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State Endangered Species Act Statutes: *California*



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State Endangered Species Act Statutes: California

Cal. Fish & G. Code § 2050 – 2089.26

Current through September, 2020

§ 2050. Short title

This chapter shall be known and may be cited as the California Endangered Species Act.

§ 2051. Legislative findings and declarations

The Legislature hereby finds and declares all of the following:

- (a) Certain species of fish, wildlife, and plants have been rendered extinct as a consequence of man's activities, untempered by adequate concern and conservation.
- (b) Other species of fish, wildlife, and plants are in danger of, or threatened with, extinction because their habitats are threatened with destruction, adverse modification, or severe curtailment, or because of overexploitation, disease, predation, or other factors.
- (c) These species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern.

§ 2052. Legislative finding, declarations and intent; state policy

The Legislature further finds and 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.

§ 2052.1. Mitigation measures or alternatives; impact on candidate species

The Legislature further finds and declares that if any provision of this chapter requires a person to provide mitigation measures or alternatives to address a particular impact on a candidate species, threatened species, or endangered species, the measures or alternatives required shall be roughly proportional in extent to any impact on those species that is caused by that person. 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 consistent with this section. All required measures or alternatives shall be capable of successful implementation. This section governs the full extent of mitigation



measures or alternatives that may be imposed on a person pursuant to this chapter. This section shall not affect the state's obligations set forth in Section 2052.

§ 2053. Legislative findings and declarations; alternative state agency projects

(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.

§ 2054. Legislative findings and declarations; state project approval; mitigation and enhancement measures

The Legislature further finds and declares that, in the event specific economic, social, or other conditions make infeasible such alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided.

§ 2055. Legislative findings and declarations; state policy; conservation of endangered and threatened species

The Legislature further finds and declares that it is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of this chapter.

§ 2056. Legislative findings and declarations; cooperation of landowners; liability

The Legislature further finds and declares that the cooperation of 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 in furtherance of the purposes of this chapter. Therefore, a landowner of property on which an endangered, threatened, or candidate species lives shall not be liable for civil damages for injury to employees of, or persons under contract with, the department if the injury occurs while those persons are conducting survey, management, or recovery efforts with respect to those species.

§ 2060. Definitions as governing construction

The definitions in this article govern the construction of this chapter.

§ 2061. Conserve; conserving; conservation

“Conserve,” “conserving,” and “conservation” mean to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened



species to the point at which the measures provided pursuant to this chapter are no longer necessary. These methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, restoration and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

§ 2062. Endangered species

“Endangered species” means a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. Any species determined by the commission as “endangered” on or before January 1, 1985, is an “endangered species.”

§ 2063. Feasible

“Feasible” means feasible as defined in Section 21061.1 of the Public Resources Code.

§ 2064. Project

“Project” means project as defined in Section 21065 of the Public Resources Code

§ 2064.5. “Recover” and “recovery” defined

“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.

§ 2065. State lead agency

“State lead agency” means the state agency, board, or commission which is a lead agency under the California Environmental Quality Act (Division 13 (commencing with Sec. 21000) of the Public Resources Code).

§ 2067. Threatened species

“Threatened species” means a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. Any animal determined by the commission as “rare” on or before January 1, 1985, is a “threatened species.”

§ 2068. Candidate species

“Candidate species” means a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that the commission has formally noticed as being under review by the department for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice of proposed regulation to add the species to either list.



§ 2070. Establishment of lists; addition or removal of species

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.

§ 2071. Guidelines; petition for listing or delisting species

The commission shall adopt guidelines by which an interested person may petition the commission to add a species to, or to remove a species from either the list of endangered or the list of threatened species.

§ 2071.5. Criteria for determining if species endangered or threatened

The department shall recommend, and the commission shall adopt, criteria for determining if a species is endangered or threatened.

§ 2072. Petition; requirements

The petition shall be written, shall be clearly identified as a petition, and shall clearly indicate the administrative measure recommended.

