State of California

George Deukmejian, *Governor*

Little Hoover Commission

1303 J Street, Suite 270 • Sacramento, CA 95814 • (916) 445-2125

REPORT ON CALIFORNIA'S FISH AND GAME COMMISSION AND DEPARTMENT OF FISH AND GAME

JANUARY 1990

Commission on California State Government Organization & Economy

REPORT ON CALIFORNIA'S

FISH AND GAME COMMISSION

AND

DEPARTMENT OF FISH AND GAME

LITTLE HOOVER COMMISSION

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1303 J Street, Suite 270 • Sacramento, CA 95814 • (916) 445-2125

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Chairman

Haig G. Mardikian
Vice-Chairman

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Assemblyman

Jeannine L. English
Executive Director

January 4, 1990

The Honorable George Deukmejian
Governor of California

The Honorable David Roberti
President pro Tempore of the Senate
and Members of the Senate

The Honorable Kenneth L. Maddy
Senate Minority Floor Leader

The Honorable Willie L. Brown, Jr.
Speaker of the Assembly
and Members of the Assembly

The Honorable Ross Johnson
Assembly Minority Floor Leader

Dear Governor and Members of the Legislature:

The Little Hoover Commission has determined that California has failed to develop an adequate system to manage the state's natural resources, despite the fact that we are living in a time when growth pressures are competing with a heightened awareness of the fragile nature of the state's diverse ecology.

The Commission for the past year has examined the roles and functioning of the state Fish and Game Commission and the Department of Fish and Game. What we discovered is that the state has an antiquated structure set up to protect the state's natural resources that has not proven capable of reacting either quickly, consistently or adequately to the demands of our times.

Where once the highest priority was managing wildlife for hunters and fishermen, the Fish and Game Commission and Department now have the much broader mandate of protecting all fish, game and native plants; conserving wildlife habitat; acquiring land, water and water rights to ensure fish and game propagation; protecting aquatic resources; monitoring dammed waters; and identifying, inventorying and managing endangered and/or rare species. This broader mandate has come without a commensurate increase in resources and without the required shifting of focus from top to bottom at the Fish and Game hierarchy.

In two public hearings, the Little Hoover Commission found that the Department and the Commission both believe they are doing a good job of protecting wildlife and that they are responsive to the public and to other agencies. But that is not what we heard from the parties that deal with both the Commission and the Department on a day-to-day basis:

* Wildlife advocates charge that there is a lack of dedication to the preservation of

species and habitat. As a result, streams are altered, development is pursued and timber is felled in areas they believe should be protected.

* Farmers claim the state buys land for refuges without notification to surrounding owners and then fails to maintain the property, causing depredation of crops and other problems for neighboring properties.

* Developers believe the Department is inconsistent, capricious and untimely in its decisions and advice on projects across the state.

* Sportsmen complain of unwieldy licensing systems and ever-increasing fees, while commercial interests find tax collection practices spotty and policies to prevent illegal taking of wildlife insufficient.

* Other governmental agencies charge that the Department reneges on bargains it has negotiated, is slow to deliver its input on projects and has changing policies depending on personalities and regions involved.

* Inside and outside the Department, experts maintain that scientific opinion and research is brushed aside whenever it conflicts with political desires and goals.

* Statewide critics find the Department does not exercise enough control over its regional operations nor does it adequately track and monitor its own fiscal performance.

In the face of such universal unhappiness with both the Fish and Game Commission and the Department of Fish and Game, the Little Hoover Commission set out to examine the mandate of the two entities, their relationship, and their performance relative to the needs of the State and the intentions expressed by the Legislature. Based on this examination, the Little Hoover Commission reached the following conclusions and recommendations:

1. **Composition of the Commission: There are no clear or publicly understood criteria for selection and appointment of Fish and Game Commissioners.** The Fish and Game Commission's mandate and related activities have grown far beyond the time when the good intentions and honest opinions of five sportspersons could be relied on to mold the state's natural resources policies.

Recommendation: With the assistance and advice of the Legislature, the Governor's Office and representatives of appropriate State control agencies, the Resources Agency should convene a special task force to develop and place into law criteria for membership on the Fish and Game Commission, including broad-based representation by biologists, environmentalists, developers, ranchers and sportspersons.

2. **Commission Viability: The Commission does not adequately exercise its statutory authority over the Department of Fish and Game.** The Commission's independent, constitutionally authorized structure places it outside the Executive Branch, thereby undercutting its ability to exercise administrative control over the Department's implementation of policy.

Recommendation: The Commission should become part of a formal Resource Agency Oversight

Task Force, composed of one executive member from each of the major resource-related commissions and departments within the agency. Chaired by the Resources Agency Secretary, this task force would serve to unify policy and practice with respect to all significant aspects of California's fish and game, water and habitat-related issues.

3. **Commission Operations and Decisions: The Commission has difficulty meeting its mandate because of external pressures and factors.** The Commission increasingly is incapable of withstanding the pressures upon it to both protect natural resources and to allow hunters and fishermen their traditional access to wildlife.

Recommendation: The Resources Agency, Legislature and the Governor's Office should assess the Commission's future performance in light of its recent stated rededication to fulfilling its mandate. The Commission should concentrate on effectively monitoring the Department of Fish and Game, responding to public input and making full use of scientific analyses before deciding issues before it, and working in a committed fashion with the new Resource Agency Oversight Task Force.

4. **Departmental Negotiations With Related Agencies: The Department of Fish and Game has exercised inappropriate bargaining tactics with respect to habitat mitigation.** There is compelling evidence that the Department, either through lack of cohesiveness or by intent, has reneged on and/or demanded changes in what affected agencies believed were completed mitigation negotiations.

Recommendation: The Department of Fish and Game should create a separate staff unit to provide timely and consistent identification of issues and practices related to mitigation actions.

5. **Departmental Acquisition and Stewardship of Land: The Department has been unsystematic and inconsistent in its acquisition and maintenance of State refuge lands.** There are charges (and in some cases, evidence) that the Department has not notified surrounding landowners about its intent to purchase land, has bought unsuitable lands or lands at inflated prices, and has failed to maintain the lands once purchased because of the separation by budget years of acquisition and maintenance funds.

Recommendation: The Governor and the Legislature should direct the Department to notify the public and surrounding landowners of its intent to buy property, to secure at least two appraisals of the land and to only buy property in the same fiscal year maintenance funds are available.

6. **Departmental Internal Administrative Capacities: The Department has no comprehensive management information system.** This lack has made it difficult, if not impossible, for the Department to provide, upon request, information to the Legislature and other entities, to properly track its funding and taxing mechanisms, and to adequately monitor fish and game species counts, hunting and fishing takes and illegal depredation of wildlife.

Recommendation: The Department's management information needs should be analyzed and planned for, the Resource Agency should be directed to report to the Legislature on the Department's fiscal performance during 1990-91, and the Department should adopt empirically defined mechanisms for measuring the legal and illegal taking for fish and game.

7. **Departmental Internal Allocation of Resources: The Department is not capable of appropriately allocating resources.** The Department cannot provide the required level of monitoring, enforcement and timely expertise and research consistent with the requirements of its mandate.

Recommendation: The Resource Agency should push for greater resources for the Department, especially in the Department's Environmental Services Division, and should promote better relationships between its own commissions and departments.

8. **Departmental Oversight and Authority Over Fish and Game Regional Administrators: The Department does not have adequate oversight and authority over Fish and Game Regional administrators.** There exists within the Department of Fish and Games' field operations a lack of consistency with respect to Regional enforcement practices and regulations.

Recommendation: The Department should tighten its lines of oversight and control over the Regional operations and continue its recent commitment to systematic training of field staff.

Throughout its study, the Little Hoover Commission made a point of not pitting people against wildlife: No assessment was made of whether it is more important to preserve our natural resources, more crucial to meet the state's growth needs through development or more sensible to strike a reasonable balance. Instead, we concentrated on the question of whether the process and structure the State has in place to manage its wildlife is fair and adequate. As our findings and recommendations above indicate, unfortunately the State's performance is falling short in this critical area.

We urge the Governor, the Legislature and the Resources Agency to move quickly on remedial actions. Because of the vital nature of this subject area, the Little Hoover Commission pledges not only to work with the various entities to accomplish these changes, but also to continue to monitor the situation and report at regular intervals on the level of progress that is made.

Sincerely,

NATHAN SHAPELL, Chairman
Haig Mardikian, Vice Chairman
Senator Alfred Alquist
Mary Anne Chalker
Albert Gersten
Senator Milton Marks
Assemblywoman Gwen Moore
George Paras
Abraham Spiegel
Barbara Stone
Richard Terzian
Assemblyman Phillip Wyman

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Executive Summary

The concept was simple when it was first written into the California Constitution: Policies governing the state's fish, game and wildlife habitat are the responsibility of the Fish and Game Commission.

But in a world where ever-mounting growth pressures on land, water and air compete with heightened awareness of the fragile nature of California's diverse ecology, the issue of wildlife management is growing increasingly complex.

The Little Hoover Commission has reviewed the performance of the Fish and Game Commission and the agency that carries out its policies, the Department of Fish and Game, within the context of their broad mandate to protect California's natural resources. The key focus of the study is the capability and performance of both the Commission and the Department in meeting these increasingly complex demands.

By law, the general charge of the Fish and Game Commission is to formulate policies for the conduct of the Department of Fish and Game. The Commission carries out its activities, which include at a minimum eight public meetings a year, on a budget of $429,000 (FY 1989-90) and with a staff of two professionals and five clerical workers. The Department, with 1,568 personnel years, has a budget of $118.9 million (FY 1989-90).

Within the purview of the Commission and the Department are:

* Preserving, protecting and managing California's fish, game and native plants, without respect to their economic value.

* Conserving California's wildlife and wildlife habitat.

* Acquiring land, water and water rights to ensure game and fish propagation.

* Acquiring land, water and water rights to ensure ecological preserves.

* Conserving and protecting aquatic resources.

* Identifying, inventorying, supporting and managing special programs for endangered and/or rare species.

* Monitoring all dams of water containing fish.

With these far-flung responsibilities, it is not surprising that intense scrutiny and frequent controversy are no strangers to the two entities. However, based upon contact from the Legislature, the general public and private organizations, the Little Hoover Commission became concerned about the widespread perception that the Fish and Game Commission and the Department of Fish and Game have isolated themselves from the major groups concerned with the preservation of fish, game and habitat, while at the same time frequently straining relations with other government agencies, sporting groups and developers.

After a 10-month investigation, two public hearings, numerous meetings with the widest possible variety of constituent groups and in-depth interviews with Department and Commission officials, the Little Hoover Commission is issuing the following findings:

A. Composition of the Commission: **There are no clear or publicly understood criteria for selection and appointment of Fish and Game Commissioners.** The Fish and Game Commission's mandate and related activities have grown far beyond the time when the good intentions and honest opinions of five sportspersons could be relied on to mold the state's natural resources policies. To give the Commission the external (i.e., outside of the Department of Fish and Game) expertise that it needs, as well as badly needed credibility with all competing constituencies, the Commission needs to be stocked with broad-based representation, including biologists, environmentalists, developers, ranchers and sportspersons.

B. Commission Viability: **The Commission has not, and as presently structured, cannot adequately exercise its statutory authority over the Department of Fish and Game.** The Commission's independent, constitutionally authorized structure places it outside the Executive Branch, thereby undercutting the ability of the Commission to exercise administrative control over the Department's implementation of policy. Without a unity of perspective and a unity of operation, the Commission has little authority over the Department and no formal relationship with the Resource Agency, which houses the Department.

C. Commission Operations and Decisions: **The Commission has difficulty meeting its mandate because of external pressures and factors outside of its control.** The Commission increasingly is incapable of withstanding the pressures upon it both to protect natural resources and to allow hunters and fishermen their traditional access to fish and game. This is particularly true in cases where scientific evidence is either sparse or non-existent, or where scientific revelations develop more quickly than the Commission can adjust.

D. Departmental Negotiations With Related Agencies: **The Department of Fish and Game has exercised inappropriate bargaining tactics with respect to habitat mitigation.** There is compelling evidence that the Department, either through lack of cohesiveness or by intent, has reneged on and/or demanded changes in what affected agencies were led to believe were completed mitigation negotiations. This has slowed the progress of projects with little or no justifiable cause and has led to the Department's reputation as a bad-faith bargainer.

E. Departmental Acquisition and Stewardship of Land: **The Department has been unsystematic and inconsistent in its acquisition and maintenance of State refuge lands.** There are charges (and in some cases, evidence) that the Department has not notified surrounding landowners about its intent to purchase land, has bought unsuitable lands or lands at inflated prices, and has failed to maintain the lands once purchased because of the separation by budget years of acquisition funds and maintenance funds.

F. Departmental Internal Administrative Capacities: **The Department has no comprehensive management information system.** This lack has made it difficult, if not impossible, for the Department to provide, upon request, information to the Legislature and other entities, to properly track its funding and taxing mechanisms, and to adequately monitor fish and game species counts, hunting and fishing takes and illegal depredation of wildlife.

