SB-473 California Endangered Species Act. (2017-2018)

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Senate Bill No. 473

CHAPTER 329

An act to amend Sections 2053, 2070, 2073.4, 2075.5, 2077, 2080, 2080.1, 2081, 2081.2, 2084, 2089.2, 2089.4, 2089.6, and 2089.22 of, to add Sections 2064.5, 2079.1, and 2089.5 to, to repeal Sections 2069 and 2081.5 of, and to repeal Article 5 (commencing with Section 2098) of Chapter 1.5 of Division 3 of, the Fish and Game Code, relating to fish and wildlife.

[Approved by Governor September 10, 2018. Filed with Secretary of State September 10, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 473, Hertzberg. California Endangered Species Act.

(1) Existing law, the California Endangered Species Act, prohibits the taking of an endangered or threatened species, except in certain situations. Under the act, the Department of Fish and Wildlife may authorize the take of listed species pursuant to an incidental take permit if the take 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. The act requires the department to adopt regulations for issuance of incidental take permits.

This bill would also apply the take prohibition to public agencies.

The bill would require the department, commencing January 1, 2019, to post each new incidental take permit issued on the department's Internet Web site within 15 days of the effective date of the permit.

(2) The California Endangered Species Act provides that if any person obtains from the United States Secretary of the Interior or the United States Secretary of Commerce an incidental take statement or incidental take permit pursuant to the federal Endangered Species Act of 1973 that authorizes the taking of an endangered species or threatened species listed pursuant to the federal act that is also an endangered species, threatened species, or candidate species under the California act, no further authorization or approval is necessary under the California act for that person to take that species, if that person notifies the Director of Fish and Wildlife, as specified, unless the director determines that the incidental take statement or incidental take permit is not consistent with the California act.

This bill would include, with this notice requirement, a requirement that the person pay a permit application fee.

(3) The California Endangered Species Act requires payment of a permit application fee for the processing of a permit application for the take of a species listed under the act, with certain exemptions. Under the act, the amount of the fee is based, in part, on the project cost, with "project cost" defined to include, among other expenses, permit and license expenses.

This bill would clarify that a permit application fee is required for amendment requests, renewal requests, consistency determination requests, and concurrence determination requests, as specified. The bill would modify the definition of "project

cost" to specifically exclude permit and license expenses and mitigation costs.

(4) The California Endangered Species Act exempts a surface mining operation, if it has been issued a permit pursuant to the Surface Mining and Reclamation Act of 1975, is in compliance with the permit with regard to matters relating to plants, and is in compliance with any memorandum of understanding with the Department of Fish and Wildlife, from criminal prosecution pursuant to the Fish and Game Code for any take of a threatened or endangered plant species that is incidental to the surface mining operation.

This bill would repeal this exemption.

(5) The California Endangered Species Act permits the Fish and Game Commission to authorize, subject to terms and conditions it prescribes, the taking of any candidate species, or the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species.

This bill would limit this take exemption by permitting the commission to authorize the taking of a species pursuant to this provision only if the take is based on the best available scientific information and consistent with the act. The bill would authorize the Department of Fish and Wildlife to recommend to the commission that the commission authorize, or not authorize, the taking of a species pursuant to this provision.

(6) The California Endangered Species Act authorizes the Department of Fish and Wildlife to design and implement actions that can be used to fully mitigate impacts resulting from certain solar thermal, photovoltaic, wind, and geothermal powerplants in the planning area of the Desert Renewable Energy Conservation Plan, as defined.

This bill would repeal this provision.

(7) The California State Safe Harbor Agreement Program Act establishes a program until January 1, 2020, to encourage landowners to manage their lands voluntarily, by means of state safe harbor agreements approved by the Department of Fish and Wildlife, to benefit endangered, threatened, or candidate species without being subject to additional regulatory restrictions as a result of their conservation efforts. The California State Safe Harbor Agreement Program Act authorizes the department to authorize specified acts with respect to endangered or threatened species that are otherwise prohibited pursuant to the California Endangered Species Act by entering into a state safe harbor agreement. The California State Safe Harbor Agreement Program Act provides that, if a federal safe harbor agreement contains species that are endangered, threatened, or candidate species pursuant to the California Endangered Species Act, and the Director of Fish and Wildlife determines, as provided, that the federal agreement is consistent with the California Endangered Species Act, no further authorization or approval is necessary to take the species in accordance with the federal agreement.