§ 2072.3. Petition; contents

To be accepted, a petition shall, at a minimum, include sufficient scientific information that a petitioned action may be warranted. Petitions shall include information regarding the population trend, range, distribution, abundance, and life history of a species, the factors affecting the ability of the population to survive and reproduce, the degree and immediacy of the threat, the impact of existing management efforts, suggestions for future management, and the availability and sources of information. The petition shall also include information regarding the kind of habitat necessary for species survival, a detailed distribution map, and any other factors that the petitioner deems relevant.

§ 2072.7. Recommendation for listing or delisting species

The department may, in the absence of a petition from an interested party, recommend to the commission that it add a species to, or remove a species from, either the list of endangered species or the list of threatened species. If it makes a recommendation under this section, the department shall include the information specified in Section 2072.3. A department recommendation under this section shall be considered by the commission as a petition with a departmental recommendation to accept and consider as described in subdivision (b) of Section 2073.5, and is subject to Sections 2074 to 2079, inclusive.

§ 2073. Reference of petition to department; time

Within 10 days of the receipt of a petition from an interested person under Section 2072.3, the commission shall refer the petition to the department.

§ 2073.3. Notice of receipt of petition; requisites



(a) The commission shall publish a notice in the California Regulatory Notice Register of the receipt of a petition prepared pursuant to Section 2072.3 by the department, or by an interested party and referred to the department, pursuant to Section 2073, or the commencement of an evaluation, to add a species to, remove a species from, or change the status of a species on, the list of endangered species or the list of threatened species pursuant to Section 2072.7. At a minimum, the notice shall include all of the following:

- (1) The scientific and common name of the species.
- (2) Habitat type, if that information is available in the petition.
- (3) The location where interested persons can submit information to the department relating to the petitioned species.

(b) The commission shall notify interested persons pursuant to Section 2078, by mail, of the notices prepared pursuant to subdivision (a), and shall mail a copy of the notice to those persons.

§ 2073.4. Evaluation of petition; submission of additional information

(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.

§ 2073.5. Evaluation of petition; report; recommendations

(a) Within 90 days of receipt of the petition, the department shall evaluate the petition on its face and in relation to other relevant information the department possesses or receives, and submit to the commission its written evaluation report with one of the following recommendations to the commission:

- (1) Based upon the information contained in the petition, there is not sufficient information to indicate that the petitioned action may be warranted, and the petition should be rejected.
- (2) Based upon the information contained in the petition, there is sufficient information to indicate that the petitioned action may be warranted, and the petition should be accepted and considered.

(b) Upon the request of the director, the commission may grant the department an extension of time, not to exceed 30 days, to allow the department additional time to further analyze and evaluate the petition and complete its evaluation report.

(c) The department's evaluation report shall include copies of, or a list of, all information submitted to the department pursuant to subdivision (a) of Section 2073.4 during its



evaluation of the petition. If copies are not included, the report shall state where the listed information is available for review.

§ 2073.7. Amendment petition

A petitioner may amend a petition at any time prior to the beginning of the meeting held by the commission pursuant to Section 2074.2. However, if the commission determines that the amendment is substantive, the commission shall resubmit the petition to the department for review pursuant to Section 2073.5, publish notice of the amendment pursuant to Section 2073.3, and renote or continue any hearing scheduled pursuant to Section 2074 in order to provide adequate opportunity for public comment.

§ 2074. Petition; scheduling on meeting agenda; availability for review

The commission shall schedule the petition for consideration at its next available meeting, but not sooner than 30 days after receipt of the petition and public release of the evaluation report, and distribute its pending agenda to interested persons pursuant to Section 2078. The commission also shall make the petition, evaluation report, and other materials received available for review.

§ 2074.2. Consideration of petition at meeting; findings; distribution

(a) At the meeting scheduled pursuant to Section 2074, 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 persons, the commission may close the public hearing and 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).
(c). Once the public hearing is closed, no person shall 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 prior to 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 petition provides sufficient information to indicate that the petitioned action may be warranted.
- (2) The commission determines that it requires further information to evaluate whether the petition provides sufficient information to indicate that the petitioned action may be 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 petition provides sufficient information to indicate that the petitioned action may be 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. If the commission reopens the record pursuant to this paragraph, it shall provide an opportunity for public comment on the submitted information prior to the issuance of its decision.