G. Departmental Internal Allocation of Resources: **The Department is not capable of appropriately allocating resources.** The Department cannot provide the required level of monitoring, enforcement and timely expertise and research consistent with the requirements of its mandate. The lack of enough resources leads to policy decisions that must be made based on incomplete or dated information.

H. Departmental Oversight and Authority Over Fish and Game Regional Administrators: **The Department does not have adequate oversight and authority over Fish and Game Regional administrators.** There exists within the Department of Fish and Games' field operations a lack of consistency with respect to Regional enforcement practices and regulations. This inconsistency makes it difficult for those who interact with the Department on a statewide basis, as well as blocking the implementation of a cohesive, top-to-bottom, statewide policy.

Flowing from the above findings, the Little Hoover Commission is making the following recommendations for corrective actions:

1. Composition of the Commission: With the assistance and advice of the Legislature, the Governor's Office and representatives of appropriate State control agencies, the Resources Agency should convene a special task force to develop criteria for membership on the Fish and Game Commission. Once agreed upon, these criteria should be placed in law.

2. Commission's Viability: The Commission should become part of a formal Resource Agency Oversight Task Force, composed of one executive member from each of the major resource-related commissions and departments within the agency. Chaired by the Resources Agency Secretary, this task force would serve to unify policy and practice with respect to all significant aspects of California's fish and game, water and habitat-related issues, while forging a closer relationship between the constitutionally independent Fish and Game Commission and the Executive Branch.

3. Commission's Operations and Decisions: The Resources Agency, Legislature and the Governor's Office should assess the Commission's future performance in light of its recent stated rededication to fulfilling its mandate. The Commission should concentrate on effectively monitoring the Department of Fish and Game, responding to public input and making full use of scientific analysis before deciding issues before it, and working in a committed fashion with the new Resource Agency Oversight Task Force.

4. Departmental Negotiations With Related Agencies: The Department of Fish and Game should create a separate staff unit, to provide timely and consistent identification of issues and practices related to mitigation actions involving external agencies.

5. Departmental Acquisition and Stewardship of Refuge Lands: There are three recommendations for action:

A. State acquisition of property should be made dependent on public notice of the intent to purchase the land, as well as specific notification of surrounding property owners.

B. The Department should require at least two appraisals of land value, including the residual value to the current owner of any rights not included in the property sale.

C. Legislative and Executive branch budgetary policies should be modified to provide for a direct tie between land acquisition funds and maintenance funds in the year the land is purchased.

6. Departmental Internal Administrative Capacities: There are three recommendations for action:

A. The Department's management and fiscal information needs should be analyzed (either by the state Office of Information Technology or an independent analyst) and a plan formulated to improve the department's management information system.

B. The Resource Agency should reconcile expenditures to dedicated fund sources for FY 1990-91 and report to the Legislature on the results and on the future viability of the present system of dedicated fund sources.

C. The Department should be directed to set up empirically defined, consistent systems for measuring legal and illegal taking of game and fish by both sporting and commercial agents.

7. Departmental Allocation of Resources: The Resource Agency should push for greater resources for the Department, especially in the Department's Environmental Services Division, and should promote better relationships between its own commissions and departments.

8. Departmental Oversight and Authority Over Fish and Game Regional Administrators: The Department should tighten its control over the Regional operations and continue its recent commitment to systematic training of field staff.

The Little Hoover Commission believes that implementation of the above recommendations would give both the Fish and Game Commission and the Department of Fish and Game the improved capability to cope with the demands of safeguarding California's natural resources in a time of explosive growth and development, while at the same time improving the credibility of both entities with the diverse and competing constituencies they now face.

I. INTRODUCTION

A. Purpose of the Study

The purpose of the study represented by this report is consistent with the more general purpose of all Little Hoover Commission (LHC) studies, which is to speak to the effectiveness and efficiency of California State public agencies. More specifically, the LHC mandate aims toward maximizing the effectiveness and efficiency of State agencies through independent analysis of State agency policies, practices and operations.

The goal of the LHC is clear: more cost-effective State government. The mechanisms for achieving increased cost-effectiveness are:

(1) Public hearings before the full Commission on the agency under study, with the goal of publicly isolating issues of primary and continuing concern (held May 15, 1989 in Los Angeles, and June 27, 1989 in Sacramento.

(2) Data collection activities, including private conferences with representatives of affected agencies and populations, with the goal of a comprehensive collection of relevant data.

(3) Continuing review and oversight of the study by both a LHC Subcommittee and the full Commission, with the goal of continued refinement of the study as a whole and the issues central to the study.

(4) The issuing of a final report, with the purpose of identifying the study's findings and recommending refinements to the agency's policies, practices and/or operations.

(5) In coordination with the State Legislature, the drafting of legislation required to resolve continuing issues, or put into place recommended policies, practices or operations.

Since their inception, the Department of Fish and Game (DFG) and the Fish and Game Commission (FGC) have had the responsibility of managing California's natural resources. With the rise of heightened environmental concern, both the Commission and the Department have experienced a rapid acceleration of their responsibilities, as well as a significant increase in the resources committed to the protection, propagation, conservation and preservation of fish, game and wildlife habitat. The public inquiries, then, which lead to the present study focus precisely on the relationship between these increased resources and responsibilities: Are these agencies functioning effectively and efficiently, and do they represent the public interest, consistent with Legislative mandate and intent?

The seriousness of the issues that precipitated LHC's study cannot be overstated. The pressures of explosive growth coupled with increased industrial output demand that the DFG and the FGC develop flexible policies and practices, consistent with the need for development of California's natural resources and lands. On the other hand, the DFG and the FGC must function as the primary agents for the protection of these same natural resources, a duty which demands a comprehensive viewpoint, foresight in planning, and coordinated action with all those affected by its policies and practices. Moreover, given the high visibility of its decisions in both the Legislature and with the sporting and general public, the DFG and the FGC cannot function in a proprietary

or unilateral fashion, but must be responsive to fluctuations in natural processes, public policy and public opinion.

Based upon contact from the Legislature, public and private organizations and the general public, the LHC became concerned with the widespread perception that the DFG and the FGC have isolated themselves from the major groups concerned with the preservation of fish, game and habitat, while at the same time acting in a manner to strain relations with other government agencies, sporting groups and developers. Consequently, LHC's study proceeded to address the following primary issues:

- Legislative mandate and intent as compared to current DFG and FGC priorities.

- The degree to which the DFG and the FGC solicit and entertain recommendations from public and private organizations, agencies and the general public concerning issues of resource management and protection.

- Whether there are unnecessarily confrontational relations between the DFG and other State and local public agencies and municipalities.

- The effectiveness of the relationship between the DFG and the FGC.

- The ability of the DFG to ensure proper and consistent application of its priorities and policies in the field.

B. Scope and Limitations of the Study

For the purpose of the review of California's system of state-administered Fish and Game protection and maintenance, the Little Hoover Commission held an open contract competition and awarded a 10-month contract for $10,840 to Dennis Rose & Associates, a Sacramento-based consulting firm. The effective initiation date for the study was March 1, 1989, with a completion date projected as December 31, 1989.

By common acknowledgement, the study as designed could not hope to adequately represent the State's Fish and Game system in its totality because of the natural diversity of the state, the proliferation of distinct natural resource maintenance and protection programs and the variety of local and state resource protection authorities. Instead, the study was designed to speak to a mix of structural and policy issues, none of which is wholly defined by some single issue, but all of which present evidence of the capacities and priorities of both the DFG and the FGC. The study also was limited to matters of Fish and Game, and so does not address the entirety of California's natural resource-related issues and the agencies/authorities that define or represent these issues.*

The natural wealth and variety of California's resources, coupled with the increasing development of what have been rural and wilderness areas, translates into numerous, topically specific natural

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* Relations between the Department of Fish and Game and its sister Departments within California's Resource Agency--Department of Water Resources, Department of Forestry, Department of Parks and Recreation--will be noted in what follows; however, the discussion strictly will proceed from a "Fish and Game" perspective.

resource advocacy groups. Many of these groups requested access both to the Commission's consultant and to the Commission's public hearings. Not all of the requests for representation at the public hearing could be accommodated, which meant that the study tended to provide greater access to those groups which had more general foci. Such groups as Defenders of Wildlife, for instance, had greater access to the study than did, say, groups advocating the preservation or protection of a single species of fish or animal. However, no group was denied access to either the consultant or to Commission staff; many "issue-limited" groups provided continuing information and dialogue with study representatives.

Finally, a further limitation placed upon the study is discussed within the "Findings" section of this report. The Department historically has not been able to adequately and reliably report on it activities, expenditures, or impact of its efforts because of an inadequate management information system. This problem precluded one important informational source for the study.* Similarly, and as will be summarized by the report, the Fish and Game Commission (FGC) has quite limited abilities to present information in support of its activities and decisions and how they impact the Department's implementation of programs.

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* It should be noted, however, that the Department's representatives were cooperative, informative and responsive to all Commission requests for information.

II. BACKGROUND: HISTORY AND PRESENT STATUS OF THE COMMISSION AND DEPARTMENT

A. Statutory Authority and Responsibilities of the Commission

As provided for in California's Constitution (Article IV, Section 20) and Fish and Game Code (Sections 101-460, inclusive), the policies governing California's fish, game and wildlife habitat issue from the Fish and Game Commission (FGC). The Commission is made up of five part-time, unpaid members, all appointed by the Governor. The FGC is staffed directly by its chief administrative officer--the Commission's Executive Secretary--and by an Assistant Executive Secretary, and five clerical support positions. The Commission is heavily dependent upon DFG staff resources for technical and support assistance (please see DFG staff support budget summary on Page 6). The Commission utilizes the DFG in several capacities. The DFG staff provides analyses of the merits of new proposals, critiques of present practices, production and reconciliation of new regulations, as well as other staff support functions. With its $429,000 yearly budget, the Commission and its staff are obligated to conduct at least eight public hearings per year, alternating between Los Angeles or Long Beach, San Diego, Sacramento and Red Bluff or Redding. Law provides for the year's public hearings to be scheduled and advertised at least sixty days prior to the first hearing, and for any changes to that year's schedule to be advertised at least thirty days prior to the date of the hearing. For calendar year 1989, the Commission will have met on ten occasions, usually for one half-day and one full-day session per meeting. The defining topics of the eight required public hearings are structured by law, with certain month's meetings devoted to regulation discussions concerning specific topics: mammals; game birds; fish, amphibia and reptiles; fishing and hunting.

By law, the general charge of the FGC is to formulate policies for the conduct of the Department of Fish and Game (DFG). This authority includes the Department's implementation priorities, enforcement priorities, budget and administration. Unless demonstrated to be without reasonable factual basis, the FGC's decisions are binding both upon the Department and upon the public. Therefore, the FGC should be understood to be the determining body with respect to policies governing the protection, propagation, conservation and preservation of California's fish, game and natural habitat.

However, to understand adequately the present status of the Commission it is necessary to understand the significant shift in emphasis from its original charter to current expectations. It is fair to say that initially the FGC was categorical in its authority and outlook: The Commission provided for reasonably structured taking of California's fish and game. It set hunting and fishing seasons, spoke to the need for protecting fish and game during certain of their developmental or "unprotected" seasons, monitored the availability of fish and game with an eye to adjusting both take limits and the kinds of take allowable, and served to reiterate and sanction California's notion of "good sportsmanship". Equally importantly, as California's natural resources became exploited commercially, the DFG served to fix standard practices, as well as rule on the proposals for balancing commercial interests with the maintenance of adequate supplies of fish and game.

