



**California Advisory Committee  
on Salmon and Steelhead Trout**



**1992 REPORT TO THE  
JOINT LEGISLATIVE COMMITTEE ON  
FISHERIES AND AQUACULTURE**

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**JOINT COMMITTEE ON FISHERIES AND AQUACULTURE**  
by the  
**CALIFORNIA ADVISORY COMMITTEE ON SALMON & STEELHEAD TROUT**

**EXECUTIVE SUMMARY**

The Salmon and Steelhead Advisory Committee, composed of eleven members and their alternates, provides recommendations to the state Legislature and the California Department of Fish and Game on matters relating to salmon and steelhead trout in California. The Advisory Committee's 1988 report, "Restoring the Balance", provided a description of the problems and solutions facing salmon and steelhead in all of the major river basins in California. A significant piece of legislation, S.B. 2261, was the result of that report.

S.B. 2261 amended the Fish and Game Code to make it the policy of all state agencies to double the populations of salmon and steelhead trout by the year 2000. Since passage of that bill, salmon populations have reached record low numbers in many north coast streams and the Sacramento winter-run chinook has been listed as "endangered" by the Fish and Game Commission and "threatened" by the National Marine Fisheries Service. Several other stocks of salmon and steelhead are possible candidates for listing under the Federal and state Endangered Species Acts. It seems we are farther than ever from reaching the goals defined in S.B. 2261.

The 1992 recommendations of the Advisory Committee reflect the framework identified in our 1988 report, because little has changed since 1988; except that the fisheries resources are steadily declining. The 1992 recommendations of the Advisory Committee are directed toward specific actions that the State Legislature can and should take to meet the goals of S.B. 2261. The recommendations focus on fisheries restoration funding, water policy reform, enforcement of the Fish and Game Code and state forest practices reform. The Advisory Committee's recommendations are intended to result in solutions which will increase the ability of the State of California to meet the goals of S.B. 2261, while maintaining a balanced approach to the use of all of California's natural resources.

## INTRODUCTION

With the filing of our 1988 Annual report we recommended that the Legislature adopt an overall plan for the conservation and restoration of the salmon and steelhead trout fisheries. We advised that the program should include explicit goals, a timetable for completion, and adequate funding. In September of 1988, with the signing into law of Senate Bill 2261, it appeared that some of our recommendations for a salmon and steelhead trout restoration program would soon begin implementation.

Today, after more than eight years of work by this committee, four years after filing our final report, and three and one-half years after many of our recommendations were passed into law; where are we? The consensus of our Committee is that we are still far from a realistic implementation. Four sections covering our major concerns follow:

### FUNDING FOR FISHERIES RESTORATION

In spite of a specific mandate from the Legislature, the Department has failed to place a high enough priority on the programs developed in conformance to S.B. 2261. We stress today, to the new Director, that he must elevate the priorities of the 2261 program to a status equal with all other Department objectives. The Department staff, assigned to the 2261 programs, must be recognized as essential contributors to the decision making processes on all matters directly or indirectly impacting the expeditious implementation of the 2261 program. There is not an administrative level in the Department of Fish and Game (or state Government) that has the right to jeopardize the Salmon and Steelhead resource further through lack of action or commission of detrimental actions.

The policies as set forth by the Legislature are listed in Chapter Eight, Part One of Division 6 of the Fish and Game Code. These policies are:

1. That it is the policy of the state to significantly increase the natural production of Salmon and Steelhead Trout by the end of this century.
2. That it is the policy of the state to recognize and encourage the participation of the public in privately and publicly funded mitigation, restoration and enhancement programs and
3. That it is the policy of the state that existing natural salmon and steelhead trout habitat shall not be diminished further without offsetting the impacts of the lost habitat.

The California Advisory Committee on Salmon and Steelhead Trout now recommends to the Legislature that you create the legislation that will provide the necessary long term funding to implement these "POLICIES" that you have set forth.

Funding for the 2261 program has declined substantially since the passage of S.B.2261 in 1988. Meanwhile, funding needs have substantially increased since the program's inception due to inflation, identification of new problems and solutions, and in the near future it is likely that additional State matching Funds will be required for Federal programs similar to the Trinity and Klamath River Restoration Programs (CVP Restoration).