(d) In its discretion, the commission 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, which shall be no later than 90 days after the meeting scheduled pursuant to Section 2074, 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 2074 or at a continued meeting scheduled pursuant to subdivision (d), the commission shall consider the petition, the department's written report, written comments received, and oral testimony provided during the public hearing, and the commission shall make and enter in its record one of the following findings:

- (1) If the commission finds that the petition does not provide sufficient information to indicate that the petitioned action may be warranted, the commission shall publish a notice of finding that the petition is rejected, including the reasons why the petition is not sufficient.
- (2) If the commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the commission shall publish a notice of finding that the petition is accepted for consideration. If the accepted petition recommends the addition of a species to either the list of endangered species or the list of threatened species, the commission shall include in the notice that the petitioned species is a candidate species. The commission shall maintain a list of species which are candidate species.

(f) The commission shall publish and distribute the findings relating to the petition pursuant to Section 2078.

§ 2074.4. Consideration of petition; notification of affected and interested parties

If a petition is accepted by the commission for consideration, all reasonable attempts shall be made to notify affected and interested parties and to solicit data and comments on the petitioned action from as many persons as is practicable. In addition to commission efforts to provide notification through distribution of the commission agenda and minutes pursuant to Section 2078, the department shall immediately undertake efforts to notify affected and interested parties. Methods of notification may include, but are not limited to, correspondence, newspaper notices, and press releases, and notification shall include notice to owners of that land which may provide habitat essential to the continued existence of the species,



unless the director determines that ownership is so widespread, fragmented, or complex as to make individual notice impractical.

§ 2074.6. Review of status of species; report

The department shall promptly commence a review of the status of the species concerned in the petition. Within 12 months of the date of publication of a notice of acceptance of a petition for consideration pursuant to paragraph (2) of subdivision (e) of Section 2074.2, the department shall produce and make publicly available on the department's Internet Web site a final written peer reviewed report, based upon the best scientific information available to the department, which indicates whether the petitioned action is warranted, which includes a preliminary identification of the habitat that may be essential to the continued existence of the species, and which recommends management activities and other recommendations for recovery of the species. Prior to releasing the final written report, the department shall have a draft status review report prepared and independently peer reviewed, and upon receiving the peer reviewers' input, shall evaluate and respond in writing to the independent peer review and shall amend the draft status review report as appropriate. The revised report shall be posted on the department's Internet Web site for a minimum of 30 days for public review prior to the hearing scheduled pursuant to Section 2075. The commission may grant an extension of up to six months if the director determines an extension is necessary to complete independent peer review of the report, and to provide a minimum of 30 days for public review of the peer reviewed report prior to the public hearing specified in Section 2075.

§ 2074.8. Independent studies or assessment of species

This article does not impose any duty or obligation for, or otherwise require, the commission or the department to undertake independent studies or other assessments of any species when reviewing a petition and its attendant documents and comments. However, the department shall seek independent scientific peer review of the department's status report. The director may approve an extension of time for completion of the status report if necessary for the purposes of obtaining independent peer review pursuant to Section 2074.6.

§ 2075. Scheduling petition for final consideration; availability of reports

The commission shall schedule the petition for final consideration at its next available meeting after receipt of the departmental report provided pursuant to Section 2074.6 and shall distribute the pending agenda for that meeting pursuant to Section 2078. The commission shall make the department's report, or copies thereof, which was provided, pursuant to Section 2074.6, available for review upon request.

§ 2075.5. Public hearing; final consideration at meeting; findings

(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.

§ 2076. Judicial review

Any finding pursuant to this section is subject to judicial review under Section 1094.5 of the Code of Civil Procedure.

§ 2076.5. Emergency regulation adding species to lists; notice

Notwithstanding Sections 2071 to 2075.5, inclusive, the commission may adopt a regulation that adds a species to the list of endangered species or to the list of threatened species as an emergency regulation pursuant to Chapter 3.5 (commencing with Section 399) of Division 1 if the commission finds that there is any emergency posing a significant threat to the continued existence of the species. The commission shall notify affected or interested persons of the adoption of the emergency regulation pursuant to the methods described in Section 2074.4.

