

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 1319 (Schultz) – As Amended April 21, 2025

SUBJECT: Protected species: California Endangered Species Act

SUMMARY: Allows for protections for species listed under the federal Endangered Species Act (ESA) when a federal action results in a decrease in protections for a species and listing under the California Endangered Species Act (CESA) would provide protections for that species. Specifically, **this bill**:

- 1) Makes it unlawful, unless otherwise authorized under state law, for a person to transport, sell, offer for sale, possess with the intent to sell, receive, acquire, or purchase any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of any statutes of the United States with regard to national or international trade of fish, wildlife, or plants in effect on January 19, 2024.
 - a) Specifies that this does not prohibit a person from transporting, selling, receiving, acquiring, or purchasing any cannabis or hemp as allowed under state law.
 - b) Sunsets this provision of law on January 1, 2032.
 - c) Provides that any action brought to enforce this provision of law on or before December 31, 2031 may proceed to final judgment.
- 2) Allows the Fish and Game Commission (Commission) to consider whether to adopt an emergency regulation that adds a California native species to the list of endangered or threatened species (listed species) as an emergency regulation, if the Commission determines, in consultation with the Department of Fish and Wildlife (CDFW), that a federal action under ESA that occurs after January 19, 2025, results in a decrease in protections for that species and that listing under CESA would provide protections for that species.
 - a) Requires CDFW to promptly commence a status review upon listing by emergency regulation.
 - b) Enables the Commission to determine whether the species should be listed beyond the duration of the emergency.
- 3) Provides that a federal action warranting a determination by the Commission may include a decision, by either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), to not protect or decrease protections to a species under ESA based upon any amendment to regulations implementing ESA that occurred after January 19, 2025.
- 4) Allows the Commission and CDFW, when authorizing the take of a species pursuant to this bill to apply the protections provided by any federal biological opinions, incidental take permits (ITP), incidental take statements (ITS), or rules under Section 4(d) of ESA that are in

effect as of January 19, 2025, unless the Commission or CDFW determine that those standards do not meet CESA standards.

- 5) Requires CDFW to monitor and report to the Commission, at least quarterly, any actions of the federal government that may constitute an emergency the necessitates action pursuant to this bill.
- 6) Exempts take authorizations during the pendency of emergency regulations from the California Environmental Quality Act.
- 7) States that the Legislature intends that the Commission and CDFW will be provided sustainable funding sufficient to fully implement these actions and resulting obligations.
- 8) Requires the Commission to notify affected or interested persons of the adoption of any emergency regulation.
- 9) Indicates that this bill is intended to protect against direct challenges to species protection and so those provisions will be inoperative on December 31, 2031 and will be repealed on January 1, 2032.
- 10) States that no reimbursement is required by this bill because this bill creates a new crime.

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 and ESA, for the listing and protection of species determined through biological scientific analysis to be endangered or threatened with extinction [FGC §§ 2070–2079.1; United States Code (U.S.C.) Title 16 §§ 1531 *et seq.*].
- 3) Makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the U.S. or in violation of any Indian tribal law, or to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce (18 U.S.C. §§ 3371–3378).
- 4) Defines endangered, threatened, and candidate species, all of which refer to native species or subspecies (FGC §§ 2062, 2067, and 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).
- 6) 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 and § 2084).

- 7) Allows the Commission to adopt, amend, or repeal a regulation after at least one hearing (i.e., an emergency regulation) if the Commission finds that the adoption, amendment, or repeal is necessary for (1) the immediate conservation, preservation, or protection of animal species or (2) the immediate preservation of the public peace, health and safety, or general welfare (FGC § 399).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, “California is home to more species of plants and animals than any other state in the nation and is considered a global biodiversity ‘hotspot.’ California has its own set of laws and initiatives to protect both state and international biodiversity. CESA includes a process by which the [Commission] shall place declining species on the state endangered or threatened species list. Those “listed” species are then protected by CESA against actions that would cause extinction. California law also includes protections for international species experiencing declines by prohibiting trade in their parts.

The current federal administration has made it clear that it intends to weaken protections for biodiversity, particularly endangered and threatened species. Since January, President Trump has issued multiple executive orders with directives to weaken protections for species protected under the federal ESA, including mandating quarterly meetings of the Endangered Species Committee, also known as the ‘God Squad,’ which can override the ESA and authorize otherwise prohibited activities. The God Squad has exercised its power to overrule the law just three times.

Further, based on actions taken in the last Trump Administration, there is sufficient reason for concern that there could be changes to federal law that will place additional international species deemed desirable by American trophy hunters at risk.

