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AB-550 The California Endangered Species Act: take of species: renewable electrical generation facilities. (2025-2026)

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AMENDED IN ASSEMBLY MAY 06, 2025

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CALIFORNIA LEGISLATURE— 2025–2026 REGULAR SESSION

ASSEMBLY BILL

NO. 550

Introduced by Assembly Member Petrie-Norris

February 11, 2025

An act to ~~amend Sections 2081, 2089.2, 2089.4, and 2089.6 of~~ *add Section 2081.3 to* the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 550, as amended, Petrie-Norris. The California Endangered Species Act: ~~the California State Safe Harbor Agreement Program Act~~ *take of species: renewable electrical generation facilities*.

The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the Department of Fish and Wildlife may authorize the take of listed species by certain entities through permits or memorandums of understanding for specified purposes. The act allows take by permit if, among other things, the impact of the authorized take is fully minimized and mitigated.

~~This bill would authorize the take, by permit, of declining or vulnerable species. The bill would also provide that an activity that results in a change in baseline conditions and specified renewable energy or decarbonization infrastructure projects are deemed fully mitigated.~~

~~The California State Safe Harbor Agreement Program Act establishes a program 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, or declining or vulnerable species. Under the act these agreements cannot reduce the existing populations of species present at the time of the baseline. The act defines "baseline conditions," among other terms, and provides that for the 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.~~

~~This bill would provide that approval by the department of the qualified person can occur before or after the habitat survey is~~

~~conducted by that person. The bill would also define "change in baseline conditions."~~

~~Under the act, the department may authorize acts that are or may become prohibited by specified law through an agreement if specified conditions are met, including, among others, that the take is incidental to an otherwise lawful activity.~~

~~This bill would provide that lawful activity includes, but is not limited to, a change in baseline conditions.~~

This bill would provide that if an at-risk species, as defined, becomes listed as an endangered, threatened, or candidate species, further authorization or approval shall not be required for a take of that species, if specified conditions are met, including that the potential listing of the at-risk species was anticipated in a permit previously issued by the department for incidental take caused by a renewable electrical generation facility. The bill would authorize the department, in partnership with a permit applicant for an incidental take caused by a renewable electrical generation facility, to develop a research project that evaluates specified factors. The bill would authorize a research project reviewed and approved by the department to contribute to a renewable electrical generation project's mitigation, as provided. The bill would require the department to report to the Legislature specified information, including among other things, a report on each at-risk species authorized for take, as provided.

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

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

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

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

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

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

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

(e) Clean energy projects can help mitigate climate change, and advancing clean energy development in the state can in this way help protect endangered or threatened species.

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

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

~~SEC. 2. 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, candidate species, and declining or vulnerable species, as defined in Section 2089.4, should they become endangered species, threatened species, or 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:

(A) An activity constituting a change in baseline conditions as defined in Section 2089.4 shall be considered fully mitigated for purposes of this section:

(B) A renewable energy or decarbonization infrastructure project that would result in incidental take shall be considered fully mitigated for the purposes of this section if all of the following conditions are met:

(i) The project is reasonably expected to advance scientific understanding of the effects on relevant endangered, threatened, candidate, or declining or vulnerable species, as defined in Section 2089.4, should they become endangered species, threatened species, or candidate species, resulting from renewable energy or decarbonization infrastructure, including, but not limited to, research on the ways in which the siting, design, construction, and operation of those infrastructure projects can prevent the adverse impacts of climate change on species and their habitats.

(ii) The research design is reviewed and approved by the department.

(iii) A surety bond, letter of credit, insurance policy, corporate guarantee, or other form of financial assurance that is acceptable to the department, is provided to ensure the completion of the research.

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

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

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

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

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

SEC. 3. 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, except as otherwise provided in this article, the existing populations of species present at the time the baseline is established by the department.

SEC. 4. 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 is approved by the department before or after the habitat survey is conducted.~~

~~(c) "Change in baseline conditions" means an impact on baseline conditions caused by new land use or development that may result in the take of endangered, threatened, candidate, or declining or vulnerable species during construction and 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.~~

~~(d) "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.~~

~~(e) "Department" means the Department of Fish and Wildlife, acting through its director or their designee.~~

~~(f) "Landowner" means any person or nonstate, state, 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.~~

~~(g) "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.~~

~~(h) "Monitoring program" means a program established or approved by the department in accordance with paragraph (6) of subdivision (a) of Section 2089.6.~~

~~(i) "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.~~

~~(j) "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.~~

~~(k) "Qualified person" means a person with species expertise who has been approved by the department.~~

~~(l) "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. 5. 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, including, but not limited to, a change in baseline conditions.

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

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

(1) The potential listing of the at-risk species was anticipated in a permit previously issued by the department pursuant to subdivision (b) of Section 2081 for incidental take caused by a renewable electrical generation facility, as defined in Section 25741 of the Public Resources Code.

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

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

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

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

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

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

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

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

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

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

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

(d) For purposes of this section, "at-risk species" includes 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.