§ 2077. Periodic review of listed species; deadline for initial review; report

(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.

§ 2078. Distribution of agenda and minutes of action

(a) To provide all interested persons access to information and notification of pending listing or delisting actions, the commission shall distribute the related agenda of pending actions and those portions of its minutes of actions taken under this article to any individuals who have notified the commission, in writing with their address, of their interest. This notification shall be published in the California Regulatory Notice Register and shall meet the requirements of public notice as required for commission action under Section 2073.3, 2074, 2074.2, 2075, or 2077.

(b) The commission may impose an annual fee on those persons who request inclusion on the list to be notified in order to offset the cost of establishing and maintaining the list, and preparing and mailing the notices. Fees received pursuant to this section shall be deposited in the Fish and Game Preservation Fund.

§ 2079. Report; summary of status of listed species; contents

The department shall, by January 30 of every third year, beginning January 30, 1986, prepare a report summarizing the status of all state listed endangered, threatened, and candidate species, and shall post the report on the commission's Internet Web site. This report shall include, but not be limited to, a listing of those species designated as endangered, threatened, and candidate species, a discussion of the current status of endangered, threatened, or candidate species, and the timeframes for the review of listed species pursuant to this article.

§ 2079.1. Development and implementation of nonregulatory recovery plans

(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.

§ 2080. Offense; exceptions

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).

§ 2080.1. Incidental take statements or permits for endangered or threatened species; notice

(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.

§ 2080.2. Findings and declarations; San Joaquin River restoration settlement

The Legislature finds and declares the following:

(a) The historic settlement approved by Congress in the San Joaquin River Restoration Settlement Act (Part I of Subtitle A of Title X of Public Law 111-11) directs the federal government to reintroduce spring run Chinook salmon to the San Joaquin River. In approving the settlement and the new statutory provisions governing the reintroduction of California central valley spring run Chinook salmon, Congress found that the



implementation of the settlement, to resolve 18 years of contentious litigation regarding restoration of the San Joaquin River and the reintroduction of the salmon, was a unique and unprecedented circumstance. The settlement also provides that nothing in the settlement diminishes the statutory or regulatory protections under the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) nor does it establish a precedent with respect to any other application of the federal act.

(b) Central valley spring run Chinook salmon have been listed since 1999 as a threatened species under this chapter and were still listed as of January 1, 2011.

(c) Restoring spring run Chinook salmon to the San Joaquin River is intended to further the conservation and recovery of the species.

(d) Consistent with the unique and historic circumstances that led to the settlement, nothing in Section 2080.2, 2080.3, or 2080.4 is intended to create any precedent as to future application of this chapter, nor do Sections 2080.2, 2080.3, or 2080.4 otherwise modify other existing statutes or legal obligations.

§ 2080.3. Enhancement of survival permit from Secretary of Commerce; timing, extent and duration

(a) Notwithstanding any other provision of this chapter, if any person obtains from the Secretary of Commerce an enhancement of survival permit pursuant to Section 1539(a)(1)(A) of Title 16 of the United States Code that authorizes the taking of spring run Chinook salmon (*Oncorhynchus tshawytscha*) in order to establish or maintain an experimental population in the San Joaquin River pursuant to subsection (j) of that section and the San Joaquin River Restoration Settlement Act (Part I of Subtitle A of Title X of Public Law 111-11), no further authorization or approval is necessary under this chapter for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if all of the following requirements are met:

- (1) That person shall notify the director in writing that the person has received an enhancement of survival permit and include in the notification a copy of the permit.
- (2) Upon receipt of the notice specified in paragraph (1) of subdivision (c), the director shall immediately have the notice published in the General Public Interest section of the California Regulatory Notice Register.
- (3) Within 30 days after the director has received the notice specified in paragraph (1), the director shall determine whether the enhancement of survival permit will further the conservation of the species. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.
- (4) The director shall immediately have the determination pursuant to paragraph (3) published in the General Public Interest section of the California Regulatory Notice Register.



(b) The timing and extent of a take authorization under this section shall be limited to the terms in the federal enhancement of survival permit and shall expire upon the expiration of the federal permit.