This bill would authorize the department to also approve a state safe harbor agreement to benefit declining or vulnerable species, as defined. The bill would clarify that the department may also authorize specified acts with respect to candidate species that may become otherwise prohibited by the California Endangered Species Act. The bill would specify that, if a species covered by an agreement is a declining or vulnerable species, and is subsequently listed as an endangered, threatened, or candidate species pursuant to the California Endangered Species Act, no further authorization or approval is required to take the species in accordance with the agreement, regardless of the species' change in status. If the majority of a property proposed to be enrolled in an agreement is forestland, the bill would require the department, to the maximum extent practicable, to prioritize the review of, and decision to approve, the agreement if the property is encumbered by a conservation easement that requires a permanent commitment to protect, restore, and maintain habitat conditions, as specified. For these prioritized properties, the bill would require the department, to the maximum extent practicable, to rely on the conservation easement to fulfill the requirements for determining an application complete. The bill would also revise the provision regarding federal safe harbor agreements to apply both to federal safe harbor agreements and to federal candidate conservation agreements with assurances.

(8) The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and to add or remove species from either list if it finds, upon the receipt of sufficient scientific information, as specified, that the action is warranted. The act requires the Department of Fish and Wildlife to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. Under the act, an interested person may petition the commission to add a species to, or remove a species from, either the list of endangered species or the list of threatened species. The act requires the commission to refer a petition to the department for initial evaluation, and permits a person to submit to the department information that relates to the petitioned species during this evaluation. The act requires the department to notify the petitioner of information submitted to the department within 10 days of submission.

This bill would require a finding by the commission that an action to add or remove a species from the list of endangered species or the list of threatened species is warranted to be based solely upon the best available scientific information. The bill would require the department to notify a petitioner of information submitted to the department during the department's initial evaluation of the petition within 30 days of submission instead of 10 days.

(9) The Administrative Procedure Act generally governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

The California Endangered Species Act requires the Fish and Game Commission, at the meeting scheduled for final consideration of a petition to add or remove a species from the list of endangered species or the list of threatened species, to make a finding that the petitioned action is warranted or not warranted. Upon a finding by the commission that a petitioned action to add or remove a species from the list of endangered species or the list of threatened species is warranted, the act requires the commission to publish a notice of that finding and a notice of proposed rulemaking under the Administrative Procedure Act, and requires further proceedings of the commission on the petitioned action to be made in accordance with the Administrative Procedure Act.

This bill would also require the commission to add or remove a species from the list of endangered species or the list of threatened species upon a finding that a petitioned action is not warranted, but that listing the species at a different status than that requested by the petitioner is warranted. The bill would require the commission, within 30 days of adopting any of these findings in writing, to publish notice of the finding. The bill would not require further proceedings under the Administrative Procedure Act upon adoption of the finding, but instead would require the commission to follow certain procedures for notice and publication of the change in status. The bill would require a finding by the commission pursuant to these provisions to be based on the best available scientific information.

(10) The California Endangered Species Act requires the Department of Fish and Wildlife to review species listed as an endangered species or as a threatened species every 5 years to determine if the conditions that led to the original listing are still present.

This bill would require the department to review listed species every 5 years only upon a specific appropriation, and would authorize the department to review listed species every 5 years, in the absence of a specific appropriation, if other funding is available.

(11) Under existing law, the Department of Fish and Wildlife has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.

This bill would authorize the department, under the California Endangered Species Act, to develop and implement a nonregulatory recovery plan for the conservation and survival of any species listed as an endangered species or a threatened species, as provided. The bill would require the department to give priority to those species that are most likely to benefit from a recovery plan, particularly those species populations that are, or may be, significantly affected by anticipated land use changes, climate change, or changes in aquatic conditions. The bill would require recovery plans to include specified information, and would authorize the department, under specified circumstances, to adopt an existing federal recovery plan for a species that is also listed as an endangered species or a threatened species pursuant to the federal Endangered Species Act of 1973. The bill would define the terms “recover” and “recovery” for purposes of the California Endangered Species Act.

