

State of California
 FISH AND GAME COMMISSION
 Minutes, Meeting of November 9-10, 1988

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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 9, 1988

Pursuant to the authority of Government Code Section 11126(q), the Commission met in closed Executive Session at 1:00 p.m. The purpose of this Executive Session was to consider pending litigation regarding mountain lion and tule elk, and potential litigation regarding unauthorized county trapping ordinances.

Persons present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

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

ATTORNEY GENERAL'S OFFICE

Denis Smaage	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Robert Fletcher	Chief Deputy Director
Eldridge Hunt	Chief, Wildlife Management Division

The Executive Session was adjourned at 2:25 p.m.

State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 9, 1988

Pursuant to the call of the President, the Commission met in the Mountain Broiler Room, Yosemite Lodge, Yosemite National Park, California, on November 9, 1988. The meeting was called to order at 2:30 p.m. by President Taucher.

Persons present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

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

ATTORNEY GENERAL'S OFFICE

Denis Smaage	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Robert Fletcher	Chief Deputy Director
Eldridge Hunt	Chief, Wildlife Management Division
DeWayne Johnston	Chief, Wildlife Protection Division
Robert Rawstron	Chief, Inland Fisheries Division

The following persons were also present and heard:

Gary Edwards	Acting Regional Director, USFWS
Jerry Grover	USFWS
Bill Shake	USFWS
Martine Colette	Wildlife Waystation
Lew Davis	Staff Biologist, Dept. Food and Agriculture
Dick Riegelhuth	Staff Biologist, Yosemite N.P.
Jeff Keay	Wildlife Biologist, Yosemite N.P.

President Taucher introduced members of the Commission, its staff, Chief Deputy Director Fletcher and Denis Smaage of the Attorney General's office.

1. READING AND APPROVAL OF MINUTES OF JULY 5, 1988 AND AUGUST 4-5, 1988 MEETINGS.

The Executive Secretary stated that the minutes of July 5, 1988 and August 4-5, 1988 meetings had been distributed to the members of the Commission. He pointed out that Commission staff knew of no errors or omissions therein and suggested that the minutes be approved as distributed.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. MURDY, THAT INASMUCH AS THE MINUTES OF THE JULY 5, AND AUGUST 4-5, 1988 MEETINGS HAVE BEEN DISTRIBUTED TO MEMBERS OF THE COMMISSION AND THERE ARE NO KNOWN ERRORS OR OMISSIONS THEREIN, READING BE DISPENSED WITH AND THEY BE APPROVED AS DISTRIBUTED.

PASSED UNANIMOUSLY.

2. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.

The Executive Secretary stated that this item had been scheduled to afford the Department an opportunity to present the Commission with informational items which may be of interest to it. Mr. Cribbs indicated that in order to save time, the Department had prepared a report on informational items it felt would be of interest to the Commission including the Department's preliminary proposed 1989 legislative package, Ash Creek Wildlife Area, entanglement of a California gray whale, and a license update status report from the License and Revenue Branch.

President Taucher suggested that discussion of items 2 and 3 be carried over until November 10, 1988 to allow the Commission an opportunity to review the Department's informational items.

Note: This item was discussed at the Commission's November 10, 1988 meeting but is placed here for continuity of agenda items.

President Taucher had indicated that he had read a newspaper article concerning the entanglement of a California gray whale in a gill net. Chief Deputy Director Fletcher indicated that this incident was reported the weekend of October 22-23, 1988. He explained that the whale was observed three miles off Long Beach and that lifeguards from Long Beach responded and found that a gill net was attached at the whale's mouth and trailed over the length of its body. He noted that the lifeguards were successful in cutting free all but a five to six foot section of the net which remained attached to the fluke. He explained that the net was an 8 to 8-1/2 inch mesh, monofilament halibut net and that the commercial fishing vessel identification number was obtained from the net and a federal enforcement investigation of the incident was in progress. Mr. Fletcher also indicated that Congress had recently amended the Marine Mammal Act and there was some major changes on how different fisheries would be handled in the future. He indicated that the Department would provide an update on this matter at the next Commission meeting.

3. RECEIPT OF COMMISSION INFORMATIONAL ITEMS.

The Executive Secretary explained that this item had been scheduled for the Commission to receive informational items from its staff and to afford the Commission the opportunity to discuss items with the Department. He noted that because of time constraints, this item would be carried over until November 10, 1988.

Note: Discussion on this item took place on November 10, 1988; however, to maintain continuity of the minutes, the item is left in numerical order.

President Taucher updated the Commission on the Western meeting to be held in Monterey on January 4-6, 1989. He indicated that the key issues for discussion at that meeting involved public access, federal intervention in California, paying for depredation cost to landowners and the mountain lion issue. Mr. Taucher indicated that he had also received a letter from Linda McCloud-Evans, Executive Director, Pacific Wildlife Project, concerning information on the National Wildlife Rehabilitators Association. He gave the letter to the Executive Secretary for response. He also provided Commission staff with a copy of notice to bidders, and an invitation to bid from the Department of Parks and Recreation, which he believed the Department could use as a guide when notices went out to prospective bidders for concessionaires to operate an upland game program on Department-owned property; that is, if the Commission and Department ever got to that point in time.

President Taucher stated that he recently read a report from the Department concerning the non-consumptive user fee and that the program was not a success. Eldridge Hunt indicated that the initial program was not a money maker. He pointed out that Assemblyman Costa had carried legislation this past year to increase the fees and expand the program to nine state wildlife areas. Commissioner Bryant asked if Department personnel had increased their checking of individuals using the wildlife areas to determine if they had a permit and if the "stuffing of the iron ranger" was still occurring. Mr. Hunt stated that the Department had improved its enforcement of this program recently and that better compliance had resulted.

President Taucher asked if a subcommittee meeting had been set up to discuss the leasing of aquaculture sites. Mr. Cribbs indicated that he had been working with Al Petrovich of the Department's Marine Resources Division to arrange that meeting which would occur within the first ten days of December. He indicated that he would keep Mr. Taucher apprised of the scheduling of this matter.

President Taucher asked Commissioner McCracken if he had had an opportunity to review the Department's proposed legislation for 1989. Mr. McCracken stated that he had just received a copy of the Department's proposal yesterday and had not had an opportunity to peruse it. President Taucher asked Mr. McCracken to keep the Commission apprised of any concerns that he may have. The Executive Secretary indicated that a memo had been

sent to the Department to incorporate in its legislative package, legislation to extend the general regulatory powers of the Commission. He noted that those statutes sunsetted January 1, 1990.

President Taucher stated that he had met with Eldridge Hunt to discuss the pipeline at San Jacinto Wildlife Area as the Department would be receiving money for this program from Wildlife Conservation Board.

Commissioner Bryant stated that special junior pheasant hunts would occur in Regions 1 through 4. He noted that he was concerned that with such a large population in southern California there were no hunts proposed in Region 5. He suggested that the Department review this situation and possibly propose some hunts in Region 5 for next year.

Red Hunt indicated that there was one hunt in southern California this year and that five were proposed for next year to be operated by the hunter safety program. President Taucher asked Mr. Hunt if the Department could utilize San Jacinto for a special hunt this year. Mr. Hunt stated that the Department would explore that alternative. President Taucher asked Denis Smaage if the hunt occurred after the season, would the Commission have to take some sort of action to allow the use after the season. Denis Smaage stated yes and that this item would normally be discussed during the Commission's meetings to discuss upland game regulations, but that the Commission would have to take action to open the area for the special junior hunt. The Executive Secretary stated that there were regulations concerning the dog field trials and he believed that if the birds were planted and not native the Regional Manager could issue a permit with terms and conditions that would allow just juniors to participate in the dog field trials.

The Executive Secretary indicated that the Commission wished to make it known to the Department and the public concerning the low flow regulations for the north coast streams that it was the Commission's intent when those regulations were adopted to allow for maximum angler use without adversely impacting the salmon and steelhead resources. He noted that an item would be on the Commission's December 1 agenda to discuss this matter and to receive a report from the Department concerning implementation of these regulations this past year.

4. RESPONSIBILITY OF THE U.S. FISH AND WILDLIFE SERVICE RE: SALMONID RESOURCES IN CALIFORNIA.

The Executive Secretary stated this item had been scheduled to discuss the issue of the responsibility of the U.S. Fish and Wildlife Service (USFWS) in the area of salmonid (salmon and steelhead) resources in California. He reminded the Commission of the recent interest in the operation of the Coleman Hatchery with respect to the handling of salmon. He indicated that this item had been scheduled to afford the Commission an opportunity to discuss the statutory roles of the USFWS, Department and Commission in salmon and steelhead management within California. He pointed out that Mr. Smaage of the Attorney General's office was prepared to address the issues of: (1) whether or not there was a memorandum of understanding with the USFWS regarding salmonid resource management within the state; (2) the authority under which the

USFWS operates the Coleman facility; and (3) the state's authority for the management of salmonids. He noted that the Department and Gary Edwards, Acting Regional Director, USFWS, were prepared to respond to any questions the Commission may have on this matter.

Gary Edwards, Acting Regional Director, USFWS, Portland, Oregon, introduced Bill Shaker, Assistant Director of Fisheries, and Jerry Grover, Fisheries Supervisor for California. He indicated that USFWS had been involved in the state for 115 years. He noted that it had started with the McCloud Fish Hatchery and that USFWS had four responsibilities concerning salmonid management in California which were as follows: (1) restore depleted federal significant species; (2) seek mitigation for federal projects; (3) assist in management on federal lands and tribal lands; and (4) federal leadership role in scientific research. He explained that the partnership with California and USFWS had been good with its involvement with Coleman Fish Hatchery, Klamath River and Russian River restoration projects. He noted that over \$10,000,000 in federal money was spent annually in California.

Commissioner Bryant asked if there were plans to enlarge Coleman Fish Hatchery and for the amount of money appropriated for Coleman Hatchery. Mr. Edwards indicated there was \$1,000,000 appropriated for hatchery maintenance and, in addition, Congress had appropriated an additional \$1.2 million. Jerry Grover stated that there was \$100,000 budgeted annually for cyclic maintenance. He pointed out that in 1988 Congress appropriated an additional \$2.5 million for construction of ponds and hatchery remodeling for the winter-run salmon. Gary Edwards stated that there was an additional \$9 million to be appropriated for remodeling of the Coleman Fish Hatchery. Commissioner Bryant asked Mr. Edwards if it didn't bother the USFWS to destroy the salmon at Coleman Fish Hatchery this year. Jerry Grover stated that the salmon run this past year was very strong. He pointed out that they had spawned 12,800 fish. He noted that normally the early part of the run consisted of young males which the hatcheries did not utilize. He noted that as of November 1, 1988, approximately 2,000 fish had been released above the diversion dam. He indicated that there was no biological problem with the hatchery operation this year. He noted that the practice was typical of all salmon hatcheries throughout the country. Commissioner Bryant stated that it was his feeling that the sportsman should be given the opportunity to utilize those fish rather than have them destroyed. Mr. Grover indicated that approximately 30,000 fish made it to Battle Creek this year with 95,000 in Sacramento River.

Chief Deputy Director Fletcher stated that Zeke Grader had printed a retraction in PCFFA's newsletter, "Friday". He noted that was the first time that he knew of Mr. Grader printing a retraction when he had made a mistake in reporting on an issue. He noted that the Department and the USFWS could have done a better public relations job this year.

President Taucher stated that in Mr. Smaage's memo to the Commission he indicated that there was no MOU on salmon management in the state between the Department and the USFWS. He asked why an MOU could not be written since the state and federal government had MOU's on the condor and sea otters. Chief Deputy Director Fletcher indicated that the Department was in constant communication with USFWS and it was difficult to outline what one agency would do and another would not. He explained that they

have had a very good working relationship in recent years. He noted that there was a conflict with worling disease two years ago but, since then, the USFWS had changed its policy and was no longer in conflict with the state.

The Executive Secretary suggested that it might be appropriate to have the Commission's Fresh Water Subcommittee meet with the Department, USFWS and the Attorney General's office to outline each agency's statutory responsibilities and write an MOU. Chief Deputy Director Fletcher stated that he did not have a problem with that suggestion. Gary Edwards stated that the USFWS had an existing MOU which stated that it had no management responsibilities in the state. He indicated that if the state wished to define each agency's role, he was not opposed to that effort. He also agreed with Mr. Fletcher's statement that the Department and USFWS have had a good relationship over the years in fisheries management issues.

The Executive Secretary stated that Dan River management of salmon stocks in California, the Department and Commission should look at modifying or eliminating certain closures and bag limits to provide opportunity for sportsmen to utilize excess fish above the numbers necessary for hatchery production and natural stream production. Robert Rawstron stated that the Department would study that suggestion.

5. REQUEST OF MARTINE COLETTE, SAN FERNANDO VALLEY, FOR AUTHORIZATION TO IMPORT AND POSSESS PROHIBITED SPECIES AT HER SHELTER.

The Executive Secretary stated that Ms. Martine Colette, San Fernando Valley, had requested authorization to import and possess prohibited species at her facility. He reminded the Commission that it had recently dealt with a similar request from Ms. Pat Derby of P.A.W.S. The Commission had approved her request to import prohibited species to her shelter under the following terms and conditions:

- (1) That the applicant provide the Department's Wildlife Protection Division with written verification that a "good faith effort" was made to place the animals outside of California, and that these specific animals will be euthanized if they cannot be placed in California;
- (2) That appropriate caging, which meets the new proposed minimum requirements, be provided at applicant's shelter and that it be inspected and approved by the Department prior to importing the animals;
- (3) That there be no Department of Fish and Game funds or expenditures involved in the importation or care and keeping of these specific animals;
- (4) That the animals be neutered;
- (5) That a "good faith effort" be made by the applicant to place these animals with an authorized animal welfare permittee;

- (6) That the applicant comply with any additional terms and conditions which the Department deems necessary to protect the animals, to provide for adherence to enforcement requirements and to ensure public safety.

Mr. Cribbs stated that Ms. Colette had not requested authorization to import specific animals, but wanted her facility exempt from Commission regulations.

