
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Josh Becker, Chair

2025 - 2026 Regular

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Author:	Petrie-Norris		
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Subject: The California Endangered Species Act: take of species: renewable electrical generation facilities

SUMMARY

This bill would provide that no additional permitting would be required for the take of an “at-risk” species by a renewable electrical generation facility in the event the at-risk species became a candidate or listed species under the California Endangered Species Act if the listing was anticipated and the take is in compliance with an incidental take permit, and would authorize a research project to contribute towards the renewable electrical generation facility’s required mitigation, as provided.

BACKGROUND AND EXISTING LAW

The California Department of Fish and Wildlife and Fish and Game Commission

Existing law establishes the California Department of Fish and Wildlife (CDFW) and the California Fish and Game Commission (commission) in the California Natural Resources Agency. CDFW’s mission statement is “to manage California’s diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.” In general CDFW implements and enforces the regulations set by the commission, as well as providing biological data and expertise to inform the commission’s decision-making process.

The California Endangered Species Act (CESA)

CESA was enacted to prevent the extinction of fish, wildlife, plant, and invertebrate species. CESA relies on scientific analysis to determine which species face extinction and imposes protections for those species. The continued existence of a species may be threatened by any combination of habitat destruction, overexploitation, predation, competition, disease, or other natural or human-related activities. The overarching intent of CESA is to regulate and impose mitigation on activities that could contribute to the extinction of species. Species are referred to as “listed” if they have been designated as “threatened” or “endangered” by CESA.

CESA prohibits the “take” of a listed species, which means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. CDFW may issue permits under CESA to allow “take” that is incidental to an otherwise legitimate activity. In California, species that are being considered for listing under CESA (i.e., candidate species) are afforded the same protections as listed species until the scientific evaluation is complete and the commission makes a final decision regarding if the species should be listed or not.

Under CESA, anyone can file a petition with the commission proposing the listing of a particular species. After the commission receives a CESA listing petition, CDFW is responsible for completing a petition evaluation that includes a recommendation on whether the petition contains sufficient scientific information to indicate the petitioned action is warranted. Once the CDFW evaluation is completed, the commission, at a public meeting, has to decide whether to accept the petition. If the petition is accepted, the species becomes a candidate species and receives CESA protections, as provided. CDFW then has to prepare a peer-reviewed species status report based upon the best scientific information available. Once the status report is completed, the commission has to decide at a public hearing whether the petitioned action is warranted. If yes, the species will be “listed” and afforded relevant protections. If no, the species is removed from candidacy.

According to the Assembly Water, Parks, and Wildlife Committee, since 2010, the commission has received 40 petitions. Of those, 22 petitions resulted in a listing and 13 are currently candidates (which includes the Western Joshua Tree, as well as the most recently proposed species: greater sage grouse, white sturgeon, bear lake buckwheat, morro manzanita, Western burrowing owl, Gerry’s curl leaved monardella, and the Pacific pocket mouse). It can take multiple years from the receipt of a completed petition to a final determination on whether to list the species is made by the commission.

Permitted take

Incidental take permits (ITPs) are exceptions under CESA to enable prohibited take, subject to certain conditions, for an otherwise lawful activity. Examples of “lawful activities” for which an ITP may be issued include infrastructure development, housing development, and scientific research. CDFW may not approve an ITP for a listed species if the activity for which the permit is sought would jeopardize the continued existence of the species. ITPs also require that the impacts to the listed species are minimized (i.e., activities that avoid take such as exclusion fencing, flagging habitat, and timing elements of projects to avoid species) and fully mitigated (e.g., acquisition, preservation, and/or enhancement of suitable habitat) using measures that are roughly proportional in extent to the impact on the species.

Existing law:

- 1) Provides that fish and wildlife resources are held in trust for the people of California by and through CDFW (Fish and Game Code (FGC) §711.7).
- 2) Provides, under CESA, for the listing and protection of species determined through biological scientific analysis to be endangered or threatened with extinction (FGC §§2070 *et seq.*).
- 3) Requires the commission to establish a list of endangered and threatened species to which species may be added or removed upon the receipt of sufficient scientific information that action is warranted and further describe the process by which a listing occurs (FGC §§2070 *et seq.*).
- 4) Defines endangered, threatened, and candidate species, all of which refer to native species or subspecies (FGC §§2062, 2067, 2068).