(12) Existing law requires the Department of Fish and Wildlife to pay the costs of administration of the California Endangered Species Act from the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

Existing law establishes the Renewable Energy Resources Development Fee Trust Fund as a continuously appropriated fund in the State Treasury to serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects, as defined, to deposit fees sufficient to complete mitigation actions established by the department and thereby meet their requirements pursuant to the California Endangered Species Act or the certification authority of the Energy Commission.

This bill would repeal those provisions.

(13) This bill would also make conforming changes, delete obsolete provisions, and make nonsubstantive changes.

(14) Under existing law, any violation of the Fish and Game Code, or of any rule, regulation, or order made or adopted under the code, is generally a crime.

To the extent that this bill expands the definition of a crime, the bill would impose a state-mandated local program.

(15) This bill would incorporate additional changes to Section 2081 of the Fish and Game Code proposed by SB 495 to be operative only if this bill and SB 495 are enacted and this bill is enacted last.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2053 of the Fish and Game Code is amended to read:

2053. (a) The Legislature further finds and declares that it is the policy of the state that public agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy.

(b) Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible.

SEC. 2. Section 2064.5 is added to the Fish and Game Code, to read:

2064.5. "Recover" and "recovery" mean to improve, and improvement in, the status of a species to the point at which listing is no longer appropriate under the criteria set out in this chapter and any regulations adopted thereunder, and, if the department has approved a recovery plan, satisfaction of the conditions of that plan.

SEC. 3. Section 2069 of the Fish and Game Code is repealed.

SEC. 4. Section 2070 of the Fish and Game Code is amended to read:

2070. The commission shall establish a list of endangered species and a list of threatened species. The commission shall add or remove species from either list if it finds, upon the receipt of sufficient scientific information pursuant to this article, and based solely upon the best available scientific information, that the action is warranted.

SEC. 5. Section 2073.4 of the Fish and Game Code is amended to read:

2073.4. (a) A person may submit information to the department relating to the petitioned species during the evaluation of the petition pursuant to Section 2073.5. The information shall relate to the matters identified in Section 2072.3.

(b) Within 30 days after receiving information pursuant to subdivision (a), the department shall notify the petitioner regarding its content.

SEC. 6. Section 2075.5 of the Fish and Game Code is amended to read:

2075.5. (a) At the meeting scheduled pursuant to Section 2075, the commission shall hold a public hearing on the petition and shall receive information, written or otherwise, and oral testimony. After the conclusion of oral testimony from the commission and department staff, the petitioner, or any other person, the commission may close the public hearing and the administrative record for the commission's decision pursuant to this section.

(b) After the commission closes the public hearing, the administrative record for the commission's decision is closed and it shall not be reopened except as provided in subdivision (c). Once the public hearing is closed, a person shall not submit further information to the commission for consideration on that petition and the commission shall not accept any further information for consideration on that petition except as provided in subdivision (c).

(c) The administrative record for the commission's decision pursuant to this section shall not be reopened once the commission closes the public hearing unless one of the following occurs before the commission's decision:

(1) There is a change in state or federal law or regulation that has a direct and significant impact on the commission's determination as to whether the petitioned action is warranted.

(2) The commission determines that it requires further information to evaluate whether the petitioned action is warranted. If the commission makes that determination during its deliberation, the commission may request, on the record at the scheduled meeting or at a continued meeting, further information on any issue relevant to making its determination as to whether the petitioned action is warranted. Any request by the commission pursuant to this paragraph shall specify a date by which the information must be submitted to the commission and shall serve to reopen the administrative record for the limited purpose of

receiving further information relating to the issues specified by the commission in the request. Commission and department staff, the petitioner, or any other person may submit information in response to a request pursuant to this paragraph.