[This bill] would provide for a process by which the [Commission] would be able to extend state protections to those endangered and threatened species left unprotected by changes in federal law. This bill would also extend protection against the importation into California of animals previously protected by law, treaty, policy, or regulation. This change in law will provide protection for imperiled species around the world deemed desirable by trophy hunters.”

- 2) **Background.** First enacted in 1900, the Lacey Act is one of the oldest federal wildlife protection laws and combats trafficking of illegally taken wildlife, fish, or plants. The Lacey Act has been amended several times, including in 2008, when protections were extended to a broader range of plants and plant products—making it unlawful to import certain products without an import declaration. The 2008 amendments focus on illegal logging and harvesting of wild plants, practices often linked to terrorist funding, political instability, deforestation, and unlawful trade. The Lacey Act is administered by agencies of the Departments of Agriculture, Commerce, and Interior, including the Animal and Plant Health Inspection Service, NMFS, and USFWS. Section 1 of this bill institutes protections similar to that under the Lacey Act.

ESA and CESA. ESA and CESA were enacted to prevent the extinction of fish, wildlife, plant, and invertebrate species. Both acts rely on scientific analysis to determine which species face extinction and impose protections for those species. Although there are differences between ESA and CESA, the overarching intent of both 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 either ESA or CESA.

According to the list of state and federally listed animal species that CDFW maintains, there are 60 species are both state- and federally-listed, 38 species are listed only under CESA, and 80 species listed only the federal ESA. Those 80 species include two species of abalone, numerous species of butterfly, two species of cutthroat trout, populations of steelhead salmon, loggerhead sea turtle, and several whale species, to name a few.

Incidental Take Permits. ITPs are granted as exceptions under CESA and ESA to enable prohibited take for an otherwise lawful activity. Examples of “lawful activities” for which an ITP may be issued include infrastructure development, housing development, and scientific research. ITPs granted under ESA and CESA both require the applicant to ensure adequate funding to implement minimization and mitigation measures, although there are a few key differences between the extent of those measures as required by each act. Under ESA, take must not appreciably reduce the likelihood of the survival and recovery of that species in the wild, and the applicant must, to the maximum extent practicable, minimize and mitigate the impact of that take. Under CESA, take must not jeopardize the continued existence of the species, and the applicant must minimize and *fully mitigate* the take. The fully mitigate standard often means that ITPs granted by the state require a higher level of mitigation than federal ITPs. CESA does provide a mechanism for CDFW to concur with a federal ITP if that ITP meets state standards, through what is called a consistency determination.

Biological Opinions and Incidental Take Statements. As noted above, federal ITPs may be granted to non-federal entities to permit incidental take during an otherwise lawful activity. ESA also has a route to permit incidental take if a federal agency has a project that is likely to adversely affect a listed species. ESA requires that the federal agency initiate a formal consultation with USFWS or NMFS to provide information regarding the nature of the impact. After consultation, USFWS or NMFS prepare a Biological Opinion (often casually referred to as a BiOp), which analyzes the impacts of a project and determine whether the proposed project is likely to jeopardize the species or adversely impact critical habitat. If USFWS or NMFS anticipate the project will result in incidental take, the Biological Opinion is accompanied by an ITS, which anticipates the amount of take, prescribes avoidance and minimization measures for the project, and exempts the project from ESAs take prohibition.

Water, projects, and wildlife. Concerns have been raised that the state will not concur with new, or revisions to existing, federal ITPs, ITSs, or Biological Opinions issued after January 19, 2025 that are not deemed to be as protective as the baseline federal standards in effect before that date. The tension between those standards is exemplified in the coordinated operations of the Central Valley Project (CVP) and the State Water Project (SWP), for which the state has previously concurred with the federal government’s Biological Opinion.

As background, the federal CVP supplies water primarily (75%) to farmers in the Central Valley and urban areas in the Bay Area (Contra Costa and Santa Clara counties). SWP

supplies most of its water to urban users in Southern California and the Bay Area and to farmers in the San Joaquin Valley. Today, the projects are operated jointly under a Coordinated Operation Agreement that meets state and federal regulations to protect water quality and endangered species. Central to these agreements are Biological Opinions that prescribe how the projects are to operate to protect the endangered salmon, steelhead trout, Delta smelt, and sturgeon that inhabit the Delta and its watershed.

