are planning to offer at this meeting? Thank you."

In a letter dated September 29, 1995, Mr. Carley also provides the following information:

"I am enclosing additional information which we will be submitting at the Nov. 2 meeting of the Commission.

"My understanding is that the Department of Fish and Game will be primarily responding to the issues raised at the August meeting. If new issues are raised, we may submit additional information in connection with these issues."

Commissioners were provided this additional information under separate cover when it arrived from Mr. Carley. Copies were also available at the meeting. Commissioners were also provided with a copy of a memo from the Department of Health Services and a copy of the Department of Fish and Game's report dated October 24, 1995.

Action

Executive Director Treanor summarized the issue.

WMD Chief Mansfield presented the Department's report. He explained the data the Department currently had available to it, as well as the data available from new Zealand. Mr. Mansfield

recommended that the Commission retain the prohibition against ferrets.

Commissioner Thieriot inquired about the amount of data available on ferrets and its validity. Mr. Dutton also requested additional information from other states that would more appropriately relate to California. Mr. Mansfield suggested that the potential impact of ferrets on other native wildlife did not warrant the risk of legalizing it in the State.

Assemblyman Goldsmith noted the impact of wild animals in the San Diego area, noting that a San Diegan had recently been killed by a mountain lion. He explained that he did not want to be involved in anything that would entail a waste of state taxpayers' money and read the sections that applied to wild and exotic animals in the State. He remarked that it was not important as to whether it was native or not, but the primary issues were health, welfare and domestication.

Mr. Floyd Carley spoke on behalf of the Domestic Ferret Association. He stated that it was their belief that the domesticated ferret was not a threat to native wildlife in California. He provided the Commission with some background material.

Dr. Dick Shoemaker, D.V.M., supported legalizing ferrets. He discussed the American Veterinary Association's position and support. He also spoke regarding domestic ferret health concerns, which he believed would be diminished by removing their illegal status. He added that diseases found in domesticated ferrets were essentially the same as those contracted by cats and dogs.

Mr. Edward Hamilton, a bionomics consultant for exotic animals, provided background regarding ferrets and supported their legalization.

Mr. & Mrs. Barry Weber spoke regarding their experiences and legal fees incurred when their pet ferret was confiscated by Department wardens.

Ms. Jeanne Carley, California Domestic Ferret Association, supported legalizing ferrets.

Mr. William B. Phillips, attorney for the California Domestic Ferret Association, stressed that the ferret should be legalized as a domestic animal, and that the State was spending too much money on this issue.

Mike Winikoff, Humane Society of the U.S., indicated that there were already enough pets within the State of California and that he was concerned about the addition of another animal as a pet, which could jeopardize native wildlife.

Ms. Virginia Handley, The Fund for Animals, expressed concerns about the potential for overpopulation and threat to native wildlife in California. She specifically opposed the sale of ferrets in pet shops.

Mr. Richard McLellan, M.D., Coalition to Protect California Wildlife, opposed legalization of domestic ferrets.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION HEREBY AUTHORIZES ITS STAFF TO PUBLISH NOTICE OF ITS INTENTION TO CONSIDER AMENDING SECTION 671, TITLE 14, CCR, RE: LEGALIZATION OF FERRETS IN CALIFORNIA, CONTINGENT UPON WHEN THE DEPARTMENT HAS TIME AND RESOURCES TO PREPARE THE NECESSARY ENVIRONMENTAL DOCUMENT.

AYES: COMMISSIONERS MCGEOGHEGAN, BOREN, AND THIERIOT.
NOES: COMMISSIONERS DUTTON AND PHARES.

MOTION CARRIED.

3. DEPARTMENT STATUS REPORT ON PUBLIC INVOLVEMENT IN DEVELOPING GUIDELINES/POLICY TO PROTECT BEARS AND OTHER WILDLIFE WHICH WANDER INTO POPULATED AREAS.
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Summary of Issue

The Wildlife Protection League made a presentation at the Commission's August 24, 1995, meeting in Long Beach requesting the development of a policy to protect bears and other wildlife which wander into populated areas. The Commission directed the Department to meet with interested parties to develop procedures for handling wildlife which wander into residential areas.

This item is scheduled to receive the Department's status report on public involvement in developing guidelines/policy to protect bears and other wildlife which wander into populated areas.

In a memo dated October 12, 1995, the Department provides the following information:

"At the Commission's August 24-25 meeting in Long Beach, the Coalition made a presentation related to black bears and

other wildlife in southern California. The representatives of the Coalition asked a number of questions regarding the Department's programs and the Commission's policies regarding black bears and potential wildlife/human conflicts.

"To allow the Department an opportunity to respond to the questions raised, the Commission asked the Department to meet with representatives from the Coalition and to exchange information related to their concerns and Department programs. In response, the Department met with Coalition representatives on September 19 and October 4, 1995. Attached is the agenda for those meetings and a copy of a list of items upon which there was consensus. Both the Department and Coalition agree that these meetings were positive and served to open communications on issues of concern.

"The Department's staff from the Wildlife Management Division and Region 5 will be prepared to discuss the matter further at the Commission's November 2-3 meeting in San Diego."

Action

Executive Director Treanor summarized the issue.

WMD Chief Mansfield reported on meetings with the Coalition to Protect California Wildlife regarding the black bear depredation policy.

Dr. Richard McLellan, Jamie Ross, and Alan Berger expressed satisfaction to date with the discussions at the meetings with the Department. They indicated that the exchange of information should continue and expressed their appreciation with the Commission for encouraging this cooperative approach.

4. REQUEST OF CALIFORNIA LOBSTER AND TRAP FISHERMEN'S ASSOCIATION, SAN DIEGO, TO DISCUSS DEPARTMENT MEMORANDUM OF AGREEMENTS WITH THREE FISH PROCESSORS RE: IMPORTATION OF LOBSTERS PRIOR TO THE START OF THE CALIFORNIA COMMERCIAL LOBSTER SEASON.

Summary of Issue

August Felando on behalf of the California Lobster and Trap Fishermen's Association, San Diego, requests that the Commission discuss the Department's Memorandum of Agreements with three fish processors regarding importation of lobsters prior to the start of the California commercial lobster season.

On October 11, 1995, Mr. Felando faxed a copy of a letter to the Commission office which he had sent to Ms. Ann Malcolm of the Department's Legal office. That letter is as follows:

"This is to confirm my telephone statement to you this date that I represent the California Lobster & Trap Fishermen's Association.

"Thank you for your courtesy in faxing this date a copy of the Memorandum of Agreement entered into between the DFG and Sea Win Inc, and for providing information about the plans of the DFG to modify the Memorandum of Agreement entered into between the DFG and Central American Seafood, Inc.

"This is to confirm my understanding that such two agreements are the only agreements entered into by the DFG with persons who are in the business of transporting live spiny lobsters into California from Mexico for export to foreign markets.

"This is to confirm my understanding that my request for a copy of the Memorandum prepared by the Legal Affairs Division in connection with such agreements must be denied on the ground that such Memorandum is a confidential 'product' of the Division.

"During my telephone conversation, I mentioned that certain members of the Association attributed an unexpected sharp reduction in the ex-vessel price of lobsters to the fact that the DFG had entered into Memorandum of Agreements with firms receiving live spiny lobsters harvested in Mexico. The Association has advised me in writing that on or about 13 September 1995, a buyer offered certain members of the Association an ex-vessel price for live lobsters of \$8.50 per pound. On or about 25 September 1995, this same buyer offered \$7.25 per pound. The buyer explained the reduction on the claim that Asian markets were being flooded with offers of Mexican lobsters. The MOA entered into with Central American Seafood, Inc. is dated September 14, 1995. The MOA entered into with Sea Win Inc, is dated September 21, 1995. I have been further advised by a fish broker that prior to the negotiation of the MOAs, the export price of spiny lobsters was \$28.00 per kilo. Since negotiation of the MOAs, the price dropped to about \$23.00 per kilo. To the lobster fishermen, this translates to a drop in the ex-vessel price of \$6.50 to \$7.00 per pound from \$8.50.

"Section 2365 of the Fish and Game Code states that imported lobsters may be possessed and sold during the closed season

'subject to the regulations of the Commission'. You advised that the lobsters covered by the MOAs are not considered by the DFG as lobsters 'imported into California'. Therefore, are we correct in assuming that the DFG takes the position that even though such lobsters were possessed and sold by the firms, such lobsters are not subject to the regulations of the Commission?

"We note that Section 3372(a)(2) of 16 United States Code (Lacey Act) sets forth certain prohibited acts that may have application to the MOAs. Are we correct in assuming that the DFG takes the position that the activity of the firms in receiving and transporting lobsters during the closed season did not violate the provisions of the Lacey Act?

"We are advised that the firms used employees in the 'facility' for the purpose of determining what packaged lobsters were strong enough to be placed in the tanks and what packaged lobsters were dead and therefore not suitable for tankering. Does not this product selection activity or repacking of the lobsters constitute more than placing a product in transit for export? We note that both MOAs refer only to actions permitted by the firms that 'are necessary to protect and preserve the lobsters' for export. We believe the activities of the firms within the facilities constitutes a processing of the lobsters received, transported and acquired by the firms covered by the MOAs.

"We are informed that Mexico changed the lobster season to a September opening date for purposes of giving an economic advantage to its citizens in sending live lobsters to Asian markets. We are further informed and believe that such change in the season date will be damaging to the objective of maintaining a healthy lobster resource shared by citizens of Mexico and the United States.

"Your answers to our questions would be greatly appreciated."

The record contains copies of the MOAs and copies of Section 2365 of the Fish and Game Code and Section 121, Title 14, CCR, regarding importing and possessing lobsters during the closed season.

Action

Executive Director Treanor summarized the issue.

August Felando discussed the issues as outlined in his letter of October 11, 1995, objecting to importation of live

lobsters into California prior to the opening of the California lobster season.

Rick Gutierrez discussed plummeting prices for California lobsters because of the importation of live Mexican lobsters into California for repackaging and shipment overseas. He stated that a large number of lobsters die because of the long transportation process and they are processed and repackaged in California.

WPD Chief Johnston stated it was the Department's position that this activity is regulated by the Federal Government. He stated it is the Department's position that these lobsters have not been legally imported into California as long as they are kept in a U.S. customs free trade zone. He noted that the Department did not believe it was necessary to have the Memorandum of Understandings to allow this activity, but that the MOU's were merely completed to clarify the activity.

Mr. Gutierrez stated that the repackaging is illegal and negates the free trade zone concept.

President Boren asked that this item be considered at a future meeting after further investigation by Mr. Noble and comments by Mr. Felando on the Department's response to his letter.

5. SELECTION OF THE WATERFOWL SPECIES FOR THE 1996-97 CALIFORNIA DUCK STAMP.

Summary of Issue

This item is to consider the selection of the waterfowl species for the 1996-97 California Duck Stamp. In a memo dated October 4, 1995, the Department provides the following information:

"The Commission traditionally selects the waterfowl species to be used on the State Duck Stamp. Since the program format was changed last year from an art competition to a contract artist, we have commitments for over \$55,000 in additional project income, and sales of prints have just begun. In order to continue to maximize the revenue generating potential of the Duck Stamp Program, after consultation with the contractor, we are requesting that the Commission designate the pintail as the subject for next year's stamp. Although it was the species featured on the stamp in 1993, the pintail is still in high demand by hunters and art collectors and it will have the greatest potential for raising program dollars. The pintail is especially appropriate because of its importance to

California waterfowl hunters and the recent easing of restrictions on bag limits. The Department recommends that the Commission select the pintail as the species for the 1996-97 Duck Stamp."

Action

Executive Director Treanor summarized the issue.

Commissioner Boren appointed a subcommittee of Commissioners Dutton and Thieriot to recommend this year's duck stamp.

6. REQUEST OF DONALD R. GILBERT, MARITECH, SAN DIEGO, TO APPEAL COMMISSION DENIAL OF HIS REQUEST FOR A WAIVER OF SECTION 238, TITLE 14, CCR, RE: MARKING OF ABALONE FOR HIS PROPOSED ABALONE CULTURE PROGRAM.

Summary of Issue

Donald R. Gilbert, Maritech, San Diego, requests an opportunity to appeal Commission denial of a waiver of Section 238, Title 14, CCR, regarding marking of abalone for his proposed abalone culture program. As background, in October 1988, the Commission first considered Mr. Gilbert's request to waive the requirements for marking abalone to be placed in waters outside of aquaculture facilities (Section 238, Title 14, CCR). Instead of denying Mr. Gilbert's request, the Commission directed the Department to work with Mr. Gilbert to establish a study to determine success of his proposed seeding program. Numerous meetings between the Department and Mr. Gilbert occurred in designing a proposed study. The Commission also scheduled several hearings on the subject to discuss the feasibility and conditions of the study. Refer to copies of Commission letters which outline the process that occurred and the Commission's decision. The record also contains various letters from Mr. Gilbert to the Commission.