(c) This section shall remain in effect only until the effective date of an amendment to Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an enhancement of survival permit, as applicable, and as of that date is repealed, unless a later enacted statute, that is chaptered before the date this section is repealed, deletes or extends that date.

§ 2080.4. Spring run Chinook salmon in the San Joaquin River; incidental take; determination by director; publication

(a) If a population of spring run Chinook salmon in the San Joaquin River is designated as an experimental population under subsection (j) of Section 1539 of Title 16 of the United States Code, no further authorization or approval is necessary under this chapter for any person to incidentally take members of that experimental population, if all of the following requirements are met:

- (1) The Secretary of Commerce has published regulations in the Federal Register specifying management restrictions, protective measures, prohibitions, and exceptions to the prohibitions for the designated experimental population of spring run Chinook salmon in the San Joaquin River.
- (2) The director has determined, in writing, that the management restrictions, protective measures, prohibitions and exceptions to prohibitions contained in the regulations specified in paragraph (1) meet the requirements in subdivision (b).
- (3) The action or activity that results in incidental take of the designated experimental population is authorized by the regulations published in the Federal Register.

(b) The director shall issue the determination described in paragraph (2) of subdivision (a), if the director finds that the federal regulations described in paragraph (1) of subdivision (a) meet all of the following criteria:

- (1) The federal regulations will further the conservation of the spring run Chinook salmon. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.
- (2) The federal regulations contain all reasonably feasible measures to avoid and minimize the impacts of any taking allowed by the regulation.
- (3) The federal regulations will not jeopardize the continued existence or recovery of spring run Chinook salmon, and will not jeopardize the restoration of spring run Chinook salmon in the San Joaquin River.

(c) If the director determines that the federal regulations described in paragraph (1) of subdivision (a) are not consistent with this chapter, or if the action or activity that results in incidental take is not authorized in those federal regulations, then the incidental take of



members of the designated experimental population may only be authorized pursuant to this chapter.

(d) The director shall publish the determination, pursuant to paragraph (2) of subdivision (a), and subdivision (b), in the General Public Interest section of the California Regulatory Notice Register.

§ 2080.5. Enhancement of survival permit authorizing the taking of endangered or threatened species to establish an experimental population; timing, extent and duration

(a) Notwithstanding any other provision of this chapter, if any person obtains from the Secretary of Commerce or the Secretary of the Interior an enhancement of survival permit pursuant to Section 1539(a)(1)(A) of Title 16 of the United States Code that authorizes the taking of an endangered species or a threatened species that is listed pursuant to Section 1533 of Title 16 of the United States Code and that is an endangered species, threatened species, or candidate species pursuant to this chapter in order to establish or maintain an experimental population, 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 enhancement of survival permit, if all of the following requirements are met:

- (1) That person shall notify the director in writing that the person has received an enhancement of survival permit and include in the notification a copy of the permit.
- (2) Upon receipt of the notice specified in paragraph (1), the director shall immediately have the notice published in the General Public Interest section of the California Regulatory Notice Register.
- (3) Within 30 days after the director has received the notice specified in paragraph (1), the director determines the enhancement of survival permit will further the conservation of the species. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.
- (4) The director shall immediately have the determination pursuant to paragraph (3) published in the General Public Interest section of the California Regulatory Notice Register.

(b) The timing and extent of a take authorization under this section shall be limited to the terms in the federal enhancement of survival permit and shall expire upon the expiration of the federal permit.

(c) (1) This section shall remain in effect only until the effective date of an amendment to Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an enhancement of survival permit, as applicable, and as of that date is repealed.

(2) If the director becomes aware that this section has been repealed pursuant to this subdivision, the director shall notify the Legislature of that fact pursuant to Section 9795 of the Government Code.



§ 2080.6. Experimental population; incidental take; determination by director; publication

(a) For purposes of this chapter, “experimental population” means any population nonessential to the continued existence of an endangered, threatened, or candidate species, including any eggs, propagules, individuals, or offspring arising solely therefrom, that the Secretary of the Interior or the Secretary of Commerce designates as an experimental population pursuant to Section 1539(j) of Title 16 of the United States Code.