Inadequate funding plagues the S.B.2261 Program. Simply put, the Program is not receiving the funding it needs to meet the Act's goal of doubling the production of salmon and steelhead trout by the year 2000. The Act states that "the conservation and restoration of the salmon and steelhead trout of the state must be accomplished primarily through the improvement of stream habitat and the elimination of manmade factors which cause the loss of juvenile fish in California's stream systems."

In its 1989 report to the legislature, "Initial elements of the Salmon, Steelhead Trout and Anadromous Fisheries Program", the Department states that "a greatly intensified program of habitat rehabilitation in all California salmon and steelhead watersheds will be required to attain the Act's mandated goal to double the natural production of salmon and steelhead by the year 2000", and "substantial additional funding will be needed to pursue the goal..." The report goes on to say that "Funding sources must be found to carry out this work and expenditures should be substantially increased from the present level of \$5-6 million."

Although funding has been substantially increased to meet some, but not all, of the increased staffing requirements, funding for habitat restoration work has actually been substantially reduced from the 1988/89 level of funding. Since the report was submitted to the Legislature, not only has the total amount of money spent on restoration projects dropped (from \$4.3 million to \$3.1 million), but far fewer funding sources exist now than then (four now, compared with ten then.)

Three of the remaining four sources of present funding have such tight spending criteria attached to them that the potential for significantly increasing overall restoration expenditures with these sources is slight. Expenditures from these sources, at least in the near future, will likely not vary significantly from current spending levels, even though authorized funding levels for these sources are several orders of magnitude greater than the amounts spent.

The remaining funding source, Proposition 99 Public Resource Account revenues, has much more flexibility built into how it can be spent, and as such, provides opportunities for funding high quality projects that do not meet the rigid and restrictive funding criteria of the other three sources. The discretionary freedom that allows the Department to allocate this money in a more effective fashion unfortunately is the very reason why so little of the revenues that should be going into salmon and steelhead restoration projects is actually being used for this purpose.

Five percent of the Tobacco Tax and Health Protection Act revenues are deposited in the Public Resources Account, half of which are to be spent on "programs to protect, restore, enhance or maintain fish, waterfowl, and wildlife habitat on an equally funded basis". The Act further provides that the money will be spent solely "to supplement existing levels of service and not to fund existing levels of service".

Valid questions have been raised about whether funds allocated to fisheries is being spent according to the statute's provisions and consistent with the Act's intent. By developing and implementing a set of spending priorities, the Department could curtail inappropriate expenditures of these funds, and would result in a significant increase in the amount of these funds allocated to the S.B. 2261 Program's grant program. This would be a significant short-term improvement in the Department's capability to implement planned restoration projects.

This will not, however, come even close to solving the grant program's funding problems. New long-term funding sources with flexible allocation criteria must be created in the next couple of years. If not, only a fraction of the habitat needed to support a doubling of natural production will be of suitable quality by the year 2000. It is sobering to realize that in fiscal year 1985/86, three years before S.B. 2261 was signed into law, \$7.4 million, a little more than twice the current year's expenditures, was spent on restoration projects. Since then, all funding sources created through the legislative process have either ceased existing or have become inaccessible.

Current Department efforts to utilize their meager salmon and steelhead habitat restoration money to it's greatest advantage are constrained by the state Legislature's failure to create a funding source for the state match of Federal expenditures by the Trinity River Basin and Klamath River Basin restoration programs. State money which is currently being spent in these drainages could be diverted back to other North Coast basins with widespread habitat degradation problems, like the Mattole, Gualala, and Russian Rivers, if a new funding source for these Federal programs could be created.

The Advisory Committee finds that unless funding for salmon and steelhead habitat restoration is quickly and substantially increased, the Department will be unable to meet the production goal mandated by the Legislature in the California Salmon and Steelhead Trout Conservation and Restoration Act of 1988. Since funding from current sources cannot be substantially increased, it is essential that new funding sources be identified and created.

For example, screening of water diversions in the Sacramento River and the Delta which entrain salmon, steelhead, delta smelt, and striped bass is a fundamental restoration project and a major line item which could amount to a fiscal need of hundreds of millions of dollars. Failure to adequately screen diversions will not only negate fishery restoration actions, but it will ultimately lead to the shutdowns of important agricultural and urban water supplies. The shutdowns and fines experienced by the Glenn-Colusa Irrigation District and the Anderson-Cottonwood Irrigation District for taking winter-run salmon are just the beginning of what could be a major shutdown of most water pumps from Shasta Dam to the Delta. This is a fundamental problem that can be solved by additional funding.