(d) The commission, in its discretion, may either close the public hearing and continue the meeting on the petition for the purpose of deliberation or continue both the public hearing and the meeting on the petition to a subsequent date that is no later than 90 days after the meeting scheduled pursuant to Section 2075, and subject to applicable notice and agenda requirements. If the commission closes the public hearing but continues the meeting for the purpose of deliberation, a person shall not submit, and the commission shall not receive, further information relating to the petition except as provided in subdivision (c).

(e) At the meeting scheduled pursuant to Section 2075, or at a continued meeting scheduled pursuant to subdivision (d), the commission shall make one of the following findings based on the best available scientific information:

(1) The petitioned action is not warranted, in which case the finding shall be entered in the public records of the commission and the petitioned species shall be removed from the list of candidate species maintained pursuant to Section 2074.2.

(2) The petitioned action is warranted, or the petitioned action is not warranted but listing the petitioned species at a different status than that requested by the petitioner is warranted, in which case the commission shall, within 30 days of adopting written findings, publish a notice of that finding and shall add the species to, or remove the species from, the list of endangered species or the list of threatened species. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the change in status of a species pursuant to this article. The commission shall submit the change in status to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. The commission shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations to reflect the change in status.

SEC. 7. Section 2077 of the Fish and Game Code is amended to read:

2077. (a) Upon a specific appropriation of funds by the Legislature, the department shall, or if other funding is available, in the absence of a specific appropriation, may, review species listed as an endangered species or as a threatened species every five years to determine if the conditions that led to the original listing are still present. The review shall be conducted based on information that is consistent with the information specified in Section 2072.3 and that is the best scientific information available to the department. The review shall include a review of the identification of the habitat that may be essential to the continued existence of the species and the department's recommendations for management activities and other recommendations for recovery of the species. The department shall notify any person who has notified the commission, in writing with their address, of their interest, and the department may notify any other person.

(b) Review pursuant to subdivision (a) of species that are listed by both the commission and the United States Department of the Interior shall be conducted in conjunction with the five-year review process of the United States Department of the Interior.

(c) Initial review of those species listed by the commission before January 1, 1982, that are not listed by the federal government shall be undertaken and completed by July 1, 1987. Initial review of those species listed by the commission after January 1, 1982, that are not listed by the federal government shall be undertaken and completed within five years of the date the species was originally listed by the commission.

(d) Notwithstanding any other provision of this section, the commission or the department may review a species at any time based upon a petition or upon other data available to the department and the commission.

(e) The department shall report in writing to the commission the results of its five-year review for each listed species. The commission shall treat any report of the department under this subdivision that contains a recommendation to add a species to, or remove a species from, the list of endangered species or the list of threatened species as a department recommendation submitted pursuant to Section 2072.7.

SEC. 8. Section 2079.1 is added to the Fish and Game Code, to read:

2079.1. (a) Upon a specific appropriation of funds by the Legislature, or if funding is otherwise available, the department may develop and implement nonregulatory recovery plans for the conservation and survival of species listed as an endangered species or as a threatened species, unless the department finds that the recovery plan will not promote the conservation of the species.

(b) The department, in developing and implementing recovery plans, shall, to the extent practicable, give priority to those endangered or threatened species, without regard to taxonomic classification, that are most likely to benefit from a recovery plan, particularly those species populations that are, or may be, significantly affected by anticipated land use changes, climate change, or changes in aquatic conditions.

(c) Each recovery plan shall be based on the best available scientific information and shall, at a minimum, include all of the following:

(1) A description of site-specific management actions necessary to achieve the recovery plan's goal for the conservation of the species.

(2) Objective, measurable criteria that, when achieved, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list of endangered species or the list of threatened species, as applicable.

(3) Estimates of the time required and the cost to carry out those measures needed to achieve the goal of the recovery plan and to achieve intermediate steps toward that goal.

(d) The department, in developing and implementing a recovery plan, may consider data and appropriate information from public and private agencies and institutions, and other qualified persons, in addition to data and appropriate information derived from the public process required pursuant to subdivision (g).

(e) The department may, in its discretion, adopt, or may adopt with revisions, an existing federal recovery plan for a species described in subdivision (a) that is also listed as an endangered species or a threatened species pursuant to Section 4 of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1533) if the department finds that the recovery plan is consistent with the provisions of this section.