- 5) Prohibits a person or public agency from importing into this state, exporting out of this state, or taking, possessing, purchasing, or selling within the state, any listed species or any part or product of the listed species (FGC §2080).
 - a) Species that have been advanced to candidacy by the commission have the same protections as listed species until resolution of their candidacy.
- 6) Defines “take” to mean hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (FGC §86).
- 7) Prohibits the taking of an endangered species, threatened species, or candidate species listed pursuant to CESA unless CDFW authorizes the taking of the listed species under an ITP and if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species (FGC §§2081, 2084).
- 8) Allows the commission to authorize, subject to terms and conditions, and based on the best available scientific information, the taking of a candidate species (FGC § 2084).

PROPOSED LAW

This bill would:

- 1) Define “at-risk” species to include species proposed for listing as an endangered or threatened species, or species that CDFW determines may, in the near future, be candidate species or proposed for listing as an endangered or threatened species. An at-risk species is not an endangered, threatened, or candidate species.
- 2) Provide that if an at-risk species becomes a candidate or listed species pursuant to CESA, then further authorization or approval shall not be required for take of that at-risk species, if both of the following conditions are met:
 - a) The potential listing of the at-risk species was anticipated in an ITP previously issued by CDFW for incidental take caused by a renewable electrical generation facility, as defined; and
 - b) The take is in compliance with both the terms of Section 2081 of the Fish and Game Code (which allows CDFW to authorize the take of a CESA-listed species under specified conditions) and the terms of the ITP.
- 3) Authorize CDFW, in partnership with an ITP applicant, to develop a research project that evaluates all of the following:
 - a) The impact of the renewable electrical generation facility's siting, design, and construction on the at-risk species and its habitat; and
 - b) The take of an at-risk species; and
 - c) Any other elements CDFW seeks to include.

- 4) Allow research projects reviewed and approved by CDFW to contribute towards a renewable electrical generation project's mitigation, as defined, to the degree CDFW deems fit.
- 5) Require CDFW, by January 1, 2030, to report to the Legislature on the following:
 - a) Renewable energy facility projects that included an at-risk species in a take authorization and each at risk-species authorized for take;
 - b) The effectiveness of the new permitting requirements proposed herein for both species protection and project security; and
 - c) The staff time and resources required to accomplish these new permitting requirements, as provided.
- 6) Make multiple relevant legislative findings and declarations related to the need for the bill including noting that the state's ambitious climate and energy goals will require a massive buildout of new clean energy projects, including nearly doubling its clean energy capacity over the next five years to stay on track with its goals.

ARGUMENTS IN SUPPORT

According to the author, "Under the California Endangered Species Act (CESA), protections apply not only to threatened and endangered species, but also to species designated as "candidates" for potential listing by the California Fish and Game Commission. Any "take" (e.g., catch, capture, or kill) of a candidate species is prohibited unless authorized by an Incidental Take Permit (ITP) that fully mitigates the impact."

"Currently, when a species becomes a candidate, developers—such as those building housing or clean energy projects—must often pause work and undergo unexpected reviews and permitting at significant cost. This creates delays, adds uncertainty, and can impose unanticipated mitigation requirements. For renewable energy projects, delays in commercial operation can result in penalties as high as \$100,000 per day—costs that ultimately affect ratepayers."

"Allowing developers to apply for ITPs before a species becomes a candidate would improve planning timelines, giving them a chance to conduct required species studies—often limited to specific seasons—and address mitigation requirements proactively. This change would reduce late-stage delays and provide more flexibility for compliance."

The Large-Scale Solar Association adds "By making this small adjustment to allow for ITPs earlier in the process, developers would have more flexibility in addressing issues and avoiding late-stage project delays. In the clean energy context, late-stage project delays drive up the cost of electricity generation and threaten reliability targets – both of which impact ratepayers."

ARGUMENTS IN OPPOSITION

In a joint "oppose unless amended" letter, Defenders of Wildlife writes, "Our organizations support the rapid transition to clean energy, but we believe that compliance with California's robust environmental laws is critical – and not antithetical – to preserving our resources while developing renewable energy projects."

Defenders continues, “the bill needs to be amended to clarify what the standard is for the CDFW to determine whether an at-risk species was appropriately covered in a CESA permit. [...] We would recommend that the bill is amended to make it clear that the standard to allow for the take of at-risk species is the fully mitigated standard under Fish and Game Code Section 2081.”

