

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 550 (Petrie-Norris) – As Amended April 7, 2025

**SUBJECT:** The California Endangered Species Act: the California State Safe Harbor Agreement Program Act

**SUMMARY:** This bill makes changes to the California Endangered Species Act (CESA) and the California Safe Harbor Act (SHA). Specifically, **this bill:**

- 1) Allows the Department of Fish and Wildlife (CDFW) to authorize, by permit, under certain conditions, the take of declining or vulnerable species should they become endangered, threatened, or candidate species (listed species).
- 2) Deems an activity “fully mitigated” for purposes of CESA if it obtains a SHA agreement that results in a “change in baseline conditions” per changes made by this bill.
- 3) Deems a renewable energy or decarbonization infrastructure project to be “fully mitigated” for purposes of CESA if it includes a scientific research program that meets all the following conditions:
  - a) The project is reasonably expected to advance scientific understanding of the effects on relevant listed species or declining or vulnerable species, should that species be listed, resulting from the project;
  - b) The research design is reviewed and approved by CDFW; and
  - c) A surety bond, letter of credit, insurance policy, corporate guarantee, or other form of financial assurance that is acceptable to CDFW is provided to ensure the completion of the research.
- 4) Allows the reduction of listed species under SHA.
- 5) Creates a new term and definition under SHA, “change in baseline conditions,” which means both:
  - a) An impact on baseline conditions caused by new land use or development that may result in the take of a listed species, or declining or vulnerable species during construction; and
  - b) Where the new land use or development is reasonably expected to provide a net conservation benefit for the same species through the implementation of management actions over the course of the operational life of the new land use or development.
- 6) Clarifies that a change in baseline is considered incidental take for the purposes of CDFW’s authority to permit activities that otherwise prohibit the take of birds, mammals, fish, reptile, amphibians, or listed species.

- 7) Makes a technical change to clarify that CDFW may approve an individual who has conducted a habitat survey either before or after the survey is conducted.
- 8) Makes findings and declarations regarding the state's climate and energy goals.

**EXISTING LAW:**

- 1) Provides that fish and wildlife resources are held in trust for the people of California by and through DFW [Fish and Game Code (FGC) § 711.7].
- 2) Declares that it is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species (FGC § 2052).
- 3) Requires that mitigation measures or alternatives, that address impact to listed species, are roughly proportional to the extent of impact on those species and shall be capable of successful implementation. Notes that where various measures or alternatives are available to meet this obligation, the measures or alternatives required shall maintain the person's objectives to the greatest extent possible (FGC § 2052.1).
- 4) Finds that cooperation with the owners of land which is identified as habitat for endangered species and threatened species is essential for the conservation of those species and that it is the policy of this state to foster and encourage that cooperation (FGC § 2056).
- 5) Defines endangered, threatened, and candidate species, to refer to native species or subspecies (FGC §§ 2062, 2067, and 2068).
- 6) Requires the Fish and Game Commission (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.*).
- 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 Incidental Take Permit (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).
- 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).
- 9) Establishes SHA and finds that the purpose of the SHA will be to encourage landowners to manage their lands voluntarily to benefit endangered, threatened, or candidate species, or declining or vulnerable species, and not be subject to additional regulatory restrictions as a result of their conservation efforts. Clarifies further that the SHA does not relieve landowners of any legal obligation with respect to listed or candidate species existing on their land because the SHA is designed to increase species populations and habitats and shall not reduce existing population of species present at the time baseline is established by CDFW (FGC § 2089.2).

- 10) Authorizes CDFW to permit the take of certain species through a SHA agreement under certain conditions, including, that the take is incidental to an otherwise lawful activity and that the implementation of the SHA agreement will lead to a net conservation benefit, and describes the process for developing, executing, and revoking an agreement (FGC §§ 2089.4 *et seq.*).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “Many well intended protections of species and the environment are now overly time consuming, opaque, confusing, and seem to favor process over outcomes. Without question, some of these complexities are warranted. But for certain types of projects, it is questionable whether or not the benefits continue to outweigh the negative impacts like project delays and cost overruns.

[This bill] includes a narrowly tailored set of commonsense reforms that prioritize positive outcomes over process. It accelerates the development of critical energy and infrastructure projects while maintaining the species and environmental protections Californians have enjoyed for decades.

[This bill] also addresses the costs and project delays caused by interruptions to projects already underway. Delays in project completion can result in liquidated damages reaching \$100,000 per day – costs that invariably translate to increased ratepayer bills. By making commonsense procedural adjustments to some of California’s essential species protections laws, developers will be able to avoid late-stage project delays without sacrificing environmental protections.”

- 2) **Background.** CESA was enacted to prevent the extinction of fish, wildlife, and plant species and relies on scientific analysis to determine which species face extinction and then impose protections for those species that are in peril. 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. Species that are designated as “threatened” or “endangered” under CESA are referred to as “listed.” 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 the “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.

*CESA: Incidental Take Permits.* ITPs are granted under CESA as exceptions to enable the otherwise prohibited take of a listed species during 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.

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).