(f) Subject to subdivision (a), and pursuant to subdivision (g), the department shall adopt guidelines and criteria to aid in the implementation of this section. Upon adoption, the department shall post the guidelines and criteria on its Internet Web site.

(g) Development of a recovery plan pursuant to subdivision (a), and adoption of guidelines and criteria pursuant to subdivision (f), shall be through a public process including at least one public meeting at which the department provides landowners, local governments, and interested members of the public the opportunity for input. The public meeting may be in conjunction with a meeting of the commission. In the case of a recovery plan, the public meeting shall be held in the recovery planning area.

(h) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development, adoption, or amendment of guidelines, criteria, or recovery plans pursuant to this section.

SEC. 9. Section 2080 of the Fish and Game Code is amended to read:

2080. No person or public agency shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of this code), or the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code).

SEC. 10. Section 2080.1 of the Fish and Game Code is amended to read:

2080.1. (a) Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to subdivision (c), if any person obtains from the United States Secretary of the Interior or the United States Secretary of Commerce an incidental take statement pursuant to Section 7 of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1536) or an incidental take permit pursuant to Section 10 of that federal act (16 U.S.C. Sec. 1539) that authorizes the taking of an endangered species or a threatened species that is listed pursuant to Section 4 of that federal act (16 U.S.C. Sec. 1533) and that is an endangered species, threatened species, or a candidate species pursuant to this chapter, no further authorization or approval is necessary under this chapter for that person to take that endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person does all of the following:

(1) Notifies the director in writing that the person has received an incidental take statement or an incidental take permit issued pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

(2) Includes in the notice to the director a copy of the incidental take statement or incidental take permit.

(3) Includes with the notice payment of the permit application fee required pursuant to Section 2081.2.

(b) Upon receipt of the notice specified in paragraph (1) of subdivision (a), the director shall immediately have published in the General Public Interest section of the California Regulatory Notice Register the receipt of that notice.

(c) Within 30 days after the director has received the notice described in subdivision (a) that an incidental take statement or an incidental take permit has been issued pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.),

the director shall determine whether the incidental take statement or incidental take permit is consistent with this chapter. If the director determines within that 30-day period, based upon substantial evidence, that the incidental take statement or incidental take permit is not consistent with this chapter, then the taking of that species may only be authorized pursuant to this chapter.

(d) The director shall immediately publish the determination pursuant to subdivision (c) in the General Public Interest section of the California Regulatory Notice Register.

(e) Unless deleted or extended by a later enacted statute that is chaptered before the date this section is repealed, this section shall remain in effect only until, and is repealed on, the effective date of an amendment to Section 7 or Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Secs. 1536 and 1539) that alters the requirements for issuing an incidental take statement or an incidental take permit, as applicable.

SEC. 11. Section 2081 of the Fish and Game Code is amended to read:

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 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) The permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114.

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

(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 Web site within 15 days of the effective date of the permit.

SEC. 11.5. Section 2081 of the Fish and Game Code is amended to read:

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

(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 Web site within 15 days of the effective date of the permit.

SEC. 12. Section 2081.2 of the Fish and Game Code is amended to read:

2081.2. (a) For purposes of this section, the following terms have the following meanings:

(1) "Permit" means any authorization issued by the department pursuant to this article to take a species listed by this chapter as candidate, threatened, or endangered. The term includes a consistency determination pursuant to Section 2080.1 and a concurrence determination pursuant to Section 2080.3 or 2080.4.

(2) "Permit application" means an application for a permit, an amendment to a permit, or a renewal of a permit. The term includes a consistency determination request pursuant to Section 2080.1 and a concurrence determination request pursuant to Section 2080.3 or 2080.4.

(3) "Permittee" includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, district, city, county, city and county, town, federal agency, and the state who applies for or who has received a permit pursuant to this article.

(4) "Project" has the same meaning as defined in Section 21065 of the Public Resources Code.