(b) If a population of a species is an experimental population, no further authorization or approval is necessary under this chapter for any person to incidentally take members of that experimental population, if all of the following requirements are met:

- (1) The Secretary of the Interior or the Secretary of Commerce has published regulations in the Federal Register for the designated experimental population as required by Section 1539(j) of Title 16 of the United States Code.
- (2) The director has determined, in writing, that the regulations specified in paragraph (1) meet the requirements in subdivision (c).
- (3) The action or activity that results in incidental take of the designated experimental population is authorized by the regulations published in the Federal Register.

(c) The director shall issue the determination described in paragraph (2) of subdivision (b), if the director finds that the federal regulations described in paragraph (1) of subdivision (b) meet all of the following criteria:

- (1) The federal regulations will further the conservation of the species. As used in this paragraph, “conservation” has the same meaning as defined in Section 2061.
- (2) The federal regulations contain measures to avoid and minimize the impacts of any taking allowed by the regulation.
- (3) The federal regulations will not jeopardize the continued existence or recovery of the species.

(d) If the director determines that the federal regulations described in paragraph (1) of subdivision (b) are not consistent with this chapter, or if the action or activity that results in incidental take is not authorized in those federal regulations, the incidental take of members of the designated experimental population may only be authorized pursuant to the other provisions of this chapter.

(e) The director shall publish the determination, pursuant to paragraph (2) of subdivision (b), and subdivision (d), in the General Public Interest section of the California Regulatory Notice Register.

§ 2080.7. Legislative intent; public outreach

It is the intent of the Legislature that, before the introduction of an experimental population, as defined in Section 2080.6, onto land or into waters of this state, the department should undertake appropriate public outreach, including public meetings, in



an effort to inform the public about the proposed introduction of the experimental population and its potential effects, if any, on ongoing human activities. To the extent practicable, this public outreach should include inviting other public boards, departments, or agencies that may have a regulatory or other role regarding the experimental population to collaborate with the department. Nothing in this section shall be construed to modify any other law or legal obligation.

§ 2081. Authorization of acts prohibited by § 2080; taking of endangered, threatened, and candidate species; permits; regulations

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.

§ 2081.1. Taking of endangered, threatened, or candidate species; authorization by department; permits, memoranda of understanding, plan, agreements

Nothing in this chapter or in any other provision of law prohibits the taking or the incidental taking of any endangered, threatened, or candidate species if the taking was authorized by the department through a permit or memorandum of understanding, or in a natural communities conservation plan, habitat conservation plan, habitat management plan, or other plan or agreement approved by or entered into by the department, or in an amendment to such a permit, memorandum of understanding, plan, or agreement and all of the following conditions are met:

(a) The application process commenced on or before April 10, 1997.

(b) The department approved the permit, memorandum of understanding, plan, agreement, or amendment thereto within either of the following timeframes:

(A) On or before April 10, 1997.

(B) Between April 10, 1997, and January 1, 1998, and the department also certifies that the permit, memorandum of understanding, plan, agreement, or amendment thereto meets the substantive criteria of subdivision (b) of Section 2081.

The permits, memoranda of understanding, plan, agreements, and amendments thereto described in this section are deemed to be in full force and effect, as of the date approved or entered into by the parties insofar as they authorize the take of species. This section does not apply to the “Emergency Management Measures Permit” issued by the department on March 15, 1995.

§ 2082.2. Permit application fees

(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.

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.

§ 2081.4. Rough sculpin; take authorized; conditions

(a) The department may authorize, under this chapter, the take of the rough sculpin (*Cottus asperimus*) resulting from impacts attributable to replacing the Spring Creek Bridge in the County of Shasta, if all of the following conditions are satisfied:

- (1) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the rough sculpin.
- (2) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the project.
- (3) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of a monitoring program and an adaptive management process until the department determines that any impacts resulting from the replacement of the Spring Creek Bridge have been fully mitigated.

(b) This section shall not be construed to exempt the project described in subdivision (a) from any other law.