President Boren has agreed to allow Mr. Gilbert an opportunity to discuss his proposal with the Commission. The real issue is whether or not the Commission wants to allow Mr. Gilbert authorization to commercially harvest undersized abalone without first verifying that the abalone he would harvest are the result of his seeding effort. That was the reason for the proposed study in lieu of marking all abalone Mr. Gilbert stocks in the ocean.

In a letter dated October 2, 1995, Mr. Gilbert provides the following information:

"Please place Maritech on the November agenda for the

San Diego Commissioners's meeting in regards to conditional proprietary rights for our mariculture project in reference to the harvesting of sub-legal pink and green abalone and to explain to them other sections needing amendments to an obsolete aquaculture agreement."

Department Recommendation

"Mr. Gilbert believes that by spawning captive broodstock and releasing the resulting larvae to settle over a large subtidal area (several square miles) off of Point Loma, he will greatly increase (by at least 50 fold) the existing abalone population. There have been attempts in other parts of the world to enhance abalone populations using the method of controlled spawning and broadcast of larvae, but to the Department's knowledge, none have been successful.

"If Mr. Gilbert succeeds in increasing the abalone population through his seeding operations, he wants the right to harvest the resultant abalone before they are allowed to be harvested by other divers, that is, he wants to harvest them at less than the minimum size allowed for recreational or commercial fishing harvest.

"The Fish and Game Code (Sections 7600, 15000, 15001) and Title 14 of the California Code of Regulations [Section 238(e)] provide for production and sale of aquaculture abalone smaller than minimum size limits. However, aquaculture regulations require that aquaculture abalone which spend part of their life in state waters be tagged or marked so they can be readily distinguished from wild abalone [Section 238(e), Title 14, CCR]. Since Mr. Gilbert proposes to release the larvae at microscopic size, no feasible marking method is known. His aquaculture-produced abalone, therefore, would be indistinguishable from naturally occurring abalone.

"Mr. Gilbert first appeared before the Commission to request authority for his proposed aquaculture project in October 1988. Citing the potential benefit to both aquaculture and to abalone resource enhancement, the Commission directed the Department to work with Mr. Gilbert to try to provide a way to allow him to go forward in conformance with existing laws and regulations and without jeopardizing the existing wild abalone resource.

"After much discussion and negotiation, the Department and Mr. Gilbert agreed in April 1990 on a study that could determine the success of the seeding activities beyond any reasonable doubt. Shortly after coming to agreement on this

approach, Mr. Gilbert began (by September 1990) to express concern that the absence of positive assurance of harvest made his proposal and business plan unattractive to investors and he reported that he was unable to raise the capital necessary to complete the study. The Department and the Commission, have consistently opposed consideration of approval for harvest of unmarked, undersize abalone until success has been demonstrated.

"Other concerns about details of the original agreement have been raised by Mr. Gilbert from time to time, and many have been resolved. It is the Department's opinion that these details can all be worked out, with the real issue being the assurance of harvest prior to the study's conclusion.

"Mr. Gilbert has continued to lobby both the Department and the Commission to change the agreement to include conditional approval of harvest. Mr. Gilbert agrees that authority to harvest is dependent upon demonstration of success by Department standards but he wants the Commission to commit now to future harvest of undersize abalone, limited only by that condition.

"The Department recommends that public notice and hearings are appropriate before that approval, which may require regulatory change, can be given by the Commission. The absence of study results which validate Mr. Gilbert's methodology makes it difficult to argue that authorized harvest of undersized abalone should be considered. The Department, therefore, recommends that Mr. Gilbert's request be denied."

Action

Executive Director Treanor summarized the long history of this issue.

Mr. Gilbert stated that marking abalone larve is an economic impossibility. He requested that the Commission amend its regulations to allow him to release abalone larve and to harvest when he proves his techniques work.

Bob Hulbrock stated that Mr. Gilbert wanted to seed abalone off Point Loma and then harvest them before they are available to sport and commercial divers. He explained that until Mr. Gilbert can prove that his techniques are successful, the Department does not recommend a change in the regulations.

Mr. Gilbert requested assurance that after going through at least one seeding/harvesting cycle (seeding for four years,

results surveyed by a third party) that if his project is successful (20-fold increase in abalone), he will be allowed to proceed with harvesting undersize abalone (his commercial divers removing abalones four and three-quarters of an inch and larger, on a best-effort basis, year-round).

Mr. Noble indicated that Mr. Gilbert was essentially asking the Commission to change the regulations regarding harvesting of undersize abalone now and commit a future Commission to allow the project to proceed.

Deputy Director Petrovich pointed out that there was an agreement on the performance standard. Mr. Hulbrock stated that the Department is at an impasse with Mr. Gilbert regarding up-front approval. He indicated that the only way to bind future Commissions would be to change the regulations to allow harvesting of undersize abalone.

The Commission requested Mr. Gilbert to provide language that he believed was necessary to be able to raise his research and development capital.

7. REQUEST OF STEVE STANSON, FT. BRAGG, FOR COMMISSION CONSIDERATION TO AMEND SECTION 120.7(q)(2)(A), TITLE 14, CCR, RE: THE NEED OF A COMMERCIAL SEA URCHIN DIVING PERMITTEE TO BE ON BOARD HIS VESSEL WITH AN ASSISTANT FOR A SEA URCHIN DIVING PERMITTEE.

Summary of Issue

Steve Stanson, Ft. Bragg, requests Commission consideration to amend Section 120.7(q)(2)(A), Title 14, CCR, regarding the need of a commercial sea urchin diving permittee to be on board his vessel with an assistant for a sea urchin diving permittee. In a letter dated October 4, 1995, Mr. Stanson provides the following information:

"I would like to place an item on your November agenda concerning a medical transfer of a sea urchin permit. I was hoping you could waive the condition of having the permit holder (myself) being present on board while the substitute diver is harvesting. I suffered a basalar skull fracture resulting in an ongoing condition of vertigo. This problem precludes any diving even in mild swell conditions, and on deck, with the pitching and yawning of the boat, it presents a hazard to me and possibility of reinjury. Latest tests show this is not an inner ear problem, but originates in the brain tissue. Indications are that it will correct itself over time.

"Urchin diving has been my main source of income for eleven years, and I would hope someday to return to diving. In the mean time, the small percentage of the substitute diver's share will help offset medical expenses."

The record contains a copy of a letter from Dr. Paul Cianci, Mr. Stanson's doctor.

Department Recommendation

"The Department recommends denial of this request. The sea urchin fishery is a pervasively regulated activity in order to prevent over utilization of the resource. Mr. Stanson is recommending that the following section be eliminated:

120.7(q)(2)(A), Title 14, CCR, - 'The authorized sea urchin diver assistant may take or assist in the taking of sea urchin only when in the company of the permittee.'

"Fish and Game Code Section 9054 states that sea urchin permits are nontransferable. If this requirement were eliminated the permit would, in effect, be transferred to the assistant."

Action

Executive Director Treanor summarized the request.

Steve Stanson explained that he had suffered a head injury which prevented him from diving and even being on a vessel. He requested a waiver of the requirement that he be onboard the vessel with the diving assistant as he needed some revenue to help pay for his medical costs.

WPD Chief Johnston provided background on the sea urchin regulations. He pointed out that sea urchin permits are not transferrable and there is no medical exception.

Deputy Director Petrovich stated that the Legislature intended to limit the permits for this fishery; it therefore made them nontransferable.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. DUTTON, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF
STEVE STANSON, FT. BRAGG, FOR COMMISSION CONSIDERATION TO
AMEND SECTION 120.7(q)(2)(A), TITLE 14, CCR, RE: THE NEED OF
A COMMERCIAL SEA URCHIN DIVING PERMITTEE TO BE ON BOARD HIS

VESSEL WITH AN ASSISTANT FOR A SEA URCHIN DIVING PERMITTEE.
PASSED UNANIMOUSLY.

8. DISCUSSION OF LIMITED ENTRY DUNGENESS CRAB FISHERY AND
APPEAL PROCESS.

Summary of Issue

In 1995, Assemblyman Dan Hauser carried legislation (AB 666) which amended the commercial Dungeness crab statutes. Among other things, the bill provided the Commission with the authority to hear appeals of Dungeness crab vessel permit application denials. Governor Wilson recently signed into law this legislation and it became effective immediately. Because the Dungeness crab season opens on November 14 south of District 7, the Department and the Pacific Coast Federation of Fishermen's Association have requested that the Commission consider holding an expedited hearing process for those individuals seeking to participate in the upcoming Dungeness crab fishing season.

The record contains a copy of the Department's October 19, 1995, letter to those individuals whose application for a Dungeness Crab Vessel Permit has been denied.

This item is scheduled for a briefing of the commercial Dungeness crab fishery requirements and Commission consideration of selecting a subcommittee to hear the appeals. If appropriate, the Commission's subcommittee could conduct the expedited appeal hearing on November 9, 1995, in Sacramento at the Resources Building.

In a memo dated October 24, 1995, the Department provides the following information:

"Because the Dungeness crab season opens on November 14 south of District 7 (Gualala River, the boundary between Mendocino and Sonoma counties) and on December 1 in the balance of the state, there is not adequate time for the Commission to hear appeals of crab vessel permit denials, under authority granted by AB 666, before the crab season opens. Therefore, the Department is requesting the Commission to consider holding an expedited hearing process for those individuals seeking to participate in the Dungeness crab fishery for the upcoming season.

"Prior to April 1, 1995, a commercial fisherman had to possess a valid Dungeness crab permit to take Dungeness crab for commercial purposes. Beginning April 1, 1995, Assembly Bill 3337 required a revokable transferable Dungeness crab

vessel permit for the commercial take of Dungeness crab using traps. The permit is issued to the vessel owner for use on a specific vessel. Qualification requirements (Attachment I) were specified to enable the determination of which vessels qualified for a permit.

"Based on a computer match of fish landing receipts and vessel registration records on file with the Department, it was determined that approximately 560 vessels qualified for a permit under Section 8280.1 (b)(1) (Attachment I, requirement number 1). Applicants who qualified under this requirement could submit a permit application to the nearest Department office for issuance upon payment of the appropriate fees.

"Applicants who qualified under sections 8280.1(b)(2) and 8280.1(b)(4) (Attachment I, requirement numbers 2 through 6) were required to submit an application with a letter requesting the reasons for review and documentation providing proof of eligibility for a permit to the Dungeness Crab Review Panel (review panel) at the License and Revenue Branch, 3211 "S" Street, Sacramento, California. The permit fee was due when the permit was approved for issuance by the review panel.

"Before appeals were mailed to the panel for review, they were reviewed by the Department. A letter was mailed to applicants who did not include sufficient proof of eligibility. The Department accepted the following as proof of eligibility: invoices for the purchase of Dungeness crab gear and equipment contracts, vessel logs, fish landing receipts, statements from physicians, cancelled checks, state tax returns, death certificates, and any other supporting documentation that would help the panel determine the applicant's eligibility.

"Vessel owners who filed an appeal for a permit were allowed to continue to use that vessel to take Dungeness crab through the end of the 1994 season under the authority of a letter permit.

"Assembly Bill 3337 inadvertently excluded vessel owners who had historically participated in the fishery but had changed vessel ownership during the moratorium period, and commercial fishermen who had participated in the fishery but were not vessel owners. To remedy this situation, Assembly Bill 666 was introduced. Assembly Bill 666 was urgency legislation and signed into law on October 16, 1995. Qualification requirements (Attachment I) were specified also to enable the determination of which vessels qualified

for a permit. It allowed the Department to accept late applications upon payment of a \$250 penalty, provided applicants appeal rights to the Commission when their application for a permit was denied by the review panel, allowed the Department to waive the vessel registration requirement for one year due to hardship, and defined a vessel owner participation in the Dungeness crab fishery under Section 8280.3, and reconstruction and under construction for applicants applying for a permit under Section 8280.1(b)(4)(C).

"To date, the panel has reviewed 272 appeals for initial permits or request for transfer of existing permits to another vessel. It has approved 112 permits for issuance and 150 applicants have been denied a permit at this time. The panel has also approved 10 permit transfers."

Action

Executive Director Treanor summarized the issue.

Maria Melchiorre provided a history of all the legislation regarding the Dungeness crab fishery and the permit requirements.

Executive Director Treanor stated that an expedited hearing could be scheduled for November 9 in Sacramento to hear those individuals who have appealed the denial of their application for a Dungeness crab permit.

Teresa Buompensiero supported the expedited hearing.

It was then:

MOVED BY MR. DUTTON, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY SCHEDULES AN EXPEDITED
HEARING FOR NOVEMBER 9, 1995, IN SACRAMENTO TO CONSIDER THE
DUNGENESS CRAB VESSEL PERMIT APPEALS. FURTHER, COMMISSIONER
MCGEOGHEGAN WILL PRESIDE OVER THE HEARING WITH THE DECISION
RATIFIED BY THE ENTIRE COMMISSION BY A TELECONFERENCE CALL
AT 5:00 P.M.

PASSED UNANIMOUSLY.

9. 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.

Action

Executive Director Treanor introduced the item.