(5) "Project cost" means the total direct and indirect project expenses that include, but are not limited to, labor, equipment, permanent materials and supplies, subcontracts, overhead, and miscellaneous costs. The term shall not include permit or license expenses or mitigation costs. For purposes of this paragraph, the term "permit" includes, but is not limited to, a permit as defined in paragraph (1).

(6) "Voluntary habitat restoration project" means a project that meets both of the following requirements:

(A) The project's primary purpose is voluntary habitat restoration and the project may have other environmental benefits, and the project is not required as mitigation due to a regulatory action.

(B) The project is not part of a regulatory settlement, a regulatory enforcement action, or a court order.

(b) (1) The department shall collect a permit application fee for processing a permit application submitted pursuant to this article at the time the permit application is submitted to the department. Notwithstanding Section 2098, upon appropriation to the department from the Endangered Species Permitting Account, the department shall use the permit application fee to pay for all or a portion of the department's cost of processing permit applications, permit development, and compliance monitoring pursuant to this article.

(2) This subdivision does not apply to any of the following:

(A) Activities or costs associated with the review of projects, inspection and oversight of projects, and permits necessary to conduct timber operations, as defined in Section 4527 of the Public Resources Code, in accordance with Article 9.5 (commencing with Section 4629) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code.

(B) Permits or memoranda of understanding authorized by subdivision (a) of Section 2081.

(C) Permits for voluntary habitat restoration projects.

(c) The department shall assess the permit application fee as follows, subject to subdivision (f):

(1) For a project, regardless of estimated project cost, that is subject only to Section 2080.1, 2080.3, or 2080.4, the department shall assess either of the following amounts:

(A) Seven thousand five hundred dollars ($7,500).

(B) Six thousand dollars ($6,000), if the project uses a department-approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(2) For a project where the estimated project cost is less than one hundred thousand dollars ($100,000), the department shall assess either of the following amounts:

(A) Seven thousand five hundred dollars ($7,500).

(B) Six thousand dollars ($6,000), if the project uses a department-approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(3) For a project where the estimated project cost is one hundred thousand dollars ($100,000) or more but less than five hundred thousand dollars ($500,000), the department shall assess either of the following amounts:

(A) Fifteen thousand dollars ($15,000).

(B) Twelve thousand dollars ($12,000), if the project uses a department-approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(4) For a project where the estimated project cost is five hundred thousand dollars ($500,000) or more, the department shall assess either of the following amounts:

(A) Thirty thousand dollars ($30,000).

(B) Twenty-four thousand dollars ($24,000), if the project uses a department-approved conservation or mitigation bank to fulfill mitigation obligations pursuant to this article.

(5) The department shall collect a fee of seven thousand five hundred dollars ($7,500) for processing permit amendments that the department has determined are minor as defined in regulation or fifteen thousand dollars ($15,000) for processing permit amendments that the department has determined are major as defined in regulation.

(d) (1) If the permit application fee paid pursuant to subdivision (c) is determined by the department to be insufficient to complete permitting work due to the complexity of a project or the potential effects of a project, the department shall collect an additional fee of up to ten thousand dollars ($10,000) from the permittee to pay for its estimated costs. Upon its determination, the department shall notify the permittee of the reasons why an additional fee is necessary and the estimated amount of the additional fee.

(2) The additional fee collected pursuant to paragraph (1) shall not exceed an amount that, when added to the fee paid pursuant to subdivision (c), equals thirty-five thousand dollars ($35,000). The department shall collect the additional fee before a final decision on the permit application by the department.

(e) (1) For a permit application submitted to the department pursuant to this article on or after the effective date of this section, the department shall collect the permit application fee at the time the permit application is submitted. The department shall not deem the permit application complete until it has collected the permit application fee. A permit application submitted or deemed complete before the effective date of this section shall not be subject to fees established pursuant to this section.

(2) If a permit application is withdrawn within 30 days after paying the permit application fee, the department shall refund any unused portion of the fee to the permittee.

(3) If a permit application is withdrawn after 30 days of paying the permit application fee, the department shall not refund any portion of the fee to the permittee.

(f) (1) The department shall adjust the fees in this section pursuant to Section 713.

(2) The Legislature finds that all revenues generated under this section and used for the purposes for which they were imposed are not subject to Article XIII B of the California Constitution.