§ 2081.6. Unarmored threespine stickleback; take authorized; conditions

(a) The department may authorize, under this chapter, the take of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) resulting from impacts



attributable to the habitat restoration project to restore, maintain, and improve riparian habitat on public lands in the geographic area defined in paragraph (1) and projects to restore the flow capacity to Bouquet Creek in Bouquet Canyon on public lands, undertaken by the Los Angeles County Department of Public Works, the Los Angeles Department of Water and Power, and the United States Department of Agriculture, Forest Service, if all of the following conditions are satisfied:

- (1) The take authorization is limited to the portion of Bouquet Creek located from a position normal to mile marker 8.3 on Bouquet Canyon Road to a position normal to mile marker 16.3 on Bouquet Canyon Road, inclusive.
- (2) The department has determined that the appropriate agreements have been executed to address environmental impacts at the Bouquet Canyon area, including, but not limited to, Bouquet Creek.
- (3) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the unarmored threespine stickleback.
- (4) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the projects.
- (5) A biologist will be on duty whenever an activity is conducted that may affect the unarmored threespine stickleback.
- (6) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of a monitoring program and an adaptive management process that satisfy the conservation standard of subdivision (d) of Section 2805 for monitoring the effectiveness of, and adjusting, as necessary, the measures to minimize and fully mitigate the impacts of the authorized take.
- (7) The take authorization provides for the development and implementation, in cooperation with state and federal agencies, of an adaptive management process that substantially contributes to the long-term conservation of the unarmored threespine stickleback.

(b) This section shall not be construed to exempt the projects described in subdivision (a) from any other law.

(c) This section shall not be construed to affect the contractual obligations of the Los Angeles Department of Water and Power to provide water from Bouquet Reservoir.

§ 2081.7. Authorization to take species resulting from impacts attributable to implementation of Quantification Settlement Agreement on enumerated water or land; other conditions with respect to Agreement

(a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and contingent upon the fulfillment of the conditions listed in subdivisions (b), (c), and (d), the department may authorize, under Chapter 1.5 (commencing with Section 2050) or Chapter 10 (commencing with Section 2800), the take of species resulting from impacts attributable to the implementation of the



Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, on all of the following:

- (1) The salinity, elevation, shoreline habitat, or water quality of the Salton Sea.
- (2) The quantity and quality of water flowing in the All-American Canal, the Coachella Canal, the Imperial Valley and Coachella Valley drains, the New and Alamo Rivers, the Coachella Valley Stormwater Channel, and the habitat sustained by those flows.
- (3) Agricultural lands in the Imperial Valley.
- (4) The quantity and quality of water flowing in the Colorado River, the habitat sustained by those flows, and the collection of that water for delivery to authorized users.

(b) The Quantification Settlement Agreement is executed by the appropriate parties on or before October 12, 2003.

(c) The department has determined that the appropriate agreements have been executed to address environmental impacts at the Salton Sea that include enforceable commitments requiring all of the following:

- (1) Imperial Irrigation District to transfer 800,000 acre-feet of conserved water, by conservation methods selected by the Imperial Irrigation District, to the Department of Water Resources on a mutually agreed-upon schedule in exchange for payment of one hundred seventy-five dollars (\$175) per acre-foot. The price shall be adjusted for inflation on an annual basis.
- (2) Imperial Irrigation District to transfer up to 800,000 additional acre-feet of conserved water, by conservation methods selected by the Imperial Irrigation District, to the Department of Water Resources during the first 15 years of the Quantification Settlement Agreement on the schedule established for the mitigation water that was previously to be transferred to the San Diego Water Authority, or on a mutually agreed-upon schedule, at no cost for the water in addition to the payment for the water from the mitigation fund described in paragraph (1) of subdivision (b) of Section 3 of Chapter 613 of the Statutes of 2003.
- (3) As a condition to acquisition of the water described in paragraph (1), the Department of Water Resources shall be responsible for any environmental impacts, including Salton Sea salinity, related to use or transfer of that water. As a condition to acquisition of the water described in paragraph (2), the Department of Water Resources shall be responsible for environmental impacts related to Salton Sea salinity that are related to the use or transfer of that water.
- (4) The Metropolitan Water District of Southern California (MWD) to purchase up to 1.6 million acre-feet of the water provided in accordance with paragraphs (1) and (2) from the Department of Water Resources at a price of not less than two hundred fifty dollars (\$250) per acre-foot on a mutually agreed-upon schedule. The price shall be adjusted for inflation on an annual basis. The Department of Water Resources shall deposit all proceeds from the sale of water pursuant to this paragraph, after deducting costs



and reasonable administrative expenses, into the Salton Sea Restoration Fund established in Section 2932.