Bob Shea submitted written material to the Commissioners and spoke regarding Item 25, the proposed abalone closure. He requested that an economic impact report be completed.

Robert McMahon stated he was unable to meet the requirements for a lobster permit because he was incarcerated for six years and requested that an exception be made so that he could continue his trade. John Duffy noted that he had met with the industry members in Los Angeles and San Diego regarding the current moratorium, which would expire April 1, 1996, if this fishery was not made limited entry. He stated that Mr. McMahon could qualify at that time or depending on qualification criteria for a limited entry fishery, he may qualify.

Carlos Ramirez spoke regarding the use of hoop nets in San Diego Bay, abandoned commercial lobster traps, and opening night contests which waste lobsters.

Paul Weakland spoke regarding a lack of data concerning the take of lobster and abalone by sport fishermen. He suggested that a lobster and abalone stamp be included on the sport fishing license. Commissioner McGeoghegan stated that this would require legislation.

10. REQUEST OF ROBERT DUNCAN, SANTA BARBARA, FOR A WAIVER OF THE COMMERCIAL SEA URCHIN AND ABALONE LANDING REQUIREMENTS.

Summary of Issue

Robert Duncan, Santa Barbara, requests a waiver of the commercial sea urchin and abalone landing requirements. In a letter dated September 21, 1995, Mr. Duncan provides the following information:

"Enclosed is a copy of my original letter which was sent along with the letter from my attending physician, Dr. Michael Behrman concerning my diving permits dated the

31st July 1995, I spoke with Ms. Maria Melchiorre the week of July 24, 1995, the same week as my accident, so as to allow enough time for the Fish and Game Commission to make a decision in case I had to go back to work in order to satisfy my permit requirements.

"A week ago, 14 September 1995, I picked up a copy of a draft report from Christine Barsky at her Santa Barbara office, and at that time asked her why I hadn't received any notice from the Fish and Game Commission regarding my request about my permit waivers. She said that she would follow up on the matter for me.

"Today, 21 September 1995, as I was returning the environmental draft report to Christine Barsky, she handed me the letter from Mr. Treanor which is enclosed. I have been told that I would be put on the schedule for the November Commission meeting.

"I know that my original letter stating my request was sent with the doctor's evaluation, since I had included my letter stapled to a pre-addressed envelope to the Fish and Game for the Doctor's convenience. Nevertheless, I am once again enclosing that letter. (See Mr. Duncan's letter below dated July 31, 1995) I am upset because I had allowed enough time for the bureaucracy of the Commission to read over the documents, and to contact me if they needed further information. If I was to have to complete my landings in order to retain my permits, then I had allowed myself enough open months to try and accomplish this. As it turns out, your office did not even try to contact me as to the incompleteness of the information that they needed, or even any confirmation on what they had received. Furthermore, I am now told that I cannot be on the October schedule for a determination, but now must wait until November, which does not allow for very much time to try and secure landings if that is the finding.

"I would like to be rescheduled on the October agenda, and notified as soon as possible as to any additional information needed or to any action taken. I feel that I have made every effort to allow enough time for you to consider this matter, and it is unfortunate that a failure to communicate has turned this request into a bureaucratic nightmare.

"Please confirm by fax that you have received all pages of this transmission. Let me know immediately of any other documents or action concerning this that you may need."

In a letter dated July 31, 1995, Mr. Duncan also provides the following information:

"I spoke to Maria Melchiorre at your office in Sacramento the week of July 24, 1995, about a waiver for my abalone and urchin permits for the upcoming year 1996-97. This letter is to request that my required number of urchin and abalone landings for the next year 1996-97 be waived because of a medical injury I now have to my right hand. Both my urchin and abalone permits are paid for and are current for the year 1995-96. The injury occurred the 20th of July with substantial damage to my fingers. Doctor Behrman is estimating a timeframe of at least six months for recovery.

"I took a waiver for my urchin landings last year because of a neck injury and am requesting this additional year for both my abalone and urchin landings in order to maintain possession of my permits. Documentation of the neck injury can be obtained from Dr. Al Donald, who is the Calif. State disability's reform doctor. His office is located in Santa Barbara, California.

"My stated permit # is L66903. The numbers on my tags are:

1995: Resident Commercial License	
crew member	100014-05
Abalone diving permit stamp	130007-02
Sea Urchin diving permit stamp	630007-03

"Please inform me as soon as possible about your decision. Enclosed is my doctor's letter concerning and confirming the injury."

Department Recommendation

"Since 1979, Fish and Game Code Section 8306.2 has required that commercial abalone divers meet the minimum landing requirements (320 abalone or 1,200 pounds of abalone) annually to be eligible to renew the permit. Title 14, California Code of Regulations, Section 120.7(c)(1) currently requires minimum landing requirements (20 landings of at least 300 pounds each) be met in one of the two preceding permit years to be eligible to renew a sea urchin diving permit. Both fisheries are limited entry fisheries in which the number of permits issued still exceeds the desired number of permits to protect the abalone and sea urchin resource from being overharvested.

"According to Department records, Mr. Duncan exceeded the minimum landing requirements for abalone in 1994, and landed

959 pounds in 1995 prior to the injury to his hand in July. Regarding his sea urchin permit, he exceeded the minimum landings during the 1993/94 permit year but, because of a neck injury in the 1994/95 permit year, made only 10 landings exceeding 300 pounds each. However, he felt his neck injury would be sufficiently healed to enable him to make the minimum landings in the 1995/96 permit year. Unfortunately, he injured his hand early in the 1995/96 permit year.

"Mr. Duncan has provided medical documentation which substantiates his inability to dive from July 1995 to approximately February 1996. This will preclude him from any opportunity to complete his abalone landings since they are based on a calendar year, and will give him very little opportunity to make up the remaining sea urchin landings needed during the permit year. **Therefore, the Department recommends Mr. Duncan be granted a landing waiver for both his abalone and sea urchin permits.** This will enable him to obtain the 1996/97 permits without making further landings, it will require him to meet the minimum landings in calendar year 1996 to obtain a 1997/98 abalone permit, and it will enable him to obtain a 1998/99 sea urchin permit based on landings made in either the 1996/97 or 1997/98 permit year."

Action

Executive Director Treanor briefly summarized Mr. Duncan's request and reported that the Department recommended approval.

It was then:

MOVED BY MR. BOREN, SECONDED BY MS. PHARES, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF
ROBERT DUNCAN, SANTA BARBARA, FOR A WAIVER OF THE COMMERCIAL
SEA URCHIN AND ABALONE LANDING REQUIREMENTS, SUBJECT TO THE
TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND
APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

11. REQUESTS OF LAURA FREDRICKSON, NORTH BEND, OREGON, AND WILLIAM A. STREET, WESTLAKE VILLAGE, FOR A WAIVER OF THE COMMERCIAL SEA URCHIN LANDING REQUIREMENTS.

Summary of Issue

Laura Fredrickson, North Bend, Oregon, and William A. Street, Westlake Village, request a waiver of their commercial sea urchin landing requirements.

A. Laura Fredrickson, North Bend, Oregon

In a letter dated, October 12, 1995, Ms. Fredrickson provides the following information:

"I Laura Lee Fredrickson F&G License #L35646 would like to request to be put on the agenda for the next Fish and Game Commission meeting to be held at the Holiday Inn in San Diego, California, on November 3, 1995. If this request cannot be granted, please put me on the agenda to be held December 7, 1995, in Sacramento, California. I will be requesting an extension for a landing waiver on my sea urchin diving permit. My excuse is back surgery and pregnancy, plus my baby's heart defect and breast feeding. I will bring all documents to the Commission meeting. Thank you."

Department Recommendation

"Section 120.7(c)(1) of Title 14, California Code of Regulations, requires each permittee to meet the minimum landing requirements (20 landings of at least 300 pounds each) in one of the two preceding permit years to be eligible to renew a sea urchin diving permit. Ms. Fredrickson (#L35646) is requesting a waiver of these requirements for the 1994-95 permit year due to medical reasons. However, she did not submit any substantiating documentation from her physician. Ms. Fredrickson's most recent sea urchin diving permit expired March 31, 1995.

"The Department recommends conditional approval of Ms. Fredrickson's request contingent upon the Department receiving and approving her physician's written statement verifying her inability to participate in the fishery.

Because Ms. Fredrickson did not submit her request for the waiver prior to the June 30 deadline, she should be required to pay the \$50 late fee upon renewal of her permit."

Action

Ms. Fredrickson explained her medical situation and provided copies of her medical records.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. DUTTON, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF LAURA FREDRICKSON, NORTH BEND, OREGON, FOR A WAIVER OF THE COMMERCIAL SEA URCHIN LANDING REQUIREMENTS, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

B. William A. Street, Westlake Village

In a letter received in the Commission office on October 4, 1995, Mr. Street provides the following information:

"My name is William A. Street, I have been a licensed sea urchin diver from 1986 to 1994. On September 22, 1992, I was injured while diving which has led to a long slow recovery with no possibility of diving until just recently, September 27, 1995. Due to my inability to make sea urchin landings, as required by law, my license has just recently expired in 1994. I respectfully request permission to appear before the Fish and Game Commission in hopes of regaining my sea urchin diving rights. My injury was diving related and my orthopedic surgeon Dr. Michael Lee has provided me with a release to commercial dive. Please call me at (805) 495-4227 if you require any additional information. Also enclosed is an official copy of my most recent license in 1994. I am eager to return to my commercial diving career and I thank you for reviewing my case. Records will show my landings from 1986 to 1993 without illegal incidence. I strongly support the laws of Fish and Game in its effort to keep this unique fishing industry alive and long lasting. I look forward to your response."

The record contains a copy of a letter from Dr. Michael Lee, Mr. Street's doctor.

Department Recommendation

"Section 120.7(c)(1) of Title 14, California Code of Regulations, requires each permittee to meet the minimum landing requirements (20 landings of at least 300 pounds

each) in one of the two preceding permit years to be eligible to renew a sea urchin diving permit. Mr. Street sustained an injury to his left shoulder in 1992 and was not able to meet this requirement. According to Department records, Mr. Street's most recent sea urchin diving permit (L-50308) expired March 31, 1994.

"A letter from Dr. Michael Lee states that Mr. Street has been under his care for a shoulder injury, and subsequent surgery for the injury, for the past two years. Dr. Lee states Mr. Street is now fully healed and should be allowed to resume fishing.

"The Department recommends approval of Mr. Street's request upon payment of the following back fees: 1994/1995 sea urchin diving permit (\$330.00), commercial fishing license - crewmember (\$50.00), 1995/1996 sea urchin diving permit (\$330.00), commercial fishing license - operator (\$90.00), and the late fee (\$50.00). Total fees due for reinstatement of Mr. Street's sea urchin diving permit are \$850.00. The fees should be submitted to the Department's License and Revenue Branch in Sacramento within 90 days of the Department's approval letter."

Action

Mr. Street explained his injuries and indicated he was willing to pay the back license fees.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF WILLIAM A. STREET, WESTLAKE VILLAGE, FOR A WAIVER OF THE COMMERCIAL SEA URCHIN LANDING REQUIREMENTS, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

12. REQUEST OF JAY DELANEY, SIMI VALLEY, FOR REINSTATEMENT OF AN EXPIRED COMMERCIAL SEA URCHIN DIVING PERMIT.

Summary of Issue

Jay Delaney, Simi Valley, requests reinstatement of an expired commercial sea urchin diving permit. In a letter received in the Commission office on October 3, 1995, Mr. Delaney provides the following information:

"My name is Jay Delaney L#12050, I have been diving sea urchin for 12 years. I have had no problems with the Fish and Game in this time. This year, I failed to obtain my permit by the allotted deadline. I have no other profession and have a family of three children. I understand if I need to pay a fine or face suspension for a reasonable period of time. But I need my ability to support my family. I appreciate any way you can help me to obtain this goal."

Department Recommendation

"Section 120.7(c)(1) of Title 14, California Code of Regulations, requires each permittee to renew his/her sea urchin diving permit each year. Section 120.7(e)(1) of Title 14, California Code of Regulations, requires the application for renewal must be received by the Department or must be postmarked no later than June 30 of each permit year. Applications presented or postmarked after June 30 and before July 31 will be assessed a \$50 late fee. Applications after July 31 will not be accepted. Because this is a restricted entry fishery that requires annual renewal to maintain eligibility, Mr. Delaney should have renewed his permit by July 31, 1995, if he intended to resume fishing at a later date.

"According to Department records, Mr. Delaney's most recent sea urchin diving permit (#L-12050) expired March 31, 1995, and this is his first request to renew after the July 31 deadline. Also, he has had no violations of Fish and Game laws or regulations.

"The Department recommends conditional approval of Mr. Delaney's request if he provides adequate justification for his renewal delay. If approved, Mr. Delaney will be required to pay the appropriate fees for the 1995-96 sea urchin diving permit, including the \$50 late fee to the License and Revenue Branch in Sacramento within 90 days of the Department's approval letter."