Martine Colette stated that her facility was started in 1965. She indicated that beginning in 1966 she received animals which individuals did not want or were to be shipped out of the state. She explained that by 1969 she had received a large volume of discarded animals and in 1976 purchased property in the San Fernando Valley to set up the Wildlife Waystation. She pointed out that in 1981 the Commission first adopted its cage and requirements and shortly thereafter the Waystation was given an exemption from the Department because it did not fit any of the criteria listed in the regulations. Ms. Colette stated that she had 600 to 1,000 animals at her facility now. She also indicated that her educational program extended from 460 to 480 schools per year. She pointed out that senior citizens and civic clubs also visited her facilities for educational purposes. She stated that she had 25 to 30 paid staff members with an additional 50 to 100 volunteers. She explained that her facility had been utilized by the Department for the last 10 years as a depository for confiscated animals. She stated that in 1988 the Department would not issue a permit for her facility and stated that since the caging regulations were changing they would wait to inspect her facilities when the new regulations were adopted. She indicated that she had been prohibited for the last eight months from importing animals which needed a home and stated that some of the animals had been put to sleep because she was not able to house the animals. She explained that her facility had always been a national rehabilitation Waystation and requested Commission approval to import, transport and export animals when needed. She also requested the ability to provide telephonic requests to the Department and that the Department be able to grant authority over the telephone and not wait for a written request.

Commissioner Bryant requested information on the disposition of the animals when they left Ms. Colette's facility. Martine Colette stated that she transported the animals to licensed operations such as zoos, wild animal parks and exhibitors. Commissioner Bryant indicated that the Commission had developed a set of terms and conditions which shelters could follow and asked Ms. Colette why she felt she could not live with those conditions. Ms. Colette stated that she had two reasons for not accepting the terms and conditions. She indicated that the first reason was that zoos would not put in writing that they would euthanize an animal if they could not find a home for one of their animals. The second reason was that the animals had to be neutered. She indicated that some of these animals were on the endangered or threatened list; and therefore, the requirement prohibited the breeding of these animals. She also indicated that neutering could change the psychology of an animal.

DeWayne Johnston stated that the Department would not accept a verbal exemption, but could handle this matter on a case-by-case basis. He stated that the Department did not understand why an animal could not be placed in

another state without coming into California. He indicated that there was a variety of enforcement agencies which were involved, such as U.S. Fish and Wildlife Service and the Department of Food and Agriculture; and therefore, written documentation of the transportation of these animals was necessary.

President Taucher asked what would happen if someone brought a ferret to Martine Colette's facility in the middle of the night. De Wayne Johnston stated that was a different issue and the Department could work out a solution for that problem. He indicated what Martine Colette was requesting was to bring unwanted animals into the state. Commissioner Bryant stated that if Martine Colette's facility was funded nationally, wasn't there another place where the animals could be placed out of state? DeWayne Johnston stated that he did not know, but that the Department was working with different states to place confiscated animals.

The Executive Secretary pointed out that Martine Colette operated as a waystation to rehabilitate sick and injured animals for release into the wild and also to operate as a shelter for unwanted and/or confiscated animals. He noted that the new regulations for caging and humane care of wild animals would address the shelter issue and provide consistent enforcement statewide. He noted that the bottom line of Ms. Colette's request was to import prohibited species from out-of-state to maintain and/or expand her funding base. DeWayne Johnston stated that the Commission had made it clear that they did not want California to be a dumping ground for other states' unwanted animals.

Lew Davis, Department of Food and Agriculture, stated that importation of prohibited species caused his department many problems, as many of these animals adversely impacted the state's agricultural community. He pointed out that the Department of Fish and Game and his department had been working cooperatively for years to keep these animals out of the state. He noted that the agricultural check stations confiscated many animals as they were being imported illegally into California. He noted that it was his belief that Martine Colette could continue to operate under the existing guidelines. He noted that ferrets were a prohibited species and his department did not want them in the state. He stated that the Department of Food and Agriculture recommended denial of Ms. Colette's request.

Martine Colette stated that she was happy to ask for permits but wanted a permit issued for all animals and operations of her facility. She thought it was a great inconvenience to ask for a permit for every type of operation for her facility. She stated that all she was asking for was to be able to function as she had in the past. DeWayne Johnston indicated that the importation of prohibited species was the issue and felt that the Department could work out a solution to the neutering requirements.

Commissioner Murdy asked what percent of animals at Martine Colette's facility were imported from out-of-state. Ms. Colette indicated that approximately 10 to 15 percent of her animals came from out-of-state. Commissioner Murdy stated that in light of that, he agreed with the Department's recommendation and felt that the Department could work out the neutering question. Commissioner Biaggini stated that Ms. Colette should also keep in mind that Commission policy was to prevent these animals from

being imported into the state because California should not be a dumping ground for other states' unwanted animals. He agreed that Ms. Colette should work out her situation with the Department.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF MARTINE COLETTE, SAN FERNANDO VALLEY, FOR BLANKET AUTHORIZATION TO IMPORT AND POSSESS PROHIBITED SPECIES AT HER SHELTER, BUT ON A CASE-BY-CASE BASIS TO WORK WITHIN THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION WHICH ARE AS FOLLOWS:

PASSED UNANIMOUSLY.

6. COMMISSION WORKSHOP: (1) NATIONAL PARK SERVICE RESPONSIBILITIES REGARDING FISH AND WILDLIFE MANAGEMENT WITHIN CALIFORNIA; (2) PROPOSAL TO EXPAND YOSEMITE NATIONAL PARK; (3) NATIONAL PARK SERVICE PROPOSAL FOR SPORT HUNTING BUFFER AREAS SURROUNDING NATIONAL PARKS; (4) TROUT STOCKING IN NATIONAL PARKS; AND (5) OTHER TOPICS OF MUTUAL CONCERN. (TESTIMONY BY INVITATION ONLY.)
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The Executive Secretary indicated that this item had been scheduled to allow the National Park Service to make a presentation to the Commission in a workshop setting regarding its responsibilities within California with respect to fish and wildlife management. He explained that the issues to be discussed regarded the proposal to expand Yosemite National Park, National Park Service's proposal for sport hunting buffer areas surrounding national parks, trout stocking in national parks and other topics of mutual concern. He also indicated that Mr. Jeff Keay, Wildlife Biologist at Yosemite National Park, would make a brief slide presentation to the Commission.

Dick Riegelhuth, Staff Biologist, briefly outlined the history of Yosemite National Park. He noted that the National Park Service had exclusive jurisdiction within the Park's boundaries to tax and serve civil papers. He also pointed out that they mandated a state fishing license. He explained that under the National Park Service's policy hunting and trapping were prohibited unless specifically authorized by Congress. He noted that fish stocking was allowed to reestablish native species which were maintained as recreational fisheries. He noted that fishing was allowed under the National Park Service's policy.

Dick Riegelhuth briefly discussed the other issues outlined by the Executive Secretary. He stated that he was happy to report that there was no National Park Service proposal to expand Yosemite Park. He indicated that the National Park Service had not endorsed nor approved any proposals which had been made. He briefly explained that he knew of Congressman Richard Lehman's proposed expansion which would include Red's Meadow, the Minarets and the Banner area. He stated that it is his understanding that

this proposal was under study at this time. Mr. Riegelhuth also explained that Yosemite National Park was not proposing sport hunting buffer areas around Yosemite National Park, but that the National Park Service requested it be allowed at the discussion table when the hunting regulations were being proposed. He noted this would allow for the Park Services input regarding animals that migrate in and out of the park and how best to manage those animals.

Dick Riegelhuth stated that the National Park Service had been working closely with the Department and recently, especially on the east side, to re-introduce extinct species such as the bighorn sheep which had been relocated to the Leevining area. He noted that, however, the National Park Service was very concerned with exotics coming into the Park from areas where they have been introduced by the Department. He indicated that he was referring to wild turkeys, wild pigs and the ptarmigan. Eldridge Hunt asked if the National Park Service had any ideas on how to control the pigs and turkeys coming into the Park. Mr. Riegelhuth stated that they did not have any answers at this time but one possibility was to ask the Commission for special hunts in areas outside of the Park to slow down the movement of those animals into Yosemite National Park.

Chief Deputy Director Fletcher asked Mr. Riegelhuth if the National Parks Service felt that there would be a negative public backlash if they changed the stocking program in the national parks. Mr. Riegelhuth stated that he did not believe that was an insurmountable problem in Yosemite because a lot of the people visiting the Park were there for the aesthetics and not so much for fishing.

Jeff Key then presented a slide show to the Commission entitled, "Wildlife Management in National Parks - Or, Mission Impossible". The slide show outlined the National Park Service's mandates for wildlife management in national parks and also briefly outlined the work being done at Yosemite National Park.

At the conclusion of Mr. Key's presentation, the Commission thanked the Park Service for providing this valuable information, and hoped that the recent cooperation between the National Park Service and the Department continued. Mr. Riegelhuth stated that the Park Service applauded this recent cooperation and stated that they would make every effort to see that it continued, especially at Yosemite National Park.

There being no additional items before the Commission, the meeting was recessed at 5:00 p.m. to be reconvened at 8:30 a.m. on November 10, 1988 in the Mountain Broiler Room, Yosemite Lodge, Yosemite National Park.

State of California
FISH AND GAME COMMISSION

Minutes, Meeting of November 10, 1988

Pursuant to the call of the President, the Commission met in the Mountain Broiler Room, Yosemite Lodge, Yosemite National Park, California, on November 10, 1988. The meeting was called to order at 8:40 a.m. by President Taucher.

Persons present:

FISH AND GAME COMMISSION

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

COMMISSION STAFF

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

ATTORNEY GENERAL'S OFFICE

Denis Smaage	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Robert Fletcher	Chief Deputy Director
Eldridge Hunt	Chief, Wildlife Management Division
DeWayne Johnston	Chief, Wildlife Protection Division
Robert Rawstron	Chief, Inland Fisheries Division
Al Petrovich	Chief, Marine Resources Division
Gene Toffoli	Legal Advisor
Greg Laret	Deputy Chief, Wildlife Protection Division
Hal Thomas	Assistant Legal Advisor
Steve Nicola	Acting Program Manager, Nongame Heritage Program
Glenn Delisle	Fisheries Management Supervisor
Joe Knarr	Warden
Kris Cory	Warden

The following persons were also present and heard:

Ken Berg	CA. Native Plant Society
Domenico Grillo	Commercial Fisherman
Paul Cross	Aquaculturist
Cliff Cooney	Malacologist
Dr. Clark	Malacologist
Paul Weakland	Commercial Abalone Diver
Ilson New	Attorney
Douglas M. Roth	Sportsman
Bruce Dennis	Commercial Fisherman
Paul H. Dobson	Attorney
James Gross	Attorney
Jane Runquist	CA. Sunshine Fisheries
Lennert Thornrose	CA. Sunshine Fisheries
Lew Davis	Staff Biologist, Department of Food and Agriculture
Jay Freeman	Attorney
Ken Beer	The Fishery

President Taucher introduced members of the Commission, its staff, Chief Deputy Director Fletcher and Denis Smaage of the Attorney General's office.

7. RECEIPT OF BIDS AND CONSIDERATION OF LEASING PREVIOUSLY ABANDONED AQUACULTURE ALLOTMENTS LOCATED IN TOMALES BAY, MARIN COUNTY.

The Executive Secretary reminded the Commission that at its August 26, 1988 meeting in Newport Beach, it approved the Department's proposed bid prospectus for submission of bids for the leasing of previous abandoned aquaculture allotments located in Tomales Bay, Marin County. He explained that there were some concerns raised by environmentalists regarding the releasing of these abandoned allotments and that the Commission office had received a letter from Robert Studdert, attorney for the aquaculturists requesting that this item be postponed until the Commission's December meeting to allow the aquaculturists to meet with the environmentalists to discuss their concerns.

Commissioner Murdy stated that in reviewing the bid prospectus, he did not see anything concerning bonding to require the aquaculturists to put in trust the first and last month's lease payment, plus the cost for removing any structures left abandoned on the lease. The Executive Secretary stated that there was some question regarding whether or not the statutes allowed for the collection of a first and last month lease payment. He stated that the Attorney General's office was reviewing this question and would clarify it prior to any releasing of these aquaculture sites.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY POSTPONES ACTION ON CONSIDERATION OF LEASING OF PREVIOUSLY ABANDONED AQUACULTURE ALLOTMENTS LOCATED IN TOMALES BAY, MARIN COUNTY UNTIL ITS DECEMBER 1-2, 1988 MEETING IN EUREKA.

8. DEPARTMENT REQUEST TO DECLARE ABANDONED THE FOLLOWING AQUACULTURE LEASES: (A) LEASE NO. M-653-03, IN THE NAME OF JUSTIN MEZEY, SEA VENTURES ENTERPRISES, INC.; (B) LEASE NO. M-489-01, IN THE NAME OF DR. A. MORGAN WEAVER, MORGAN OYSTER COMPANY AND (C) LEASE NO. M-711-01, IN THE NAME OF MARK BECKER, CALIFORNIA ABALONE ASSOCIATION.
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The Executive Secretary stated that the Department had requested that the Commission declare abandoned aquacultural lease numbers M-643-03 in the name of Justin Mezey, Sea Ventures Enterprises, Inc., (5 acres) located offshore of Santa Barbara, Santa Barbara County; M-489-01 in the name of Dr. A. Morgan Weaver, Morgan Oyster Company, (5 acres) located in San Francisco Bay, San Mateo County; and M-711-01, in the name of Mark Becker, California Abalone Association, (1 acre) located offshore of Santa Rosa Island, Santa Barbara County. He noted that certified letters had been sent to each of these individuals notifying them of possible action being taken by the Commission at this hearing. He explained that the Department made this request based upon the fact that the entities involved had failed to comply with the terms and conditions of their leases. He pointed out that the Commissioners had been provided with a copy of the Department's comments and recommendation as well as a letter from Justin Mezey's attorney explaining the reasons why he failed to submit his annual proof-of-use statement.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY DECLARES ABANDONED AQUACULTURE LEASE NO. M-653-03 (FIVE ACRES) LOCATED OFFSHORE OF SANTA BARTBARA, SANTA BARBARA COUNTY, IN THE NAME OF JUSTIN MEZEY, SEA VENTURES ENTERPRISES, INC., SANTA BARBARA.

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY DECLARES ABANDONED AQUACULTURE LEASE NO. M-48901 (FIVE ACRES) LOCATED IN SAN FRANCISCO BAY, SAN MATEO COUNTY, IN THE NAME OF DR. A. MORGAN WEAVER, MORGAN OYSTER COMPANY, BURLINGAME.