“Second, the bill needs to be amended to make it clear that CDFW cannot rely on scientific research to mitigate for the loss of habitat or death of a species. [...] Allowing the destruction of habitat of an at-risk species and not mitigating it with conserved habitat would lead to a net loss of habitat – which is exactly what we do not need or want for species on the brink of being listed as threatened or endangered.”

Defenders further notes the importance of establishing a fee for the work required by CDFW’s effort to address “at risk” species, stating “It is likely that there will be substantial costs associated with CDFW including ‘at risk’ species into a take permit as it will require them to analyze how a project will impact species that may not be in the normal permit processes and that may have little biological information.”

COMMENTS

CESA’s fully mitigated standard. CESA’s fully mitigated standard for species subject to its protection is a hallmark standard. Recall that a species subject to CESA is at risk of extinction. While research, particularly research into how to mitigate for, determine, or address the impact of various activities on certain species, is an important endeavor, there is no guarantee that the outcome of the research will provide useful or implementable results to the benefit of the species at risk. Validated research may inform future permit requirements, but cannot meet the fully mitigated standard critical to the survival of species today.

The renewable electrical energy facility industry has undertaken interesting research related to understanding how to best address the disruption their industry causes to resident species.

While there are important benefits to permit streamlining efforts to combat the climate crisis, these should not come at the cost of upholding standards that are also intended to protect the environment from the climate crisis and ongoing human development.

There is a fair argument – if sufficient information about an at-risk species is known – that incorporating these species into an ITP with a requirement to meet the fully mitigated standard can provide some certainty to a permittee in the event the at-risk species advances to candidacy. Limiting the universe of at-risk species to those that have a petition pending for listing before the commission or that have been recommended for listing by CDFW increases the likelihood that sufficient information will be available to incorporate the at-risk species into an ITP under section 2081.

In view of this, the Committee may wish to amend the bill as follows:

- replace the definition of at-risk species with “species proposed for listing” which includes species recommended by CDFW for listing or that have been petitioned by an interested party prior to being designated as a candidate species;

- incorporate species proposed for listing into the ITP process;
- provide discretion to CDFW to not issue an ITP for a species proposed for listing if insufficient information is available;
- remove research as an option to meet the fully mitigated standard for a renewable electrical generation facility;
- add an online reporting requirement in 6 years to provide information on use of the new program; and
- make various conforming and clarifying changes. **[Amendment #1]**

Recent related legislation.

AB 1581 (Kalra, Chapter 681, Statutes of 2024) establishes the Restoration Management Permit, which requires restoration projects to provide a net conservation benefit above baseline conditions, and extends CDFW's authority to issue a consistency determination on Safe Harbor agreements.

AB 3238 (Garcia, 2024) would have created exemptions from, and streamlining of, planning, environmental review, and environmental permitting processes for the development of electrical infrastructure projects, including Natural Community Conservation Plans. (*This bill was held on the suspense file in the Senate Appropriations Committee.*)

SUGGESTED AMENDMENTS**AMENDMENT 1**

Amend the bill per the following mock-up:

SECTION 1. The Legislature finds and declares all of the following:

(a) California has created ambitious climate and energy goals to achieve a net zero carbon economy by 2045. The California Air Resources Board "2022 Scoping Plan for Achieving Carbon Neutrality" calls for the state to cut air pollution by 71 percent and to reduce fossil fuel consumption by 86 percent.

(b) The 100 Percent Clean Energy Act of 2018 (Chapter 312 of the Statutes of 2018) updated the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code) to ensure that by 2030 at least 60 percent of California's electricity is renewable and for the state to provide 100 percent of its retail sales from zero-emission sources by 2045.

(c) It is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat. The conservation, protection, and enhancement of these species and their habitats is of statewide concern.

(d) Certain species of fish, wildlife, and plants have been rendered endangered or threatened as a consequence of human activity, including climate change. All state agencies, boards, and commissions should seek to conserve endangered and threatened species.

(e) Clean energy projects **often result in impacts to and take of endangered or threatened species, but** can **also** help mitigate climate change, and advancing clean energy development in the state can in this way help protect endangered or threatened species.

(f) The state's ambitious climate and energy goals will require a massive buildout of new clean energy projects. The state must nearly double its clean energy capacity over the next five years alone to stay on track with its goals.