During the first Trump Administration, the Biological Opinions that governed the CVP and SWP operations were revised with the goal of increasing exports from the Delta. However, those revised 2019 Biological Opinions were in conflict with state laws and regulations protecting endangered species. This put tension between the operations of the CVP and SWP, which made the Coordinated Operation Agreement unworkable, brought the issue to court, pausing the implementation of the Biological Opinion, and eventually led to new Biological Opinions under the Biden Administration. The tangible impact of not operating both projects in coordination, is that if the federal CVP increases its water exports to Central Valley farmers, the burden to protect species and meet water quality standards would rest on the SWP, resulting in reduced water delivery to Southern California and San Joaquin Valley farmers.

These concerns are particularly notable after two Executive Orders from January 2025. The first, “Putting People over Fish” indicates President Trump’s goal to deliver “enormous amounts of water” to Central Valley and Southern California, and the second “Emergency Measures to Provide Water Resources in California,” which directs the Secretaries of the Interior and Commerce to “immediately take actions to override existing activities that unduly burden efforts to maximize water deliveries” and directs the Secretary of the Interior to “expedite action related to any exemption under [ESA] for the long-term operation of the [CVP] and [SWP] for all applicable threatened and endangered species.” This Executive Order also allows the Secretaries of the Interior and Commerce to take action that is in line with the 2019 Biological Opinions and states that the CVP may be operated “notwithstanding any contrary State or local laws.”

The Central Valley Project Improvement Act—the federal law that managed the CVP, particularly for the protection, restoration, and enhancement of fish and wildlife—clearly states that the CVP must be operated in a manner that meets “all obligations under state and federal law,” and will be operated jointly with the state through a Coordinated Operation Agreement. State law would include all state water quality, endangered species, and water rights laws. The January Executive Order appears to direct federal agencies to ignore those provisions. States are generally permitted to develop stricter endangered species regulations than the federal government, however, it is unclear if the state can dictate those regulations to the federal government itself. It is therefore uncertain, if under the state’s authority, if any respect will be afforded to the listed species under CESA in this circumstance, should the federal government continue to be interested in operating its projects “notwithstanding any contrary State or local law.”

This time around. This bill is similar to provisions found in SB 1 (Atkins) of 2019 in response to the first Trump administration, which as previous analyses noted, had committed numerous actions to rollback federal environmental protections because that administration presumed that environmental law and regulation jeopardize economic growth in the United States. The current federal administration has indicated its intention to weaken protections

for biodiversity, particularly endangered and threatened species. Since January, President Trump has issued multiple executive orders with directives to weaken protections for species protected under the ESA, including mandating quarterly meetings of the Endangered Species Committee, also known as the “God Squad,” which can override ESA and authorize otherwise prohibited activities; sunset environmental protections to “unleash American energy;” and streamlining ESA to expand American Timber Production. As recently as April 17, 2025, USFSW and NMFS have proposed to rescind the regulatory definition of “harm” under ESA, which is frequently used to protect critical habitat for listed species. These actions indicate that the protections likely to be afforded under this bill are far from hypothetical.

- 3) **Policy considerations.** This bill introduces a new, accelerated process for petitioning under CESA. Under this process, CDFW is required to monitor federal actions that may reduce the protections for a federally listed species that is native to California. If the Commission determines that listing the species under CESA would restore protections for that species, the Commission may use its emergency authority to list that species under CESA. During that time, CDFW must commence a status review of the species to determine whether to list the species beyond the duration of the emergency authority. *As emergency regulations have an expiration date, the author may wish to consider the use of emergency authority as this bill moves forward and consider if there is an alternative route that might permit CDFW more time to develop species status reviews.*
- 4) **Proposed committee amendments.** To clarify the scope of this bill, *the author may wish to consider the following amendments:*

Amendment 1: clarify that scope of “species” that may be listed under CESA as any “federally-listed species” as defined

(i) For the purposes of this section, “federally-listed species” means and species, subspecies, distinct population segment, or evolutionary significant unit that has been protected under the federal Endangered Species Act of 1973.

Amendment 2: clarify the scope of federal actions that may warrant a determination by the commission

(b) A federal action *that occurred after January 19, 2025* warranting a determination by the commission pursuant to subdivision (a) may include, but is not limited to:

(1) An act of Congress to amend the federal Endangered Species Act of 1973 or reduce protections to a federally-listed.

*(2) A decision by either the United States Fish and Wildlife Service or the National Marine Fisheries Service not to protect a **federally-listed** species. ~~or~~*

*(3) A decision by either the United States Fish and Wildlife Service or the National Marine Fisheries Service to decrease protection to a **federally-listed** species listed under the federal Endangered Species Act of 1973 that relies, ~~in whole or in part,~~ upon any amendments to regulations implementing the federal Endangered Species Act of 1973. ~~that occurred after January 19, 2025.~~*

(4) An action of the Endangered Species Act Committee.