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY DECLARES ABANDONED AQUACULTURE LEASE NO. M-711-01 (ONE ACRE) LOCATED OFFSHORE OF SANTA ROSA ISLAND, SANTA BARBARA COUNTY, IN THE NAME OF MARK BECKER, CALIFORNIA ABALONE ASSOCIATION, SANTA BARBARA.

PASSED UNANIMOUSLY.

9. RECEIPT OF DEPARTMENT STATUS REPORT AND SUBCOMMITTEE REVIEW OF
PROGRESS RE: FISH PASSAGE AT HEALDSBURG DAM, SONOMA COUNTY,
EVIDENTIARY HEARING.

Mr. Cribbs stated that this item had been scheduled to receive a Department status report regarding the issue of fish passage at Healdsburg Dam, Sonoma County. He explained that an engineering consultant on this project had been preparing design drawings for the fish ladder and those drawings would be completed and presented to the County by November 11, 1988. He indicated that during the week of November 14 representatives from the Sonoma County Board of Supervisors, United Anglers and the Department would meet and review those drawings and the costs of implementing those alternatives to determine if the consultant had provided the information that was required in his contract. Mr. Cribbs noted that if the plans were consistent with the requirements of the contract they would then be presented to the Department and the County Board of Supervisors for approval. He noted that the Department and the Commission Subcommittee of Commissioners Bryant and McCracken had reviewed the progress of this matter and were satisfied that the matter was being appropriately pursued and recommended that the evidentiary hearing regarding fish passage at Healdsburg Dam, Sonoma County be continued until the Commission's December 1-2, 1988 meeting in Eureka. He noted that, at this time, United Anglers also agreed that this matter should be continued until the Commission's December 1-2 meeting.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MCCRACKEN, THAT
THE FISH AND GAME COMMISSION CONCURS IN THE
RECOMMENDATION OF THE SUBCOMMITTEE THAT THE EVIDENTIARY
HEARING ON FISH PASSAGE AT HEALDSBURG DAM, SONOMA
COUNTY, BE CONTINUED UNTIL THE COMMISSION'S
DECEMBER 1-2, 1988 MEETING IN EUREKA.

PASSED UNANIMOUSLY.

10. REVIEW OF STRIPED BASS BROODSTOCK COLLECTION PROGRAM.

The Executive Secretary stated that this item had been scheduled to receive the Department's report regarding a review of the Striped Bass Broodstock Collection Program for the period 1987-1988. He pointed out that Commissioners had been provided with a copy of the Department's report as well as a copy of the new permit terms and conditions proposed by the Department. He stated that based on advice from the Department's legal advisor this item would be discussed after the Commission considered Item 34.

Note: Even though this item was discussed out of order, the discussion is reported in numerical order to provide continuity of the minutes.

Glenn Delisle, Fisheries Management Supervisor, Inland Fisheries Division, briefly summarized the Department's report concerning the Striped Bass Broodstock Collection Program for 1987-88. He noted that the

Department recommended Commission approval for the issuance of up to ten permits for this program. He reported that the Department recommended approval of the previous year's permittees as well as requests from Crows Landing Fisheries and Tony Vaught, Professional Aquaculture Services.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE RENEWAL OF THE STRIPED BASS BROODSTOCK COLLECTION AND BREEDING PERMIT ISSUED TO AQUATIC SYSTEMS, SAN DIEGO; ARROWHEAD FISHERIES, RED BLUFF; THE FISHERIES, GALT; GOURMET FISHERIES, INC., SACRAMENTO; CALAVERAS TROUT FARM, SNELLING; NAMAKAN WEST FISHERIES, LOS BANOS; RI-DI FISHERIES, SNELLING; CROWS LANDING FISHERY, CROWS LANDING, AND AUTHORIZES THE DEPARTMENT TO ALSO ISSUE A SIMILAR PERMIT TO TONY VAUGHT, PROFESSIONAL AQUACULTURE SERVICES, CHICO, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

11. REVIEW OF WHITE STURGEON BROODSTOCK COLLECTION PROGRAM.

The Executive Secretary stated that this item had been scheduled to receive the Department's report regarding a review of the White Sturgeon Broodstock Collection Program for the period 1987-88. He pointed out that the Commissioners had been provided with a copy of the Department's report as well as a copy of the new permit terms and conditions proposed by the Department. He explained that based on the advice from the Department's legal advisor, discussion of this item would be heard after the Commission heard Item 34.

Note: Even though this item was discussed after the Commission heard Item 34, it is reported here to maintain continuity of the minutes.

Robert Rawstron briefly summarized the Department's report of the 1988 White Sturgeon Broodstock Collection Program. He stated that the objectives of the program were being met and that the Department recommended renewal of the program. He stated that the Department would be working with each facility to develop an individual plan for that facility. He explained that additional changes in the program would require anglers obtaining broodstock fish from the wild for aquaculture to possess a valid scientific collecting permit in combination with a commercial fishing license so that anglers may be legally paid for their fish. He explained that the Department would be developing new standards for mitigation and would be working with the industry to finalize those standards. He noted that the Department recommended that Reef Falls, Macon Springs Fish Hatchery and American Trout and Salmon Company be deleted from this program as they have not participated in this program in recent years. He indicated that the Department recommended that Crows Landing Fisheries be approved, as well as Tony Vaught, who requested to enter into this program.

He stated that the Department recommended that the Commission authorize the issuance of a permit in the name of California Gourmet Fisheries, as the Department did not have a problem with that facility.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. MCCRACKEN, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE RENEWAL OF THE WHITE STURGEON BROODSTOCK COLLECTION AND BREEDING PERMITS ISSUED TO CALAVERAS TROUT FARM, SNELLING; CALIFORNIA GOURMET FISHERIES, SACRAMENTO; CROWS LANDING FISHERY, CROWS LANDING; RI-DI FISHERIES, LA GRANDE; SEA FARM OF NORWAY, HERALD; THE FISHERY, GALT; ZANKER BROTHERS, INC., LA GRANGE, AND AUTHORIZES THE DEPARTMENT TO ALSO ISSUE A SIMILAR PERMIT TO TONY VAUGHT, PROFESSIONAL AQUACULTURE SERVICES, CHICO, SUBJECT TO THE TERMS AND CONDITIONS RECOMMENDED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION.

PASSED UNANIMOUSLY.

12. CONSIDERATION OF PETITIONS TO LIST THE FOLLOWING SPECIES AS CANDIDATES FOR THREATENED OR ENDANGERED STATUS: (A) MARSH SANDWORT (Arenaria paludicola); (B) LA GRACIOSA THISTLE (Cirsium loncholepis); (C) SURF THISTLE (Cirsium rhotophilum); (D) BEACH SPECTACLE POD (Dithyrea maritima); (E) GAMBEL'S WATERCRESS (Rorippa gambellii) and (F) BLACK JEWELFLOWER (Streptanthus niger).

The Executive Secretary stated that pursuant to sections 2072.3 and 2073.5 of the Fish and Game Code, the Department had determined that, based upon the information contained in the petitions received from the California Native Plant Society for each of the noted species above, there was sufficient information to indicate that the petitioned actions may be warranted. He explained that, therefore, the Department recommended that the petitions be accepted and considered and that the subject species should be noticed as candidate species. He indicated that the twelve-month review process provided for in Section 2074.6 of the Fish and Game Code required that the Department solicit data and comments and notify affected and interested parties, including landowners. He stated that any new information obtained would be included in the Department's report to the Commission at the end of the twelve month review process. He pointed out that copies of the petitions were available for Commission review. Mr. Cribbs asked if there was anyone in the audience who was opposed to the listing of these plants as candidates for listing as either threatened or endangered species, and there was no response.

Commissioner McCracken stated that he had a concern with this action because he felt that he was not knowledgeable as to whether or not these plants should be listed as candidates for threatened or endangered species status. He noted that the Department had the expertise not the Commissioners.

Denis Smaage stated that pursuant to Section 2074.2 of the Fish and Game Code, the Legislature placed the authority with the Commission to make findings and approve the petitions, if it had sufficient information. He noted that this was a narrow road to follow but that the Commission was the body that had to make the decision. The Executive Secretary reminded the Commission of the Attorney General's recommendation regarding the winter-run salmon petition. He noted that originally the Commission had not listed the winter-run salmon as a candidate species and had a lawsuit filed against it in that matter. He noted that based on the Attorney General's recommendation and in the absence of opposition, it placed the Commission in a tenuous position if it rejected a petition without factual information to counter the argument for listing. He noted that Commission staff and Department staff would be meeting with Assemblyman Campbell in the near future to discuss the California Endangered Species Act and some possible amendments to that Act that may give flexibility to the Commission to do other things besides listing.

Commissioner Murdy was concerned that once the process started it would be hard to stop it and was concerned that the Department may not have enough staff to process all of the petitions which the Commission had been receiving for the past several months. Steve Nicola, Acting Supervisor of the Natural Heritage Program, indicated that the Department did have adequate staff to process the petitions. He noted that the native plant staff as well as the Natural Diversity Data Base would be reviewing these petitions and providing the staff work necessary. Commissioner Murdy asked whether once a species was listed as a candidate species, would it throw a road block in front of any proposed project? Mr. Nicola indicated that the species were already in the natural diversity base and that the developers and permitting agencies were already fully aware of these plants and the concerns for the continued existence of these species.

Ken Berg, California Native Plant Society, indicated that his organization was working closely with the Department in these matters. He noted that the plants were already listed as sensitive plants and were considered in the CEQA process. He explained that the reason the petitions were submitted by the public was because the Department was behind in preparing petitions for all of the species of concern. He noted that these plants already warranted listing; and therefore, needed to be listed. He pointed out that the petitions were developed by local experts who were professional botanists.

The Executive Secretary stated that Commissioner Biaggini requested a review of how the Commission received its authority and exactly what authority the Commission did have in these matters. He suggested that the Attorney General provide a written analysis and recommendation regarding the statutes at the January 1989 meeting at Palm Springs. He also suggested that the Department report to the Commission, at the same time, regarding the costs incurred by the Department in reviewing the 33 petitions which have been submitted to the Commission to date.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE DEPARTMENT'S REQUEST TO LIST MARSH SANDWORT (Arenaria paludicola), LA GRACIOSA THISTLE (Cirsium loncholepis), SURF THISTLE (Cirsium rhothophilum), BEACH SPECTACLE POD (Dithyrea maritima), GAMBEL'S WATERCRESS (Rorippa gambellii), AND BLACK JEWELFLOWER (Streptanthus niger) AS CANDIDATES FOR LISTING AS EITHER THREATENED OR ENDANGERED STATUS.

AYES: COMMISSIONERS BIAGGINI, BRYANT AND MURDY
NO: COMMISSIONER MCCRACKEN

13. DEPARTMENT SUPPLEMENTAL REPORT RE: TRANSMITTAL OF RESULTS OF FIVE-YEAR REVIEW OF ENDANGERED SPECIES AND RECOMMENDATIONS FOR CHANGES TO THE LIST OF THREATENED AND ENDANGERED SPECIES.
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The Executive Secretary reminded the Commission that at its August 25-26 meeting in Newport Beach, the Commission received the Department's report regarding the results of a five-year review of endangered species and recommendations for changes to the list of threatened and endangered species. He noted that the report contained all but two of the five-year reviews due in 1988 pursuant to Section 2077 of the Fish and Game Code. He stated that in a memo dated October 18, 1988 the Department transmitted the two additional reviews regarding the greater sandhill crane (Grus canadensis tabida) and the Swainson's hawk (Buteo swainsoni) to fulfill its obligation for 1988. He pointed out that the Commissioners had been provided with a copy of those two additional reviews. He noted that the Department recommended retaining the existing designation of threatened for each species. Mr. Cribbs stated that he had discussed the greater sandhill crane report with the Department and that the Department would review the status of the sandhill crane in other states, particularly Oregon and Nevada, to determine if the existing designation should be modified.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY ACCEPTS THE DEPARTMENT'S REPORT REGARDING THE ADDITIONAL FIVE-YEAR REVIEW OF THE GREATER SANDHILL CRANE (Grus canadensis tabida) AND THE SWAINSON'S HAWK (Buteo swainsoni) AND ACCEPTS THE DEPARTMENT'S RECOMMENDATION THAT THE EXISTING DESIGNATION OF THREATENED BE MAINTAINED.

PASSED UNANIMOUSLY.

14. DEPARTMENT REQUEST TO AMEND TERMS AND CONDITIONS FOR EXPERIMENTAL GEAR PERMITS RE: THE USE OF DRIFT LONGLINES TO TAKE BONITO SHARKS AND BLUE SHARKS.

The Executive Secretary stated that the Department had requested that the terms and conditions for experimental gear permits regarding the use of drift longlines to take bonito sharks and blue sharks be amended. He explained that the Department's recommendations were as follows: (1) close the experimental drift longline fishery for bonito sharks and blue sharks as of the Commission meeting of November 10, 1988; (2) endorse the Department's proposal to maintain the observers through December 31, 1988 in order to complete the processing and analysis of data concerning the experimental fishery; and (3) request the Department amend the existing contracts with the permittees to eliminate the December 1, 1988 payment for observers. Mr. Cribbs indicated that the Commission would consider re-authorizing these permits at its January 1989 meeting in Palm Springs. He pointed out that the Commissioners had been provided with a letter from John Farrell and Ernest England, current permittees, as well as the Department's memo dated October 12, 1988.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MCCRACKEN, THAT
THE FISH AND GAME COMMISSION HEREBY APPROVES THE
REQUEST OF THE DEPARTMENT TO AMEND THE TERMS AND
CONDITIONS OF THE TEN EXPERIMENTAL GEAR PERMITS
REGARDING THE USE OF DRIFT LONGLINES TO TAKE BONITO
SHARKS AND BLUE SHARKS.

PASSED UNANIMOUSLY.

15. REQUEST OF DOMENICO GRILLO, PACIFIC GROVE, FOR AN EXPERIMENTAL GEAR PERMIT TO HARVEST HERRING ROE ON KELP SUSPENDED FROM A LINE FOR COMMERCIAL PURPOSES.