With the rise of environmental consciousness in the late 1960s and early 1970s, the Commission's general and somewhat indistinct mandate--to protect and maintain fish and game--became subject to acute, extended and sustained demands. With the rise of public consciousness and debate came the development of new law, and in the case of the Commission, if not substantially new

UNIT - 001 UNIT NAME - Fish and Game Commission F&GCOM.BUD

6/ 2/1989

PROJECTED BUDGET

LINE ITEM	1987-88 ALLOTMENT	1987-88 BALANCE	1988-89 ALLOTMENT	1988-89 BALANCE	1989-90 ALLOTMENT	
PERSONAL SERVICES						
Perm Pos 1 Qtr	$38,419		$47,350		$48,297	
Perm Pos 2 Qtr	$38,419		$47,350		$48,297	
Perm Pos 3 Qtr	$38,419		$47,350		$48,941	
Perm Pos 4 Qtr	$38,419		$48,297		$48,941	
Commissioner's Salary	$30,000		$30,000		$30,000	
Temporary Help	$0		$6,000		$6,000	
S65 Overtime	$0		$6,222		$6,222	
S66 Overtime	$0		$0		$0	
Staff Benefits	$67,766		$53,297		$54,453	
Salary Savings	$-3,935		$-9,517		$-9,724	
SUBTOTAL PERSONNEL SERVICES	$247,527		$275,245		$281,427	
Regulations Coordinator						
Salary	$38,772		$38,966		$39,326	
Benefits	$13,570		$10,910		$10,383	
Salary Savings	$-969		$-1,948		$-1,961	
	$51,373		$47,928		$48,248	
TOTAL PERSONNEL SERVICES	$298,900		$324,277		$329,675	
OPERATING EXPENSES						
General Expense	$10,419	$0	$10,400	$0	$10,400	
Employee Relocation	$0	$0	$0	$0	$0	
Library Purchases	$100	$0	$100	$0	$100	
Minor/Warden Equip.	$450	$0	$450	$0	$450	
Telephone	$7,641	$0	$7,600	$0	$7,600	
Telephone-lease	$1,359	$0	$0	$0	$0	
Telephone-ATSS/Centrex	$0	$0	$1,350	$0	$1,350	
Radio Operations	$0	$0	$0	$0	$0	
Postage	$100	$0	$100	$0	$100	
UPS	$0	$0	$0	$0	$0	
Vehicle Insurance	$0	$0	$0	$0	$0	
Travel - In-state	$11,000	$0	$11,000	$0	$11,000	
Contracts-Internal	$0	$0	$12,150	$0	$24,300	(Contract Student)
Contracts-External	$0	$0	$0	$0	$0	
Vehicle Operations	$4,500	$0	$4,500	$0	$4,500	
TOTAL OPERATING EXPENSES	$35,569		$47,650		$59,800	
EQUIPMENT						
Equip. -Major Replacement	$0		$0		$0	
TOTAL EQUIPMENT	$0		$0		$0	
TOTAL F & G COMMISSION 1/	$334,469		$371,927		$389,475	
GOVERNOR'S BUDGET 2/	$460,000		$461,000		$470,000	

1/ This worksheet displays the budget allocations for the Fish and Game Commission's, salaries, benefits and operating expense and equipment.

2/ The Governor's Budget displays the total costs charged to the Fish and Game Commission. These costs are derived from the Department's cost accumulation system and includes charges from various Divisions within the Dept of Fish & Game for preparation of recommendations on agenda items and regulatory documents.

mandates, then new expectations. By the 1980s, the DFG increasingly had become the flash point for the wide variety of newly and rapidly developing constituencies. As recognition of the threatened status of California's traditional natural plenty grew, so too grew the level and vitality of public expectations. Advocacy on behalf on species and sub-species flourished, and the DFG more and more became responsible for satisfying the demands of both advocates and the populations they represented.

B. Statutory Authority and Responsibilities of the Department

Currently (1988-89), California's Department of Fish and Game operates within a $118.9 million budget, which provides for 1,568 personnel years of staffing (please see charts on Pages 8 and 9 for current Agency and Department organization). The Department maintains five regional offices each under the direct supervision of a Regional Manager: Fresno, Long Beach, Rancho Cordova, Redding and Yountville. These managers, in turn, report to various executive level staff at DFG headquarters in Sacramento. Ultimately, the DFG is administered by a Department Director, who is appointed by the Governor and confirmed by the State Senate for an indeterminate term.

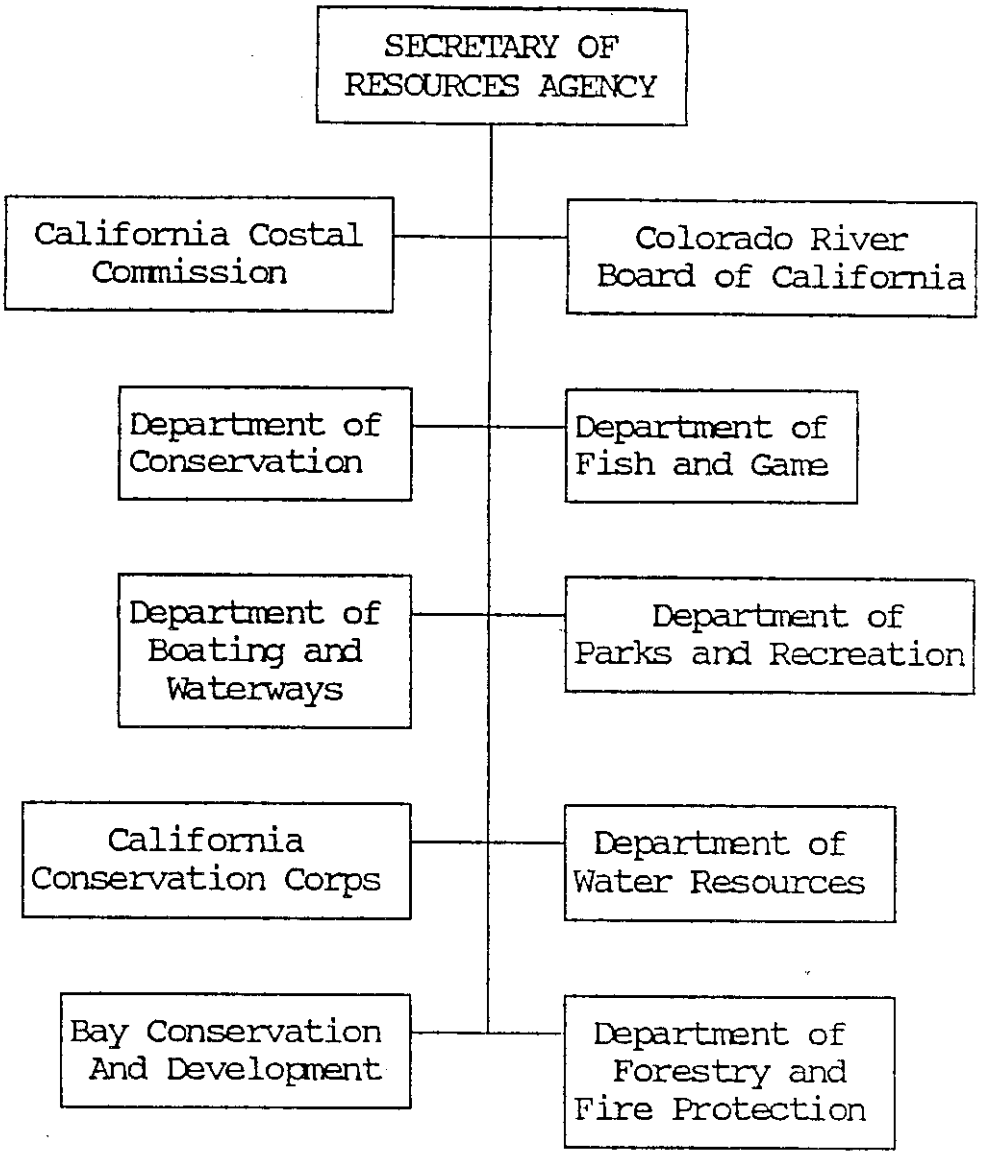
In speaking of the responsibilities of the DFG one must take note of the flurry of Legislative activity during the 1970s with respect to natural resource issues. One way of understanding the responsibilities of the DFG is to examine Legislative intent. In general, the Legislature has held that the maintenance of a quality environment is a matter of the highest statewide concern, and that every citizen, corporation and public agency has the responsibility to contribute to the preservation and enhancement of the environment. This mandate includes preventing the elimination of fish or wildlife, and requires all governmental agencies to consider qualitative, long-term factors in their decisions concerning the environment.

Against this backdrop, the Legislature has mandated a wide range of responsibilities for the Department, including but not limited to the following:

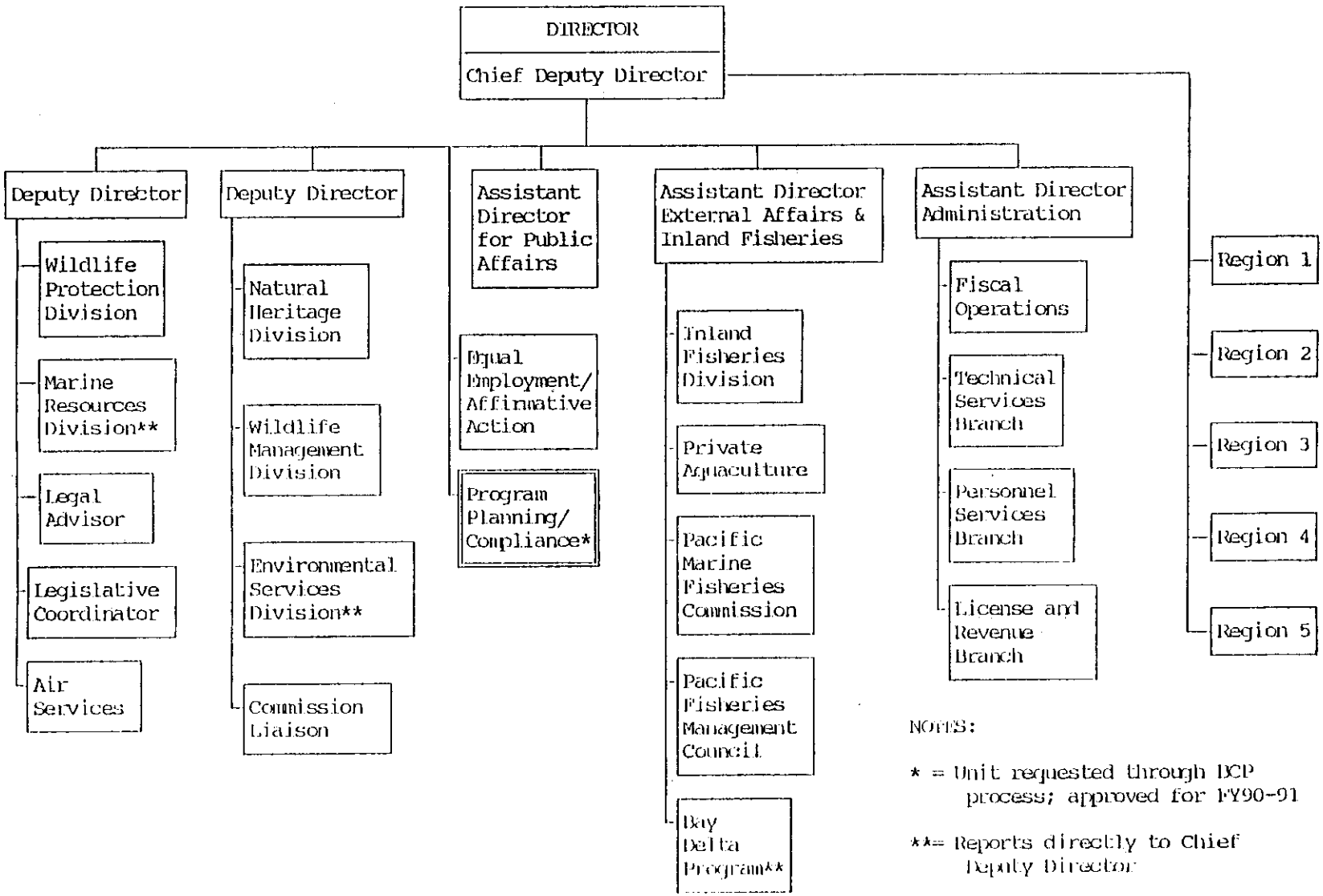
- To preserve, protect and manage California's fish, game and native plants, without respect to their economic value.
- To conserve California's wildlife and wildlife habitat.
- To acquire land, water and water rights to ensure recreational and game and fish propagation.
- To acquire land, water and water rights to ensure ecological reserves.
- To conserve and protect aquatic resources.
- To identify, inventory, support and manage special programs for endangered and/or rare species.
- Periodically, to examine all dams of water containing fish.

The purposes of these mandates are numerous, but plausibly can be condensed into the following goal: to maintain sufficient populations of all species of wildlife and habitat to provide for the

RESOURCES AGENCY



DEPARTMENT OF FISH AND GAME



NOTES:

* = Unit requested through DCP process; approved for FY90-91

** = Reports directly to Chief Deputy Director

beneficial use and enjoyment of wildlife by all citizens of the state.

Perhaps the most traditionally understood duty of the DFG is the enforcement of laws governing fish, game, and wildlife habitat (native plants, the integrity of waterways and waterway vegetation). In this regard, the Department, through its officers, has all the powers and authority conferred by law upon peace officers, and provided for in Section 830.3 of the California Penal Code. Although precluded from acting as law enforcement officers in non-Departmental matters, deputized employees of the DFG may investigate, arrest and assist in the prosecution of persons violating Fish and Game laws and/or regulations.

With respect to the taking of fish and game, the Department has authority over licensing, which includes the types of fish and game that may be taken, the times at which they may be taken, the condition in which they may be taken, the locations at which they may be taken, and the means by which they may be taken. In addition, the Department has special authority over fish and game habitat and propagation, especially for certain identified species such as steelhead and salmon.