*Safe Harbor Act Agreements.* Collaboration with private landowners is critical to species recovery, as many declining species occur primarily or exclusively on private property. The purpose of SHA is to encourage landowners to manage their lands voluntarily to benefit a listed or candidate species, and not be subject to additional regulatory restrictions as a result of their conservation efforts. The program benefits both the species and the landowner. An SHA agreement is designed to increase the population of listed species through management actions, the creation of new habitats, and enhancements to existing habitats. Actions that have only a remote or highly speculative chance of benefiting those species do not qualify for an agreement. Landowners benefit because they may alter or modify their property, even if it results in the incidental take over a covered species, so long as the "baseline conditions" are maintained.

Baseline conditions are estimates of population size and habitat quality that are based on the best available science and methodologies. The SHA agreement includes management activities that are intended to increase population numbers above baseline to provide a "net conservation benefit." The regulatory relief afforded by SHA agreements is relief only from new or additional restrictions that would impact species that exceed baseline conditions. SHA explicitly states that a SHA agreement "shall not reduce the existing populations of species present at the time the baseline is established by [CDFW]" (see Existing Law # 10).

- 3) **Policy considerations.** It is critical that streamlining efforts to combat the climate crisis do not come at the cost of upholding standards that are also intended to protect the environment from the climate crisis and ongoing human development.

Allowing CDFW to permit take of species that are not yet considered under CESA would be new authority for CDFW and will likely require extensive species research to be able to prescribe appropriate avoidance, minimization, and mitigation measures. However, having an ITP in hand for a not-yet-listed species, may provide valuable security to renewable energy projects as they enter the construction phase of a project. It is unclear to Committee staff how wide spread the issue of a newly listed species interrupting construction is, or how well a project proponent may be able to predict which species may be listed in the future.

This bill makes significant amendments to SHA that would apply to any activity, not just a renewable energy project, and allow activities to reduce the population of listed species below baseline conditions. These changes would reduce the core protections of a SHA agreement and effectively allow any SHA to take a listed species without obtaining an ITP. It is not clear why this is desirable and it would have broad implications for existing and future SHA agreements, which encompass a broad array of agricultural and other activities.

- 4) **Proposed committee amendments.** To clarify the scope of projects, CDFW permitting authority, and the use of research as mitigation for ITPs for not-yet-listed species, *the author*

may wish to consider striking the contents of the bill and narrowing the bill to read as follows:

Section 2086 is added to the Fish and Game Code, to read:

*(a) If an at-risk species becomes listed as an endangered, threatened, or candidate species pursuant to this chapter, and its potential listing was anticipated in a permit previously issued by the department under Section 2081 for incidental take caused by a renewable electrical generation facility, as defined in Section 25741 of the Public Resources Code, then no further authorization or approval shall be required for any take of that at-risk species occurring in compliance with the terms of both the permit and Section 2081.*

*(b) (1) The department may, in partnership with the applicant, develop a research project that evaluates the impact on the at-risk species and its habitat, siting, design, and construction of those infrastructure projects, take of an at-risk species, and any other elements the department may wish to require.*

*(2) Research projects that are reviewed and approved by the department may contribute towards the projects mitigation to the degree the department deems fit.*

*(c) On or before January 1, 2030, the department shall report to Legislature, in compliance with Section 9795 of the Government Code, and directly transmit a copy to the relevant policy and fiscal committees, regarding the projects that included an at-risk species in a Section 2081 take authorization, a report on each at-risk species so included, the effectiveness of this section for both species protection and project security, and the additional staff time and resources required to accomplish this section.*

*(d) "At-risk species" include species proposed for listing as an endangered or threatened species pursuant to this chapter, 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.*

- 5) **Arguments in support.** Energy developers write in support of this bill arguing that, "allowing project developers to seek ITPs in advance of a species moving to candidacy gives developers improved sightlines and better timing flexibility to prepare for the costs, species reviews, and mitigation requirements of an ITP." They also note that "because little is typically known about a newly listed candidate species, there is an elevated value in scientific research contributing towards a better understanding the species, its vulnerabilities, its population status, and its interaction with human development activities." Regarding the SHA provisions supporters write that "this would allow for projects that have a short-term impact on a protected species but a longer-term net benefit to that species to qualify for the [a SHA agreement], thereby incentivizing long-term land stewardship behaviors."
- 6) **Arguments in opposition.** Several groups write with an "oppose unless amended position." They appreciate the author's intent to support the rapid transition to clean energy and willingness to discuss this bill. They note that SHA agreements are "designed to encourage landowners to do 'good projects' on their lands without fear of future permitting obligations created by the increase in threatened and endangered species on their property. [SHA agreements are] not designed to be used as a permitting program for industrial projects that

‘take’ species.” They also argue against the provision that allows research to be used as mitigation. They note that there has never been an instance in which scientific research has been allowed to substitute for the conservation of habitat in exchange for the take of a listed species.

- 7) **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 SHA agreements.

AB 3238 (Garcia) of 2024, when heard by this Committee, 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. AB 3238 was held in the Senate Appropriations Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

AES Clean Energy  
Arevon  
Aypa Power Development LLC  
California Wind Energy Association  
Independent Energy Producers Association  
Intersect Power  
Large-scale Solar Association  
Leeward Renewable Energy

### **Oppose Unless Amended**

Anza-Borrego Foundation  
Audubon California  
California Native Plant Society  
Center for Biological Diversity  
Defenders of Wildlife  
Planning and Conservation League

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