(5) The issuance of new biological opinions that have reduced protections from previous biological opinions.

(6) A decision by the United States Federal Courts to decrease protections for a federally-listed.

- 5) **Arguments in support.** Numerous organizations write in support of this bill and the long legacy of biodiversity conservation in this state. “The current federal administration has made it clear that it intends to weaken protections for biodiversity, particularly endangered and threatened species. Since January, President Trump has issued multiple executive orders with directives to weaken protections for species protected under the federal ESA, including mandating quarterly meetings of the Endangered Species Committee, also known as the ‘God Squad,’ which can override the ESA and authorize otherwise prohibited activities. Further, based on actions taken in the last Trump Administration, there is sufficient reason for concern that there could be changes to federal law that will place additional international species deemed desirable by American trophy hunters at risk.” As this bill is a response to weaken protections initiated by this federal administration, supporters also note that this bill will only remain in effect until December 31, 2031.
- 6) **Arguments in opposition.** The Water Blueprint for the San Joaquin Valley writes in opposition to this bill because the implementation of ESA and CESA has had “profound negative socioeconomic impacts on the San Joaquin Valley, predominantly through the impact of reduced water supply reliability for state and federal water contractors, and the communities and lands they serve.” They add that the current listing process “provides sufficient access and expedient action on listing petitions, and the establishment of a separate process only adds additional complexity and uncertainty to a process that is well understood.”

Several groups write with an “oppose unless amended position” regarding the application of Section 2 (i.e., the CESA/ESA) provisions of the bill. They note that the Commission and CDFW already have “appropriate and expeditious tools to address any concerns related to a species that resides in California.” They also argue that the “decrease in protections” language is broad, that it could result in the Commission considering almost ever federally-listed species, which increases the uncertainty water agencies and businesses face as they move forward with projects. Finally, they note that CDFW is already facing significant staff cuts, which calls into question CDFW’s ability to effectively implement this bill.

- 7) **Related legislation.** SB 1 (Atkins) of 2019, would have enacted the California Environmental, Public Health, and Workers Defense Act of 2019 with the purpose of ensuring that protections afforded to Californians, under federal environmental and labor laws and regulations as of January 2017, remained in place in the event that the federal government weakens or repeals any of those federal laws or regulations. SB 1 was vetoed by the Governor: “While I disagree about the efficacy and necessity of [SB] 1, I look forward to working with the Legislature in our shared fight against the weakening of California’s environmental and worker protections.”

SB 49 (De León) of 2017, would have enacted the California Environmental, Public Health, and Workers Defense Act of 2017, to prohibit a state or local agency from amending or

revising its rules to be less stringent than the federal baseline standards pertaining to environmental protection. This bill was not heard on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:**Support**

Defenders of Wildlife (sponsor)
Applegate Siskiyou Alliance
Audubon California
Bear Yuba Land Trust
Cabrillo Marine Aquarium
CactusToCloud Institute
California Association of Zoos & Aquariums
California Coastal Protection Network
California Environmental Voters
California Institute for Biodiversity
California Native Plant Society
California Native Plant Society, Alta Peak Chapter
California Trout
CalWild
Center for Biological Diversity
Central Valley Partnership
Clean Water Action
Climate Action California
Coastal Corridor Alliance
Endangered Habitats League
Environmental Protection Information Center
Fresno Chaffee Zoo
Friends of Rose Creek
Friends of the Dunes
Friends of the Inyo
Friends of the River
Hills for Everyone
Los Angeles Neighborhood Land Trust
Los Angeles Waterkeeper
Los Cerritos Wetlands Land Trust
Midpeninsula Regional Open Space District
Mono Lake Committee
Mount Shasta Bioregional Ecology Center
Planning and Conservation League
San Diego Bird Alliance
San Francisco Baykeeper
San Joaquin River Parkway & Conservation Trust, INC.
Santa Clara Valley Bird Alliance
Save Mount Diablo
Sequoia Riverlands Trust
Sierra Club California
Sierra County Land Trust

Sierra Nevada Alliance
SoCal 350 Climate Action
Sonoma Land Trust
South Yuba River Citizens League
The River Project
The Wildlands Conservancy
Trust for Public Land
Wildlands Network

Opposition

Water Blueprint for the San Joaquin Valley Advocacy Fund

Oppose unless amended

Association of California Water Agencies
California Chamber of Commerce
San Luis Delta-Mendota Water Authority
State Water Contractors

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