Action

WPD Chief Johnston explained Mr. Delaney's request and that the Department was withdrawing its conditional approval. He indicated that Mr. Delaney had been cited for commercial fishing for lobsters without a valid permit and that there were outstanding warrants against Mr. Delaney.

Mr. Delaney admitted that he had illegally fished for lobsters.

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. THIERIOT, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE APPEAL OF
JAY DELANEY, SIMI VALLEY, FOR REINSTATEMENT OF HIS EXPIRED
COMMERCIAL SEA URCHIN DIVING PERMIT.

PASSED UNANIMOUSLY.

13. REQUEST OF RAY HARRIS, SANTA BARBARA, TO APPEAL DEPARTMENT
DENIAL OF HIS COMMERCIAL LOBSTER PERMIT APPLICATION.

Summary of Issue

Ray Harris, Santa Barbara, requests an appeal of the
Department's denial of his commercial lobster permit application.
In a letter faxed to the Commission office on October 10, 1995,
Mr. Harris provides the following information:

"I would like to appear before the Commission at the
November meeting in San Diego to obtain my lobster permit as
it was denied in early December of last year. I have the
necessary landings as required."

Department Recommendation

"The Commission, at its January and February 1995 meetings,
approved a waiver process to the moratorium on the issuance
of spiny lobster permits which has been in effect since
November 2, 1994 and which will expire at the end of this
lobster season.

"A fisherman who had a lobster permit in any two of the
previous four lobster seasons (1990, 1991, 1992, and 1993),
and who made at least one landing of 100 pounds or more of
spiny lobster, as documented by a fish landing receipt
submitted to the Department, is able to obtain a lobster
permit during the moratorium.

"Mr. Harris wrote to the Commission saying that he had the
required landings, however, he only submitted copies of
'Daily Lobster Log' (book) pages from the vessel 'Starfish,'
skipper Guy Robinson, which list Mr. Harris' permit number
as a crewman and shows fishing activity on March 9 and 13,
1994. Department records indicate that the fish landing
receipts for that fishing activity were issued to
Mr. Robinson, permit number 63695.

"Mr. Harris does not meet the conditions for a waiver of the
moratorium, therefore, the Department recommends denial of

the subject request."

Action

Executive Director Treanor summarized the issue.

Ray Harris explained that he fished on the F/V Starfish and had made the necessary landings, but the logs only showed the Captain's name.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MR. DUTTON, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE APPEAL OF RAY HARRIS, SANTA BARBARA, FOR A COMMERCIAL LOBSTER OPERATOR'S PERMIT.

PASSED UNANIMOUSLY.

14. CONSIDERATION OF REVOCATION OF COMMERCIAL FISHING LICENSE OF JESSE H. PARSONS, EL CAJON.

Summary of Issue

The Department requests that the Commission permanently revoke the commercial fishing license of Jesse H. Parsons. A certified letter has been sent to Mr. Parsons notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on June 27, 1995, in the San Diego Municipal Court, Jesse H. Parsons was found guilty of a violation of Section 8252 of the Fish and Game Code, possession of 25 undersized lobsters and Section 7852.27, failure to possess valid driver's license while commercial fishing. As background, on November 20, 1994, Mr. Parsons was stopped by San Diego City Lifeguards. Mr. Parsons was found to be in possession of twenty-five short lobsters and seventeen legal lobsters. Mr. Parsons was fined \$1,200, forfeited his catch and placed on three additional years of probation.

Mr. Jesse H. Parsons also has prior violations which are as follows:

	<u>Date</u>	<u>Violation(s)</u>
1.	01/01/92	Section 9002(a), Fish and Game Code, unlawfully disturbing of traps belonging to another for which his commercial fishing license was suspended from March 4, 1993, for

a period of one year or until March 4, 1994.

2. 09/25/91 Section 122(k) Title 14, CCR, placing lobster traps in the water without the doors wired open more than six days before the season for which he received a letter of warning on March 5, 1992, from the Commission stating that any future violation may result in the revocation of your fishing privileges.
3. 10/14/86 Section 8252, Fish and Game Code, take and possession of seven (7) undersized lobsters.

The Commission's authority to take this action is pursuant to Section 12153 of the Fish and Game Code.

The record contains a copy of the Commission's letter dated September 15, 1995; the Department's request dated August 2, 1995; the citation; the arrest report; the court record and background information on his prior violations.

Action

Executive Director Treanor summarized Mr. Parsons' case.

Steven Frantz spoke on behalf of Mr. Parsons. He explained that Mr. Parsons' had made some mistakes, but his prior violations were several years old. Mr. Frantz pleaded with the Commission not to revoke Mr. Parsons' commercial fishing license.

WPD Chief Johnston indicated that Mr. Parsons habitually violated the law and took large numbers of short lobsters. He provided the Department's suggested findings.

It was then:

MOVED BY MR. DUTTON, SECONDED BY MR. MCGEOGHEGAN, THAT THE FISH AND GAME COMMISSION HEREBY REVOKES THE COMMERCIAL FISHING LICENSE OF JESSE H. PARSONS, EL CAJON, PURSUANT TO THE FOLLOWING FINDINGS:

1. Mr. Parsons was found guilty on June 27, 1995, in the San Diego Municipal Court of a violation of Sections 8252, Fish and Game Code, possession of 25 undersized lobsters, and 7852.27, failure to possess a valid driver's license while commercial fishing.
2. The Department of Fish and Game believes, and the Commission adopts the view that the requirement to obey the size limit and possessing a valid driver's license

while commercial fishing for spiny lobsters is of utmost importance in the proper management of the spiny lobster resource.

3. Section 12153, Fish and Game Code, allows the forfeiture of a Commercial Fishing License for a violation of the laws relating to the use of nets. Lobster traps are included in the definition of nets in Section 56 of the Fish and Game Code.
4. In making this determination, the Commission has considered Mr. Parsons' prior violations on October 14, 1986, of Section 8252, Fish and Game Code, take and possess 7 undersized lobsters, September 25, 1991, of Section 122(k), Title 14, CCR, placing lobster traps in the water without the doors wired open more than six days before the season, for which Mr. Parsons received a letter of warning on March 5, 1992, and on January 1, 1992, of Section 9002(a), Fish and Game Code, unlawfully disturbing of traps belonging to another for which Mr. Parsons' commercial fishing license was suspended from March 4, 1993, for a period of one year until March 4, 1994.
5. Mr. Parsons' prior violations and actions in possessing 25 undersized lobsters and failure to possess a valid driver's license warrant the revocation of his commercial fishing license permanently.
6. Mr. Parsons' attorney, Mr. Steven Frantz, failed to present mitigating evidence sufficient to dissuade the Commission from revoking his commercial fishing license permanently. Mr. Parsons must take responsibility for failing to obey all commercial fishing regulations because of the important public policy involved.

AYES: COMMISSIONERS DUTTON, MCGEOGHEGAN, THIERIOT,
AND PHARES

ABSTAINED: COMMISSIONER BOREN

MOTION PASSED.

15. CONSIDERATION OF SUSPENSION OF COMMERCIAL PRAWN AND SHRIMP
TRAWL PERMIT OF PIETRO BUOMPENSIERO, AVILA BEACH.

Summary of Issue

The Department requests that the Commission suspend the commercial prawn and shrimp trawl permit of Pietro Buompensiero, for a period of one year from November 2, 1995, through November 1, 1996, or other such time period as the Commission deems appropriate. A certified letter has been sent to Mr. Buompensiero notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that on June 6, 1995, in the Del Norte Municipal Court, Mr. Buompensiero pled guilty to a violation of Section 120(i), Title 14, CCR, take and possession of more than 1,500 pounds of incidentally caught fish while taking shrimp or prawn. As background, Mr. Buompensiero was contacted on April 18, 1995, after landing shrimp at Pacific Choice Seafood in Crescent City Harbor. Mr. Buompensiero was found to have landed and be in possession of 839 pounds of pink shrimp and approximately 6400 pounds of lingcod and rockfish. All fish and shrimp was taken on one two-day trip. Mr. Buompensiero took three times the legal limit of incidental fish. He was fined \$2,000, placed on three years' probation, and his catch of 1,778 pounds of lingcod and 4,619 pounds of rockfish was forfeited to the Department.

The Commission's authority to take this action is pursuant to Section 120(m), Title 14, CCR.

The record contains a copy of the Commission's letter dated October 2, 1995; the Department's request dated July 21, 1995; the citation; the arrest report; and the court record.

Action

Executive Director Treanor summarized Mr. Buompensiero's case.

Pietro Buompensiero explained that he did not intentionally land the high number of lingcod and rockfish, but they were abundant in shrimp trawling grounds. He stated that once the trawl was emptied, he didn't want to just dump the fish overboard.

WPD Chief Johnston explained the Department's recommendation. He indicated that Mr. Buompensiero was far above what was reasonable for an incidental harvest. He read the Department's suggested findings into the record.

It was then:

MOVED BY MR. DUTTON, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE COMMERCIAL PRAWN AND SHRIMP TRAWL PERMIT OF PIETRO BUOMPENSIERO, AVILA BEACH, FOR THE FIRST THREE MONTHS OF THE 1996 SEASON (APRIL, MAY AND JUNE) EFFECTIVE NOVEMBER 2, 1995, PURSUANT TO THE FOLLOWING FINDINGS:

1. Mr. Buompensiero pled guilty for a violation of Section 128(i) of Title 14, California Code of Regulations, take and possess more than 1,500 pounds of incidentally caught rockfish while taking shrimp or prawn.
2. The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to not take over 1,500 pounds of incidentally-caught fish is of utmost importance in the proper management of the shrimp and prawn resource.
3. Section 120 (m), Title 14, California Code of Regulations, allows the commission to revoke and cancel all Commercial Shrimp and Prawn Trawl permits, without notice, upon breach or violation of any fish and game law or regulation or any violation of the terms or conditions of this permit by the holders thereof, their agents, servants, employees or those acting under their direction and control. Permits so revoked and cancelled may not be renewed for a period of one year from the date of revocation.
4. Mr. Buompensiero's actions in taking more than 1,500 pounds of incidentally-caught fish while taking shrimp or prawn warrant the suspension of his Commercial Prawn and Shrimp Trawl Permit for one year.
5. Mr. Buompensiero presented mitigating evidence sufficient to dissuade the Commission from suspending his Commercial Prawn and Shrimp permit for one year. The Commission suspended his permit for the first three months of the 1996 season. Mr. Buompensiero must take responsibility for the overlimit of incidentally-caught fish because of the important public policy involved.

PASSED UNANIMOUSLY.

16. CONSIDERATION OF SUSPENSION OF COMMERCIAL LOBSTER PERMIT OF
RAYMOND ASTON, ALHAMBRA.

Summary of Issue

The Department requests that the Commission suspend the commercial lobster permit of Raymond Aston for a period of one year from November 2, 1995, through November 1, 1996, or other such time period as the Commission deems appropriate. A certified letter was sent to Mr. Aston notifying him of the possible action to be taken by the Commission.

The Department's request is predicated on the fact that Mr. Aston pled nolo contendere on June 1, 1995, in the Los Angeles City Municipal Court to a violation of Section 8258 of the Fish and Game Code, commercial take of spiny lobster in District 19; Section 9005 of the Fish and Game Code, failure to mark lobster traps; Section 8282(a) of the Fish and Game Code, take and possession of undersize rock crab; Section 2012 of the Fish and Game Code, failure to show upon demand fish and apparatus; and Section 122(f), Title 14, CCR, unlawful raising of lobster traps. As background, Raymond and Steven Aston were contacted after being observed fishing submerged traps. Prior to this contact, marked lobster had been placed inside the traps. The traps were themselves located in waters closed to commercial fishing - District 19A. Mr. Aston was fined \$13,535.00; sentenced to 60 days in jail with 31 days suspended; placed on three years' probation; and the 510 pounds of lobster was forfeited to the Department.

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

The record contains a copy of the Commission's letter dated September 25, 1995; the Department's request date July 5, 1995; the arrest report; and the court record.

Action

Executive Director Treanor summarized Mr. Aston's case. Mr. Aston was not present.

WPD Chief Johnston read into the record the Department's suggested findings.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. DUTTON, THAT
THE FISH AND GAME COMMISSION HEREBY SUSPENDS THE COMMERCIAL
LOBSTER PERMIT OF RAYMOND ASTON, ALHAMBRA, FOR A PERIOD OF

ONE YEAR OR UNTIL November 1, 1996, PURSUANT TO THE
FOLLOWING FINDINGS:

1. Mr. Aston pled nolo contendere on June 1, 1995, in the Los Angeles City Municipal Court of a violation of Section 8258 of the Fish and Game Code, commercial take of spiny lobster in District 19; Section 9005 of the Fish and Game Code, failure to mark lobster traps; Section 2012 of the Fish and Game Code, failure to show upon demand fish and the apparatus used; and Section 122(f), Title 14, CCR, unlawful raising of lobster traps.
2. The Department of Fish and Game believes, and the Commission adopts the view, that the requirement to obey all commercial fishing regulations for spiny lobsters is of utmost importance in the proper management of the spiny lobster resource.
3. Section 8256 of the Fish and Game Code allows the Commission to suspend a commercial lobster permit for up to one year for a violation of the terms or provisions of the laws relating to the taking of spiny lobsters by the permittee, his agent, servant, employee or those acting under his direction and control.
4. Mr. Aston's actions in failing to mark lobster traps, taking lobster from a closed area, and failure to show upon demand fish and the apparatus used warrant the suspension of his commercial lobster permit for one year.
5. Mr. Aston did not appear at the meeting to provide mitigating evidence to dissuade the Commission from suspending his commercial lobster permit for one year. Mr. Aston must take responsibility for failing to obey all commercial fishing regulations for spiny lobsters because of the important public policy involved.