Another mandated responsibility of the DFG is to establish criteria for identifying endangered or rare species or subspecies. Biennially, the Department is responsible for creating an inventory of threatened birds, mammals, fish, amphibia and reptiles; animals whose prospects of survival and reproduction are in immediate jeopardy (endangered), or animals which may become endangered if their present environment worsens (rare). Once identified, as described below, the Wildlife Conservation Board will take these findings into consideration in its recommendations for acquisition of land, water or water-rights.*

The Wildlife Conservation Board is located under the jurisdiction of the Department, and operates in conjunction with the DFG and the FGC. The Board is composed of the President of the FGC, the Director of the DFG and the Director of the State Department of Finance. The purpose of the Board is to investigate, study and determine what areas within the State are most essential and suitable for wildlife production and preservation. The Board makes these determinations in conjunction with three members from the State Senate and three members from the State Assembly. The primary result of the meetings of this Board is to direct the Department in the State's acquisition of new wildlife protected and recreational areas, including land, water and/or water rights. In conjunction with these acquisitions, the Board may authorize the DFG to construct facilities appropriate to the acquisitions. Where such acquisitions are made, the DFG has primary responsibility for maintaining them. This responsibility includes ensuring that areas acquired for recreation are accessible to the public, or that areas acquired as ecological reserves are protected in their natural condition.

There are numerous other resource or animal-specific mandates for the DFG, all falling within the general mandates listed above. Although these include a range of enforcement and management duties, there is one responsibility that has become especially a source of public controversy: investigation and enforcement of law governing the changing of a river, stream or lake bed. In short, the Department is responsible for ensuring that no alteration of river, stream or lake beds, channels or banks occurs without submission of a plan for such alteration. While there are well-

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* As will be presented later in this report, this mandate is the source of great contention between the DFG and groups advocating on behalf of sporting and environmental constituencies.

defined avenues of recourse for those proposing but not receiving permission for such alterations, the Department has initial authority to decide whether a given body of water is a potential habitat, and so under its jurisdiction.

The sources and respective amounts of the Department's funding (for FY88-89) include:

General Fund **$8.9 million**
These resources represent the Department's share of all non-categorical revenues collected by the State.

California Environmental License Plate Fund **$12.5 million**
This special program directs fees for personalized automobile license plates to the Department for general use.

Fish and Game Preservation Fund **$67.9 million**
These resources derive from all money collected relating to fees, the sale of licenses, fines and/or penalties, or other non-categorical monies that under law relate to the protection of fish and game. The monies may be used either generally by the Department in pursuit of its mandate, or specifically by the Commission to subsidize its operation.

Fisheries Restoration Account **$3.0 million**
Established by the Keene-Nielsen Fisheries Restoration Act of 1985, this account comes from yearly appropriations specifically directed toward the construction, operation and administration of projects designed to restore and maintain fisheries and fish habitats that have been damaged by past water diversions and water projects.

Federal Trust Fund **$15.7 million**
Consistent with the terms of several pieces of federal legislation, states receive pro rata shares of federal taxes on the sale of fishing and hunting equipment. Each state's allocation of these federal monies is in direct proportion to total sales within each state.

Renewable Resources Investment Program Fund **$.7 million**
Under the terms of California's offshore oil taxation legislation, a separate account within the state's General Fund was created to assist resource-related programs within the state. These funds are allocated to resource-related state agencies, on a pro rata basis. Since offshore development has slowed in California, disbursements from this account have become minimal. The Department anticipates no revenue from this source for FY 89-90.

Reimbursements **$10.2 million**
The Department can obtain reimbursement from public agencies, notably other State and Federal agencies, in the event such agencies require major departmental assistance. These funds are reimbursement for services only, and are requested only in those cases where the services required from the Department exceed either the mandate of the Department or where the Department has insufficient internal resources to subsidize the requested service.

These funds provide for eight distinct fish and game programs, as well as for Department administration. The allocation of these funds is as described below:

	In millions
Enforcement of Laws and Regulations	26.1
Licensing	3.0
Wildlife Management	19.0
Nongame Heritage	8.9
Inland Fisheries	19.8
Anadromous Fisheries	23.7
Marine Resources	8.3
Environmental Services	10.1
Administration	18.8
TOTAL	118.9

III. BACKGROUND: CALIFORNIA'S ENVIRONMENT, DEVELOPMENT, RESOURCE INDUSTRIES, PROTECTION OF RESOURCES, AND ENVIRONMENTAL ADVOCACY COMMUNITY

A. Richness and Variety of California's Resources

In order to gain an appreciation of the diversity, abundance and complexity of California's natural resources, one only has to read the words of one witness, testifying at LHC's June 27, 1989 hearing on Fish and Game:

> "My studies on fish indicate that California is suffering a magnitude of biodiversity loss akin to that of the tropical rain forests . . ."[1]

Even though the witness goes on to stipulate that California's natural diversity is not identical to the standard-setting complexity of tropical rain forests, still it is difficult for non-Californians to appreciate the geographical, biological, climatic and plant diversity of California's valleys, mountains, ocean coasts and deserts.

California's major mountain range, the Sierra Nevada, and its affiliated plain and range lands provide habitat to a variety of fauna, including mountain lions, mountain goats, elk, deer, coyote, as well as hundreds of other species. The State's inland fisheries, by way of example of California's biological diversity, provide habitat for 124 species of freshwater fish alone, with 79 of these species native to California.[2] The State's desert environment contains numerous examples of exotic flora and fauna, many to be found nowhere else in the world. And as California's importance as a marine commercial power attests, the State's coastal waters accommodate an environment rich in fish, mammal and vegetation resources. In short, it is this wealth and complexity that sets the stage for the intensity of need for fish and wildlife policy in California, for just as the State has a richness of habitation, the State too has a heightened potential for a decline in its natural resource diversity.

B. Growth Within California

Since 1982, California has grown substantially faster than the rest of the country. In the next five years, it is expected that California will continue to outperform the nation in terms of income growth and employment rates.[3] For example, the non-farm job growth rate for California from 1989-94 is expected to be 2.3% per year in California. The national average will be 1.7%.[4]

Clearly, this growth is related to expected population growth. The States' population growth rate is more than double the nation's; projected job growth will carry with it nearly 6 million more people by the year 2000.[5] All regions in California will post population gains of more than 20% between 1988 and 2000. By contrast, the U.S. population is projected to grow by less than 10% during the same period.[6] Sacramento and the Central Valley, previously largely rural, will be the fastest growing region in California, followed by San Diego urban and rural areas.[7]

The state will significantly grow, not only in jobs and in population, but in housing. It is expected that there will be 2.1 million new households in California in 2000.[8] Job growth and demographic trends will continue to support a strong residential construction market, and it is likely that there will be some 275,000 new housing starts each year for the next five years.[9]

The level of this projected growth has forced a recent surge of interest in local growth management policies by municipalities and regional planners, as well as resource and development constituencies and the general public. Whereas local growth management decisions traditionally have been made at the local level, the economies of the local communities increasingly are translating into regional perspectives.[10] This is especially true in the semi-urban, central valley communities, where in-migration is beginning to take place.[11] The Los Angeles and San Francisco Bay Area will grow more slowly, but will, nevertheless, account for more than 60% of the State's population gain in the next decade. The Los Angeles basin will add nearly 3 million residents, while the Bay Area will add about 1 million.[12]

Other communities are beginning to experience population surges as well. However, much of these increases can be attributed to in-migration from the crowded and more costly coastal areas of California (thus raising quality-of-life considerations for the growing communities). Although housing has remained affordable for first-time buyers and the business climate is generally more favorable in these communities, this positive situation is bound to decline as communities become growth-saturated. Some of the communities and counties identified for significant in-migration in the next ten years are: Sacramento, San Joaquin (Stockton), Stanislaus (Modesto), Fresno, Kern (Bakersfield), Sonoma (Santa Rosa/Rohnert Park) and Napa. Other quickly growing regional communities are: San Luis Obispo, Santa Cruz, Salinas, Chico, Ukiah, Redding, Red Bluff and Eureka.[13]

Sacramento, Fresno and San Joaquin/Stanislaus--all relatively well-bounded by traditionally rural environments--will see the largest growth, with increases in the number of households by 6%, 5.1% and 4.8% respectively. To date, the housing markets have kept pace with these increases, and the rate of new housing starts will increase by 6.8%, 6.0% and 5.5% in each of these in-migration areas.[14]

C. Resource Industries Within California

Timber Industry

The Northern California economy, as well as several of the previously noted in-migration communities (Redding, Red Bluff, Chico, etc.), are directly tied to the forest industry. The forest or timber industry provides nearly 100,000 jobs,[15] not taking into account the number of related jobs in these communities, such as transportation, petroleum products, machine shops and tire distribution.[16] The U.S. Forest Service estimates that the annual potential legal yield of California forests exceeds 2 billion board feet. However, current yield in California is below that potential, at about 1.3 billion feet.[17]

The recession of 1978-84 created havoc in California's timber industry-dependent communities. The rapid reduction of the inflation rate, the collapse in the housing market, and intense price competition from Canada and other states trapped California's industries. In fact, timber prices per 1000 square feet dropped from $337 to $102. They have since increased to approximately $204, but have not recovered enough to stabilize the local economies.[18] In line with projected growth state-wide, and as housing starts escalate, government economists predict an intense rise in the demand for wood products. However, current harvesting restrictions--both State and Federal--represent major impediments to the growth of the timber industry in California's sixteen national forests.[19]

Fishing Industry

The commercial fishing industry has grown significantly during the 1980s. Consumer demand for fish products has increased to a level to where both California and Washington are beginning to implement measures designed to prevent over-exploitation of several species. In California, the technology used by commercial fisheries has improved, in order to keep pace with demand caused both by consumer preferences and population growth.[20]

Marine fishing has increased in California in the 1980s, but recently has decreased as a portion of the State's total industry. Presently it accounts for approximately 17% of the total manufacturing industry in coastal and traditionally marine-oriented counties such as Mendicino and Humboldt.[21]

Inland fisheries make up an increasing portion of the commercial fishing market. However, the nature of the production of these fisheries--hatcheries--is changing. In 1980, most of the hatcheries harvested sturgeon, trout and catfish. But the inland fishing industry on both private and public lands has changed during the 1980s,[22] and it is likely that many varieties such as bass, blue gill and other species will become more popular and profitable.

The non-game fish industry is also likely to grow in the 1990s. Though most inland fisheries are located in the mountain and central valley areas, millions of pounds of scrod, blackfish, carp and large goldfish are currently sold live to markets in San Francisco, Los Angeles and San Diego. Catfish are increasingly being sold alive, as well. The impact of this change to many communities may be that the related canning industry may be decreased if the non-game market substantially increases.[23]

The nature of sport fishing has also changed in the 1980s. The sport habitats are decreasing due to increased use and to damming and other water projects, and the previously noted increase in demand for these fish has increased, which means that fishermen are taking larger catches than ever before.[24] In addition, the fees for fishing licenses are increasing to the extent that an average individual licence that cost $6.00 in 1980 will cost $21.00 in 1990. And even though this fact is not expected to decrease fishing, it does support the tendency of contemporary sportsmen to take larger catches.

Game Industry

The game industry is not so much an "industry" as it is a combination of sports and commercial production. Commercially, there is a multimillion-dollar poultry industry in central and coastal California, mostly chicken and turkey. Increasingly, other game, such as goose and quail, are being farmed as consumer demand changes. Production, markets and commodities are expected to stabilize in the 1990s.[25]

As distinct from strictly large-scale, commercial enterprises, increasingly public and private lands are being used for commercial and sport gaming. A cooperative program managed by California's Department of Fish and Game currently includes over 800,000 acres of privately owned sport gaming land, and these areas are expected to expand in the 1990s. During the last two years, an average of 82,000 hunter-days were recorded on these private, state-managed lands.[26]

In addition to the lands within this program, the DFG also manages 55 wildlife areas that are open

to occasional sport gaming. These wildlife areas are located primarily in the north central valley and mountain areas. Duck, deer and turkey remain the most common sport game, and daily averages for birds are slightly more than 1.7 birds per hunter. This is not expected to change within the next five to ten years, although there have been and likely will continue to be significant increases in the fees for sport gaming: Tag fees will increase by 33% to 75% in 1990 and are likely to continue to increase in the 1990s.[27]

D. Protection and Preservation of California's Habitat by Resource Agency Departments

The California Constitution specifically mandates protection and preservation of natural resources such as waterways, fish and game, as well as the lands supporting these resources. This protection, framed under a concept termed the "public trust," evolved from early Roman times. Under the "trust," waterways--historically considered common highways--and game are recognized as essential to life and therefore subject to no single ownership. And while our relationship with natural resources has changed, still the idea of public ownership remains. Through development of statute, common law and case law, the extent of the public's right to ownership of and access to natural resources and the need of government to serve the public's interest in natural resources has become more intensively and extensively defined. Within this context, it has become apparent that resource users sometimes compete for their special interests, and that natural resources require advocacy for their continued public availability.

To achieve a balance of use, California, like the Federal government, has created agencies dedicated to specific resources and resource missions. This separation permits specialization and creates responsiveness to the ultimate user or advocate of the resource. In cases where conflicts between resource users or missions can not be resolved, the Executive Branch, the Legislature and/or the Judiciary are called upon to decide on the ultimate highest and best use of the public's resources. Historically, this separation of roles has been supported by the Legislature, and, subsequently, agencies with a specific mission have proliferated.