Unfortunately, according to the Fish and Game Code, the State of California may be required to foot the bill for screening some of the largest and most costly diversions in the state. That is a situation that the taxpayers can ill afford at this time of rising budget deficits and recession. At the same time, the legal problems and potential costs to the agricultural community and municipal and industrial water users are staggering. It is time for all parties to work together to create a win-win situation.

The Salmon and Steelhead Advisory Committee recommends that the Legislature develop a multi-faceted solution to the funding issue, which would include reducing the state's financial liability for unscreened diversions, while at the same time, increase revenues and provide financial incentives to water users who take the initiative to correct problems such as unscreened diversions, thus utilizing a "carrot and stick" approach.

The multi-faceted solution for funding recommended by the Salmon and Steelhead Advisory Committee includes the following:

1. Enact a fee on the gross tonnage of sand and gravel extracted pursuant to the Surface Mining and Reclamation Act to be deposited into an account for the express purpose of restoring fish habitat and rebuilding fish populations affected by sand and gravel extractions.

2. Enact S.B. 2390 (2/18/88, see "Restoring the Balance"), which requires changes in the Fish and Game Code relative to responsibility for payment of screening water diversions. This bill could significantly reduce the state's liability for screening water diversions.

3. Enact S.B. 959, which requires payment of a "water tax" on urban water users, with a portion of the proceeds to be deposited into an account for fisheries restoration.

4. Enact a bill which would be similar to S.B. 959, except that the water tax would apply to agricultural water users. A specified portion of the revenues would be placed into a revolving account to be used for the purposes of providing no-interest loans for the screening of water diversions by owners of those diversions.

5. Levy highway-based fees to reflect the ongoing, annual impact of roads and highways on wildlife and fishery habitat.

6. Charge recreational fees and or/taxes on non-hunting and fishing recreational use of habitat, such as skiing and hiking.

7. Implement population impact fees to reflect the pressures and demands by the increasing population on fish and wildlife habitat in the State of California.

8. Levy nonpoint discharge fees on pollution that originates from a variety of sources difficult to identify that negatively affect wetlands and aquatic habitat areas.

9. Wastewater discharge fees could also be increased to reflect the impact of wastewater discharges on fish species and habitat.

## WATER POLICY REFORM

There are several initiatives before Congress and the State Legislature to reform water policy in California. Most notably, the Katz, S.B. 2090 before the state Legislature, and the Miller/Bradley vs. Seymour/Herger/Dooley bills before Congress. In looking at the Federal bills, it is important to note that in 1990, at the request of the Advisory Committee, the California Legislature passed the Senate Joint Resolution 26 advising Congress and the President to halt the sale of 1.5 million acre feet of "uncommitted CVP yield" which we now know does not exist. It should also be noted that goals of S.B. 2261 to double anadromous fish populations provides the cornerstone of the Miller/Bradley bills. As pointed out in our 1988 report, "Restoring the Balance", the structures proposed in the Seymour/Herger/Dooley bill will surely fail without the policy improvements proposed in the Miller/Bradley bill.

The prospect of providing for California's growing water needs through the use of unfettered water transfers is tantalizing to many, including the Salmon and Steelhead Advisory Committee. However, complete deregulation of water transfers from farms to cities could result in economic and environmental problems worse than the problems it is trying to reduce. Increased Delta exports and the accumulation of water in the hands of the wealthiest are some of the potential problems associated with S.B. 2090.

In regard to water policy, the Salmon and Steelhead Advisory Committee recommends the following:

1. That the Legislature memorialize Governor Wilson, President Bush and the Congress to support and enact the Miller/Bradley CVP Restoration bills.
2. That the Legislature pass an amended S.B. 2090 to allow water transfers between State Water Project contractors only. Consideration of all deregulation of water transfers for all water users could be evaluated after three years.