(g) These goals may be achieved through a collaborative stewardship approach to protecting endangered or threatened species while catalyzing the development of clean energy.

****ADD AND AMEND EXISTING FGC 2081 AS FOLLOWS:****

2081. The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, **and** candidate species, **and species proposed for listing, as defined in subdivision (c) of section 2081.3,** if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) (A) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(B) For purposes of this section, transportation funding identified in the State Highway System Management Plan shall be presumed to ensure adequate funding for the long-term maintenance of a habitat connectivity or wildlife corridor structure on the state highway system, but not for the habitat on or around the structure. To ensure adequate funding to maintain the habitat on or around the structure, the applicant shall provide an endowment.

(4) The department has sufficient information to determine the impact of the authorized take on, and compliance with paragraphs (2) and (3) for, the species proposed for listing.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

(e) Commencing January 1, 2019, the department shall post each new permit issued pursuant to subdivision (b) on its internet website within 15 days of the effective date of the permit.

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SEC. 2. Section 2081.3 is added to the Fish and Game Code, to read:

2081.3. (a) If an **at-risk species** **a species proposed for listing** becomes listed as an endangered, threatened, or candidate species pursuant to this chapter, then further authorization or approval shall not be required for a take of that **species proposed for listing, at-risk species**, if both of the following conditions are met:

(1) The **species proposed for listing was included as a covered species potential listing of the at-risk species was anticipated** in a permit previously issued by the department pursuant to subdivision (b) of Section 2081 for incidental take.

(2) The incidental take is caused by a renewable electrical generation facility, as defined in Section 25741 of the Public Resources Code.

~~(2)~~ **(3)** The take is in compliance with **both** the terms of Section 2081, **and the terms of the permit described in paragraph (1).**

(b) (1) The department may, in partnership with an applicant of a permit described in paragraph (1) of subdivision (a), develop a research project that evaluates all of the following:

(A) The impact of the renewable electrical generation facility's siting, design, and construction on the at-risk species and its habitat.

(B) The take of an at-risk species.

(C) Any other elements the department seeks to include.

(2) Research projects that are reviewed and approved by the department may contribute towards a renewable electrical generation project's mitigation, pursuant to subdivision (b) of Section 2081, to the degree the department deems fit.

(c) (1) On or before January 1, 2030, the department shall report to the Legislature, in compliance with Section 9795 of the Government Code, and directly transmit a copy of the report to the relevant policy and fiscal committees, regarding all of the following:

(A) The projects that included an at-risk species in a take authorization pursuant to Section 2081 and each at risk-species authorized for take.

(B) The effectiveness of this section for both species protection and project security.

(C) The staff time and resources required to accomplish this section.

(2) This subdivision shall become inoperative on January 1, 2034, pursuant to Section 10231.5 of the Government Code.

(c) On or by January 31, 2033, the department shall compile and post a summary table on its internet website that includes, at a minimum, all of the following information for calendar years 2027 – 2032, inclusive:

(1) The projects that included a species proposed for listing as a covered species in a take authorization pursuant to Section 2081, including identification of the species concerned and whether the species proposed for listing advanced to candidacy or listing.

(2) Additional relevant information as determined by the department.

(d) For purposes of this section, "at-risk species" "species proposed for listing" means includes species proposed recommended by the department or petitioned by an interested party for listing as an endangered or threatened species pursuant to this chapter before the commission determines if the species will be designated as a candidate species. , or species that the department determines may, in the near future, be candidate species or proposed for listing as an endangered or threatened species pursuant to

this chapter. An at-risk species is not an endangered, threatened, or candidate species.

SUPPORT

AES Clean Energy
American Clean Power – California
Arevon
Aypa Power
California Energy Storage Alliance
California Wind Energy Association
Clearway Energy Group
EDF Power Solutions
EDP Renewables North America
Independent Energy Producers Association
Intersect Power
IPX Power
Large-scale Solar Association
Leeward Renewable Energy
Longroad Environmental Management
Solar Energy Industry Association

OPPOSITION

Anza-Borrego Foundation (unless amended)
Audubon California (unless amended)
California Ecological Restoration Business Association (unless amended)
California Native Plant Society (unless amended)
Center for Biological Diversity (unless amended)
Defenders of Wildlife (unless amended)
Planning and Conservation League (unless amended)

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