Today, more than 15 State departments, 10 within the Resources Agency, three Boards headed by the Secretary of Environmental Affairs, and a handful of special Boards or Commissions, such as the Wildlife Conservation Board, Energy Commission and the State Lands Commission, provide protection for California's natural resources. Four State entities--Fish and Game, Forestry and Fire Protection, Water Resources and the Water Resources Control Board--manage the bulk of resource missions identified in this study.

Department of Fish and Game

Historically, the Department of Fish and Game directed its service toward commercial fishing and hunting operators, and has oriented itself toward providing opportunities for these, the sport fishing and hunting communities. It also has managed predator populations when there have been claims of detrimental impact on ranching and farming industries. As can easily be seen, these priorities were directly related to the primary source of funding for the Department, which were user fees and affiliated fees and payments. However, through the years the Department's mission has come to include protection and management of non-game species, identification of threatened species, and restoration of habitat. For instance, relatively recent changes in law have required the Department to assume first-response management of hazardous spills near waterways or wildlife habitat. Moreover, with its new land management programs, the Department now provides a public

information role that includes a natural history education component. In short, dedicated funding sources have assisted the DFG in making the transition to a broad-purpose agency.

Turning to the DFG's land management activities, the role of the DFG as a land owner is a relative new one. With increasing pressures on California's once-open acreage, the need to set aside land for specific habitat purposes has become increasingly acute. Where once public lands contained in parks or Federal holdings were considered adequate for habitat purposes, a growing awareness of the need for lands such as wetland nurseries and breeding areas has dictated the acquisition of areas that are not necessarily suitable for uses traditionally associated with parks and recreational territories. Given this growing concern, the DFG has acquired land through purchase and has entered into management contracts with public agencies and private parties to achieve its goals.

The Department also maintains a statutory responsibility for oversight of public and private management through the California Environmental Quality Act. Under this Act, the Department reviews and comments on projects that may have an impact on the resources it is charged with protecting. These comments extend to the impacts involved, measures required to mitigate impacts, and any legal requirements specific to DFG's enforcement role. Projects involving waterways, timber harvests or other resources are automatically forwarded to the Department for review.*

Enforcement of the Fish and Game codes is accomplished through a field force, primarily composed of first-line game wardens, trained in law enforcement and certified as law enforcement officers. The Department has begun to reinforce the background of its new recruits with a heightened program of training emphasizing resource identification and management techniques. To augment this training, staff biologists and other experts are made available to wardens and other Regional staff for special issues.

Department of Forestry and Fire Protection

The Department of Forestry and Fire Protection provides for protection of California's timber and associated resources. The Department of Forestry provides fire protection, as well as emergency contract services to rural areas. On the resource side, Forestry operates a small number of State forests and nurseries that are used to demonstrate state-of-the-art sylviculture techniques as well as to promote good forestry practices. The Department of Forestry also conducts and reviews research involving, among other things, forest pathology, entomology and land use. The Board of Forestry provides for licensing of professional foresters and develops rules and regulations under which private and commercial harvesting is conducted in California. Timber harvest plans prepared under this scheme are considered functional equivalents of environmental documents required under the California Environmental Quality Act.

Department of Water Resources

The Department of Water Resources provides for construction and management of the State water

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* Previous to the present Administration, DFG's comments in this regard stood as final. However, recently comments regarding projects outside of the State jurisdiction, such as comments solicited for the Federal Army Corps of Engineers projects, are now coordinated by the Resources Agency.

projects, flood protection, dam safety, water conservation and auxiliary hydroelectric energy benefits. Coordination of these services involves a merging of professional disciplines including engineering, geology, planning, soils, biology and agriculture, along with hydrology. The physical operation of the State water projects is a significantly labor-intensive function, and the Department is the largest of the Resources Agency.

Water Resources Control Board

The Water Resources Control Board, operated under the Secretary of Environmental Affairs, regulates water quality and allocation of water rights. It also provides oversight to nine autonomous Regional Water Quality Control Boards. Like the DFG, under the terms of the recently passed Proposition 65, the Boards also are required to assume greater roles in the management of hazardous spill incidents.

Environmental Advocacy Community

California's environmental advocacy community is a well-organized, intensely focused, combative and well-represented force in the development of the State's natural resource-related policy and practice. Such groups as Defenders of Wildlife, California Wildlife Federation, California Sportfishing Protection Alliance and Pacific Coast Federation of Fisherman's Associations--all witnesses at LHC's public hearings--provide advocacy leadership, representing major constituencies within California. In addition to these major advocates, there exist literally scores of "game," "fish," "animal" or "plant" specific constituencies/advocacies, whose sole purpose is to promote the protection, and in some cases re-establishment, of well-defined portions of California's natural resource diversity. Defenders of Wildlife, for instance, a national non-profit, membership organization, alone has 14,000 California members.

In contrast to the more purely "protective" advocacies statewide, California has well developed animal and fish-specific constituencies representing the interests of hunters and fishermen. Since California's history of natural abundance is directly tied to its history of the exploitation of these resources, it is not surprising that these constituencies share many of the characteristics of their frequent adversaries, noted above. Such organizations as the National Rifle Association, Pacific Coast Federation of Fisherman's Associations and numerous County, Regional and City sport alliances, clubs and associations promote the interests of hunters and fishermen.

These advocacy organizations have affected fish and game policy at every level: local, regional, state and federal. In California, their influence touches the appointment of Fish and Game Commission membership, legislation and, increasingly so in the 1980s, litigation against the DFG and the FGC. It is fair to say that much of California's current (and likely future) fish and game policy is a direct result of the intervention of these constituencies.

IV. IDENTIFIED ISSUES

During the course of the study the Commission was presented with a variety of issues related to both the Fish and Game Commission and the Department of Fish and Game. These issues ranged from complaints about individual game wardens, to protests of local planning council decisions concerning land use, to criticisms of fish and game policy and implementation decisions.

Expressed problems concerning the DFG and FGC have run the gamut from overzealous enforcement, to inconsistent decision-making, to violations of Legislative intent. Proponents of these bodies' "protect and preserve" responsibilities charge that neither takes seriously its duties to protect, not simply identify, endangered or rare species. Others argue that the DFG takes a heavy-handed and non-communicative approach to the enforcement of habitat and waterway preservation enforcement, and that the FGC is unable to make timely, informed decisions. Still others complain of inconsistencies in regional enforcement, and that the DFG has not carried out its mandate to protect California sportsmen and the general public against such crimes as poaching, illegal hunting and fishing.

To illustrate the complexity of the issues confronting those mandated to protect California's natural resources, some critics of the DFG and the FGC argue that drought-related conditions have placed California's continued salmon and steelhead populations at-risk. Other critics decry any but marginal water flows--which are directly associated with fish viability--as counter to local water preservation, land/development and housing interests. Still others argue that the primary consideration for water flow and allocation decisions should be the continued productivity of California's agricultural industry. Finally, there is a well-established community that argues that regulation of California's waterways is itself counterproductive to the natural relationships between animals, fish, plants and habitat, and that all such planning should be reduced to minimal levels.

Critics of DFG's protection performance argue that the Department takes an unnecessarily limited view of its mandate, and that rather than actively protecting endangered and rare species, the Department is comfortable with simply acting in accordance with the letter of the law; identifying, cataloguing and reporting on those animals currently endangered or rare. With respect to the consistency of DFG's enforcement activities, critics point to difficulties in steady statewide enforcement of law, especially with regard to the monitoring of hunting and fishing. Critics charge that the DFG does not adequately protect the sporting public from illegal taking of game and fish, and that the Department's monitoring data system is incomplete and inaccurate. Moreover, there are charges that the DFG central offices do not, and perhaps cannot, sufficiently oversee their regional staff, which can lead to unprofessional conduct on the part of DFG local officers.

Those representing the land development community take issue with the rigor and lack of consistency in the DFG's enforcement of habitat protection law. Typically, these criticisms focus on poor communication between the DFG's officers and local planning bodies, local developers and other local public bodies. Antagonists to the development community take issue with the fact that typically development *does* occur, and that the Department is not aggressive in blocking what the antagonists view as habitat destruction.

In all cases, these issues were explored by LHC consultants and staff. Many of these issues ultimately reduced to cases of miscommunication and/or misunderstanding of policy or implementation strategy. In other cases, the issues reduced to a situation where, due to a lack

of compelling scientific evidence, reasonable persons may disagree. In still other cases, the issues were found to be clear, present, distinct and in need of resolution.

The issues that comprise the remainder of this report are a result of a "culling" of the total set of issues presented to the LHC during the period of March 1, 1989 through November 21, 1989. These are issues that could not be reduced to simple miscommunication, misunderstanding, or questions of reasonable difference of opinion or judgment.

A. Composition of the Fish and Game Commission

The issue here can be stated simply: To what extent do the Commissioners have the necessary background to adequately regulate the Department and protect California's fish, game and habitat? Arguments and evidence have been offered from a wide range of critics that at present, as well as historically, the Commissioners are appointed by governors not because of their expertise or familiarity with wildlife issues, but for reasons not directly tied to the complex issues they will be facing as Commissioners. Critics suggest there is clear and increasing evidence that the Commissioners are not able to independently assess proposed actions by the Department or petitions by the public.

B. The Commission's Viability

Critics suggest that there are two major issues here. First, to what extent does the Commission (composed of Governor's appointees) actually direct the Department, whose Director is also a Governor's appointee and not directly accountable to the Commission? This first issue is a question of authority, with the central question being the power of the Department to, in large part, set its own agenda. Clearly, even though the Commission advertises and holds public hearings, all parties concur that the Commission depends upon the Department for a substantial portion of its staff support and information. The FGC receives well-researched and highly developed recommendations concerning proposed and established policies from the DFG. Given this fact, and the fact that the Commission has only minimal staff resources, critics argue it may not be accurate to portray the Commission as the independent authors of fish and game policies. In fact, they argue, it may be more accurate to portray the Department as having a clear ability to set the terms for the Commission's decisions. This argument, critics suggest, has even greater weight when one incorporates recent comments of the DFG Director, who maintains that his primary responsibility is to the Governor, not to the independent Commission.

A second affiliated issue can be simply and clearly stated: Given the increasing complexity and visibility of natural resource-related policy, is the Commission's mandate viable? That is, no matter the appointment authority, is it possible for five persons to accurately and in an informed fashion regulate <u>the sum total</u> of California's use of its wildlife resources? Given the small number of Commission employees and the large and programmatically/geographically varied number of departmental staff, a wide range of critics offered the perception that it is questionable whether the Commission can be an effective monitor of departmental practices. Many would argue there is no clear evidence of the Commission officially investigating the Department's performance, and even less evidence of the Commission issuing corrective action direction. Many parties have raised the question, "Isn't it likely that the Commission's oversight role has become co-opted by the Department; in fact, that the Department monitors its own performance?"

Another dimension of the issue of viability speaks to the sheer magnitude of the matters before the FGC. For instance, since all wildlife decisions, to a greater or lesser extent, depend upon access to water, can any single resource-oriented Commission hope to successfully balance the water requirements for three competing and often mutually exclusive interests: fish and game, residential and commercial development, and agriculture? The complexity of the relationships between these interests becomes all the more untractable, it is argued, given the historical seasonality and shortages of available water. Clearly, many argue, the minimum difficulty is this: Can the need for balanced allocation of water be achieved, when some needs are constant and some needs are periodic, and where the periodic demands are not consistent with the quality and quantity of the constant demands.

Even more difficult in the minds of critics is the fact that the Commission does not have full authority over water allocation policy; this is a shared responsibility with local water districts, local water purchasers, regional water boards, the State Department of Water Resources, the Federal Department of Interior, State and Federal Courts, as well as agriculturally oriented boards, commissions and departments. Many would argue that this difficulty is compounded by the Commission's seeming lack of relationship with California's Resource Agency: Does the Agency have a consistent appreciation of the authority and role of the Commission?

Some argue that given the general and relatively succinct mandate of the Commission, the Commission may have no option but to increasingly defer to outside and/or departmental recommendations. Others argue the issue as essentially reducing to a question of staff resources; without sufficient, in-house staff support, no number of Commissioners could hope to effectively monitor California's resource needs. Still others argue that the FGC historically has not had the will to oversee the DFG's operations, and that the question of sufficient resources is superfluous.

In conjunction with these considerations is the question of whether the mandated public hearings are sufficient to meet current demand for access by the public to the Commission. Are there adequate hours available to the public, is there appropriate public notice, can the public reconcile the physical location of monthly hearings with the immediacy of local needs distant from some one monthly hearing, is any Commission capable of absorbing the numerous, varied and rapidly changing viewpoints so intimately connected with the welfare of California's fish and game? And perhaps most importantly, many would question, "Can a Commission absorb sufficient material, sufficiently quickly, on a consistent basis, to develop well-informed, enforceable policies for the management of the State's fish and game?"

C. The Commission's Operation and Decisions

Status of Various California Fish and Animals

Proponents of various fish and wildlife (e.g., chinook salmon, mountain lions, big-horn sheep, tule elk, deer, bears, trout, etc.), consistently charge that the Department and Commission are unwilling to proactively and aggressively carry out their legal mandate to protect and preserve California's wildlife. Specifically, these proponents argue the following points:

1. Departmental biologists and local wardens often are at odds with departmental executives, to the extent that well-researched and defensible staff analyses are unrealistically modified, or shelved by executive staff.