The Executive Secretary stated that Mr. Domenico Grillo, Pacific Grove, had requested an opportunity to appear before the Commission to request an experimental gear permit which would allow him to harvest herring roe on kelp suspended from a line. He reminded the Commission that at its August 25-26 meeting in Newport Beach, it dealt with the issue authorizing experimental gear permits to use the "open pond" method to obtain herring eggs on kelp. He noted that Mr. Grillo's proposal was similar in nature to the operations carried out under the "open pond" method; however, he had proposed a slight modification which would utilize a suspension of his lines between the pilings on a pier. He pointed out that the Commissioners had been provided with a copy of Mr. Grillo's request as well as the Department's comments and recommendation in this matter.

Domenico Grillo stated that he traveled to Canada to observe this fishery and learned the procedures in establishing a fishery in California. He explained the process that he would utilize and noted that it would be out of the way and not a hazard to navigation. He indicated that it would not be towed like the "open pond" method, but would utilize a cork line and a lead line with kelp suspended between it and tied off under a structure.

Al Petrovich stated that the Department did not have a problem with the merits of Mr. Grillo's proposal, but it did with the timing. He noted that the Commission had already issued experimental gear permits for this similar "open pond" method and that at the early August meeting it awarded the allotments for the two areas in San Francisco Bay. He explained that there was an existing valid waiting list of prior applicants should any new permits be authorized or existing permits become available. He noted that to ignore the existing waiting list in favor of a new applicant could place the Department and the Commission in an untenable position if legal action ensued. He pointed out that Mr. Grillo had every opportunity to previously apply for such permits when they were being considered by the Commission; and therefore, based on the foregoing the Department recommended that the Commission deny Mr. Grillo's request.

Domenico Grillo stated that the reason he did not apply before was that he did not have everything in order. He indicated that he had entered into a contract with an expert in this field and also lined up a buyer for his herring roe. He noted that if he did not fish this year he would lose credibility for next year. He also pointed out that the proposed method was different than the "open pond" method. Commissioner Bryant stated that Mr. Grillo was getting the cart before the horse in that he entered into an agreement before he had a permit from the State. Mr. Grillo stated that he wanted to be sure that he had a buyer and an expert in this field before he applied to the State.

Chief Deputy Director Fletcher indicated that there could be a problem with enforcement if the individual moved from one location to another. He pointed out that the Department would be unable to keep track of the number of eggs or pounds taken. He recommended that Mr. Grillo bring his request before the Director's Herring Advisory Committee in the Spring and that the Department would also review the request in the meantime.

Commissioner Taucher asked if denial of Mr. Grillo's request would affect his capability of fishing herring this year. The Executive Secretary indicated that there were two methods involved in this matter. One was herring eggs on seaweed and the other was collecting roe through the lampara or gill net fishery. He noted that it was the same product but just different methods of securing herring roe. Commissioner Taucher agreed with Mr. Fletcher regarding Mr. Grillo presenting his request before the Director's Herring Advisory Committee. He pointed out that he did not see the urgency in Mr. Grillo's request.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE
REQUEST OF DOMENICO GRILLO, PACIFIC GROVE, FOR AN
EXPERIMENTAL GEAR PERMIT TO HARVEST HERRING ROE ON
KELP SUSPENDED FROM A LINE FOR COMMERCIAL PURPOSES.
FURTHER THE COMMISSION SUGGESTS THAT MR. GRILLO
PRESENT HIS REQUEST TO THE DIRECTOR'S HERRING
ADVISORY COMMITTEE FOR ITS REVIEW AND RECOMMENDATION.

PASSED UNANIMOUSLY.

16. REQUEST OF PAUL CROSS, WOODLAND HILLS, FOR AUTHORIZATION TO IMPORT AND POSSESS FRESHWATER MOLLUSKS AT THE YUBA GOLD FIELDS, YUBA COUNTY, FOR AQUACULTURE PURPOSES.

The Executive Secretary stated that Mr. Paul Cross, Woodland Hills, had requested authorization to import and possess freshwater mollusks at the Yuba gold fields, Yuba County, for aquaculture purposes. He explained that Mr. Cross noted that it was his company's intent to maintain two million clams within a closed system with rotating crops of freshwater clams after the first 18 months of cultivation. He stated that through the use of staggered nucleation, Mr. Cross expected to harvest 250,000 clams every 90 days and that the clams would be used to cultivate pearls, with the clams being held in large enclosed baskets until they had been nucleated and then transferred to a racking system where they would be fully enclosed in a plastic netting material. He indicated that Mr. Cross would have a security guard on duty at the main entrance of his facility during business hours and an onsite security guard would be available 24 hours a day. He pointed out that the Commissioners had been provided with a copy of Mr. Cross' request.

Paul Cross stated that he wished to import five different species of exotic freshwater clams to the Yuba gold fields. He noted that his intent was to cultivate these clams for freshwater pearls. He pointed out that the clams would be held in a 30 surface acre lake. He noted that he had hired two experts in this matter and neither foresaw any problems with his proposal.

Cliff Cooney stated that he understood the Department's concern regarding the spread of these freshwater mussels if they got out of the enclosed lake. He noted that there were only three genera of these mussels in the west, but that because the lake was deep he did not believe that the larvae would survive; and therefore, be able to leave the lake at the Yuba gold fields. He indicated that he did not believe that parasitism would be a problem with these mussels.

Dr. Clark stated that he had 35 years experience and indicated that there was one native mussel that could be host for a parasite of trout and salmon but he did not believe glochidiosis would be a problem here in California. Dr. Clark briefly explained his experience and the studies that have been conducted throughout the nation with these species of freshwater mollusks. He noted that these mollusks in the Red River drainage extended their range to areas that had high concentration of calcium or a high hard water area.

Commissioner Bryant asked Dr. Clark if these freshwater mollusks could transmit parasites to the fish in the Yuba gold fields or to salmon in the Yuba River. Dr. Clark stated that he did not believe that these freshwater mollusks could transmit any parasites as he had not found any evidence in the literature or from his personal experience.

Robert Rawstron stated that the Department recommended denial at this time. He noted that the Department's concern with metazoan parasites did not necessarily need trout and salmon population but, could also utilize black bass and catfish which were found in the lake in the Yuba gold

fields. He noted that the Department was concerned with some endangered species in the State which needed further study to determine the impacts of the importation of these species. He noted that another concern was the possibility of introducing parasites from other states which would adversely impact native species if these freshwater mollusks were imported into the State. He stated that the Department needed some additional time to discuss this concern with Mr. Cross. Commissioner Bryant asked if Mr. Cross could wait until the Department finished its review. Mr. Cross stated that he had a short time frame in which to work to bring the species in for this year, but would like some indication from the Commission of when this review might be accomplished. He stated that this was a major project and could have a benefit to the economy of California. Robert Rawstron indicated that to alleviate part of his concern regarding the parasites, could be accomplished if the fish in the lake were killed prior to introduction of the freshwater mollusks. Commissioner Murdy asked the Department when it could finish its review. Mr. Rawstron stated that he believed that the Department could complete its review by the Commission's December meeting in Eureka. Chief Deputy Director Fletcher stated that if it was okay with Mr. Cross the Department would make its recommendation at the Commission's January 1989 meeting in Palm Springs since it was closer to Mr. Cross' residence. Mr. Cross stated that he would like to have this issue resolved as soon as possible and was willing to travel to Eureka in December if the Department was able to complete its review by then.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT
THE FISH AND GAME COMMISSION HEREBY POSTPONES ACTION
ON THE REQUEST OF PAUL CROSS, WOODLAND HILLS, FOR
AUTHORIZATION TO IMPORT AND POSSESS FRESHWATER
MOLLUSKS AT THE YUBA GOLD FIELDS, YUBA COUNTY, FOR
AQUACULTURE PURPOSES, UNTIL ITS DECEMBER 1-2, 1988
MEETING IN EUREKA.

PASSED UNANIMOUSLY.

CONSENT CALENDAR

The Executive Secretary noted that Items 17-25 had been placed on the Commission's consent calendar. He pointed out that any item could be removed from the consent calendar by the Commission or upon request from the Department or someone in the audience who would like to speak to that item. He noted that Mr. Paul Weakland requested that Item #18 be removed from the consent calendar. Mr. Cribbs stated that the Commission knew of no opposition to the remaining proposals at this time, other than as specified, and that the Department had provided a recommendation on each of these items which either called for approval, or modified approval, by the Commission. He pointed out that Commission staff had prepared a summary of the consent calendar items which had been made available to the audience. Mr. Cribbs then stated that one overall motion was appropriate for approval of these remaining items.

17. AMENDMENT OF SECTION 6.15, TITLE 14, CCR, RE: MURRAY LAKE CLOSURE, SAN DIEGO COUNTY.

Summary of Issue

At the Commission's August 26, 1988 meeting in Newport Beach, it authorized its staff to publish notice of its intent to amend Section 6.15, Title 14, CCR, which pertains to the Lake Murray fishing closure, San Diego County. That legal notice has been published. Commissioners were provided with a copy of the Department's pre-publication of notice and pre-adoption statements, as well as the text of regulations in strike-out and underline format. There has been no correspondence received in the Commission office on this item.

Department Recommendation

The Department recommends that the Commission approve the proposed amendments to Section 6.15, Title 14, CCR. The following is a summary of that proposed action:

"Hydrilla, a serious aquatic plant pest, was identified in 1977 from Lake Murray in San Diego County. In an effort to prevent the spread of hydrilla to other waters, the lake was closed to public use and put under quarantine by the Department of Food and Agriculture. The Fish and Game Commission closed Lake Murray to all fishing by emergency action at its June 29, 1979 meeting.

"Among the angling regulation change proposals for 1987 was a City of San Diego recommendation to open Alvarado Bay to fishing. Careful monitoring demonstrated the absence of any hydrilla for at least 18 months. The Commission adopted the recommendation, and it became effective on March 1, 1987. The present proposal would extend the legal fishing area to the central portion of Lake Murray. This had the Department's support, as well as that of the City of San Diego, the San Diego County Agricultural Commissioner and the Department of Food and Agriculture."

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 200, 202, 205 AND 210 OF THE FISH AND GAME CODE AND TO IMPLEMENT AND INTERPRET OR MAKE SPECIFIC SECTIONS 200, 202 AND 205-210 OF SAID CODE, HEREBY AMENDS SECTION 6.15, TITLE 14, CCR, REGARDING MURRAY LAKE CLOSURE, SAN DIEGO COUNTY, AS FOLLOWS:

Section 6.15, Title 14, CCR, is amended to read:

6.15. Murray Lake Closure (San Diego Co.).

Murray Lake is closed to all fishing except in its central portion, as clearly identified by the City of San Diego and in that portion of the lake known as Alvarado Bay. ~~Alvarado Bay~~ Murray Lake or any portion of it may be closed to fishing by the Department if hydrilla, Hydrilla verticillata, is found. The Department shall notify the Commission, and the public via the news media, of any fishing closure.

Authority: Sections 200, 202, 205 and 210, Fish and Game Code.

Reference: Sections 200, 202 and 205-210, Fish and Game Code.

PASSED UNANIMOUSLY

19. DEPARTMENT REQUEST TO AUTHORIZE PUBLICATION OF NOTICE OF COMMISSION INTENT TO AMEND SECTION 121 AND ADD SECTION 121.5, TITLE 14, CCR, RE: POSSESSION OF SPINY LOBSTERS DURING CLOSED SEASON, AND VERIFICATION OF THE SIZE OF LOBSTERS. (HEARING SCHEDULED FOR JANUARY 12, 1989, IN PALM SPRINGS.)
-

Summary of Issue

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 121, Title 14, CCR, regarding spiny lobsters. Commissioners were provided with a copy of the Department's pre-publication of notice statement and the text of the regulations in strike-out and underline format. This matter will be scheduled for Commission action at its January 12, 1989 meeting in Palm Springs. The proposed changes as provided by the Department, will be made available to the Commissioners at the November 10 meeting.

20. DEPARTMENT REQUEST TO AUTHORIZE PUBLICATION OF NOTICE OF COMMISSION INTENT TO AMEND SECTIONS 550 AND 630, TITLE 14, CCR, TO INCREASE NONCONSUMPTIVE USER FEES ON THE ASH CREEK, GRAY LODGE, GRIZZLY ISLAND, IMPERIAL, LAKE EARL, LOS BANOS AND SAN JACINTO WILDLIFE AREAS AND TO IMPOSE A USER FEE ON ELKHORN SLOUGH AND UPPER NEWPORT BAY ECOLOGICAL RESERVES, TO COMPLY WITH THE PROVISIONS OF AB 3873 (COSTA, 1988). (HEARING SCHEDULED FOR JANUARY 12, 1989, IN PALM SPRINGS.)
-

Summary of Issue

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend sections 550 and 630, Title 14, CCR, to increase the nonconsumptive user fees on Ash Creek, Gray Lodge, Grizzly Island, Imperial, Lake Earl, Los Banos and San Jacinto State Wildlife Areas and to impose a user fee on the Elkhorn Slough and Upper Newport Bay Ecological Reserves to comply with the provisions of AB 3873 (Costa, 1988). Commissioners were provided with a copy of the Department's pre-publication of notice. Those proposed changes would allow a conversion of the \$1 daily nonappropriative user fee test, that is in effect on four wildlife areas, to a \$2 daily and \$10 annual fee for nonappropriative users on the areas specified above.

21. RECEIPT OF DEPARTMENT REPORT AND RECOMMENDATIONS ON PETITIONS TO LIST THE TIPTON KANGAROO RAT (Dipodomys nitratooides nitratooides) AS ENDANGERED AND THE BANK SWALLOW (Riparia riparia) AS THREATENED, AND REQUEST TO AUTHORIZE PUBLICATION OF NOTICE OF COMMISSION INTENT TO AMEND SECTION 670.5, TITLE 14, CCR, RE: ADDING THE TIPTON KANGAROO RAT AS ENDANGERED AND THE BANK SWALLOW AS THREATENED. (HEARING SCHEDULED FOR JANUARY 12, 1989 IN PALM SPRINGS.)
-

This item has been scheduled to receive the Department's report and recommendations regarding the petitions to list the Tipton kangaroo rat (Dipodomys nitratooides nitratooides) as endangered and the bank swallow (Riparia riparia) as threatened. In addition, the Department has requested that the Commission authorize publication of notice of the Commission's intent to amend Section 670.5, Title 14, CCR, to add the Tipton kangaroo

rat as endangered and the bank swallow as threatened. The hearing on this matter will be scheduled for the Commission's January 12, 1989 meeting in Palm Springs.