PASSED UNANIMOUSLY.

The Commission decided to defer Items 17 and 18 until November 3. The meeting adjourned 6:50 p.m.

State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 2-3, 1995

Pursuant to the call of the President, the Commission met at the Holiday Inn on the Bay, 1355 N. Harbor Drive, San Diego, California, on November 3, 1995. The meeting was called to order at 8:30 a.m. by President Boren.

Persons present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

Robert R. Treanor	Executive Director
Ronald J. Pelzman	Assistant Executive Director
Marilyn H. Mearns	Word Processing Technician

OFFICE OF THE ATTORNEY GENERAL

Doug Noble	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Charles Raysbrook	Acting Chief Deputy Director
Al Petrovich	Deputy Director, Policy
Jeff Weir	Conservation Education
Tim Farley	Chief, Inland Fisheries Div. (IFD)
DeWayne Johnston	Chief, Wildlife Protection Div. (WPD)
Terry Mansfield	Chief, Wildlife Management Div. (WPD)
John Duffy	Marine Resources Division
Don Schultze	Marine Resources Division
Frank Henry	Marine Resources-Menlo Park Office
Doyle Hanan	Marine Resources-San Diego Office

The following persons were also present and heard:

Bob Fletcher	Sportfishing Association of CA.
Dr. Richard D. Glenn	United Anglers
Nello Castagnola	CA Gillnetter Association
Michael Albov	SF Round Haul Association
Frank Hester	Consultant, SF Bay Round Haul Association
Dominic Papetti	Gillnet Herring Fisherman

Harold Vanniro
Sam Liberati
Sal Ferrante
Vince Aliotti
Gaspere Allotti
Robert Glenovich
Ilson W. New
Tammie Shrader
Henry Davis
James Finch
Bob Shea
Jeremiah O'Brien
Michael Garnsoy
Paul Weakland
Jim Marshall
Don Thompson
Bob Todd
Ron Johnston
Bob Bertelli
Bob Rawstron
Steve Netti
Mike Kennedy
Nicholas DiCroce
Jim Edmondson
Earl V. Brown
Jim Brown
Gretchen Yearous
Heinz R. Hoenecke
Allen Greenwood
August Felando

Gillnet Herring Fisherman
Gillnet Herring Fisherman
Purse Seine Fisherman
Purse Seine Fisherman
Round Haul Fisherman
Round Haul Fisherman
Attorney for Roe on Kelp Permittees
Commercial Herring Fisherman
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone Diver
Commercial Abalone/Sea Urchin Diver
So. CA. Bass Council
San Diego Fly Fishers
Tournament Fisherman's Coalition
Federation of Fly Fishers
California Trout
Owens River Campground
San Diego Trout, City of San Diego
Concerned Citizen
SD Fly Fishing Assoc.
San Diego Trout
CA. Lobster & Trap Fishermen's
Association

President Boren introduced members of the Commission, its staff, members of the Department's Directorate and Doug Noble, Deputy Attorney General.

17. RECEIPT OF DEPARTMENT LEGISLATIVE REPORT.

Summary of Issue

This item is scheduled to afford the Commission an opportunity to receive the Department's Legislative Report. The Department will be prepared to discuss this item and respond to any questions the Commission may have at the November 2, 1995, meeting.

Action

Executive Director Treanor highlighted the Department's report. The Commission had no questions regarding the report.

18. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.

A. RESTRICTING ACCESS TO O'NEILL FOREBAY WILDLIFE AREA,
MERCED COUNTY, TO ALLOW SPECIAL JUNIOR PHEASANT HUNT.

Summary of Issue

In a memo dated October 5, 1995, the Department provides the following information:

"The Department of Fish and Game plans to restrict access to the O'Neill Forebay Wildlife Area, Merced County, to allow for special pheasant hunts open to junior licensed hunters and their escorts. Times of the area restrictions are as follows:

- "1. Closed from sunset Friday, November 17, 1995, and reopen 8 a.m. on Monday, November 20, 1995.
- "2. Closed from sunset Friday, November 24, 1995, and reopen 8 a.m. on Monday, November 27, 1995.

"This area is used by a large number of pheasant hunters on the days after the junior pheasant hunts. It is necessary to control the number of pheasant hunters entering the area for safety reasons. The 8 a.m. reopening time will allow staff to control the number of hunters on the area.

"We plan to sponsor a total of eight four-hour hunts on November 18, 19, 25 and 26, 1995, at O'Neill Forebay Wildlife Area. The hunts will be for released rooster pheasants supplied by the Los Banos Sportsmen's Association, Quail Unlimited Stockton Chapter, and the Department of Fish and Game's Game Bird Heritage Program. A maximum of 35 permits will be issued for each hunt period to holders of junior hunting licenses. Hunters are selected at a public computerized drawing. If all permits are not issued at that time, the remainder will be issued on a first-come, first-serve basis. Permits will be issued to holders of junior hunting licenses that apply in writing in accordance with the instructions outlined in the attached press release. A minimum of one adult for each two junior hunters must accompany and supervise the hunters in the field. The adults will not be allowed to hunt.

"The press release will be supplied to the newspapers throughout the San Joaquin Valley and Monterey-San Jose area.

"The Department anticipates approximately 110 to 120 public

users (adult and youth combined) will be permitted on the area each day. This is greater daily use than this area normally receives at this time of the year. Similar junior hunts have been successfully conducted on the area in previous years. No problems are anticipated.

"This information item is intended to fulfill the requirement of the California Code of Regulations, Title 14, Chapter 8, Section 550(b)(14), which states the Department shall notify the Fish and Game Commission in writing and the public via the news media of any implementation of a closure on a wildlife area under the provisions of this subsection."

B. QUARTERLY REPORT ON THE GAME BIRD HERITAGE PROGRAM.

Summary of Issue

In a memo dated October 12, 1995, the Department provides the following information:

"The purpose of this report is to provide an update on the status of the Game Bird Heritage Program since the Commission's August 3-4, 1995, meeting.

"Revenues generated from the sales of upland game stamps, as reported by the License and Revenue Branch for FY 1994-95, totaled \$1,174,522, up \$85,412 from FY 1993-94. Revenues for July through August of FY 1995-96 were \$179,713.

"The Game Bird Heritage Advisory Committee met on August 24, 1995, with representatives from the National Wild Turkey Federation, Congressional Sportsmen's Caucus, Western Outdoor News, California State Department of Water Resources, and Quail Unlimited in attendance. The meeting was held at the Department of Fish and Game's Region 2 office.

"The focus of the meeting was the two publications currently being developed by the Game Bird Heritage Program, the *California Turkey Hunter's Guide* and the *Hunter's Guide to Public Lands in California*, and the 1994-95 final budget. A decision was made that both upcoming publications would be available to the public for a fee. The turkey guide will be free, but a shipping and handling fee will be charged. A fee for the public lands guide will cover the cost of printing, shipping, and handling. The amount of these fees will be determined after printing.

"Final products from the 1994-95 region projects were presented to the advisory committee, including: water

source mapping data reports, sage grouse abundance report, private lands access report, public lands access report, mountain quail status report, blue grouse population report, Mojave National Reserve report, and habitat enhancement reports.

"The 1995-96 junior pheasant hunting program is underway and has grown to include 37 junior events and 3,000 junior pheasant hunting opportunities. The Licensed Game Bird Club program has four participating clubs who will provide hunting opportunities for up to 1,000 juniors throughout the pheasant season. The Game Bird Heritage Program is also sponsoring three family pheasant hunting events in Region 4 and one in Region 5, as well as a women's pheasant hunt in Region 2. These special hunts will provide pheasant hunting opportunities for over 1,000 participants.

"Quail Unlimited produced two 'Covey Kids Camps' using grant money from the Game Bird Heritage Program for start-up costs. These camps were one week long and included education on hunting and conservation topics along with practical skills relating to hunting and outdoor recreation. Under the contract agreement, Quail Unlimited will continue to provide 'Covey Kids Camps' using revenue generated from camp participant's tuition."

Action

Executive Director Treanor summarized the Department's written reports.

19. 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

Commissioner Boren established three subcommittees: 1) Strategic Planning subcommittee, Commissioners Boren and Dutton; 2) a subcommittee to reach out to environmental groups, Commissioners Boren and Thieriot; and 3) Budget subcommittee, Commissioner McGeoghegan and one volunteer.

20. RECEIPT OF LEGAL COUNSEL INFORMATIONAL ITEMS.

Summary of Issue

This item is scheduled for the Commission's Legal Counsel to discuss any informational items and certain legal issues or procedures with the Commission.

Action

There were no informational items.

21. BRIEFING BY ROBERT C. FLETCHER, SPORT FISHING ASSOCIATION OF CALIFORNIA, SAN DIEGO, ON THE PROCESSING OF SPORT CAUGHT FISH PURSUANT TO SECTION 231, TITLE 14, CCR.

Summary of Issue

The Commission, at its October 6, 1995, meeting in Redding, took emergency action to amend Section 231, Title 14, CCR, regarding processing sport-caught fish. At that time, the Commission requested that Mr. Fletcher brief the Commission regarding the background for the regulation and the status of the sole cannery in Southern California.

Action

Robert Fletcher presented his report. He suggested additional amendments to Section 231 to regulate individual businesses that come to the dock and offer filleted frozen fish in exchange for the fresh fish. He indicated that he would work with the Department to develop such language.

22. CONSIDERATION OF DEPARTMENT WHITE SEABASS FISHERY MANAGEMENT PLAN DEVELOPED PURSUANT TO SECTION 7020 OF THE FISH AND GAME CODE.

Summary of Issue

The Commission received the Department's White Seabass Fishery Management Plan at its August 24, 1995, meeting in Long Beach. The plan was developed pursuant to Section 7020 of the Fish and Game Code. The Commission received public comments from Mr. Jim Paulk, Dr. Richard Glenn and Dr. Larry Allen at its August 24 meeting who all indicated that the plan did not go far enough and a recovery plan needed to be formulated. Dr. Allen stated there was a need to identify areas critical for white seabass and aspects of its life history that need to be studied.

Pursuant to the statutes, the Commission is to consider adoption of the plan and any regulations required to implement the plan. The Department has highlighted areas that need legislative actions. The Department's report also recommends that legislation be introduced which would remove part of the Commission's authority and provide the Director of the Department of Fish and Game with the authority to adopt regulations for the management of white seabass. This area should be thoroughly discussed prior to adoption of the plan and to highlight the pros and cons of this proposal. The Department's memo dated September 22, 1995, provides further background information.

In a memo dated October 19, 1995, the Department provides the following information:

"The Department presented background regarding development of subject Plan as a pilot program, and a summary of the plan at the Commission's August 24-25, 1995, meeting. At the Commission's October 5-6, 1995, meeting further discussion of white seabass management occurred during consideration of adoption of the Plan.

"The Commission requested additional background information on the history of the fishery and its regulation at the last meeting. Also, the Commission expressed an interest in hearing further from recreational and commercial fishing representatives.

"The Department will provide additional information regarding the history of the white seabass fisheries and their management at the upcoming Commission meeting. Also, the Department will request that fisheries representatives that participated in developing the Plan be present at the meeting to provide input as needed."

Action

Executive Director Treanor introduced the item and summarized the background of the Commission's previous discussion of this topic.

Don Schultze provided a history of the fishery.

Doyle Hanan explained the fishery management plan and answered questions from the Commissioners.

Bob Fletcher stated that the management plan would be a framework which could be reviewed and revised by the Commission as necessary. He pointed out that the process would be similar to the Pacific Fishery Management Council process. He

recommended that the Commission accept the Department's recommendation.

Dr. Richard Glenn presented an alternative plan with specific harvest goals and suggestions as to how the whole management process should be run in the pilot program. He recommended that the Commission have authority over both commercial and recreational fisheries.

Mr. Schultze indicated that Dr. Glenn's proposal would be a major change in the Department's draft management plan and would have to be discussed with the advisory groups.

Nello Castagnola stated that the hatchery program was merely an experiment and it would be several years before the effects are known. He supported the Department's proposed plan.

Commissioners expressed concern that the Commission's role was not clearly identified in the plan. The Commission requested that one authority be given over both commercial and recreational fisheries. Commissioner Boren noted that the current bifurcated system was not working and needed to be changed.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. DUTTON, THAT
THE FISH AND GAME COMMISSION HEREBY REQUESTS THE DEPARTMENT
TO REVISE THE WHITE SEA BASS MANAGEMENT PLAN NAMING THE
COMMISSION AS THE REGULATORY BODY WHICH WOULD HAVE
RESPONSIBILITY AND ACCOUNTABILITY TO OVERSEE THE PLAN FOR
BOTH COMMERCIAL AND RECREATIONAL FISHING.