## FOREST PRACTICES

The California Advisory Committee on Salmon and Steelhead Trout recognizes the improvements made in protecting our fisheries resources during timber harvesting since the passage of the Z'berg/Negedly legislation in the 1970's and subsequent regulation of logging and associated road building on private land in California. The Legislature, the Board of Forestry (BOF) and the California Department of Forestry and Fire Protection (CDF&FP) are attempting to further those reforms through legislative and administrative processes. However, the damage from past and present timber harvest activities continue to have impacts on salmon and steelhead resources throughout the state. In particular, the CDF&FP continues to approve harvest plans in watersheds severely impacted from past logging practices, even though Federal land management agencies such as the U.S. Forest Service and Bureau of Land Management would not allow continued logging in such degraded watersheds. Examples include the Mattole River, Grouse Creek in the South Fork Trinity and Grass Valley Creek in the Trinity River Basin.

Grass Valley Creek in Trinity County is a prime example of misplaced priorities and resources. Despite the expenditure of approximately \$30 million through the Trinity River Task Force to reduce sediment discharges into the Trinity River, timber harvest activities are proceeding at this very minute under "state of the art" timber harvest plans which allow winter hauling of logs over a \$1 million road. The road was constructed by the Trinity River Task Force, with fishery restoration funds for the purpose of reducing siltation of the Trinity River. Incidentally, that road was constructed with 15% state matching funds. Reforms are necessary in the Forest Practice Act, and the Advisory Committee believes that the "Grand Accord" provides a base to expand upon.

The Salmon and Steelhead Advisory Committee believes that the Grand Accord falls short of what is necessary for protection and restoration of fisheries resources. In particular, the Advisory Committee believes that the Grand Accord should be amended as follows:

1. Delete the provision allowing the Department of Fish and Game to delegate its 1600 permitting authority to CDF&FP. The Department of Fish and Game has the expertise in this area and it relies heavily on money generated from its 1600 permitting authority. Proponents of this provision state that it is not likely for the Department to delegate its authority, the Grand Accord merely provides the opportunity. If it is not likely to occur, why include it?

2. Provide a seat on the Board of Forestry for a person who makes a living from the salmon/steelhead fishery. This could either be a commercial fisherman or a sportfishing guide/charter boat operator. The current and proposed make-up of the Board of Forestry does not provide for inclusion of a person who makes a living from salmon and steelhead, even though forestry activities seriously impact the fisheries resource. The opportunity for individuals directly affected by the current timber harvest regulations to participate in the process which led to the current legislative package appears to have been intentionally kept to a minimum. Those who depend on the forests, through the fisheries dependent on those forests, need to be given more opportunity, and therefore more responsibility, in the management of those forests. Provide a minimum of at least one seat on the Board of Forestry for a member of the fishery industry.

3. Provide clear language in a forestry reform package that allows and requires substantial watershed improvements to be made as a condition of approval of new timber harvest plans in sensitive watersheds which are beyond the threshold of concern for cumulative watershed impacts. The substantial improvements would go beyond anticipated impacts from the planned timber harvest activities and provide restoration of sensitive watersheds so that there is a net improvement in the condition of the watershed. The watershed improvements would be required to be maintained for a period of at least 15 years after the completion of timber harvest activities.

4. Include a provision identical to S.B. 1335 (3/6/87-see "Restoring The Balance") which would authorize the Department of Fish and Game and the State Water Resources Control Board to enter and inspect land at any time during the life of a timber harvest plan.

## ENFORCEMENT OF THE FISH AND GAME CODE

A recent article in the San Francisco Examiner detailed an internal memo from the Department of Fish and Game's Legal Advisor, Eugene Toffoli, to the Attorney General's Office. In short, Mr. Toffoli blasted the AG's office for lack of cooperation in prosecuting violators of the Fish and Game Code.

It is evident to the Advisory Committee that all of the money being spent on fish and wildlife restoration and enhancement will be money down a rathole without adequate prosecution of Fish and Game Code violators. Lack of adequate prosecution not only negates restoration efforts, but it can contribute to the decline of species to the extent that they will become eligible for endangered species listing. The Sacramento winter-run chinook is a prime example. Enforcement of code provisions requiring screening of diversions and passage of fish through dams could have prevented listing of that species as "endangered".

To alleviate this chronic, long-term problem, the Salmon and Steelhead Advisory Committee recommends that the Legislature enact legislation which allows the Department of Fish and Game to prosecute violators of the Fish and Game Code if assistance from the Attorney General's Office and the County District Attorneys has been requested by the Department and been denied, or no response has been received within 60 days of said request. The legislation should also substantially increase fines for Fish and Game Code violations, with the increase of fine monies to be directly deposited into a special account to hire special prosecutors for the Department.