Department Recommendation

"Pursuant to Section 2074.6 of the Fish and Game Code, the Department has completed its review of the status of this subject species and has prepared the specific reports containing the information specified in Section 2074.6. The Department has determined that the petitioned actions are warranted and, therefore, recommends that the Commission take regulatory action to implement the recommended changes. The Department notes that it has solicited data and comments on the petitions from affected interested parties, including landowners and the general public, pursuant to Section 2074.4. It indicates that those notices were distributed to the effective county boards of supervisors, interested state and federal agencies, private individuals and organizations, and were published as legal notices in 13 newspapers. Responses are due to the Department by November 4, 1988 and will be reported to the Commission at the November 10, 1988 meeting."

The specific petitions are on file in the Commission office and will be available to the Commission for review at the November 10 meeting.

22. RECEIPT OF DEPARTMENT REPORT AND RECOMMENDATIONS ON PETITION TO LIST THE DESERT TORTOISE (Gopherus agassizii) AS THREATENED AND REQUEST TO AUTHORIZE PUBLICATION OF NOTICE TO AMEND SECTION 670.5, TITLE 14, CCR, RE: DESIGNATING THE DESERT TORTOISE AS A THREATENED SPECIES. (HEARING SCHEDULED FOR FEBRUARY 3, 1989, IN LONG BEACH.)

Summary of Issue

This item has been scheduled to receive the Department's report and recommendations regarding the petition to list the desert tortoise (Gopherus agassizii) as threatened. The Department is further requesting that the Commission authorize its staff to publish notice of its intent to amend Section 670.5, Title 14, CCR, to designate the desert tortoise as a threatened species. The Department's pre-publication of notice statement and the text of the proposed regulations in strike-out and underline format will be made available prior to the meeting. The adoption hearing on this matter will be scheduled for the Commission's February 3, 1989 meeting in Long Beach. Copies of the petition on this matter are on file in the Commission office and are available upon request. Copies will also be available at the meeting for review by the Commissioners.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE PROVISIONS OF SECTION 2075.5 OF THE FISH AND GAME CODE, HEREBY FINDS THAT THE PETITIONED ACTION TO LIST THE DESERT TORTOISE (*Gopherus agassizii*) IS WARRANTED; AND THEREFORE, DIRECTS ITS STAFF TO PUBLISH NOTICE OF ITS INTENT TO AMEND SECTION 670.5, TITLE 14, CCR, TO DESIGNATE THE DESERT TORTOISE AS A THREATENED SPECIES.

PASSED UNANIMOUSLY.

23. RECEIPT OF DEPARTMENT REPORT AND FINDINGS RE: SILVERKING OCEANIC FARMS.
-

Summary of Issue

This item has been scheduled to receive the Department's report regarding ocean ranching at Silverking Oceanic Farms, Santa Cruz. Silverking Oceanic Farms operates the only registered aquaculture facility authorized for salmon and steelhead ocean ranching anywhere in the state. Authority for the operation is provided by Section 15908 of the Fish and Game Code. Their permit for operation is included as regulatory language adopted by the Commission and is set forth in Section 235.2, Title 14, CCR. Commissioners were provided with a copy of the Department's report in a memorandum dated October 14, 1988. In that report, the Department notes that Silverking Oceanic Farms has apparently complied with all the terms and conditions of the permit and the laws and regulations governing the operation. It, therefore, recommends that their permit be continued.

24. RECEIPT OF COACHELLA VALLEY WATER DISTRICT'S BIENNIAL REPORT RE: "MONITORING PROGRAM FOR OPERATIONAL USE OF TRIPLOID GRASS CARP IN THE COACHELLA CANAL".
-

Summary of Issue

This item has been scheduled to formally receive the Coachella Valley Water District's biennial report regarding "Monitoring Program for Operational Use of Triploid Grass Carp in the Coachella Canal". Commissioners were provided with a copy of that report. Should the Commission desire to discuss the content of that report, an item will be scheduled for the January 1989 meeting in Palm Springs.

25. REQUEST OF TIFFANY VANCE, INC. FOR RENEWAL OF EXPERIMENTAL GEAR PERMIT (NO. X-1656) TO USE LONGLINES TO HARVEST SHARK, TUNA AND SWORDFISH NORTH OF PT. ARGUELLO.
-

Summary of Issue

The Commission originally authorized the issuance of the subject permit at its October 1-2, 1987 meeting. The permit is issued to Mr. Alex Bueno who is the captain of the vessel, TIFFANY VANCE.

Department Recommendation

"With regard to Mr. Bueno's fishing activities, our records indicated that he notified our offices in Long Beach and Monterey, on several occasions prior to planned fishing trips, as required by the experimental gear permit conditions. In addition, he submitted fishing records (logs) which covered three months of fishing activity in October, November and April. These fishing logs indicate that he fished a total of 19 days and used 20 to 38 miles of drift longline gear with 400 to 600 hooks attached. His major fishing areas were 40 miles offshore just north of Point Arguello and 100 miles west of Monterey.

"Swordfish, the primary target species, accounted for 1.3 percent by number of his total catch, while blue shark was the dominant species totaling 95 percent of the catch. Incidentally caught species included pelagic sting rays and bigeye thresher sharks.

"On the basis of this information, we have some concerns regarding the probable success of this experimental fishery. The relatively low take and landings of swordfish suggest that this gear may be unsuitable for targeting on this species off California, especially north of Point Arguello. We still oppose the use of this gear (long, high-seas type, drift longline gear) south of Point Arguello due to the likelihood of high incidental catches of striped marlin.

"In addition, we are concerned about the apparent large numbers of blue sharks taken during the experimental fishing operations and the associated problem of fish wastage. We would like to see additional efforts made to develop a viable market for blue sharks which are an underutilized resource at this time.

"However, we recognize that the foregoing information and comments are based on only one year of limited fishing. Therefore, we recommend renewal of Mr. Bueno's experimental permit for an additional year. Also, we recommend that an additional permit condition be added to provide that every reasonable attempt should be made to release all blue sharks and/or any other nontarget species alive, if possible."

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES ITEMS 17 AND 19 THROUGH 25 OF THE COMMISSION'S NOVEMBER 10, 1988 CONSENT CALENDAR.

PASSED UNANIMOUSLY.

18. AMENDMENT OF SECTION 120.7, TITLE 14, CCR, RE: PROVIDING FOR A LIMITED ENTRY COMMERCIAL SEA URCHIN FISHERY.

The Executive Secretary reminded the Commission that at its August 5, 1988 meeting in Sacramento, it authorized its staff to publish notice of its intent to amend Section 120.7, Title 14, CCR, relating to providing for

a limited entry commercial sea urchin fishery. He noted that the legal notice had been published. He pointed out that the Commissioners had been provided with a copy of the Department's pre-publication of notice statement dated July 12, 1988, and the Department's pre-adoption statement dated September 12, 1988 as well as the text of the regulations in strike-out and underline format.

The following is a summary of the proposed action as set forth in the informative digest contained in the Department's pre-publication of notice statement.

"A preliminary management plan for the sea urchin resource and fishery was established by the Fish and Game Commission in 1987. This plan provided for the establishment of a moratorium on the further issuance of new sea urchin permits until March 31, 1989; the curtailment of sea urchin fishing statewide for the first calendar week of each month from May through September; the maintenance of logbooks on vessels fishing for sea urchins; and the closure to sea urchin fishing of a small area in Sonoma County for research purposes.

"A large increase in sea urchin landings in northern California, from 10.1 million pounds in 1986 to 23.5 million pounds in 1987, coupled with a decline in landings in southern California, indicate that further management measures are needed to insure the continued well-being of the sea urchin resource. In addition, the moratorium on the issuance of new permits precludes the opportunity for new divers to enter the sea urchin fishery, while some divers with permits are holding them only for speculative purposes. Also, the industry is being unnecessarily hampered by some aspects of the weekly closure.

"The proposed action is directed at establishing regulations containing the following elements:

1. The replacement of the moratorium on the further issuance of new sea urchin permits with a permanent limited entry system. Features of the limited entry system include nontransferability of sea urchin permits, a ceiling on the number of diving permits, establishment of sea urchin apprentice permits, and development of minimum landing requirements.
2. A prohibition against taking red sea urchins between 1-1/2 and 3 inches in diameter. However, the proposed regulation provides for a five percent tolerance by number for red sea urchins in the 1-1/2 to 3-inch size range.
3. Modification of the sea urchin fishing season closure so that it applies only to red sea urchins, and is operational for the second week of a calendar month, rather than the first week.

"These regulatory changes will continue the curtailment of fishing effort established by the moratorium, yet allow the fishery to operate efficiently by allowing new entrants to replace divers leaving the fishery. Also, the size restrictions on red sea urchins will insure that some spawning stock is left on the sea urchin beds after periods of heavy

fishing, and the changes in the seasonal closures will continue to protect red sea urchins, while allowing the industry to explore the use of other species of sea urchins during periods they would otherwise be inactive. Similarly, the change in the week that the season is closed will insure that the industry can satisfy its market demands."

Subsequent to publication of notice on this matter, the Department, in its pre-adoption statement proposed additional modifications of the regulations. Those changes are summarized as follows:

"Change 1.

- (a) Existing Title 14 provisions: Subsection 120.7(i) specifies that during periods closed to fishing, no sea urchins may be possessed on any vessel that has sea urchin diving gear on board.
- (b) Provisions as originally proposed: Specified that the closed periods applied only to the take of red sea urchins, rather than to all species of sea urchins, and re-lettered the subsection from (i) to (m).
- (c) Provisions as modified: In addition to the originally proposed changes, provides that the ban concerning possession of sea urchins during closed periods applies to all commercially registered vessels, not just those with diving gear on board. Also clarifies the extent of the area closed to fishing.
- (d) Modification to Pre-adoption Statement of Purpose: This amended pre-adoption statement of purpose describes a further modification in the originally proposed changes that would allow pick-up boats (larger vessels used to transport sea urchins from the fishing grounds to the processor) until 8 a.m. of the first day of a weekly closure to return to port.
- (e) Reason for Modification: The change concerning possession of sea urchins on vessels during the closed season involves the resolution of a problem that had not been previously considered. Present regulations allow pick-up boats (larger vessels used to transport sea urchins from the fishing grounds to the processor) to deliver sea urchins to the processor after the season is closed, while prohibiting fishing vessels (those with sea urchin diving gear on board) from making such deliveries. The use of pick-up boats could negate the purpose of a closed season, since fishing vessels could fish illegally after the season closure and then transfer their catch to a pick-up for legal delivery hours or days after the season closes. The modified provisions restore the full effectiveness of the closed season by requiring all vessels to make their deliveries before the season closes. These changes bring the sea urchin fishing season closure restrictions into conformance with all other such commercial fishing season closures in California.

The amended Pre-adoption Statement of Purpose concerns the establishment of an exception to the ban on the possession of red sea urchins during closed periods. The exception allows boats to transport red sea urchins to port until 8:00 a.m. of the first day of the weekly closure. This modification is required to allow the pick-up boats to return from distant locations (offshore islands in southern California, Point Arena in northern California) with legally taken red sea urchins. Without this modification, fishing vessels at distant fishing locations would lose a day's fishing before each closed period, since red sea urchins taken during the last day of an open period could not be delivered to a processor prior to the close of the season at midnight. In addition, this modification recognizes that weather or vessel breakdowns can often delay the scheduled return of a pick-up boat to port.

"Change 2.

- (a) Existing Title 14 provisions: Section 120.7(k) specifies a single area closed to commercial fishing for sea urchins.
- (b) Provisions as originally proposed: No change, except to re-letter the subsection from (k) to (o).
- (c) Provisions as modified: Adds the description of a second area closed to commercial fishing for sea urchins.
- (d) Reason for modification: The change concerning the closure of an additional area to commercial sea urchin fishing involves the need for an additional study area that had not been previously considered necessary. The Department is conducting a legislatively mandated study of the sea urchin resource. Present regulations provide an unfished study area at Gerstlae Cove (Sonoma County), while the Point Cabrillo Reserve (Mendocino County) (Section 27.45, Title 14, CCR) serves a similar function closer to Fort Bragg. These unfished areas provide study sites to contrast with fished areas. However, a study area where heavy harvesting has taken place is also needed to determine how such an area recovers. Originally, we presumed that an area would not have to be formally closed to fulfill this need, since fishermen normally avoid areas that have low numbers of harvestable sea urchins remaining. However, as fishing pressure has increased in response to high demand for sea urchins, previously heavily fished areas are being re-harvested at shore intervals. As a consequence, it is now necessary to close a previously fished area so that recovery can be monitored. The South Casper Point area has been selected for this purpose because: (1) it has been heavily harvested; (2) it resembles the Point Cabrillo Reserve area, allowing valid comparisons to this unfished area; (3) it includes both headland and cove habitat for study contrasts; and (4) it is in close proximity to the Point Cabrillo Reserve and the Fort Bragg Fish and Game office.

"Change 3.

- (a) Existing Title 14 provisions: Section 120.7(a) specifies that a permit is required to take sea urchins for commercial purposes.
- (b) Provisions as originally proposed: Wording was changed to clarify, and a provision was added to exempt vessel operators from sea urchin permit requirements.
- (c) Provisions as modified: Wording is changed back to original form and, in addition, the scope of the regulation is expanded to prohibit diving from a sea urchin fishing vessel for any purpose without a sea urchin permit.
- (d) Reason for modification: The change concerning diving from a vessel fishing for sea urchins involves the closure of a loophole in the regulations. The originally proposed regulation change formally exempted vessel operators and deckhands from the requirement of holding a sea urchin permit. However, without a restriction on diving, these vessel operators and deckhands could illegally harvest sea urchins underwater while claiming to be practice diving or diving for pleasure. The modified provision prevents this by allowing only fishermen with sea urchin permits to dive from a sea urchin fishing vessel.

"Change 4.

- (a) Existing Title 14 provisions: Section 120.7(c) specifies the duration of a sea urchin permit.
- (b) Provisions as originally proposed: Wording was changed to clarify the regulation and to include more than one kind of sea urchin permit. Also, the subsection was re-lettered from (c) to (f).
- (c) Provisions as modified: In addition to the originally proposed changes, wording is added to clarify the regulation.

"Change 5.