PASSED UNANIMOUSLY.

23. CONSIDERATION OF AMENDMENT OF SECTION 163, TITLE 14, CCR,
TO EXTEND THE TIMETABLE FOR THE ROUND HAUL CONVERSION
PROGRAM BY ONE YEAR AND ADJUST BY ONE YEAR THE DATES FOR
EACH PHASE OF THE CONVERSION PROGRAM.

Summary of Issue

The Commission, at its August 25, 1995, meeting in Long Beach, adopted its commercial herring regulations for the 1995-96 season, except it continued to its November 3, 1995, meeting in San Diego a discussion of the request to extend the timetable for the round haul conversion program by one year and adjust by one year the dates for each phase of the conversion program. The record contains copies of the Pre-publication of Notice and Pre-adoption Statements, the text of the regulations in strikeout/underline format, and any correspondence received on

this matter.

Department Recommendation

"The Department is opposed to the proposed amendment to extend the timetable for the round haul conversion program by one year and adjust by one year the dates for each phase of the conversion program. The Department is opposed to the amendment for the following reasons:

- "● Economic implications of the conversion have been thoroughly considered and regulations were drafted to minimize such impacts. The Department feels that the short-term economic losses have been over-stated by the round haul permittees; the lower costs of gill netting versus seining have not been part of the current discussion. Several letters to the Commission provide additional insights into the economics of this fishery.
- "● Additional economic analysis, to be presented at the November 3, 1995, meeting, will describe (1) the other fishing opportunities for California round haul vessels; (2) that ownership of a gill net vessel is not required for participation in the fishery; and (3) the degree of importance of herring revenue to the round haul permittees' total fishing revenue.
- "● The Department has already conducted thorough biological analyses which support the existing conversion regulations.
- "● Department staff met with Dr. Hester (the biological consultant hired by the San Francisco Bay Round Haul Association), and subsequently reviewed and commented on his draft study proposal. Department staff strongly feel that the wrap-and-release study will not determine the frequency of wrap-and-release activity. Further, it is unlikely that the mortality caused by wrap-and-release activities can be assessed in this single year of study, and Dr. Hester has acknowledged this in written communications to Department staff.
- "● The study proposes collection of herring age data this season to evaluate the differing age composition of gill net and round haul catches. Capture of younger herring by round haul gear has been clearly demonstrated in every year of our 20-year series of fishery data. Another year of such data will not change the basic catching characteristics of round haul gear.

- "• The study appears to be a delaying tactic, and future requests for a continued moratorium for 'more study' can be anticipated."

Action

Executive Director Treanor summarized the regulatory issue.

Frank Henry provided an overview of the commercial herring fishery and the reasons for the phase out of the round haul fishery for herring.

The following persons supported extending the timetable for the round haul conversion program for one year: Vince Aliotti; Sal Ferrante; Gaspare Aliotti; and Robert Glenovich. Michael Albov submitted 79 letters in support of round haul fishermen.

The following persons spoke in support of the Department's recommendation to phase out the use of round haul nets: Domonic Papetti; Tammie Shrader; and Sam Liberati who submitted 103 letters.

Dr. Frank Hester indicated that in his opinion the data was not clear to phase out the use of round haul nets and recommended more time to review the Department's old data and the data to be obtained this year.

Harold Vanniro recommended either one round haul permit or one gill net permit.

It was then:

MOVED BY MR. DUTTON, SECONDED BY MR. THIERIOT, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 1050, 5510, 8550 AND 8553 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTIONS 8043, 8550, 8553, 8554 8556, 8557 AND 8559 OF SAID CODE, HEREBY DECLINES TO EXTEND THE TIMETABLE FOR THE ROUND HAUL CONVERSION PROGRAM; HOWEVER, THE INCENTIVE TO CONVERT THAT ENDED ON OCTOBER 4, 1995, BE EXTENDED SO THAT THOSE FISHERMEN WHO CHOSE TO APPEAL FOR AN EXTENSION WOULD BE ALLOWED TO CONVERT THEIR ROUND HAUL PERMITS TO GILL NET PERMITS.

PASSED UNANIMOUSLY.

24. CONSIDERATION OF AMENDMENT OF SECTION 164, TITLE 14, CCR, TO ALLOW THE HARVESTING OF HERRING EGGS ON KELP BETWEEN THE HOURS OF 10:00 P.M. AND 6:00 A.M. ON WEEKDAYS, BUT NOT OFFLOADING DURING THOSE HOURS; AND FOR CLARITY, THE SCALE USED ABOARD A VESSEL, IF PROCESSING OCCURS ON THAT VESSEL, MUST BE USED TO DETERMINE THE TOTAL WEIGHT OF HERRING EGGS ON KELP PRIOR TO PROCESSING.
-

Summary of Issue

The Commission amended its regulations to harvest herring eggs on kelp (Section 164, Title 14, CCR) at its August 25, 1995, meeting in Long Beach. In addition, the Commission continued discussion of Mr. New's request on behalf of the 10 permittees. Those issues are as follows:

- 1) Allow harvesting of herring eggs on kelp between the hours of 10:00 p.m. and 6:00 a.m. on weekdays, but not offloading during those hours; and
- 2) For clarity, the scale used aboard a vessel, if processing occurs on that vessel, must be used to determine the total weight of the herring eggs on kelp prior to processing.

The record contains a copy of the Department's Pre-publication of Notice Statement with the text of the regulations in strikeout/underline format and Mr. New's request.

Department Recommendation

"The Department requests that the Commission publish notice of its intent to amend the subject regulations for the 1995-96 harvesting of herring eggs.

"Attached is the Pre-publication of Notice for Regulatory Action and the proposed amendments to Section 164, Title 14, CCR. The proposals would allow the harvesting of herring eggs on kelp between the hours of 10:00 p.m. and 6:00 a.m. on weekdays, but not offloading during those hours. In addition, for the purpose of clarity, the scale used aboard a vessel, if processing occurs on that vessel, must be used to determine the total weight of herring eggs on kelp prior to processing."

Action

Executive Director Treanor introduced the item.

Ilson New recommended approval of the Department's proposed regulation changes.

Tammie Shrader expressed concern that there were not enough enforcement personnel to police the fishery during night fishing.

WPD Chief Johnston stated that the night harvesting would not be a problem as other wardens were moved in to the area.

It was then:

MOVED BY MR. THIERIOT, SECONDED BY MR. DUTTON, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTION 8389 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTION 8389 AND 8550-8556 OF SAID CODE, HEREBY AMENDS SECTION 164, TITLE 14, CCR, RE: TO ALLOW THE HARVESTING OF HERRING EGGS ON KELP BETWEEN THE HOURS OF 10:00 P.M. AND 6:00 A.M. ON WEEKDAYS, BUT NOT OFFLOADING DURING THOSE HOURS; AND FOR CLARITY, THE SCALE USED ABOARD A VESSEL, IF PROCESSING OCCURS ON THAT VESSEL, MUST BE USED TO DETERMINE THE TOTAL WEIGHT OF HERRING EGGS ON KELP PRIOR TO PROCESSING AS FOLLOWS:

- (1) Subsection (j) (3) (D) for Section 164, Title 14, CCR, is amended to read:

(D) Herring eggs on kelp may not be harvested between the hours of 10:00 a.m. on weekdays, but may not be off-loaded during those hours. Herring eggs on kelp may be harvested on Saturdays and Sundays if the permittees reimburse the Department for the cost of operations.

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

(4) Permittee must have a certified scale aboard the vessel at all times if any processing operations are conducted aboard that vessel. This scale shall be used to determine the total weight of herring eggs on kelp prior to processing. For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested produce and included in the total weight of herring eggs on kelp. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in determining the total weight of herring eggs on kelp.

PASSED UNANIMOUSLY.

The meeting was recessed at 10:00 a.m. to go into Executive Session.

EXECUTIVE SESSION
November 3, 1995

The Commission met in closed Executive Session at 10:00 a.m., pursuant to the authority of Government code Section 11126(q), to consider the following items.

PENDING LITIGATION TO WHICH THE COMMISSION IS A PARTY:

- (A) CALIFORNIA DOMESTIC FERRET ASSOCIATION vs. FISH AND GAME COMMISSION, ET AL., RE: FERRETS.
- (B) MOUNTAIN LION FOUNDATION, ET AL., vs. FISH AND GAME COMMISSION, ET AL., RE: MOHAVE GROUND SQUIRREL.
- (C) NATURAL RESOURCES DEFENSE COUNCIL, ET AL., vs. FISH AND GAME COMMISSION RE: CALIFORNIA GNATCATCHER.
- (D) POSSIBLE LITIGATION INVOLVING THE COMMISSION.

Persons Present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

Robert R. Treanor	Executive Director
Ronald J. Pelzman	Assistant Executive Director
Marilyn H. Mearns	Word Processing Technician

OFFICE OF THE ATTORNEY GENERAL

Doug Noble	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Charles Raysbrook	Acting Chief Deputy Director
Al Petrovich	Deputy Director, Policy

Executive Session adjourned at 10:30 a.m. and the regular meeting resumed after Executive Session.

25. RECEIPT OF PUBLIC TESTIMONY ON DRAFT ENVIRONMENTAL DOCUMENT AND PROPOSED REGULATIONS RELATIVE TO THE PROPOSED CLOSURE OF THE PINK, GREEN, AND WHITE ABALONE SPORT AND COMMERCIAL FISHERIES. (THE COMMISSION WILL CONSIDER ADOPTION OF THE REGULATIONS AT ITS DECEMBER 8, 1995, MEETING IN SACRAMENTO.)

Summary of Issue

The Department of Fish and Game has prepared a Draft Environmental Document recommending the closure of the pink, green and white abalone sport and commercial fisheries in southern California to protect these resources from further depletion. The Draft Environmental Document was officially made available to the public on September 11, 1995. Written comments were to be received in the Commission office by 5:00 p.m. on October 26, 1995. However, during discussion of this issue at the Commission's October 6, 1995, meeting in Redding, the Commission extended the comment period to the Commission's November 3, 1995, meeting in San Diego. The Commission is not scheduled to take action on this matter until its December 8, 1995, meeting in Sacramento.

The record contains a copy of the Department's Notice of Availability of the Draft Environmental Document relative to the proposed closure of the pink, green, and white abalone sport and commercial fisheries, the Pre-publication of Notice Statement as well as the text of the regulations in strikeout/underline format and letters from interested individuals.

The Department's proposal can be summarized as follows:

"Existing regulations allow for the recreational and commercial harvest of abalone. The proposed action would prohibit the take and/or possession of any pink, green or white abalone for two years.

"These three species of abalone have been affected by a long-term decline in abundance.

"The prohibition on pink, green and white abalone harvest will protect the individuals currently remaining in the population. These remaining abalone will provide the breeding stock for rehabilitation of the abalone resource, whether by natural or man caused processes."

In a memo dated October 20, 1995, the Department provides the following information:

"At the Commission's October meeting in Redding, the Department agreed to prepare a brief summary of the abalone

situation for the November meeting. We will have staff present to respond to any questions the Commissioners may have regarding the Draft Environmental Document and abalone biology and resource issues."

Action

Executive Director Treanor summarized the issue.

Pete Haaker, Region 5 MRD Biologist, made a slide presentation which provided background on the abalone fishery.

Henry Davis, Bob Shea, Jim Marshall, Bob Todd, and Jeremiah O'Brien, opposed the closure and recommended retaining existing regulations. They recommended keeping the pink abalone open.

James Finch opposed the closure and submitted letters in support of his position. He stated the pink abalone population is not threatened.

Paul Weakland, Don Thompson, Michael Garnsoy, Don Johnson, and Bob Bertelli, opposed all recommended closures.

All of the above speakers stated that the Department's data used in the draft environmental document was incomplete and more study was necessary before any closures instituted. They offered to provide dive vessels and assist the Department in obtaining the necessary population data.

26. DISCUSSION OF RECOMMENDATIONS FOR CHANGES IN THE 1996-98 SPORT FISHING REGULATIONS AND ANNOUNCEMENT OF REGULATIONS THAT THE COMMISSION INTENDS TO ADOPT RELATING TO FISH, AMPHIBIA, REPTILES, AND INVERTEBRATES.

Summary of Issue

The Commission, at its August 25, 1995, meeting, opened to review its regulations in Part I (Fish, Amphibians and Reptiles), Chapter I (General Provisions and Definitions), Chapter 2 (Statewide Regulations for Fishing and Frogging in Inland Waters), Chapter 3 (District Trout, Salmon and Special Regulations), Chapter 4 (Ocean Fishing), and Chapter 5 (Native Reptiles and Amphibians). The fact that the Commission is conducting this biennial review and is holding hearings on these regulations has been noted in the Office of Administrative Law's Notice Register. In addition, as required by law, the Commission has published notice of these hearings in papers of general circulation throughout the state.