2. Departmental executives are subject to political pressures from the Resources Agency and the Governor's office, and these pressures largely relegate protection of fish and wildlife to a status secondary to agriculture's water and land requirements.

Representatives of most natural resource constituencies, as well as representatives of the DFG and the FGC agree that California's natural resource heritage is at risk. California's natural diversity of plants and animals is in conflict with contemporary visions of alternative land and water uses. By consensus opinion, this conflict is serious, difficult and not liable to resolution anytime in the near future. Moreover, California's natural diversity carries with it the potential for exacerbating the nearly universal perception that the decline in the State's natural heritage is wholly preventable; if only the responsible agencies would do their jobs, fish and wildlife would continue their diversity and abundance.

For many critics of California's system of fish and wildlife preservation, extinction is not simply a historical curiosity, but a reality of our time. This widely held perspective presents special difficulties for a body such as the FGC, since many would argue that it is by charter and design not capable of a comprehensive viewpoint, or timely response to immediate issues of species' survival. Three distinct cases each exemplify different structural flaws of the Commission. These cases are as follows:

Hunting of Mountain Lions: Here, critics argue, is an issue that speaks to the heart of the Commission: Is it an organization "of the sportsman, by the sportsman and for the sportsman?" The issue of the managed harvest of mountain lions, coupled with the perceived bias of the FGC in favor of hunting, and against the backdrop of public opinion and non-conclusive evidence of the need for such hunting, results in the charge that the Commission has not recognized the need for it to serve as a guarantor of the continued welfare of California's wildlife. These critics have argued that until the Commission demonstrates its commitment to the welfare of fish and animals as opposed to the welfare of hunters, the Commission cannot justifiably be regarded as an effective partner in the maintenance of the State's natural resources, and must be regarded as an institutionalization of an increasingly narrow group's interests: hunters and hunting.

Bear Hunting: The issue here is the insufficiency of information on which the FGC justifiably can act. After conducting a review of the desirability of and conditions for hunting of black bears, a court challenge to the FGC's decision to allow hunting yielded information that the data upon which the FGC decision was made was, at least, outdated and unrepresentative of current bear populations, as well as possibly an unrepresentative portrait of bear population conditions at the time of its production. Critics point to this type of situation as increasingly common; the FGC must depend excessively on unaudited findings from the DFG as well as from the public.

Maintenance of Chinook Salmon: In this case, critics maintain, the FGC demonstrated most obviously its inability to act in an independent, well-informed and timely manner. After seasons of drought, water flow and water temperature conditions of the chinook salmon's primary spawning avenue had declined to predictably dangerous levels. However, again due to continuous drought conditions, competing water interests made their positions evident to the FGC and DFG's appointment authority. When confronted with dire

projections of the status quo's effect on salmon during the next spawning season, the Commission affirmed the status quo, and so, critics argue, simply "rubber-stamped" water allocation decisions made by its appointment authority. However, immediately preceding as well as during the next spawning season, the Commission was repeatedly required to address the issue of chinook viability, and repeatedly affirmed its prior position. Finally, after mounting public pressure, and critics would assert, after mounting visibility of the untenable nature of the Commission's prior affirmations, the Commission reversed itself, and provided protective status for the chinook. Critics currently charge that the chinook is near extinction, that data predicting this was readily available to the FGC, and that current efforts to re-establish the species, if possible, will no doubt be significantly more costly than a more timely and proactive response would have been. In sum, critics argue that the Commission is not capable of timely response due to its inability to function in an independent fashion; consistency of Commission viewpoint cannot be developed or maintained without independence and authority.

D. Departmental Negotiations with Related Agencies

"Bad Faith" Negotiation of Water and Timber Project Mediations

Representatives of both the timber industry and local water districts have documented instances where the Department has negotiated approval for harvesting and water allocation plans/projects, only to either (1) renege on the approval at the last possible moment before the appeal process ends, or (2) immediately prior to the appeal process, demand extensive and, in some cases, extraneous additional conditions to the agreement. Representatives from both industries argue three positions:

- Such cases form a pattern and are not so much a demonstration of administrative disarray as they are a planned strategy for private subsidy of departmental interests.

- The demands for modifications of approved plans often take place at the regional level, and it is unclear to what extent the Department's executives are aware of or party to the demands.

- The demands, by admission of Department staff, are not based upon established fact, and so are capricious and detrimental to the continued economic viability of the water and timber industries.

Whether by design, by virtue of lack of staff resources or by lack of effective communication, the Department stands accused of "bad faith" negotiation. Moreover, and as especially noted by timber industry critics, there is no consistency of viewpoint and no consistency of enforcement priorities, region-to-region. This allegation is coupled with the complaints of obvious and continuous lack of coordination between DFG and its sister agency, the Department of Forestry, with the claimed result that local and industry planners are being denied reasonable opportunities to serve consumers, play a positive role in the protection of natural resources and remain economically viable.

Departmental Participation in Water Allocation and Leasing Decisions

Critics assert the Department consistently has either not taken the lead or declined to be represented during decisions concerning major water allocation planning and contracts. Of late, the Department has declined to take part in renewal proceedings for 40-year district water contracts in California's major central valley water districts. Sponsored by the U.S. Department of Interior, Bureau of Reclamation, these long-term contracts have a direct bearing on the status of fish, wildlife and habitat for the area and the state. A similar lack of participation was evident with respect to water flow and allocation decisions concerning Mono Lake.

E. Departmental Acquisition and Stewardship of Refuge Lands

Evidence has been offered noting inefficient and, proportedly, illegal acquisition of previously private lands, purchased in order to serve as State-owned and managed refuges. Additional evidence has been offered concerning the ineffectiveness of the DFG's management of newly acquired refuge lands, and the resulting harm to owners of contiguous lands.

With respect to the acquisition of refuge land, critics charge the DFG with failing to consistently notify local communities and, especially, landowners adjacent to the proposed parcels of the State's intention to purchase. Witnesses have suggested that the Department as a matter of course does not notify affected land owners of its intention to purchase land for habitat protection. Although both the Commission and Department are obligated to advertise hearings, regulatory changes, etc., witnesses have asserted that presently there is no provision in law for prior notification, except in special cases involving right-of-way access, in which cases the local county board of supervisors must be consulted prior to acquisition.

The failure to notify local interests, charge critics, is illegal and sets the stage for counterproductive future relations between neighbors. In addition, some have suggested that the Department has inadvertently paid inappropriately high prices for acquired lands, and so has artificially inflated remaining land prices.

Departmental Stewardship of Refuge Lands

With regard to the DFG's stewardship of public land, some have noted what they say is a dysfunctional system of land acquisition and stewardship. Although new lands may be acquired during, say, FY1988, there may not be funds available for proper maintenance of this land until FY1989. Because acquisition resources and maintenance resources come from different fund sources, there is no structural, and hence, no operational relationship between either the fund sources or between the DFG's acquisition and maintenance programs. Some critics do note (as does the DFG), however, that this situation is not particularly palatable to the DFG since, given the distinction between fund sources either (a) they will be criticized if they do not purchase necessary land when it becomes available, or (b) they will be criticized when they do take advantage of purchase opportunities. Whether palatable to the DFG or not, adjoining land owners have complained of frequent and damaging intrusion of protected wildlife onto their property, as well as decreases in the value of adjoining land due to poor fire and pest control by the Department.

F. Departmental Internal Administrative Capacities

Within California State government, an oft-repeated charge concerning the DFG's internal administrative capacity is the seeming inability of the DFG to provide timely, comprehensive and well-founded fiscal and program information. Whether requested by State control agencies, such as the Legislative Analyst and Department of Finance, or by the public, the DFG, it is claimed, has been unable to provide anything more than rudimentary budget, allocation and expenditure information. Further, critics claim DFG's management information system (MIS) is not simply primitive, but has undercut DFG's ability to provide for the collection of taxes and fees, which, as previously noted, constitute the DFG's main revenue source.*

Tied directly to the alleged failure of DFG's MIS is its inability to satisfy critics of its programs to monitor the taking of fish and game. Critics charge that California's system of managing the hunting of deer is flawed, and so allows for substantial illegal taking of deer and, consequently, a significant under-count of the actual number of deer taken by hunters. Similarly, critics assert, the DFG is unable to consistently monitor and record the identities of those commercial fisherman engaged in illegal fishing. If true, this situation robs the DFG of the ability to track the commercial activities of past-cited fishing operations, and so protect both populations of aquatic life and the rights of responsible fishing concerns.

G. Departmental Internal Allocation of Resources

Critics have been joined by the DFG itself in suggesting that both DFG's environmental (biological) and enforcement divisions are underfunded, understaffed, and so not fully effective in the Department's mission to protect California's natural resources. Both critics and the DFG suggest the present system of categorical funding of specific departmental activities is inconsistent with changing and accelerating needs. However, where critics and the DFG have parted company within this issue is at the point of the relative allocation of resources between, on one hand, enforcement, and on the other hand, environmental services. In short, critics maintain the Department is overly concerned with enforcement, and too little concerned with providing leadership and resources committed to protection, enhancement and maintenance of the many plants, animals and fish presently at-risk.

H. Departmental Oversight and Authority Over Fish and Game Regional Administrators and Their Wardens

Challengers to DFG's system of managing its Regional employees suggest that the Department does little to assure (1) Regional assimilation of central office policies and guidelines, (2) consistency of application of central office policies and guidelines among Regions, (3) consistency of application of central office policies and guidelines among wardens within given Regions, and, finally, (4) effective monitoring of Regional activities and decisions. Criticisms in this regard range from a detrimental lack of "day to day" attention to Regional decisions by central office, to insufficient training for Regional staff, especially with respect to standard management/administrative practices and public relations.

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* Certainly the Legislature's position on DFG's system of accounting is clearly evidenced by the setting stringent budget conditions for the Department's 1989-90 budget. In short, the Legislature distinctly indicated its reluctance to discuss allocation of State resources until such time as the DFG can provide accounting information consistent with professional practice.

Within this general topic resides a potentially more potent issue that speaks to the heart of the current structure of the Department. The Department is a highly hierarchical, rigid structure, modeled on a law-enforcement agency. Critics maintain that (1) this structure, if ever necessary, currently is obsolete, (2) the rigid reporting lines stifle wardens' and other field employees' initiative, (3) the rigid reporting structure precludes effective communication with the central office during those occasions when Regional employees believe Regional practices are inconsistent with DFG standards, and (4) the "militaristic" hierarchy over-regulates career advancement, and so leads to job dissatisfaction and unnecessary attrition.

V. FINDINGS

Before turning to the set of specific findings related to the issues identified in the previous section of this report, two developments that occurred during the course of this study should be noted. First, the Fish and Game Commission, as a result of this study's scrutiny, alleges to have re-established its "direction". Specifically, the FGC recently has (1) asserted its re-commitment to functioning as an active and enthusiastic guarantor of the welfare of California's natural resources, and (2) has reasserted, in vigorous terms, its authority in judging the adequacy of implementation of its policy decisions by the Department of Fish and Game. In its public declarations following LHC's June 27th public hearing, the Commission explicitly stated its intention to more closely hold the DFG accountable for practices, especially where the public perceived that there was a reluctance by the Department to carry out such policies.

A second development was the fall release of a report on the DFG, initiated in response to severe Legislative and control agency findings. Authorized and sponsored by the Secretary of Resources Agency, the study was conducted by a special task force composed of representatives of the Agency and its Departments: the California Conservation Corps, the Department of Water Resources, the Water Resources Control Board, the Department of Parks and Recreation and the Department of Forestry and Fire Protection. In major respects, the report's findings and recommendations, as well as the response to the report from DFG's Director, are consistent with LHC's study findings and recommendations.

A. Composition of the Commission

There are no clear or publicly understood criteria for selection and appointment of Fish and Game Commissioners. This situation unnecessarily places the Commission's effectiveness at risk. There exist several dimensions to this finding. First, and by nearly universal consent,* the explosive complexity of resource policy issues renders obsolete the traditional and nearly exclusive dependence upon the opinions of sportspersons. Without broad-based representation on the Commission--including biologists, environmentalists, developers, ranchers *and* sportspersons--the Commission's decisions will consistently be subject to "second guessing" by what has become a vocal, powerful and persistent set of wildlife protection and preservation advocates. Given the fact that the issues before the Commission have been and will continue to be volatile, difficult and subject to the dictum that "reasonable persons may disagree", the lack of broad-based representation on the Commission is needlessly unproductive, unnecessarily provocative, and, consequently, an inadequate response to the need for a balanced, well-informed and comprehensive viewpoint.

A second dimension to the finding that the membership of the Commission is overly restricted issues from a continuing logistical difficulty: Without inclusion of scientists, the Commission will continue to be overly reliant on DFG staff work, findings and recommendations. At present, the Commission cannot consistently incorporate late-breaking and "state-of-the-art" external viewpoints into its policy deliberations. Although public hearings can and often do bring with them information independent from DFG perspectives, still the ultimate arbiter of conflicts between the

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* This consent does not include the Governor's Office, which, in response to public and Legislative complaints concerning its appointees, has publicly stated its position that ranchers and sportsmen, which presently comprise the Commission membership, represent the best possible membership.

