

AMENDED IN ASSEMBLY MARCH 24, 2010

AMENDED IN ASSEMBLY MARCH 16, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2420

Introduced by Assembly Member Huffman

February 19, 2010

An act to amend Section 2080.1 of the Fish and Game Code, relating to protected species.

LEGISLATIVE COUNSEL'S DIGEST

AB 2420, as amended, Huffman. Protected species: incidental take: consistency determinations.

The Federal Endangered Species Act of 1971 (FESA) directs federal agencies, in consultation with the Secretary of the Interior or the Secretary of Commerce, as appropriate, to carry out conservation programs for endangered species listed under FESA. FESA generally prohibits activities affecting these threatened and endangered species unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service (permitting agencies), as appropriate. FESA requires a federal agency authorizing, funding, or carrying out an action (agency action) to consult with a permitting agency on any actions that might affect listed species. A biological opinion is the permitting agency's written report describing the agency action and how it will affect the species or its critical habitat. If the permitting agency determines that take will occur incidental to the agency action, an incidental take statement is developed that contains reasonable and prudent measures necessary to minimize that impact and terms and conditions to implement those measures. The incidental

take statement accompanies the biological opinion. Under FESA, incidental take permits are required when nonfederal activities will result in take of FESA listed species. FESA prohibits the issuance of an incidental take permit unless the applicant submits a conservation plan.

Under the California Endangered Species Act (CESA), if any person obtains from the Secretary of the Interior or the 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 an endangered species, threatened species, or candidate species pursuant to CESA, no further authorization or approval is necessary under CESA for that person to take that species, if that person notifies the Director of Fish and Game, as specified, and the director determines that the statement or permit is consistent with CESA.

~~This bill would revise those provisions to require that both a biological opinion and an incidental take statement or a conservation plan and an incidental take permit be obtained. The bill would require additional information to be included in the notice to the director, and would give the director 7 days to determine if the notice is complete. The bill would require the director, if the director determines that the notice is not complete, to immediately provide a written response to the person submitting the notice that sets forth the deficiencies in the notice require the inclusion in the notice of a specified additional information, including copy of the biological opinion along with an incidental take statement or a copy of the conservation plan with an incidental take permit. The bill would authorize the department to adopt regulations to implement those revised incidental take and consistency determination provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2080.1 of the Fish and Game Code is
2 amended to read:
3 2080.1. (a) Notwithstanding any other provision of this chapter,
4 or Chapter 10 (commencing with Section 1900) or Chapter 11
5 (commencing with Section 1925) of Division 2, but subject to
6 subdivision (c), if any person obtains from the Secretary of the

1 Interior or the Secretary of Commerce a biological opinion and an
2 incidental take statement pursuant to Section 1536 of Title 16 of
3 the United States Code or a conservation plan and an incidental
4 take permit pursuant to Section 1539 of Title 16 of the United
5 States Code that authorizes the taking of an endangered species
6 or a threatened species that is listed pursuant to Section 1533 of
7 Title 16 of the United States Code and that is an endangered
8 species, threatened species, or a candidate species pursuant to this
9 chapter, no further authorization or approval is necessary under
10 this chapter for that person to take that endangered species,
11 threatened species, or candidate species identified in, and in
12 accordance with, the biological opinion and the incidental take
13 statement, or the conservation plan and the incidental take permit,
14 if that person receives a determination of consistency in accordance
15 with subdivision (c) after doing both of the following:

16 (1) Notifying the director in writing that the person has received
17 a biological opinion and an incidental take statement or a
18 conservation plan and an incidental take permit issued pursuant
19 to the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec.
20 1531 et seq.).

21 (2) Including in the notice to the director:

22 (A) References to the required measures in the biological
23 opinion and the incidental take statement or the conservation plan
24 and the incidental take permit that meet the minimization, full
25 mitigation, funding, and compliance monitoring requirements of
26 subdivision (b) of Section 2081.

27 (B) A copy of the biological opinion and the incidental take
28 statement or the conservation plan and the incidental take permit.

29 (b) Upon receipt of the notice specified in paragraphs (1) and
30 (2) of subdivision (a), the director shall ~~have seven days to~~
31 ~~determine if the notice is complete. If the director determines that~~
32 ~~the notice is complete, the director shall~~ immediately have
33 published in the General Public Interest section of the California
34 Regulatory Notice Register the receipt of that notice. ~~If the director~~
35 ~~determines that the notice is not complete, the director shall~~
36 ~~immediately provide a written response to the person submitting~~
37 ~~the notice that sets forth the deficiencies in the notice.~~

38 (c) Within 30 days after the director has received a complete
39 notice, as described in subdivision (a), the director shall determine
40 whether the biological opinion and the incidental take statement

1 or the conservation plan and the incidental take permit are
2 consistent with this chapter. If the director determines within that
3 30-day period, based upon substantial evidence, that the biological
4 opinion and the incidental take statement or the conservation plan
5 and the incidental take permit are not consistent with this chapter,
6 then the taking of that species may only be authorized pursuant to
7 this chapter.

8 (d) The director shall immediately publish the determination
9 pursuant to subdivision (c) in the General Public Interest section
10 of the California Regulatory Notice Register. A determination
11 pursuant to subdivision (c) is effective upon publication in
12 accordance with this subdivision.

13 (e) Unless deleted or extended by a later enacted statute that is
14 chaptered before the date this section is repealed, this section shall
15 remain in effect only until, and is repealed on, the effective date
16 of an amendment to Section 1536 or Section 1539 of Title 16 of
17 the United States Code that alters the requirements for issuing a
18 biological opinion and an incidental take statement or a
19 conservation plan and an incidental take permit, as applicable.

20 (f) The department may adopt regulations to implement this
21 section.