The Department verbally summarized its proposed regulation changes at the August 25 and October 6, 1995, meetings. Any additional proposals from the Department will be presented today.

Each proposed regulation change submitted by the Department, or public recommendation accepted by the Department is open for discussion. If the Commission elects to depart from the Department's recommendation, a vote on the issue would then be in order. A summary of all correspondence received in the Commission office in support of or opposition to recommendations received on August 25, 1995, and currently under consideration, has been brought to the Commission's attention. Copies of correspondence received in the Commission office are available for Commission review.

The purpose of this agenda item is to receive public comment concerning the angling proposals for 1996-98 and for the Commission to confirm the proposed regulations it will consider for further discussion and possible adoption at the Commission's December 8, 1995, meeting in Sacramento. Depending on the public comments on the environmental documents, the matter before the Commission at its December 8, 1995, meeting in Sacramento will be for certification of the final environmental documents and adoption of the 1996-98 Sport Fishing Regulations.

The record contains a summary of correspondence and a list of recommendations received from the public concerning sport fishing regulations for the period of 1996-98. The record contains the Department's proposed regulation changes as outlined to the Commission at its October 6, 1995, meeting in Redding (as found in the Announcement of Intentions to Adopt.) You will also recall that at the October 6 meeting, the Department provided the Commissioners with copies of its written responses to the oral and written recommendations received by the Commission at its August 25, 1995, meeting in Long Beach. The record contains the timetable. The record includes Pre-adoption Statements, Pre-publication of Notice Statements and Amended Pre-publication of Notice Statements received after October 6, 1995. Pre-publication of Notice Statements exhibited at the October 6 meeting will be available at the Commission meeting.

Environmental Documents

The Commission announced and properly noticed the fact that it would receive public comment concerning the draft environmental documents, including any cumulative adverse impacts. Those comments were to be received in the Commission office in writing no later than 5:00 p.m. on October 26, 1995. Your staff has provided you with a summary of those comments as well as the Department's draft environmental documents.

Action

Assistant Executive Director Pelzman introduced the item.

IFD Chief Farley outlined the Department's proposals and listed items which it recommended be carried over to the December meeting for further discussion. He reported that a written communication had been received from Jim Brown regarding black bass regulations in San Diego County.

Bob Rawstron opposed the proposed slot limit at Lake McClure and Millerton Reservoir. He recommended the removal of the 12-inch size limit on spotted bass, but to leave it on largemouth and smallmouth bass.

Mr. Pelzman noted that Richard Glenn had left the meeting, but supported Mr. Rawstron's recommendations.

Steve Netti supported Jim Brown's written proposal for the black bass regulations. He recommended a maximum size limit on sunfish rather than a numerical limit; maintaining numerical limits on crappie; special regulations for San Antonio Creek, San Bernardino County; and that Pauma Creek and the West Fork San Luis Rey River, San Diego County, be put under special regulations to protect the native fisheries. He also mentioned that San Onofre Creek, Camp Pendleton, was omitted from the list of special closures.

Mike Kennedy recommended catch-and-release regulations for Loveland and Sweetwater reservoirs, but allow people to keep the smaller bass for tournaments, weigh them in, and then release them at the end of the day.

Earl Brown supported the Department's recommendations for the Owens River and Crowley Lake.

Jim Edmondson opposed the Department's proposal for Crowley Lake because the comprehensive plan for management of the lake and its tributaries was incomplete. He recommended adoption of the California Trout proposal for San Antonio Creek. He objected to the Department's recommendation to keep the Middle Fork Eel River summer steelhead season closed until there were 1,600 summer adults. He stated there were never 1,600 summer steelhead adults.

Gretchen Yearous recommended catch-and-release fishing with artificial lures and single, barbless hooks in San Diego streams.

Nicholas DiCroce supported the Department's recommendation to continue the existing regulations for the Upper Sacramento River.

Jim Brown recommended a reduction of the daily bag limit for channel catfish from 10 to 5 (Section 5.15). On Section 5.3, he recommended a minimum size limit on crappie with a 10-inch size limit at El Capitan as an experiment. He agreed with the proposed opening of Upper Otay Reservoir. He complained about the inconsistency of regulations in different areas and different waters. He supported the zero bag limit, artificial fly, barbless hook fishing on the West Fork San Luis Rey River and Pauma Creek and recommended adding Boulder, Pine Valley, Kitchen, Noble, Santa Isabel, and Cottonwood Creeks.

Allen Greenwood agreed with Mr. Brown's recommendations regarding the creeks in San Diego County.

August Felando submitted a letter and stated that too many SCUBA divers were taking spiny lobster. He recommended a reduction in the sport take of spiny lobsters from seven to five for those divers operating from shore or from private boats (Section 29.90).

It was then:

MOVED BY MR. BOREN, SECONDED BY MR. MCGEOGHEGAN, THAT FRANK BOREN, PRESIDENT, ANNOUNCES THE FOLLOWING PROPOSALS OF THE CALIFORNIA FISH AND GAME COMMISSION WITH RESPECT TO RECOMMENDED CHANGES IN THE SPORT FISHING REGULATIONS FOR 1996-98. THESE PROPOSALS ARE TO BE CONSIDERED ON DECEMBER 8, 1995, IN SACRAMENTO IN ACCORDANCE WITH APPROPRIATE PROVISIONS WITHIN THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET, OR MAKE SPECIFIC SUCH SECTIONS OF SAID CODE, AND AFTER REVIEW AND CONSIDERATION BY THE FISH AND GAME COMMISSION OF ALL RECOMMENDATIONS SUBMITTED AT ITS AUGUST 25, 1995, MEETING AND A PUBLIC DISCUSSION THEREOF AT ITS OCTOBER 6, 1995, AND NOVEMBER 3, 1995, MEETINGS:

Regulation Section

Subject

2.08

Special Methods of Take

5.00

Black Bass

7.50(b) (63)

Van Duzen River

7.50(b) (91.1)

Klamath River

7.50(b) (98.6)

Lee Vining Creek

7.50(b) (107)

Mad River

7.50(b) (135.5)

Parker Creek

7.50(b) (150)

Redwood Creek

7.50(b)(153)	Rush Creek
7.50(b)(156)*	Upper Sacramento River
7.50(b)(204.5)	Walker Creek
29.15	Abalone
230	Issuance of Permits for Contests

PASSED UNANIMOUSLY.

*Testimony will also be received at the Commission's January 9, 1996, meeting.

CONSENT CALENDAR

Items 27-32 have been placed on the Commission's Consent Calendar. Your staff knows of no opposition to these proposals other than as specified in the analysis. The Department has provided a recommendation on each of these items which either calls for approval or modified approval by the Commission. Any item may be removed from the consent calendar by the Commission or upon request of the Department or someone in the audience who would like to speak to that item. Your staff has prepared a summary of consent calendar items which will be made available to the audience. One overall motion is appropriate for approval of these items.

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MR. BOREN, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES ITS
NOVEMBER 3, 1995, CONSENT CALENDAR, ITEMS 27 THROUGH 32.

PASSED UNANIMOUSLY.

27. AMENDMENT OF SECTION 630, TITLE 14, CCR, RE: TO ADD
CANEBRAKE AND LOKERN ECOLOGICAL RESERVES, KERN COUNTY, AND
STONE CORRAL ECOLOGICAL RESERVE, TULARE COUNTY.

Summary of Issue

The Commission, at its August 25, 1995, meeting in Long Beach, authorized its staff to publish notice of its intent to amend Section 630, Title 14, CCR, to add Canebrake and Lokern Ecological Reserves, Kern County, and Stone Corral Ecological Reserve, Tulare County, and to make some minor editorial corrections. That legal notice has been published. The record contains the Department's Pre-publication of Notice and Pre-adoption statements as well as the text of the regulations in strikeout/underline format. Those changes are summarized as follows:

"Section 630, Title 14, California Code of Regulations, (CCR), currently lists 97 habitat areas as state ecological reserves. This section also includes general rules and regulations for designated ecological reserves, as well as special area regulations which protect biological values while permitting compatible public use of the areas.

"The proposed regulatory amendment would change the designation for Salmon Falls Ecological Reserve to the Salmon Falls unit of the Pine Hill Ecological Reserve. Public access would remain unchanged. In addition, the designation for Estelle Mountain Ecological Reserve will be corrected to read Riverside County instead of Orange County.

"The proposed regulatory change would also designate three areas as State ecological reserves. They are: Canebrake, Kern County; Lokern, Kern County; and Stone Corral, Tulare County. At present these properties, owned by the State, are undesignated. The proposed amendment will provide authority to the Department to protect and manage wildlife habitat values including rare, threatened and endangered species, and special habitats thereon, and will regulate public use. In addition to the general regulations, public use will be accommodated or restricted as follows:

- "- Permit grazing under permit from the Department on the proposed Canebrake, Lokern, and Stone Corral ecological reserves. Grazing will be implemented to control exotic vegetation, and to manage and allow the recovery of native plant species.
- "- Permit hunting in accordance with general hunting regulations at specific times and locations designated by the Department on the proposed Lokern and Stone Corral ecological reserves.
- "- Provide access for hunting on adjacent public lands by allowing licensed hunters to carry firearms and archery equipment at designated times and locations on the proposed Canebrake Ecological Reserve. Hunters may be accompanied by their dogs on leash or in their vehicles.
- "- Permit fishing and equestrian use only at specific locations designated by the Department, allow biological or archaeological research under permit, and allow only those animals which assist visually impaired or disabled persons on the proposed Canebrake Ecological Reserve."

It was then:

MOVED BY MR. MCGEOGHEGAN, SECONDED BY MR. BOREN, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 1580, 1581, 1583 AND 1907 OF THE FISH AND GAME CODE, AND TO IMPLEMENT, INTERPRET AND MAKE SPECIFIC SECTIONS 1526, 1528, 1530, 1580-1584 AND 2000 OF SAID CODE, HEREBY AMENDS SECTION 630, TITLE 14, CCR, TO ADD CANEBRAKE AND LOKERN ECOLOGICAL RESERVES, KERN COUNTY, AND STONE CORRAL ECOLOGICAL RESERVE, TULARE COUNTY. (NOTE: THE REGULATORY LANGUAGE WILL BE INCLUDED AS AN APPENDIX IN THE COMMISSION OFFICE MASTER MINUTES.)

PASSED UNANIMOUSLY.

28. DEPARTMENT REQUEST FOR AUTHORIZATION TO ACCEPT CONSERVATION EASEMENTS OF: (1) 75± ACRES, ALAMEDA COUNTY, FROM EAST BAY REGIONAL PARK DISTRICT; (2) TALONE LAKE ENHANCEMENT AREA, 36± ACRES, SAN DIEGO COUNTY; AND (3) WILDLANDS MITIGATION BANK, 323± ACRES, PLACER COUNTY, FROM WILDLANDS.
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Summary of Issue

The Department requests authorization to accept conservation easements of (1) 75± acres, Alameda County, from East Bay Regional Park District; (2) Talone Lake Enhancement Area, 36± acres, San Diego County; and (3) Wildlands Mitigation Bank, 323± acres, Placer County, from Wildlands.

- A. 75± ACRES, ALAMEDA COUNTY, FROM EAST BAY REGIONAL PARK DISTRICT

In a memo dated September 26, 1995, the Department provides the following information:

"The Department and Shea Homes have entered into a Memorandum of Understanding (MOU) regarding the management of the State-listed threatened Alameda whipsnake in Castro Valley. As part of the agreed upon terms of the MOU, Shea Homes purchased a 75± acre parcel of land and deeded the property to the East Bay Regional Park District (EBRPD) to be managed as part of a larger area acquired for open space and recreational purposes. Upon transfer of the land, EMRPD is required to give the Department a conservation easement over the 75± acres on behalf of Shea Homes.

"The easement area is located west of Palomares Road in the hills east of Hayard in Alameda County. It is adjacent to a larger 100-acre conservation easement area recently acquired by the Department as mitigation for Intowne Homes' housing development project.

"Attached for your information is a map showing the conservation easement area.

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

B. TALONE LAKE ENHANCEMENT AREA, 36± ACRES, SAN DIEGO COUNTY

In a memo date October 3, 1995, the Department provides the following information:

"The Talone Lake Wetland Mitigation Plan has been prepared on behalf of The Fieldstone Company, Collins Capital Properties, and Rancho Del Oro Development. It provides for certain management activities which will mitigate the impacts of development of a commercial project commonly known as the Rancho Del Oro Town Center North, a residential project commonly known as Rancho Del Oro Village 7, and construction of Franzee Road between Mission Avenue and College Boulevard in the City of Oceanside, San Diego County. Certain permits and approvals have been issued to authorize development which include the following:

- (1) Verification by the U.S. Army Corps of Engineers dated October 19, 1992 that the proposed development complies with a nationwide permit under Section 404 of the Clean Water Act, subject to certain Special Conditions for #92-413-DZ set forth therein;
- (2) Two (2) California Endangered Species Act Memoranda of Understanding relating to Vireo Mitigation [Ref. No. 9238] and Coastal Sage Scrub Conservation [Ref. No. 9239] effective as of November 30, 1993, and providing for Management Authorizations pursuant to Section 2081 of the California Endangered Species Act;
- (3) An Agreement regarding Proposed Stream or Lake Alteration [Notification No. 5-173-93] effective December 1, 1993; and

- (4) Conditions of Approval for Rancho Del Oro Town Center North as set forth in City Council Resolution No R93-199 adopted December 1, 1993, issued by the City of Oceanside.