DFG and external viewpoints appears to be the DFG since it is the Commission's source of staff support. This situation does not represent a sufficient set of "checks and balances" on the development of fish and game policy.

Finally, without clearly defined membership standards, neither the appointing authority--the Governor's Office--nor the confirming authority--the California State Senate--can adequately judge the merits of proposed appointees. The present system of appointment, with its "non-categorical" membership, sets the stage for appointments by candidate interest rather than by candidate competence. In the past, sincere interest in fishing and hunting and the continued availability of fish and game may have sufficed. However, the Commission's mandate now demands much more than simple sincerity of interest.

B. Commission Viability

The Commission has not, and as presently structured, cannot adequately exercise its statutory authority over the Department of Fish and Game. This situation arises from several features of the appointment, staffing and function of the Commission and Department. The Commission's "independent" structure places it outside the Executive Branch of Government, thereby undercutting the ability of the Commission to exercise administrative control over the Department's implementation of policy. When Commission "push" comes to departmental "shove," the Department's Director has freely stated his responsibility is to the Governor's Office, which in such cases will guide the Department, either through Agency communication or Governor's Office directives. Consequently, without a unity of perspective and a unity of operation, the Commission has little authority over the Department and no formal relationship with the Resource Agency. And, clearly, there is no current unity of operation between the Agency, the Department and the Commission. At present the Commission simply does not have significant access to, recognition by or a direct working relationship with the Resource Agency and its Departments. Moreover, without direct request for intercession by the Governor's Office, the Commission cannot exercise any contractual or "employer-employee" control over DFG's Director, thus rendering the authority of the Commission hypothetical.

On a less structural and more operational note, the lack of Commission internal resources effectively precludes consistent pro-active or timely oversight of the DFG's implementation of Commission policies. Whether by limitation of resources (which is quite a real limitation), by lack of commitment or by lack of practical authority (which consistently are public charges), the Commission has not demonstrated consistent dedication to Department oversight. The Commission has depended excessively upon Department "self-reporting," as reflected by DFG responses to Commission and public queries,* just as it depends upon DFG staff resources for the vitality of its operation.

Turning to the viability of the Commission as a recourse for public modification of current policy and DFG practice, the notion that even frequent (monthly) public hearings can provide sufficient information for informed and comprehensive decision-making is, at best, problematical. The

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* By direct statement, a primary approach to DFG oversight is the Commission's Executive staff perusal of "chron files," which represent written communications from the DFG. Apart from the issue of whether this approach is sufficient (the professional management community would not view such an approach as either "best information" or comprehensive), such an approach, by Executive staff admission, is quite labor intensive, and so is inefficient for an agency with a shortage of staff resources.

geographical schedule under which the Commission operates, while an admirable attempt to respond to California's great size, tends to undermine continuity of discussion. This is particularly true where the items for consideration are not statewide in scope, and where the Commission must absorb new facts and scientific viewpoints, all too common an occurrence. More importantly, even with monthly public hearings, this frequency many times does not coincide with the need for immediate consideration and action. Increasingly, even small time delays can mean the difference between the continued health of a species and its extinction.

Some have suggested an infusion of new resources would improve the Commission's viability. Although forced by Legislation and the State's population and economic growth to address difficult issues, it is apparent that the Commission, even with increased staff, was not designed to develop or dispense mitigations to such wide-ranging and interconnected resource issues. It has been and will continue to be impossible for it to satisfactorily fulfill current policy needs, given the fact the Commission has authority over only one portion of the likely issues before it: fish and game welfare. California's issues of fish and game no longer are restricted to questions of which fish and game should be taken, at what size, when and by whom. Riparian issues include the future viability and existence of fish and game.

Such decisions concerning water requirements for fish and game cannot be made without recourse to a balanced approach to the water needs of humans and California's economy. However, the Commission's mandate does not include the authority over the development of a balanced agenda, nor does its recognize the need for a balanced agenda. Consequently, expanding the Commission's resources may help it meet its mandate but it also simply creates a more powerful advocacy entity in the arena of the preservation and exploitation of California's resources. This is not desirable since the very interconnectedness of water, fish and game, habitat, human development and agricultural issues demands a coordinated approach rather than one of accelerated confrontational advocacy.

C. Commission Operation and Decisions

The Commission has difficulty meeting its mandate because of external pressures and factors. The Commission increasingly is incapable of withstanding the pressures upon it to (1) maintain the natural diversity and populations of California's fish and game, and (2) allow hunters and fishermen their traditional access to fish and game. In essence, it is unreasonable to expect any board or commission to continuously and productively withstand the wildly conflicting pressures of, for instance, hunters as opposed to animal protectionists. This is particularly true in cases where scientific evidence is not available or is inconclusive, leaving the Commission without a standard for resolution of the issue before it. Best evidence suggests the standards required for such resolution often are not available, given the relative infancy of the biological sciences as applied to questions of individual species and inter-species welfare. This situation results in a "damned if you do and damned if you don't" status for the Commission, which tends to continuously erode both the authority and timeliness of its decisions.

For example, the continuing controversy over the hunting of mountain lions in California demonstrates the untenable nature of the Commission's task. Mountain lion hunting has been illegal since 1971, with the purpose of preserving what was fast becoming a species lost to California. Since that time, ranchers and hunters have attempted to repeal or significantly modify present law, and resume at least controlled hunting. They cite increased numbers of lions,

decreased ranges, and resulting threats to public and herd animals' health. Opponents of hunting, on the other hand, argue that the fact of increased population and activity of mountain lions does not translate directly to "full health" of the mountain lion; its threatened status cannot justifiably be repealed. Proponents of hunting cannot rebut the argument that the mountain lion populations are not "fully recovered" and opponents of hunting cannot provide empirically defined standards for "full recovery".

Against this backdrop, the Commission continues to be subject to demands that it adopt a defensible position on the hunting of mountain lions, if not as the sole arbiter of the issue, then in order to provide insight as to what it believes constitutes an endangered species, the morality of hunting, its commitment to natural diversity, etc. Hunters address the FGC as the agency developed to assist hunters in maintaining the availability of game, while hunters' antagonists address the FGC as the agency responsible for guaranteeing the animals' right to life, their right to continue naturally defined functions in their natural setting. Without scientifically compelling evidence, the FGC has not and cannot resolve such radical perspectives, especially not on a "case-by-case" basis.

This incapacity is aggravated further by FGC's inability to incorporate late-breaking empirical studies and facts into its policy development process. The example of FGC's disposing of the water flow and temperature requirements for 1988-89's chinook salmon consistently is offered by critics. They argue that the chinook were imperiled throughout the drought years (1987 and 1988, primarily), and that the Commission had been called upon to protect this salmon by mandating minimum water flows and minimum and maximum released-water temperatures. However, the Commission declined to offer protected status to the chinook, citing the lack of compelling evidence for such protection. For months in a row, the FGC was obliged to speak to the issue and, without what they felt to be compelling evidence, continued to dismiss the need for protection. Finally, as salmon counts demonstrated a severe and dangerous decline in chinook population, the Commission reversed its position and offered protected status to the salmon. The difficulty with this method of operation is clear: What constituted compelling evidence for the Commission was inconsistent with incremental increases in knowledge about the status of the salmon offered to the Commission prior to the salmon's imminent disappearance.

D. Departmental Negotiations with Related Agencies

The Department of Fish and Game has exercised inappropriate bargaining tactics with respect to habitat mitigations. In this respect, one is left with unpalatable options for understanding departmental authorization of proposed water allocation and timber harvesting plans. One option is that the DFG continues to be unable to guarantee a consistency of viewpoint both within central office, from central office to Region and from Region to Region, demonstrating administrative ineffectiveness. The other option suggested by those interviewed is just as troublesome but more sinister in its intent: that DFG promotes inconsistency within itself as a means for extracting the most concessions from local timber and water interests.

Clear and persuasive evidence of DFG's dysfunctional negotiation stance is best described by documentation received by the Yuba County Water Agency (YCWA). As a modification of a 1965 contract between the DFG and the YCWA, consistent with the terms of the Costa-Isenberg Water Transfer Act of 1986 (Section 470 and following, State Water Code), and in response to two years of drought, the YCWA sought the sale and release of water to the East Bay Municipal Utility

District. The DFG set forth conditions of the water transfer, consistent with its authority and mandate, and these conditions were accepted by the YCWA. The terms of the proposal were forwarded to the State Water Resources Control Board for approval of the transfer. On the day of the Control Board hearing, and without prior notification of the YCWA, the DFG submitted testimony unsupportive of the proposed transfer, and requested that the transfer be conditional on YCWA's initiation and completion of eight different studies on local waterways. These studies, as proposed, did not directly bear on the proposed water transfer, but represented extensive analyses of local waterways. The YCWA and the DFG renegotiated a water transfer agreement subsequently, but again without prior notice the DFG argued against the completed agreement before the Control Board immediately prior to the end of the review-and-comment-period, prior to Control Board authorization. This late notice from the DFG once more changed the terms of the transfer, but with significant increases in mitigations to be subsidized by the YCWA: permanent additional, unreimbursed water releases solely for fishery enhancement, in addition to studies. Once again the YCWA and the DFG, this time in conjunction with the Department of Water Resources, negotiated reduced contractual conditions, and completed the transfer. The Department of Water Resources became responsible for the bulk of the DFG-requested studies, and the YCWA increased unreimbursed water flows in addition to guaranteeing funds for requested studies.

By adding to the foregoing an overlay of significant inconsistency of policy from Region to Region plus a lack of cooperation between the DFG and its sister agency, Department of Forestry and Fire Protection, one can approach the experience of the timber industry in California. According to documentation provided by representatives of the timber industry, negotiations with the DFG are plagued by a lack of coordination (or, for the alternative scenario, manipulative negotiations) between Regions and central office, such that mitigation measures must be continuously renegotiated. In addition, timber firms that do business statewide find that they must adjust their practices to suit the personalities and, apparently, the creative interpretations of Regional staff.*

E. Departmental Acquisition and Stewardship of Refuge Lands

The Department has been unsystematic and inconsistent in its acquisition and maintenance of State purchase refuge lands. Witnesses have testified that public notice of intent to purchase lands is not consistently made, contrary to State law. Furthermore, the Department has not promoted its cause with local land owners, because it has failed to consistently notify owners of lands contiguous to proposed refuge lands. With respect to charges of payment of inflated land prices and the purchase of lands inappropriate to the stated purpose of the purchase, no finding is made save to say the Department should take special care in the future to deny any reasonable basis for such charges.

The Department is, however, unable to effectively tie its land acquisition to its land maintenance program. There is not necessarily a timely relationship between the acquisition of new lands earmarked for refuge status, and the provision of resources either to maintain or to improve the newly acquired land. The continuation of this circumstance threatens the viability and productivity of newly acquired refuge lands. In defense of the Department, however, this situation is not of its own making, certainly not to its liking and largely results from Legislative oversight. Currently the

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* Here timber representatives are speaking of differences between Regional priorities and practices over and above the obvious need for the flexibility demanded by differing geographies, differing habitat conditions, differing protective needs and differing economic conditions.

fund sources for land acquisition precede the availability of maintenance funds, such that lands acquired early in a fiscal year may not be eligible for effective management until the following fiscal year, when maintenance funds estimated on the basis of the current inventory of lands become available.

F. Departmental Internal Administrative Capacities

The Department has no comprehensive management information system (MIS). The Department has been nearly wholly unable to satisfy Legislative informational requests. The causes include both the fiscal complexity of the Department's funding as well as deficiencies of DFG's fiscal managers.* Consequently, these inadequate fiscal controls have resulted in inappropriate fund expenditures, and in at least one instance (the Shrimp Tax) has compromised the Department's ability to fully assess and collect taxes and fees due it.

In addition to the fiscal dimension of its MIS, DFG's system for tracking the licensed taking of fish and game--especially deer--is incomplete, inadequate and likely misrepresents the status of at least some fish and game. By consensus opinion, the present system of monitoring the illegal taking of fish by commercial interests is insufficient and, if not augmented, likely will threaten the viability of fish populations and legal commercial interests. Again, however, in fairness to the DFG, this situation is directly related to available internal resources.

Of equal concern is DFG's system for tracking the welfare of California's deer herds. However, this issue is bound by a set of technical and policy considerations. First, there is no wholly adequate and reliable method for estimating current or likely future deer populations. Historical herd population data is subject to at least the same criticisms as current data, and therefore cannot be used for reliable predictions. Attempts to estimate attrition due to licensed hunting are bound by the degree to which prospective hunters feel compelled to (1) obey the law (2) risk their future prospects for hunting,** and (3) of their own volition return deer tags (permits) where no deer were taken. And, although sincere and serious in their interest,*** DFG field counts of deer--populations are subject to a variety of nagging variables: the tenacity of field staff, the intrusion of human development and the subsequent relocation of herds, inaccessibility of terrain and the cost of more technological approaches such as marking of individual deer, etc. Suffice it to say that without distinct evidence that deer herds are in decline as a direct result of DFG's method of counting illegal take, this study can make no finding on the programmatic significance of DFG's admittedly imperfect MIS.