- (a) Existing Title 14 provisions: Section 120.7 did not contain subsections concerning classes of sea urchin permits, qualifications of sea urchin permittees, procedures for issuing sea urchin permits, or a size limit for sea urchins.
- (b) Provisions as originally proposed: Adds subsection 120.7(b) concerning classes of sea urchin permits, subsection 120.7(c) addresses qualifications of permittees, subsection 120.7(e) regards procedures for issuing sea urchin permits, and subsection 120.7(p) which institutes a size limit for sea urchins.
- (c) Provisions as modified: Wording is changed in the originally proposed subsections to clarify the proposed regulations."

The Executive Secretary noted that the Commission office had received a letter from Bruce Steel, California Urchin Divers Association, in support of the proposed regulation changes. Al Petrovich stated that the Director's Sea Urchin Advisory Committee had recommended a size limit with a tolerance for the percentage of shorts in a load. He indicated that to allow for the size limit to be enforceable, the Department use the standard language found in several other regulations. He noted that there was some concern from the fish buyers regarding this size limit recommendation, but noted that the Department recommended adoption, at this time, and that the Department would discuss this issue in February with the Director's Sea Urchin Advisory Committee. Chief Deputy Director Fletcher stated that originally the Department was opposed to the size limit issue, but since the Director's Advisory Committee made the recommendation, the Department went along with it. Mr. Petrovich indicated that the state of Washington had a zero tolerance for short sea urchins in their regulations.

Paul Weakland, commercial fisherman, stated that he was a commercial abalone diver and would like to get into the sea urchin fishery; and therefore, he was opposed to the limited entry aspect of the sea urchin fishery. He indicated that he believed the southern California divers were running the fishery and not the Department. He also recommended that there should be a minimum and maximum size limit imposed on the fishery. He indicated that the divers that he had seen took everything. Chief Deputy Director Fletcher explained how the moratorium on the issuance of sea urchin diving permits was instituted and that the Director's Advisory Committee had discussed the issue of a minimum and maximum size limit, but there was no consensus; and therefore, the Department did not make a recommendation concerning that matter. He indicated that the Department was not in a position to support a maximum size limit at this time. Mr. Petrovich also pointed out that the proposed regulations would institute an apprentice program beginning June 30, 1989, whereby non-permitted divers could enter the sea urchin fishery through this apprentice program.

Commissioner Biaggini stated that he had concerns regarding a limited entry fishery, but felt that the sea urchin resource needed to be protected.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MCCrackEN, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 1050, 9054 AND 9055 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SAID SECTIONS OF SAID CODE, HEREBY AMENDS SECTION 120.7, TITLE 14, CCR, REGARDING PROVIDING FOR A LIMITED ENTRY COMMERCIAL SEA URCHIN FISHERY AS FOLLOWS:

REGULATIONS AS AMENDED

Section 120.7, Title 14, CCR, is amended to read:

120.7. Taking of Sea Urchins for Commercial Purposes.

(a) Permit Required. ~~(1)~~ Any person taking sea urchins for commercial purposes shall have obtained a valid sea urchin permit and shall be in possession of said permit while engaged in such activities. A sea urchin permit is not required to operate or assist in operating a vessel used to take sea urchins, however, no person without a valid sea urchin permit shall engage in diving from a vessel from which sea urchins are being taken or possessed for commercial purposes.

~~(2) To Whom Issued:~~ The department shall issue a permit to persons licensed pursuant to Section 7850 of the Fish and Game Code, who have completed and submitted the appropriate permit application.

~~(3) Where Issued:~~ Permits will be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

~~(4) Moratorium:~~ Notwithstanding any other provisions of this section, sea urchin permits shall not be issued to persons who have not previously held a valid 1986-87 or 1987 sea urchin permit. Persons who held sea urchin permits during the 1986-87 permit year are eligible to obtain permits for the 1987-88 permit year until March 31, 1988. Only persons holding valid 1987-88 permits will be eligible to purchase sea urchin permits for the 1988-89 permit year. This moratorium shall expire on March 31, 1989 unless extended by the commission. The department shall report to the commission by July 1, 1988 on the moratorium.

~~(b) Limitation of Permit:~~ Not more than one permit shall be issued to any person. Permits shall not be assigned or transferred from person to person.

(b) Classes of Permits.

(1) Sea Urchin Diving Permit. Sea urchin diving permits will be issued to licensed commercial fishermen who have qualified for permits pursuant to subsection (c). This permit is not transferable.

(2) Sea Urchin Apprentice Permit. Sea urchin apprentice permits will be issued to licensed commercial fishermen who have qualified for permits pursuant to subsection (c). An apprentice permittee may only take sea urchins in company with a diver who has a sea urchin diving permit, and not more than one apprentice permittee shall accompany a sea urchin diving permittee. This permit is not transferable.

(c) Qualifications for Permittees:

(1) Applicants for sea urchin diving permits must have held a sea urchin diving permit in the immediately preceding permit year (April 1 - March 31). In addition, beginning with the 1991-92 permit year, applicants must be able to demonstrate that they made at least 20 landings of at least 300 pounds each of sea urchin during one of the two immediately preceding permit years.

(2) Applicants for sea urchin apprentice permits must be licensed commercial fishermen. In addition, in order to receive consideration as a prior sea urchin apprentice permittee, applicants must have held sea urchin apprentice permits in the immediately preceding year and, beginning with the 1991-92 permit year, must be able to demonstrate that they made at least 20 landings of at least 300 pounds each of sea urchins during one of the two immediately preceding years.

(3) Landings used to qualify applicants for sea urchin diving permits, or for consideration as a prior sea urchin apprentice permittee, must have been reported to the department as required by Fish and Game Code Section 8043, with the name and identification number of the applicant shown on the receipt.

(d) Number of Permits.

(1) All qualified prior sea urchin diving permittees shall be eligible to receive diving permits regardless of the number issued.

(2) No new sea urchin diving permits shall be issued if the number of diving permits issued to prior permittees is more than 400. If the number of diving permits issued to prior permittees is less than 400, the number of new sea urchin diving permits to be issued shall be the difference between the number of diving permits issued to prior permittees and 400.

(3) The total number of sea urchin apprentice permits available for issuance shall be one-third of the difference between the total number of sea urchin diving permits issued during the current permit year and the total number of sea urchin permits issued during the 1987-88 base year (915).

(A) All qualified prior sea urchin apprentice permittees shall be eligible to receive apprentice permits.

(B) The number of new sea urchin apprentice permits to be issued shall be the difference between the number of apprentice permits issued to qualified prior apprentice permittees and the total number of apprentice permits available, as provided in subsection (d)(3).

(e) Procedures.

(1) Applications for sea urchin diving permits and sea urchin apprentice permits must be received by the department or must be postmarked no later than June 30 of each permit year. Each application must be accompanied by evidence that the qualification requirements specified in subsection (c) have been met. Applications postmarked or presented after June 30 will not be considered.

(2) All qualified prior sea urchin diving permit applications and all qualified prior sea urchin apprentice permit applications will be processed as soon as possible and the appropriate permits issued.

(3) If any new sea urchin diving permits are available for issuance, as provided in subsection (d)(2), they shall be issued to sea urchin apprentice permittees who have held a sea urchin apprentice permit for at least one year. Sea urchin diving permits shall be issued to apprentices in order of the date they were first issued an apprentice permit. If there are more apprentices with the same date of first issuance than there are diving permits available, a drawing will be held among those individuals. The drawing will be held on the Wednesday nearest to July 15 each year. The available sea urchin diving permits will be issued without additional charge to the selected apprentices to replace their apprentice permits. These diving permits will be issued by July 30, and will be effective on August 1.

(4) If any new sea urchin apprentice permits are available for issuance, as determined in subsection (d)(3)(B), they shall be issued to applicants for sea urchin apprentice permits received in accordance with subsection (e)(1). If there are more applicants for sea urchin apprentice permits than there are apprentice permits available, a drawing will be held to determine which applicants will be eligible to purchase apprentice permits. The drawing will be held on the Wednesday nearest to July 15 each year. The selected applicants will have until August 31 to purchase their sea urchin apprentice permit. No sea urchin apprentice permits will be issued after August 31 each year.

~~(e)~~ (f) Duration of Permit. ~~Except as otherwise provided,~~ All sea urchin permits issued pursuant to these regulations shall be in force valid from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

~~(d)~~ (g) Cost of Permit Fee. The fee for the permit sea urchin diving permits and sea urchin apprentice permits shall be \$250.

(h) Appeal. Any applicant who is denied a sea urchin permit for any reason may appeal the denial to the commission in writing, describing the basis for the appeal.

~~(e)~~ (i) Vessel Identification. When sea urchins are taken under these regulations, the vessel's commercial registration number shall be displayed on both sides of the boat. The number shall be black, at least 10 inches high, and on a white background. All permittees aboard the boat shall be mutually responsible for the proper display of the vessel's commercial registration number.

{f} (j) Conditions of the Permit:

(1) No person shall take or possess lobsters or abalone aboard any boat used to take sea urchins under these regulations on any day that sea urchins have been taken or are to be taken.

(2) Hydraulic lifts and air lifts shall be used only in such a manner that no rocks or other mineral matter, aquatic plants, fish or other aquatic life except sea urchins, shall be removed from the bottom or otherwise disturbed.

{g} (k) Revocation of Permits. Any permit may be suspended, revoked, or canceled by the commission upon breach or violation of any fish and game regulation pertaining to the take of sea urchins or abalone; or violation of the terms or conditions of the permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

{h} (l) Exemption from Tidal Invertebrate Permits. A sea urchin diver operating under the provisions of a sea urchin permit is not required to possess a Tidal Invertebrate Permit, but is subject to the provisions of Section 123, Title 14, CAE CCR.

{i} (m) Fishing Season. All year EXCEPT that if commercial landings of red sea urchins for the previous calendar year exceeded 10 million pounds in northern California (north of Monterey-San Luis Obispo county line) OR 18 million pounds in southern California (south of the Monterey-San Luis Obispo county line) the season for red sea urchins will be closed coastwide during the ~~first~~ second complete week (Sunday through the following Saturday) in each month starting with May and extending through September. The department will notify the permittees

by February 15 each year whether the weekly closures will be in effect for that year. During the closed periods, no red sea urchins may be possessed on any commercially registered vessel. that has sea urchin diving gear on board Notwithstanding the provisions set forth above, commercially registered vessels that do not possess sea urchin diving gear (hooka, SCUBA) on board (pick-up vessels) may transport sea urchins after the weekly closure goes into effect (0001 Sunday), provided that the pick-up vessel is in port no later than 0800 on the first day (Sunday) of the closed season.

{j} (n) Logbooks. Any person who operates a vessel used for the commercial harvest of sea urchins shall prepare a daily record of the vessel's sea urchin fishing activities on a form (DFG-120.7, October, 1987) provided by the department before the sea urchins are landed. The completed daily records shall be sent to the Fort Bragg office of the Department of Fish and Game for fishing activities north of the Monterey-San Luis Obispo county line, and to the Long Beach office for fishing activities south of the Monterey-San Luis Obispo county line on or before the fifth day of each month following the month to which the records pertain.

{k} (o) Closed Areas.

[(1)] The Gerstle Cove area in Salt Point State Park (Sonoma County) is closed to all commercial fishing for sea urchins. This area is delimited as all the ocean waters east of a line extending due south from the southernmost point (lat. $38^{\circ}33.9'$, long. $123^{\circ}19.45'W$) of Salt Point and north of a line extending due west from the westernmost point of land (lat. $38^{\circ}33.6'N$, long. $123^{\circ}18.85'W$) of the unnamed point at the southern end of Gerstle Cove.

(2) The South Casper Point area in Mendocino County is closed to all commercial fishing for sea urchins. This area is bounded on the north by a line extending 90° magnetic East from sea to the mouth of Casper Creek (north bank) in Casper Cove, on the south by a line extending 90 magnetic East from sea to a point of land (marked by a boundary marker visible from the sea) approximately 1,500 feet south of the westernmost point of land on South Casper Point, on the west by the 120-foot depth contour line connecting the north and south boundary lines, and on the East by the mainland shore.

(p) Size Limit. No red sea urchin between one and one-half (1-1/2) and three (3) inches in shell diameter, not including the spines, may be taken, possessed, sold, or purchased, except that not more than five (5) percent by number in any load or lot of red sea urchins may be red sea urchins between one and one-half (1-1/2) and three (3) inches in shell diameter. Red sea urchins less than one and one-half (1-1/2) inches in shell diameter shall not be considered as part of the load or lot when determining the five (5) percent tolerance.

Authority cited: Sections 1050, 9054 and 9055, Fish and Game Code.

Reference: Sections 1050, 9054 and 9055, Fish and Game Code.

PASSED UNANIMOUSLY.

LICENSE AND PERMIT CONSIDERATIONS

26. REQUEST OF 1987-88 COMMERCIAL HERRING PERMITTEES FOR OPPORTUNITY TO APPEAL DEPARTMENT'S DENIAL OF COMMERCIAL HERRING PERMIT FOR 1988-89 FOR LATE FILING OF RENEWAL APPLICATIONS.

The Executive Secretary stated that the following herring permittees failed to submit their applications for their 1988-89 commercial herring permits on time: Michael Pierini, Bodega Bay; Ron Frizzel, Redding; Antonio Davi, Seaside; Peter Dentice, Monterey; and John Tarantino, Corte Madera. He explained that herring permits are renewed annually and applications for renewal are required to be submitted to the Department of Fish and Game prior to 5:00 p.m. on the first Friday of October. He pointed out that the Commissioners had been provided with pertinent correspondence from these permittees as well as the Department's comments and recommendation. He noted that the Department recommended that the Commission issue a letter of warning without the necessity of these individuals to appear at the Commission's November 10, 1988 meeting which would be consistent with the Commission's action of November 10, 1987 regarding this subject matter.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF MICHAEL PIERINI, BODEGA BAY; RON FRIZZEL, REDDING; PETER DENTICE, MONTEREY; JOHN TARANTINO, CORTE MADERA; AND ANTONIO DAVI, SEASIDE FOR RENEWAL OF THEIR 1988-89 COMMERCIAL HERRING PERMITS WITH A STRONG ADMONITION THAT THEY SHOULD SUBMIT THEIR APPLICATIONS IN A TIMELY MANNER IN THE FUTURE.

PASSED UNANIMOUSLY.