(3) The department, at least every five years, shall analyze permit application fees pursuant to Section 713 to ensure the appropriate fee amounts are charged.

(g) Fees paid to the department pursuant to this section shall be deposited in the Endangered Species Permitting Account, which is hereby established in the Fish and Game Preservation Fund. Notwithstanding Section 2098, funds in the account shall be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing this chapter, except that fee moneys collected pursuant to this section shall only be used for the purposes of this article.

SEC. 13. Section 2081.5 of the Fish and Game Code is repealed.

SEC. 14. Section 2084 of the Fish and Game Code is amended to read:

2084. (a) The commission may authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, (1) the taking of any candidate species, or (2) the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species, provided that in either case the take is consistent with this chapter.

(b) The department may recommend to the commission that the commission authorize, or not authorize, the taking of an endangered, threatened, or candidate species pursuant to this section.

SEC. 15. Section 2089.2 of the Fish and Game Code is amended to read:

2089.2. (a) This article shall be known and may be cited as the California State Safe Harbor Agreement Program Act.

(b) The Legislature finds that a key to the goals set forth in this article of conserving, protecting, restoring, and enhancing endangered, threatened, and candidate species, is their habitat. A significant portion of the state's current and potential habitat for these species exists on property owned by private citizens, municipalities, tribes, and other nonfederal entities. Conservation efforts on these lands and waters are critical to help these declining species. Using a collaborative stewardship approach to these lands and waters will help ensure the success of these efforts.

(c) The purpose of this article is to establish a program that will 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.

(d) This article does not relieve landowners of any legal obligation with respect to endangered, threatened, or candidate species existing on their land. The program established by this article is designed to increase species populations, create new habitats, and enhance existing habitats. Although this increase may be temporary or long term, California state safe harbor agreements shall not reduce the existing populations of species present at the time the baseline is established by the department.

SEC. 16. Section 2089.4 of the Fish and Game Code is amended to read:

2089.4. As used in this article, the following definitions apply:

(a) "Agreement" means a state safe harbor agreement approved by the department pursuant to this article. "Agreement" includes an agreement with an individual landowner and a programmatic agreement.

(b) "Baseline conditions" means the existing estimated population size, the extent and quality of habitat, or both population size and the extent and quality of habitat, for the species on the land to be enrolled in the agreement that sustain seasonal or permanent use by the covered species. Baseline conditions shall be determined by the department, in consultation with the applicant, and shall be based on the best available science and objective scientific methodologies. For purposes of establishing baseline conditions, a qualified person that is not employed by the department may conduct habitat surveys, if that person has appropriate species expertise and has been approved by the department.

(c) "Declining or vulnerable species" include candidate species, 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.

(d) "Department" means the Department of Fish and Wildlife, acting through its director or his or her designee.

(e) "Landowner" means any person or nonstate or federal entity or entities that lawfully hold any interest in land or water to which they are committing to implement the requirements of this article.

(f) "Management actions" means activities on the enrolled land or water that are reasonably expected by the department to provide a net benefit to the species or their habitat, or both.

(g) "Monitoring program" means a program established or approved by the department in accordance with subdivision (f) of Section 2089.6.

(h) “Net conservation benefit” means the cumulative benefits of the management activities identified in the agreement that provide for an increase in a species’ population or the enhancement, restoration, or maintenance of covered species’ suitable habitats within the enrolled property. Net conservation benefit shall take into account the length of the agreement, any offsetting adverse effects attributable to the incidental taking allowed by the agreement, and other mutually agreed upon factors. Net conservation benefits shall be sufficient to contribute either directly or indirectly to the recovery of the covered species. These benefits include, but are not limited to, reducing fragmentation and increasing the connectivity of habitats, maintaining or increasing populations, enhancing and restoring habitats, and buffering protected areas.

(i) “Programmatic agreement” means a state safe harbor agreement issued to a governmental or nongovernmental program administrator. The program administrator for a programmatic agreement shall work with landowners and the department to implement the agreement. The program administrator and the department shall be responsible for ensuring compliance with the terms of the agreement.