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* As noted by the Task Force report and the DFG's most vocal critics, the Department's fiscal accounting environment is not a happy one. There exist 21 "categorical" or dedicated accounts against which the DFG must charge portions of many employees' time, and for which there must be separate accounting. By consensus opinion, this represents one of the State's most complex bookkeeping systems.

** Hunting licenses are distributed through a lottery, and offenders of hunting laws are automatically precluded from future competition.

*** DFG's Director has expressed the Department's perspective that its primary emphasis with respect to deer is population management, and that illegal take is a relatively minor component of the maintenance of California's herds; certainly much less an issue than the availability of habitat, for instance. In a resource-limited environment, he suggests, the most cogent approach is the approach that maximizes impact, even though such an approach may not include all of the measures that should be applied to the issue. The DFG currently is piloting a hybrid deer population measurement system that is a synthesis of those models used by Western states, with a primary reliance on the model used by the State of Nevada.

G. Departmental Internal Allocation of Resources

The Department is not capable of appropriately allocating resources. The Department cannot provide the required level of monitoring, enforcement and timely expertise and research consistent with the requirements of its mandate. Increasingly, policy and implementation decisions, especially with respect to staff support to the FGC, must be made on the basis of incomplete or dated information. This situation is largely determined by the previously noted lack of sufficient resources, but also owes itself to an unfortunate configuration of accelerated (and in some cases not fully informed) public expectations, critical wildlife and habitat needs and a late-developing science.

The need for effective and consistent monitoring is clear, as is the need for effective and professional enforcement of protective laws. However, the most critical need likely leads to a dilemma: time. On one hand, what may be most needed is simply time; time for science to gather sufficiently tailored and species-specific data, time for this data to be translated into systems that model realistic wildlife configurations, and time for the public and its representatives to assimilate this data and formulate empirically justified policy. On the other hand, it is questionable whether the need for time can be reconciled with the immediate need for protective action with respect to many of the plants and animals that comprise California's natural diversity. In short, time may be an academic consideration if sufficient and timely research is not made available to initiate the cycle of informed protection.

H. Departmental Control of Regions

The Department does not have adequate oversight and authority over fish and game regional administrators. Apart from the formal personnel system, designed to speak to issues of grievance and employee inadequacy, the DFG has no consistent, structured system for monitoring the actions and decisions of Regional Administrators. Moreover, the "law enforcement" structure of the DFG translates to an unnecessary and counterproductive rigidity, and leads to an unproductive balance between Regional autonomy and adherence to central office directives. At present, the DFG has no mechanism for non-putative field reporting of suspicious or questionable practices. Quite the contrary, there is adequate evidence that such extra-chain of command communication with central office likely would become known to Regional managers, and so prejudice the employment and advancement status of the employee reporting. In sum, wardens often must be overly reliant on the perspectives and personalities of Regional managers in order to "correctly" enforce laws and implement regulations.*

Clearly, there exists within DFG's field operations a lack of consistency with respect to Regional enforcement practices and regulations. Again, this Regional inconsistency goes beyond the terms of required flexibility of action and policy, and presents unnecessary difficulties for those attempting to work with the DFG statewide. The sporting, commercial and general public often are unclear as to Regional managers' and wardens' discretion in matters of implementation of policy and strict enforcement of law. Given the wide range of complaints and complainants in this regard, it is not sufficient or justified to suggest that this situation is somehow the fault of the public involved with local DFG operations. In this regard, State control agencies have noted the apparent difficulty of

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* In combination with the "depth" of DFG's hierarchy, which is a structural difficulty in and of itself, this situation represents a potent disincentive for line suggestions regarding refinement of local/Regional practices.

Regional managers in adhering to central office guidelines and directives, which suggests, at a minimum, Regional staff are not sufficiently informed as to the need for such adherence.

Given that the background and experiences of field personnel are varied,* it is not surprising that Regional interpretation and implementation of regulations and guidelines is not consistent. However, until recently,** DFG's response to the obvious training needs of its Regional staff was insufficient. This lack of training has been one more sign of the lack of "day-to-day" attention directed toward Regional administrative capabilities by DFG's central office. Especially with regard to public relations, management and generally accepted standards of administration, the DFG has demonstrated less than optimum performance.

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* The inconsistency largely consists of three distinct orientations in experience and background: (1) primary orientation to law enforcement, (2) primary orientation to fish and game biology and environment, and (3) orientation to environmental studies, including plant and non-animal natural resources.

** Recent improvements largely came about as a result of the Agency Task Force report, and scrutiny by the Auditor General and Legislative Analyst's Offices.

VI. RECOMMENDATIONS

A. Composition of the Commission

With the assistance and advice of the Legislature, the Governor's Office and representatives of appropriate State control agencies, the Resources Agency should convene a special task force to develop criteria for membership on the California Fish and Game Commission. The results of this Task Force's study should include:

a. criteria for membership, tied directly to each of the five Commissioner positions,
b. constituencies represented by virtue of the proposed membership criteria,
c. justifications for the comprehensiveness of viewpoint represented by the proposed criteria,
d. recommendations, if found advisable, for expansion of the membership of the Commission.

These changes would be included within the Fish and Game code, and would ensure sufficient expertise and representation of major constituencies within the Commission.

B. Commission's Viability

The Fish and Game Commission should become part of a formal Resource Agency Oversight Task Force, composed of one executive member from each of the major resource-related, Resource Agency commissions and departments. This Oversight Task Force would be chaired by the Agency Secretary, and would serve to unify policy and practice with respect to all significant aspects of California's fish and game, water and habitat-related issues. The process of the Oversight Task Force would include both public hearings and opportunities for continuing public access. The initial life-span of the Oversight Task Force should be twenty-four months, during which the Task Force should hold regular, scheduled meetings among the principals, regular briefings of appropriate Legislative Committees, and scheduled public hearings for public review and comment and informational exchanges directly related to proposed modifications and refinements proposed by the Committee.

C. Commission's Operation and Decisions

With participation of the Commission in the proposed Resource Agency Oversight Task Force, recommendations for re-examining the continued viability for the Fish and Game Commission should be held in abeyance. However, over the next twenty-four months, Agency, Legislative and Governor's Office attention should be given to (1) the effort expended by current Commissioners and Commission staff toward effectively monitoring the Department of Fish and Game, (2) the extent to which the Commission is able to demonstrate to its constituencies its responsiveness to full and complete analysis of major issues before it, and (3) the commitment of the Commission representative to the Oversight Task Force. As part of its general work responsibilities, the Commission staff should be prepared to issue yearly special reports, which at a minimum, would outline specific measures and results related to 1-3, above.

D. Departmental Negotiations with Related Agencies

The Department of Fish and Game should provide separate staff, within an identified and dedicated unit, to provide for timely identification of issues and practices related to mitigation actions involving external agencies. This would provide a consistency and sense of priority that is now lacking and that has led to the DFG being seen as a "bad-faith" negotiator. Once nearing initiation, this service should be described in detail, including, at a minimum, (1) the role/purpose/goals/objectives of the service, (2) the authority of those staffing the service, (3) staffing level, (4) maximum durations for identified components of service, (5) options for resolution of issues and (6) means of access/contact persons. This description would be distributed proactively to all likely affected agencies.

The present "system" of personal intervention by the Department's Director on a case-by-case basis is unacceptable, and should not be considered as an option or alternative to this recommendation.

E. Departmental Acquisition and Stewardship of Refuge Lands

The Governor and the Legislature should direct the Department to make the following changes:

With respect to "intent to purchase" notifications, the progress of State acquisition should be contingent upon documented evidence of public notice, as well as signed acknowledgement of such notice by all owners of adjacent land. Such notice should include the proposed use of the land.

With respect to questions regarding the State's acquisition of lands in excess of their fair market value, prior to any offer of purchase the Department should have in hand and available at least two independent appraisals of the value of the land in question. These appraisals should include the residual value to the current owner of any rights not included in the property's sale.

In regard to the maintenance of newly purchased land, no land should be purchased without a departmental cost estimate of the resources necessary for maintenance of the land for the purpose acquired for the remainder of the fiscal year during which the land was purchased. Moreover, present Legislative and Executive branch budgetary practice and allocation policies should be modified to provide for the direct tie between land acquisition funds and maintenance funds for the year purchased. Resources sufficient to maintain newly acquired lands should be available prior to their acquisition.

F. Departmental Internal Administrative Capacities

The Department of Fish and Game's management and fiscal information needs should be analyzed, either by the Department of Finance's Office of Information Technology or an independent analyst, and a program should be formulated to meet those needs, with a special emphasis on the needs of State control agencies and local resource planners for summarized, easily accessible data bases.

Further, the Resource Agency should be directed to take authority for the reconciliation of expenditures to dedicated fund sources for FY 1990-91, and to report to the Legislature on:

a. The reconciliation of expenditures.
b. The extent to which the Department is capable of accomplishing such reconciliations in the future.
c. The net cost to the Department of such a fiscal accounting system/capability.
d. The future viability of the present system of dedicated fund sources.*

Finally, the Department should be directed to complete studies/issue papers aimed at providing program specifications for empirically defined, consistent measurement of legal and illegal taking of primary game and fish by both sporting and commercial agents. The Department should take pains to promote pubic understanding of its measurement strategies and justifications by advertising the availability of these studies/issue papers to all major hunting, fishing and protection agencies and associations.

G. Departmental Allocation of Resources

The Resource Agency should press for more resources for the Department, with special emphasis on adequate provision of services to the Department's Environmental Services Division. The Agency should also promote a more intimate working relationship between its constituent commissions and departments.

H. Departmental Oversight and Authority Over Fish and Game Regional Administrators

The Department should provide for an independent, external assessment of:

a. The extent to which the present latitude given to its Regional Managers in interpreting and implementing policy and regulation is consistent with current and likely future departmental and public needs.
b. The degree to which the present system of issuance of departmental guidelines sufficiently regulates all levels of field staff.
c. The adequacy of current specifications for Regional Manager positions, with a view toward augmenting management/administrative and public relations capabilities at the Regional and local levels.

Consistent with this assessment, the Department should continue its newly enhanced commitment to systematic position-specific training of its field staff.

The Department should institute an internal hotline from all field Regions to the central office, such that departmental employees can access central office staff regarding improvements to current practice, potentially significant field information and/or requests for information or clarification of policy and/or regulation.

Finally, the Commission, the Department and the Resource Agency should develop coordinated plans for augmenting its current public information capacities and performance. In concert, these

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* Item d. is of critical importance given the budding trend of decreased hunting and affiliated fees in direct opposition to increased costs of maintaining and, in some cases, re-establishing wildlife.

agencies should develop a strategic plan for (1) maximizing wide public access to the policies and guidelines of the Agency's Departments and Commissions and (2) development, dissemination and analysis of appropriate public assessments of need, with respect to the welfare of fish and game, as well as the performance of those agencies responsible for the protection of fish and game.

ENDNOTES

1. Moyle, Dr. Peter, written testimony for June 27, 1989 public hearing, Little Hoover Commission, 1989.

2. Shapovalov, Leo, et. al., "A List of Freshwater and Anadromous Fish of California," California Fish and Game Quarterly, 67 (1), 1981, pages 4-38.

3. Forecast 1990, First Interstate Bankcorp, Los Angeles, CA, 1989, page 10.

4. Vision California, 2010, California Economic Development Corporation, Sacramento, CA, 1989, page 41.

5. Forecast, page 10.

6. California Population Characteristics, Center For Continuing Study of the California Economy, Palo Alto, CA, 1989, page vi.

7. Ibid, page vii.

8. Ibid., page vi.

9. Ibid., page vii.

10. Ibid., page viii.

11. Forecast, op.cit., page 12.

12. Population Growth, op. cit., page viii.

13. Forecast, op.cit., page 11.

14. Ibid., pages 169-174.

15. "Your Economic Future," Alliance for Environmental Resources, Newsletter #4, 1988, page 2.

16. Redford, Robert, "Search For Common Ground," Harvard Business Review, May-June 1987, page 107.

17. Ibid., page 4.

18. Ibid., page 5.

19. Redford, op. cit., page 107.

20. Interview with Steve Taylor, Department of Fish and Game, Inland Fisheries Management, November 27, 1989.

21. Forecast, op. cit., page 14.

22. "Restoring America's Fisheries," U.S. Interior, Department of Fish and Wildlife Service, Division of Federal Aid, Washington, D.C., 1989, page 14.

23. Ibid., page 19.

24. Ibid., page 19.

25. Forecast, op. cit., page 23.

26. Mansfield, Terry, et. al., "California's Private Lands Wildlife Management Area Program," paper presented at The Western Section of The Wildlife Society, 1989.

27. Cowan, John B., "Hunting On The Public Areas," Outdoor Californian, Sacramento, Ca.