27. REQUEST FOR TRANSFER OF SAN FRANCISCO EVEN HERRING GILL NET PERMIT (H-130-SF) OF ROY FLORAND (DECEASED) TO HIS DAUGHTER, MICHELLE FLORAND.

The Executive Secretary stated that Ms. Michelle Florand had requested authorization for a transfer of her father's (Roy Florand, deceased) San Francisco even herring gillnet permit (H-130-SF) to her.

Mr. Cribbs explained that under existing law (Fish and Game Code Section 8103) a limited entry permit may be transferred to a parent, spouse, child or sibling of a permittee whose death was the result of an accident which occurred after January 1, 1986. He pointed out that the Commissioners were provided copies of Ilson New's correspondence for client, Ms. Michele Florand, as well as a copy of the Department's comments and recommendations a copy of Section 8103 of the Fish and Game Code and Senate Bill 2187 which had been signed by the Governor and would become effective January 1, 1989 defining accidental death.

Ilson New stated that Michele Florand was the only surviving child of Mr. Roy Florand who died on February 9, 1988 of hypoxic encencepelopathy, and acute aortic dissection. He explained that the permittee contributed approximately \$4,000 to \$4,500 per year to Michele Florand's financial support equaling approximately 50% of her net usable annual income. He noted that without the income from the herring fishery Michele Florand's income would be near poverty level as defined by the California Department of Welfare benefits standard. He stated that his client's request is similar to the one Rosa Cricchio had submitted last year to the Department. He also provided copies of letters written by Assemblyman Farr and Senator Mello in support Mrs. Cricchio's request for her husband's permit.

Mr. New explained that he was in disagreement with the Department's comments in its memo to the Commission dated October 21, concerning the legislative intent of Section 8103. He indicated that the legislation did not elaborate on accidental death. He stated that the Department and the Commission should apply the law that was in effect at this time, not the law that would become effective January 1, 1989. He requested a favorable action by the Commission to prevent a severe hardship on his client.

Denis Smaage stated that the Legislature first had indicated that herring permits were not transferable, but then adopted sections 8102 and 8103 of the Fish and Game Code to allow the transfer under specific circumstances. He noted that the amendment to Section 8103 further explains what the legislature meant in the original legislation in Section 8103. He pointed out that Senator Mello's letter cannot provide the basis of legislative intent. He noted that it was a long-standing rule of law that an author cannot show authority or intent of a statute because the entire Legislature enacted the law which may be different than the original intent of the author.

Commissioner Murdy indicated that he could not accept a heart attack as an accidental death. He pointed out that he was sympathetic for Michele Florand and that there was no question that her father's death was sudden and unexpected; however, the principle cause of death was due to natural causes, and not the result of an accident.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. MCCRACKEN, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE
REQUEST OF MICHELE FLORAND FOR A TRANSFER OF THE SAN
FRANCISCO EVEN HERRING GILL NET PERMIT (H-130-SF) OF
HER FATHER, ROY FLORAND (DECEASED) TO HER.

PASSED UNANIMOUSLY.

28. REQUEST FOR TRANSFER OF SAN FRANCISCO EVEN HERRING GILL NET PERMIT (H-124-SF) OF HANS EHLERS (DECEASED) TO HIS WIFE, BETTY EHLERS.

The Executive Secretary stated that Mrs. Betty Ehlers had requested authorization for a transfer of her husband's (Hans Ehlers, deceased) San Francisco even herring gill net permit (H-124-SF) to her. He explained that under existing law (Fish and Game Code Section 8103) a limited entry

permit may be transferred to a parent, spouse, child or sibling of a permittee whose death was the result of an accident which occurred after January 1, 1986.

Mr. New stated that in 1985 the Ehlers gross income from herring fishing equaled approximately 55.9% of their total income and in 1986 it was 66.9% and in 1987 it was 52.7%. He explained that the death of Hans Ehlers deprived Mrs. Betty Ehlers of the opportunity to continue to derive a livelihood from the herring fishery and would impose greater hardships on her. He noted that his arguments were similar to those discussed in the Florand case. He pointed out that Mr. Ehlers died of a heart attack after strenuous exertion from being blown-in by a storm during a salmon fishing trip of August 2, 1988.

Commissioner Murdy stated that his comments on this matter were similar to those he expressed in the Florand case; and therefore, he could not support the request for transfer.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. MCCRACKEN, THAT
THE FISH AND GAME COMMISSION HEREBY DENIES THE
REQUEST OF BETTY EHLERS FOR A TRANSFER OF THE SAN
FRANCISCO EVEN HERRING GILL NET PERMIT (H-124-SF) OF
HANS EHLERS (DECEASED) TO HER.

PASSED UNANIMOUSLY.

Ilson New asked, for the record, why the Commission had a different ruling on these two matters than for Mrs. Cricchio last year. Denis Smaage indicated that the Commission did not hear the Cricchio case but that was handled by the Department. He further explained that Section 8103 of the Fish and Game Code now has a clear definition of accidental death which the Commission utilized.

29. REQUEST OF JOHN ANDERSON, MONTAGUE, AND DOUGLAS M. ROTH, LOCKWOOD, FOR REINSTATEMENT OF GUIDE LICENSE PRIVILEGES.

The Executive Secretary stated that Messrs. John Anderson, Montague, and Douglas M. Roth, Lockwood, had requested an opportunity to appear before the Commission to show cause why their guide license privileges should be reinstated.

John Anderson, Montague

Mr. Cribbs stated that on September 6, 1988 the Department notified Mr. Anderson that his application for a guide license had been denied. He reported that action was based upon the fact that Mr. Anderson had been convicted on November 16, 1987 for a violation of sections 2012, 2353, 2001 and 4376 of the Fish and Game Code, failure to show, declare, import, and unlawful possession of deer meat. He indicated that the Department recommended that the Commission deny Mr. Anderson's request for reinstatement of his guide license during the current license year. He pointed out that the Commissioners had been provided with a copy of a

letter submitted by Mr. Anderson regarding this matter and that he would be unable to appear at this meeting. Mr. Cribbs stated that the Department recommended that Mr. Anderson's license not be reinstated until May 16, 1989 which would be 1-1/2 years from the date of conviction.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF JOHN ANDERSON, MONTAGUE, FOR REINSTATEMENT OF HIS GUIDE LICENSE PRIVILEGES UNTIL MAY 16, 1989.

PASSED UNANIMOUSLY.

Douglas M. Roth, Lockwood

Mr. Cribbs stated that on August 26, 1988 the Department informed Mr. Doug Roth, Lockwood, that his application for a guide license had been denied, based upon the fact that he forfeited bail on March 23, 1987 for a violation of Section 700, Title 14, CCR, fishing without a valid license in possession. He pointed out that the Commissioners had been provided with a letter dated October 4, 1988 from Mr. Roth explaining the circumstances surrounding his citation.

Douglas M. Roth stated that it was an oversight on his part that he was fishing without a license. He stated that he normally renewed his license at the first of each year, but this year he failed to do so and when he was fishing he did not have a valid license in his possession. DeWayne Johnston stated that, based upon the circumstances of this case, the Department recommended the Commission reinstate Mr. Roth's guide license privileges as of December 1, 1988.

It was then:

MOVED BY MY MURDY, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF DOUGLAS M. ROTH, LOCKWOOD, FOR REINSTATEMENT OF HIS GUIDE LICENSE PRIVILEGES AS OF DECEMBER 1, 1988.

PASSED UNANIMOUSLY.

30. REQUEST OF JOSEPH SALVATORE ALIOTTI, SALINAS, TO APPEAL DEPARTMENT DENIAL OF APPLICATION FOR RENEWAL OF GENERAL GILL/TRAMMEL NET PERMIT.

The Executive Secretary stated that Mr. Joseph Salvatore Aliotti, Salinas, had requested an opportunity to appear before the Commission to appeal the Department's denial of his application for renewal of his general gill/trammel net permit. He pointed out that the Commissioners had been provided with a copy of Mr. Aliotti's request as well as a copy of the Department's comments and recommendation in this matter.

DeWayne Johnston stated that the Department had no objection to Mr. Aliotti renewing his general gill/trammel net permit if he provided adequate documentation as to why he did not renew his permit since the 1985/86 season.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF JOSEPH SALVATORE ALIOTTI, SALINAS, FOR RENEWAL OF HIS GENERAL GILL/TRAMMEL NET PERMIT SUBJECT TO VERIFICATION BY THE DEPARTMENT THAT THE REASON MR. ALIOTTI DID NOT RENEW HIS PERMIT WAS FOR REASONS BEYOND HIS CONTROL.

PASSED UNANIMOUSLY.

31. REQUEST OF BRUCE DENNIS, GARDENA, FOR RENEWAL OF DRIFT GILL NET SHARK AND SWORDFISH PERMIT.

The Executive Secretary stated that Mr. Bruce Dennis, Gardena, had requested an opportunity to appear before the Commission to show cause why his drift gill net shark and swordfish permit should be renewed. He pointed out that the Commissioners had been provided with a copy of Mr. Dennis's request as well as the Department's comments and recommendation on this matter.

Bruce Dennis stated that he was incarcerated at the time his permit was to be renewed and he was unable to renew the permit by the deadline. DeWayne Johnston stated that the Department recommended approval of Mr. Dennis's request provided he submitted documentation that he met all landing requirements in prior years.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MCCRACKEN, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF BRUCE DENNIS, GARDENA, FOR RENEWAL OF HIS DRIFT GILL NET SHARK AND SWORDFISH PERMIT PROVIDED HE SUBMITS TO THE DEPARTMENT VERIFICATION OF MEETING THE LANDING REQUIREMENTS IN ALL PRIOR YEARS.

YES: COMMISSIONERS BIAGGINI, BRYANT, MCCRACKEN
NO: COMMISSIONER MURDY

32. REQUEST OF ARTHUR RADLEY, EL CAJON, FOR RENEWAL OF GENERAL GILL/TRAMMEL NET PERMIT.

The Executive Secretary reminded the Commission that at its June 30, 1988 meeting in Bishop, it considered Mr. Radley's request for renewal of his general gill/trammel net permit. He explained that, at that time, the Commission authorized reissuance of the permit subject to Mr. Radley providing the Department with suitable documentation that his vessel had sunk. He noted that subsequent to that time, Mr. Radley was informed by the Commission office that the Department was not satisfied with the documentation and that it would be necessary for him to further verify the sinking of his vessel. He noted that was the reason for this item being placed on the agenda. He pointed out that the Commissioners had been provided with a letter dated September 13, 1988 from Mr. Radley further explaining the circumstances surrounding the sinking of his vessel.

Greg Laret, Deputy Chief, Wildlife Protection Division, stated that based on conversations with Mr. Radley and the Department's San Diego office personnel, Mr. Radley made a choice to go lobster fishing instead of renewing his gill/trammel net permit by the deadline in 1987. He stated that the Department recommended denial of Mr. Radley's request.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY DENIES THE REQUEST OF ARTHUR RADLEY, EL CAJON, FOR RENEWAL OF HIS GENERAL GILL/TRAMMEL NET PERMIT AS OF NOVEMBER 10, 1988.

PASSED UNANIMOUSLY.

33. REQUEST OF BRYCE C. IRVIN, VISTA, FOR REINSTATEMENT OF SPORT FISHING PRIVILEGES.

Mr. Cribbs stated that Mr. Bryce C. Irvin, Vista, had requested an opportunity to appear before the Commission to request reinstatement of his sport fishing privileges. He indicated that on August 29, 1988, Mr. Irvin was notified that his sport fishing privileges had been revoked for a period of three years or until January 20, 1991. He noted that action was predicated upon the fact that on June 22, 1983, Mr. Irvin was convicted of a violation of Section 2.05, Title 14, CCR, angling with more than one rod; on April 4, 1985 he was convicted of a violation of Section 2.05, Title 14, CCR, illegal method of fishing with two poles; and on January 20, 1988 he was convicted of a violation of Section 2.05, Title 14, CCR, fishing with more than one line. Mr. Cribbs pointed out that upon the Department's investigation of this matter it found that circumstances surrounding his conviction on January 20, 1988, was suspect; and therefore, the Department recommended reinstatement of Mr. Irvin's sport fishing privileges.

It was then:

MOVED BY MR. BRYANT, SECONDED BY MR. MCCRACKEN, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES THE REQUEST OF BRYCE C. IRVIN, VISTA, FOR REINSTATEMENT OF HIS SPORT FISHING PRIVILEGES AS OF NOVEMBER 10, 1988.

PASSED UNANIMOUSLY.

34. NONRENEWAL OF WHITE STURGEON BROODSTOCK COLLECTION PERMITS OF KIETH BROWN AND ROY COBBLE, RED BLUFF, ARROWHEAD FISHERIES, INC.; JANE RUNDQUIST, SACRAMENTO, CALIFORNIA SUNSHINE FISHERIES; LEWIS CLANTON, GERBER, RANCHO DEL PESCADO; KEN BEER, GALT, THE FISHERY; DAVID MCFARLAND, SUSANVILLE, AMERICAN TROUT AND SALMON COMPANY; AND RONALD F. LIPTON, SACRAMENTO, CALIFORNIA GOURMET FISHERIES, INC.

The Executive Secretary stated that the Department had requested that the Commission not renew the white sturgeon broodstock collection permits of Arrowhead Fisheries, Inc., California Sunshine Fisheries, Rancho Del Pescado, The Fishery, American Trout and Salmon Company, and California Gourmet Fisheries, Inc. He explained that the Department's basis for this recommendation was set forth in its letter dated October 7, 1988. He noted

that as a result of investigations conducted by the Department, it recommended that the white sturgeon broodstock collection permits not be renewed for the following reasons:

(1) Arrowhead Fisheries: (a) Purchase of fish from a fisherman not listed on the permit (an undercover warden); (b) failure to notify the Department of the disposition of the fish; (c) butchering and returning the fish to the undercover warden; and (d) submitting false information on the annual report.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY POSTPONES RENEWAL OF WHITE STURGEON BROODSTOCK COLLECTION PERMIT OF KIETH BROWN AND ROY COBBLE, RED BLUFF, ARROWHEAD FISHERIES, PENDING ADJUDICATION OF THE CRIMINAL CHARGES, THEN THE MATTER WILL BE RE-CALENDERED FOR COMMISSION CONSIDERATION.

PASSED UNANIMOUSLY.