(j) “Qualified person” means a person with species expertise who has been approved by the department.

(k) “Return to baseline” means, at the termination of an agreement, activities undertaken by the landowner to return the species population or extent or quality of habitat to baseline, excluding catastrophic events such as floods, unplanned fires, or earthquakes, and other factors mutually agreed upon before permit issuance and that are beyond the control of the landowner.

SEC. 17. Section 2089.5 is added to the Fish and Game Code, to read:

2089.5. (a) The department shall, to the maximum extent practicable, prioritize the review of, and decision to approve, an agreement if the property proposed to be enrolled in the agreement is encumbered by a conservation easement that requires a permanent commitment to protect, restore, and maintain habitat conditions, provided that the department finds that practices consistent with the conservation easement can reasonably be expected to provide a net conservation benefit to the species listed in the application.

(b) If the property proposed to be enrolled in an agreement is subject to a conservation easement, the department, to the maximum extent practicable, shall rely on the conservation easement to fulfill the requirements of Section 2089.8.

(c) This section only applies to agreements where a majority of the property is forestland.

SEC. 18. Section 2089.6 of the Fish and Game Code is amended to read:

2089.6. (a) In addition to the other provisions of this article, the department may authorize acts that are or may become otherwise prohibited pursuant to Section 2000, 2080, or 2085 through an agreement, including a programmatic agreement, if all the following conditions are met:

(1) The department receives a complete application containing all of the information described in Section 2089.8.

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

(3) The department finds that the implementation of the agreement is reasonably expected to provide a net conservation benefit to the species listed in the application. This finding shall be based, at a minimum, upon the determination that the agreement is of sufficient duration and has appropriate assurances to realize these benefits.

(4) The take authorized by the agreement will not jeopardize the continued existence of the species. This determination shall be made based on the provisions of subdivision (c) of Section 2081.

(5) The department finds that the landowner has agreed, to the maximum extent practicable, to avoid or minimize any incidental take authorized in the agreement, including returning to baseline.

(6) The department has established or approved a monitoring program, based upon objective scientific methodologies, to provide information for the department to evaluate the effectiveness and efficiency of the agreement program, including whether the net conservation benefits set forth in the agreement are being achieved and whether the participating landowner is implementing the provisions of the agreement.

(7) The department has determined that sufficient funding is ensured, for it or its contractors or agents, to determine baseline conditions on the property, and that there is sufficient funding for the landowner to carry out management actions and for monitoring for the duration of the agreement.

(8) Implementation of the agreement will not be in conflict with any existing department-approved conservation or recovery programs for the species covered by the agreement.

(b) If the species covered by an agreement is a declining or vulnerable species, and the species is subsequently listed as an endangered, threatened, or candidate species pursuant to this chapter, no further authorization or approval shall be required for take of the species in accordance with the agreement, regardless of the species' change in status.

SEC. 19. Section 2089.22 of the Fish and Game Code is amended to read:

2089.22. (a) If a federal safe harbor agreement, or a federal candidate conservation agreement with assurances, has been approved pursuant to applicable provisions of federal law and the federal agreement contains species that are endangered, threatened, candidate, or declining or vulnerable species pursuant to this chapter, no further authorization or approval is necessary under this article for any person authorized by that federal agreement to take the species identified in and in accordance with the federal agreement, if that person and the department follow all of the procedures specified in Section 2080.1, except that the determination of consistency shall be made by the department based only on the issuance criteria contained in this article.

(b) Any authority pursuant to subdivision (a) to take species identified in a federal agreement shall terminate immediately upon the expiration or termination of the federal agreement.

SEC. 20. Article 5 (commencing with Section 2098) of Chapter 1.5 of Division 3 of the Fish and Game Code is repealed.

SEC. 21. Section 11.5 of this bill incorporates amendments to Section 2081 of the Fish and Game Code proposed by this bill and Senate Bill 495. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 2081 of the Fish and Game Code, and (3) this bill is enacted after Senate Bill 495, in which case Section 2081 of the Fish and Game Code, as amended by Senate Bill 495, shall remain operative only until the operative date of this bill, at which time Section 11.5 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.