"The land compensation requirements of the above referenced permits and approvals will be accomplished under the subject conservation easement. The Talone Lake Enhancement Area will be preserved and protected in perpetuity using interest generated on a capital endowment provided to the Department by the developers.

"Attached for your information are maps delineating the easement area.

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

C. WILDLANDS MITIGATION BANK, 323± ACRES, PLACER COUNTY, FROM WILDLANDS

In a memo dated October 5, 1995, the Department provides the following information:

"The proposed Wildlands Mitigation Bank site is located one mile northwest of the town of Sheridan in western Placer County, approximately midway between Roseville and Marysville. The site encompasses approximately 323± acres and will be restored and enhanced over time pursuant to a Development Plan approved by the Department of Fish and Game (DFG). The bank site will provide compensatory mitigation opportunities of vernal pool, seasonal emergent marsh, perennial emergent marsh including open water areas, riparian scrub and woodlands, valley oak woodlands, and oak and elderberry savanna habitats. The native California habitats selected for restoration and creation will represent a very naturalistic balance of high quality wetland and upland habitats constructed in a manner that will insure long-term viability and sustainability, as well as provide in-kind mitigation.

"The mitigation bank will be developed in two or more phases. As each phase is developed, a conservation easement will be recorded to protect the property in perpetuity. Mitigation credits will be sold by the mitigation bank developer at a rate of two or three acres to one credit depending on habitat type. Upon obtainment of first and successive year's performance standards, the DFG will review

annual monitoring reports and evaluate the obtainment of performance standards and adjust the mitigation credit ratios accordingly.

"The DFG requests your authorization to accept the 76± acres Phase 1 conservation easement as well as authorize the DFG to accept future conservation easements as the mitigation bank is developed.

"Attached for your information are associated maps for the bank site and easement area.

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

29. DESIGNATION OF 2,009± ACRES OF DEPARTMENT LANDS AS THE PINE CREEK WILDLIFE AREA, MODOC COUNTY.

Summary of Issue

The Department requests designation of 2,009± acres of Department lands as the Pine Creek Wildlife Area, Modoc County. In a memo dated September 20, 1995, the Department provides the following information:

"The Department of Fish and Game has taken title to the following property which we request to have designated by the Commission as a wildlife area:

"-Pine Creek Wildlife Area, Modoc County, 2,009± acres.

"We are providing notice at this time pursuant to Commission policy enabling the Department to begin payment of in-lieu fees effective the date of the Commission meeting.

"Thank you for your consideration of this request."

30. DEPARTMENT REQUEST FOR AUTHORIZATION TO ACCEPT 40± ACRES WITHIN THE SALMON FALLS UNIT OF THE PINE HILL ECOLOGICAL RESERVE, EL DORADO COUNTY.

Summary of Issue

The Department requests authorization to accept 40± acres within the Salmon Falls Unit of the Pine Hill Ecological Reserve, El Dorado County. In a memo dated October 17, 1995, the Department provides the following information:

"The Department and the American River Conservancy (ARC) have been cooperating in the acquisition of lands within the Salmon Falls Unit of the Pine Hill Ecological Reserve in

western El Dorado County. The ARC has acquired and transferred to the Department nearly 100 acres of endangered plant habitat. Funding for the acquisitions has been provided by the California Department of Transportation's Environmental Enhancement Mitigation (EEM) Grant Program and the Department of Parks and Recreation's Habitat Conservation Program. Acquisition of the subject parcel will be accomplished using funds awarded through the Caltrans EEM grant program.

"The subject parcel, as well as the parcel's acquired to date, are all contiguous and identified as high priority in the Department's Pine Hill Conceptual Area Acquisition Plan prepared by Region 2.

"Attached for your information is a map showing the subject parcel as well as the parcels that have been acquired to date.

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

31. REQUEST OF STEVE STANSON, FT. BRAGG, TO DECLARE ABANDONED HIS LEASE FOR KELP BED NO. 208B, SAN LUIS OBISPO COUNTY.

Summary of Issue

Mr. Steve Stanson, Ft. Bragg, requests authorization to declare abandoned his lease for Kelp Bed No. 208B, San Luis Obispo County. In a letter dated October 4, 1995, Mr. Stanson provides the following information:

"Due to financial hardship and recent medical problems, I am forced to abandon kelp bed lease #208B. Please place this item on the November agenda for consideration."

Department Recommendation

"Kelp Bed 208B consists of that portion of Kelp Bed 208 lying inshore of the 6 fathom depth contour and amounting to 0.78 square miles in area. The lease on this bed was granted to Macrosystems at the August 5, 1993, Fish and Game Commission meeting in consideration of a kelp harvest royalty rate bid of \$2.53 per wet ton. Macrosystems has not reported harvesting any kelp from the bed since obtaining the lease. However, the nonrefundable advance deposit has been paid as required by Section 165.5, Title 14, CCR.

"Therefore, the Department recommends that subject request be granted, and that the Commission authorize the

publication of notice of its intent to advertise for bids on the lease of Kelp Bed No. 208B."

32. 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 September 23, 1995, Messrs. Guglielmo provide the following information:

"Last November 1994, my brother and I appeared before your Board whereby we were granted Experimental Permits Nos. 1831 and 1832 which allowed us permission to trap lobster and crab in the Port of Los Angeles' landfill project area under construction know as Pier 400. The permit was for two phases - two different areas.

"The first phase began in January 1995, and lasted only seventeen (17) days due to construction. In that short timeframe, we were able to save and relocate 641 juvenile lobster and sell 74 adult lobster. This was a great success due to the relatively few days we had to work.

"The second phase begins in October 1995 and ends November 15, 1995. In discussing our concerns with Mr. Dave Parker, Department of Fish and Game (310) 590-5129, he suggested that we request an extension should the need arise.

"We believe that for our operation to be even more successful, we need to fish the area until such time as the construction would prohibit us. The construction is scheduled to take place in December, however, due to a current strike, the construction could be delayed.

"For these reasons, we would appreciate your consideration to extend the current experimental gear permits for additional time.

"Again, thank you for giving us the opportunity. This project is a great benefit to both protecting our natural resources and helping our livelihoods. We appreciate your cooperation."

Department Recommendation

"The Department recommends renewal of subject permit, with the additional stipulation the permits expire upon the close of the 1995-96 commercial lobster season, March 20, 1996."

33. ANNOUNCEMENT OF FUTURE MEETINGS.

1995 COMMISSION MEETING

DECEMBER 7 (Thurs. 10:00 a.m.)	Resources Auditorium
8 (Fri. 8:30 a.m.)	1416 Ninth Street
	Sacramento

1996 DRAFT MEETING SCHEDULE

DATE	LOCATION
January 8-9 (Joint Meeting with Board of Forestry)	Sacramento
*February 1-2 Receipt of mammal hunting recommendations	Long Beach
*March 7-8 Discuss mammal hunting regulations	Redding
*April 4-5 Further discussion of mammal hunting regulations April 25 Adoption of mammal regulations	Sacramento Sacramento (Conference Call)
May (Joint Meeting with Board of Forestry)	Ontario
June 20-21 Receipt of resident & migratory bird recommendations	Bridgeport
August 1-2 Adopt resident & migratory upland game bird regulations	Santa Barbara
August 29-30 Adopt waterfowl regulations	South Lake Tahoe
October 3-4	San Diego
November 7-8	Yosemite
December 5-6	Eureka/Monterey

* Meeting location and/or date is set in Fish and Game Code.

It was then:

MOVED BY MS. PHARES, SECONDED BY MR. BOREN, THAT
THE MEETING BE ADJOURNED.

PASSED UNANIMOUSLY.

There being no further business, the Fish and Game
Commission meeting was adjourned at 3:00 p.m.

1. Subsection (b)(34) of Section 630, Title 14, California Code of Regulations, is amended to read:

(34) Pine Hill Ecological Reserve, El Dorado County including the Salmon Falls Unit.

(A) No person, except as provided in subsection (a)(10), shall enter this reserve ~~between sunset and sunrise.~~

(B) No horses are permitted within the boundaries of the reserve.

2. Subsections (b)(83) through (97) of Section 630, Title 14, California Code of Regulations, are amended to read:

~~(83) Salmon Falls Ecological Reserve, El Dorado County.~~

~~(A) No person, except as provided in subsection (a)(10), shall enter the reserve.~~

(8483) Calhoun Cut Ecological Reserve, Solano County.

(A) No person, except as provided below and in subsection (a)(10), shall enter this reserve.

(B) Hunting for waterfowl is allowed only from a boat on waters of the main channel of Calhoun Cut and its tributaries, accessible only from Lindsey Slough and subject to the general hunting regulations and the provisions of subsection 630(a)(10), Title 14, CCR, related to the protection of wildlife, aquatic life and habitat.

(C) Fishing is allowed only from a boat on waters of the main channel of Calhoun Cut and its tributaries, accessible only from Lindsey Slough and subject to the general sport fishing regulations and the provisions of subsection 630(a)(10), Title 14, CCR, related to the protection of wildlife, aquatic life and habitat.

(D) Grazing may be allowed under permit from the Department.

(8584) McGinty Mountain Ecological Reserve, San Diego County.

(8685) Oasis Springs Ecological Reserve, Riverside County.

(A) All fishing is prohibited.

(B) Hunting shall be permitted in accordance with general hunting regulations.

(8786) King Clone Ecological Reserve, San Bernardino County.

(8887) Dales Lake Ecological Reserve, Tehama County.

(A) Waterfowl hunting shall be permitted in accordance with the general waterfowl regulations per Section 502.

(8988) San Felipe Creek Ecological Reserve, Imperial County.

(A) Hunting shall be permitted in accordance with the general hunting regulations.

(9089) Indian Joe Springs Ecological Reserve, Inyo County.

(A) Upland game hunting shall be permitted in accordance with the general hunting regulations.

(9190) River Springs Lakes Ecological Reserve, Mono County.

(A) Hunting shall be permitted in accordance with the general hunting regulations.

(9291) Coal Canyon Ecological Reserve, Orange County.

(A) Hunting shall be permitted in accordance with the general hunting regulations, but only at such times and in specific areas as designated by the department.

(b) Method of take restrictions: Shotguns and archery equipment only.

(9392) Laguna Laurel Ecological Reserve, Orange County.

(9493) Estelle Mountain Ecological Reserve, ~~Orange~~Riverside County.

FINAL VERSION

(A) Upland game hunting shall be permitted in accordance with the general hunting regulations.

(9594) Santa Rosa Plateau Ecological Reserve, Riverside County.

(A) Notwithstanding the provisions of subsection (a)(18), only those animals assisting visually impaired or disabled persons are permitted.

(B) Notwithstanding the provisions of subsection (a)(7), equestrian use shall be limited to docent-led tours.

(9695) Sycamore Canyon Ecological Reserve, Riverside County.

(9796) Plaisted Creek Ecological Reserve, San Diego County.

3. Subsections (b)(98) through (100) are added to Section 630, Title 14, California Code of Regulations, to read:

(97) Stone Corral Ecological Reserve, Tulare County.

(A) Notwithstanding the provision of subsection (a)(15), grazing may be allowed under permit from the department.

(B) Hunting may be permitted in accordance with general hunting regulations only at such times and in specific areas as designated by the department.

(98) Lokern Ecological Reserve, Kern County.

(A) Notwithstanding the provision of subsection (a)(15), grazing may be allowed under permit from the department.

(B) Hunting may be permitted in accordance with general hunting regulations only at such times and in specific areas as designated by the department.

(99) Canebrake Ecological Reserve, Kern County.

(A) Notwithstanding the provision of subsection (a)(15), grazing may be allowed under permit from the department.

(B) Firearms, archery equipment, and hunting dogs, either on leash or in a vehicle, may be possessed only by licensed hunters only at such times and in specific areas as designated by the department.

(C) Fishing may be allowed only in those specific areas designated by the department.

(D) Notwithstanding the provisions of subsections (a)(1), (3), (5), (6), and (12), the department may issue permits to conduct biological or archaeological research. Such research shall be compatible with the primary purpose of the reserve.

(E) Notwithstanding the provisions of subsection (a)(18), only those animals assisting visually impaired or disabled persons are permitted.

(F) Notwithstanding the provisions of subsection (a)(7), equestrian use may be allowed, but only in specific areas designated by the department.

Authority cited: Sections 1580, 1581, 1583 and 1907, Fish and Game Code.

Reference: Sections 1526, 1528, 1530 and 1580-1584, Fish and Game Code.