(2) California Sunshine Fisheries, Inc.: (a) Purchase of sturgeon taken under the authority of a sport fishing license from Mr. T. Goodman; (b) sale of sturgeon over eight inches to River City Aquatics, an aquarium dealer permittee; and (c) violation of the terms of the permit by taking 21 fish in 1988, failure to mitigate for all fish taken and falsely reporting the actual number of sturgeon taken on the annual report to the Department.

Legal advisor's Gene Toffoli and Hal Thomas presented the Department's case in this matter, and California Sunshine Fisheries, Inc. was represented by Paul Dobson and Jim Gross, Attorneys at Law. Greg Laret, Deputy Chief, Wildlife Protection Division, and Warden Joe Knarr were witnesses for the Department and Jane Rundquist and Mr. Thornrose were witnesses for California Sunshine Fisheries, Inc. All witnesses were sworn in and were cross-examined. Both the Department and the attorneys for California Sunshine Fisheries, Inc. submitted exhibits which were included into the record. After hearing the case, the Commission took the matter under submission in Executive Session to determine its findings in this case. The following order was issued in this matter:

BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA

In the Matter of Request for Renewal)
of White Sturgeon Broodstock Capture)
Permit Held by:)

California Sunshine Fisheries, Inc.)
9149 East Levee Road)
Elverta, California 95628)

Permittee)

White Sturgeon Broodstock Capture
Permit Dated: January 28, 1988
and as amended March 8, 1988 and
May 4, 1988

DECISION

On November 10, 1988, in Yosemite, California, the California Fish and Game Commission (Albert C. Taucher, Robert A. Bryant, John A. Murdy III, E. M. McCracken, Jr., and Benjamin F. Biaggini) sitting as a body, heard this matter.

Eugene Toffoli and Harold Thomas represented the Department of Fish and Game, complainant.

Permittee, California Sunshine Fisheries, Inc., was represented by James Gross and Paul Dobson, Attorneys at Law.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Representative, Pete Bontadelli, Director, California Department of Fish and Game, made and filed the complaint solely in his official capacity.

II

Permittee, California Sunshine Fisheries, Inc., is a registered California aquaculturist under California law and is engaged in the business of raising sturgeon for sale commercially. On January 28, 1988, permittee, California Sunshine Fisheries, Inc., was issued a permit to capture wild white sturgeon broodstock from specified waters of the state. At all times herein the permittee was authorized by said permit to capture and possess up to 20 white sturgeon during 1987-88 subject to the terms and conditions of said permit as amended.

III

The permittee was charged with a violation of the terms and conditions of its permit as follows:

Count (1) Purchased sturgeon taken under the authority of a sport fishing license from Mr. T. Goodman;

Count (2) Sold sturgeon over eight inches to River City Aquatics, an aquarium dealer permittee;

Count (3) Violated the terms of the permit by taking 21 fish in 1988; and

Count (4) Falsely reported the actual number of sturgeon taken on its 1988 annual report to the Department.

IV

At the time of the hearing, counsel for the Department of Fish and Game and counsel for California Sunshine Fisheries, Inc., stipulated that counts (1) and (2) would be dropped and that the permittee admitted to counts (3) and (4). In explanation to the stipulation, counsel for the permittee stated that they would show that possession of one of the 21 fish was the result of an inadvertent error.

V

(Count (3))

The defense contends that an adult male white sturgeon received by the permittee on May 11, 1988 from an authorized fisherman, Joe Lebeda, was found unsuitable for their broodstock purposes and was therefore rejected and was not retained for use by the permittee.

VI

The direct evidence (testimony and Department's Exhibit No. 4) from Joe Knarr, the Department's undercover warden who was working as an employee of California Sunshine Fisheries, Inc., was that he observed this male sturgeon at the facility on May 12, 1988. This confirms that the fish in question was retained by California Sunshine Fisheries beyond May 11, 1988.

VII

Ms. Jane Rundquist, President of California Sunshine Fisheries, Inc., testified that the adult male sturgeon brought in by Joe Lebeda on May 11, 1988 was not accepted by the permittee as being too small and unsuitable and was thus immediately given back to Mr. Lebeda. However, Ms. Rundquist was not personally in attendance on May 11, 1988 at the facility and, therefore, did not personally make this observation and she testified that she was relying upon the statements of her employee.

Ms. Rundquist also relied upon permittee's exhibit A, which is a "spawning data sheet" dated May 11, 1988, 2100 hours, which shows delivery of an adult male sturgeon, 49-1/2 inches fork length, from fisherman Joe Lebeda. This exhibit had a notation: "did not accept". However, the second portion of that "spawning data sheet" tends to indicate that, on April 13, 1988 at 1445 hours at 20 degrees centigrade, an injection may have been made, although the milligrams of pituitary has been left blank.

The use of an April date rather than a May date on this injection line renders this form ambiguous. The second page of the permittee's exhibit A is a daily and hourly log. For the date of May 11, 1988 at 2100 hours, the log indicates that apparently the same male sturgeon was brought in by Joe Lebeda and the log has a notation for that fish: "no sperm seen in fluid taken from male at arrival". There was no further entry for that date. We conclude that the detailed and accurate log that this document appears to be would certainly have mentioned that the fish in question was immediately returned to Mr. Lebeda, if that were indeed a fact.

Reviewing the testimony of Ms. Rundquist, and the documentary evidence presented and interpreted by her in contrast to the direct observations made by Warden Knarr, we conclude that the sturgeon in question was indeed captured and possessed for a period of time by the permittee and that its possession was not an inadvertent error on the part of the permittee.

Defense counsel raised the issue that Warden Knarr, as an employee of the permittee, was under an obligation to inform his employer that the possession of that fish constituted a violation. This argument fails because the permittee as of that date had not captured and possessed over 20 twenty fish, as this did not occur until May 23, 1988.

We find that the preponderance of the evidence shows that the permittee was in violation of the terms and conditions of their permit which only authorized the capture and possession of 20 white sturgeon during 1988.

VIII

(COUNT (4))

Counsel for the permittee stipulated to the fact that California Sunshine Fisheries, Inc., had submitted to the Department a false annual report on the number of adult fish that it had captured and possessed during the 1987-88 year.

The undisputed facts show that the annual report by California Sunshine Fisheries, Inc., to the Department stated that only 10 white sturgeon had been captured and possessed during the 1987-88 permit year. The facts are that the permittee had captured and possessed 21 white sturgeon. The annual report showing only 10 white sturgeon was a deliberate falsification. In paragraph 5, page 2, of the permit dated January 28, 1988, it states that each adult white sturgeon permittee is required to mitigate for each sturgeon taken from the wild as follows:

"For every adult sturgeon collected under this permit, 1,000 fingerlings averaging three (3) inches in total length or 3,000 free swimming fry will be made available to be released to the wild at or near the location the adult or adults were captured. The permittee shall notify the Department during normal business hours at least 24 hours prior to release of juvenile fish. Of the juveniles retained by the permittee, at least 200 will be retained for broodstock purposes. Other arrangements must be approved by the Inland Fisheries Division."

IX

The accurate and truthful reporting of fish captured and possessed by permittees is critical to the overall success of the white sturgeon broodstock program and to ensuring the Department's protection of the public trust.

The preponderance of the evidence presented and, in fact, stipulated to by the counsel for the permittee, clearly shows that the permittee failed to comply with reporting requirements of paragraph 7 of the permit dated January 28, 1988.

X

Financial Impact: The permittee and the Department testified that the operations of California Sunshine Fisheries, Inc., could continue to function during 1989 if it was denied renewal of its white sturgeon broodstock capture permit, as juvenile sturgeon could be purchased by the permittee from other approved sources. Therefore, nonrenewal of the permittee's white sturgeon broodstock capture permit during 1988-89 would not result in an undue economic hardship to the permittee.

DETERMINATION OF ISSUES

I

Cause for nonrenewal of California Sunshine Fisheries, Inc.'s white sturgeon broodstock capture permit for 1988-89 was established by reason of permittee's violation of the terms and conditions of its permit dated January 28, 1988 and as amended on March 8, 1988 and May 4, 1988 by reasons of Findings I through X.

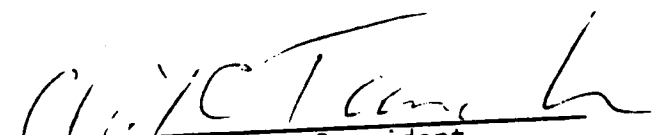
II

The violation of either Count (3) or Count (4) alone is sufficient to support an order denying renewal of permittee's white sturgeon broodstock capture permit for calendar year 1989.

ORDER

California Sunshine Fisheries, Inc.'s white sturgeon broodstock capture permit shall not be renewed by the Department of Fish and Game during 1989. Further, California Sunshine Fisheries, Inc., and/or its employees or agents shall be prohibited from capturing, possessing, spawning, processing or transporting any white sturgeon taken from the waters of California during 1989.

Dated: April 1, 1989


Albert C. Taucher, President
California Fish and Game Commission

(3) Rancho Del Pescado: The violations are identical to those charged against Arrowhead Fisheries and are based on the same evidence. One of the individuals charged in this case is the registered owner of the Rancho Del Pescado facility.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BIAGGINI, THAT THE FISH AND GAME COMMISSION HEREBY POSTPONES RENEWAL OF THE WHITE STURGEON BROODSTOCK COLLECTION PERMIT OF LEWIS CLANTON, GERBER, RANCHO DEL PESCADO, PENDING ADJUDICATION OF THE CRIMINAL CHARGES, THEN THE MATTER WILL BE RE-CALENDERED FOR COMMISSION CONSIDERATION.

PASSED UNANIMOUSLY.

(4) The Fishery: Purchase of sturgeon taken by a fisherman not listed on the permit and failure to notify the Department prior to collection of fish.

Legal advisor's Gene Toffoli and Hal Thomas presented the Department's case and Jay Freeman, Attorney at Law, represented The Fishery. The Department witnesses included Greg Laret, Deputy Chief, Wildlife Protection Division, and Warden Chris Cory. Ken Beer was a witness for The Fishery. All witnesses were sworn in and the Department and Mr. Freeman submitted exhibits for the record. After hearing this case, the Commission determined that the Department failed to prove that The Fishery purchased sturgeon taken by a fisherman not listed on their permit. The Commission found, however, that The Fishery's record keeping was lax and admonished The Fishery to keep better records in the future.

It was then:

MOVED BY MR. MCCRACKEN, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY APPROVES RENEWAL OF THE WHITE STURGEON BROODSTOCK COLLECTION PERMIT OF KEN BEER, GALT, THE FISHERY, FOR THE CALENDAR YEAR 1989. FURTHER, THE COMMISSION ADMONISHED MR. BEER TO MAINTAIN ACCURATE RECORDS IN THE FUTURE AND TO COMPLY WITH ALL TERMS AND CONDITIONS OF HIS PERMIT.

PASSED UNANIMOUSLY.

(5) American Trout and Salmon Company: (a) Did not participate in wild broodstock capture and spawning during 1987-88; (b) did not obtain juvenile fish from other sources; and (c) is not maintaining any broodstock fish.

It was then:

MOVED BY MR. MURDY, SECONDED BY MR. BRYANT, THAT THE FISH AND GAME COMMISSION HEREBY DENIES RENEWAL OF THE WHITE STURGEON BROODSTOCK COLLECTION PERMIT OF DAVID MCFARLAND, SUSANVILLE, AMERICAN TROUT AND SALMON COMPANY, AS OF NOVEMBER 10, 1988.

PASSED UNANIMOUSLY.

(6) Ron Lipton, California Gourmet Fisheries: Mr. Lipton has moved to Oregon. The permit is nontransferable, yet the persons now operating the facility are in possession of sturgeon broodstock obtained under Mr. Lipton's permit.

The Department did not have a problem with California Gourmet Fisheries receiving a permit and separated Ronald Lipton from California Gourmet Fisheries.

It was then:

MOVED BY MR. BIAGGINI, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION HEREBY DENIES RENEWAL OF THE WHITE STURGEON BROODSTOCK COLLECTION PERMIT OF RONALD F. LIPTON, SACRAMENTO, CALIFORNIA GOURMET FISHERIES, UNTIL SUCH TIME AS HE APPEARED BEFORE THE COMMISSION TO SHOW CAUSE WHY A WHITE STURGEON BROODSTOCK COLLECTION PERMIT SHOULD BE REISSUED TO HIM.

PASSED UNANIMOUSLY.

OTHER

35. ANNOUNCEMENT OF FUTURE MEETINGS.

12/1/88 (1:00 p.m.)
12/2/88 (8:30 a.m.)

City Council Chambers
531 "K" Street
Eureka

1/11/89 (1:00 p.m.)
1/12/89 (8:30 a.m.)

City Council Chambers
3200 Tahquitz-McCallum Way
Palm Springs

2/2/89 (1:00 p.m.)
2/3/89 (8:30 a.m.)

City Council Chambers
333 W. Ocean Boulevard
Long Beach

3/2/89 (1:00 p.m.)
3/3/89 (8:30 a.m.)

City Council Chambers
1313 California Street
Redding

4/3/89 (1:00 p.m.)
4/4/89 (8:30 a.m.)

Auditorium, Resources Building
1416 Ninth Street
Sacramento

4/21/89 (1:00 p.m.)	Sacramento
5/15/89 (1:00 p.m.)	San Luis Obispo
5/16/89 (8:30 a.m.)	
6/29/88 (1:00 p.m.)	Independence/Lone Pine
6/30/89 (8:30 a.m.)	
8/3/89 (1:00 p.m.)	San Rafael
8/4/89 (8:30 a.m.)	
8/29/89 (1:00 p.m.)	Auditorium
8/30/89 (8:30 a.m.)	1416 Ninth Street Sacramento
10/5/89 (1:00 p.m.)	San Diego
10/6/89 (8:30 a.m.)	
11/2/89 (1:00 p.m.)	Redding
11/3/89 (8:30 a.m.)	
11/30/89 (1:00 p.m.)	City Council Chambers
12/1/89 (8:30 a.m.)	333 W. Ocean Boulevard Long Beach

The Executive Secretary requested that the Commission review the future meeting schedule and if they had any conflicts or requested changes in any dates or locations that were not set by the statutes, he asked that they notify the Commission office as soon as possible.

There being no additional items before the Commission the meeting was adjourned at 4:15 p.m.