(5) The Metropolitan Water District of Southern California to pay not less than twenty dollars (\$20) per acre-foot for all special surplus water received by MWD as a result of reinstatement of access to that water under the Interim Surplus Guidelines by the United States Department of Interior subtracting any water delivered to Arizona as a result of a shortage. The money shall be paid into the Salton Sea Restoration Fund. The price shall be adjusted for inflation on an annual basis. Metropolitan Water District of Southern California shall receive a credit against future mitigation obligations under the Lower Colorado River Multi-Species Conservation Plan for any funds provided under this paragraph to the extent that those funds are spent on projects that contribute to the conservation or mitigation for species identified in the Lower Colorado River Multi-Species Conservation Plan and that are consistent with the preferred alternative for Salton Sea restoration.

(6) Coachella Valley Water District, Imperial Irrigation District, and San Diego County Water Authority to pay a total of thirty million dollars (\$30,000,000) to the Salton Sea Restoration Fund as provided in paragraph (2) of subdivision (b) of Section 3 of Chapter 613 of the Statutes of 2003.

(d) All of the following conditions are met:

(1) The requirements of subdivision (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.

(3) The take authorization provides for the development and implementation in cooperation with state and federal agencies of an adaptive management process that substantially contributes to the long-term conservation of the species for which take is authorized. Preparation of the adaptive management program and implementation of the program is the responsibility of the department. The department's obligation to prepare and implement the adaptive management program is conditioned upon the availability of funds pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), or other funds that may be appropriated by the Legislature or approved by the voters for that purpose. The failure to appropriate funds does not relieve the applicant of the obligations of paragraphs (1) and (2). However, the applicant shall not be required to fund any program pursuant to this paragraph.

(4) The requirements of paragraph (1) may be satisfied if the take is authorized under Chapter 10 (commencing with Section 2800).



(e) (1) The Secretary of the Resources Agency, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, appropriate air quality districts, and the Salton Sea Advisory Committee, shall undertake a restoration study to determine a preferred alternative for the restoration of the Salton Sea ecosystem and the protection of wildlife dependent on that ecosystem. The Secretary of the Resources Agency shall extend an invitation to the United States Geological Survey Salton Sea Science Office to also participate in the restoration study, and the office may participate if it accepts the invitation. The restoration study shall be conducted pursuant to a process with deadlines for release of the report and programmatic environmental documents established by the secretary, in consultation with the department, the Department of Water Resources, the Salton Sea Authority, and the Salton Sea Advisory Committee, and the United States Geological Survey Salton Sea Science Office, if it is a participant. The secretary shall use all available authority to enter into a memorandum of understanding (MOU) with the Secretary of the Interior, as provided in Section 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L. 105-372) for the purpose of obtaining federal participation in the restoration of the Salton Sea.

(2) The restoration study shall establish all of the following:

- (A) An evaluation of alternatives for the restoration of the Salton Sea that includes consideration of strategies for salinity control, habitation creation and restoration, and different shoreline elevations and surface area configurations. The alternatives shall consider the range of possible inflow conditions. The evaluation established pursuant to this subparagraph shall also include suggested criteria for selecting and evaluating alternatives consistent with Chapter 13 (commencing with Section 2930), including, but not limited to, at least one most cost-effective, technically feasible, alternative.
- (B) An evaluation of the magnitude and practicability of costs of construction, operation, and maintenance of each alternative evaluated.
- (C) A recommended plan for the use or transfer of water provided by paragraph (2) of subdivision (c). No water may be transferred pursuant to that subdivision unless the secretary finds that transfer is consistent with the preferred alternative for Salton Sea restoration.
- (D) The selection of a preferred alternative consistent with Section 2931, including a proposed funding plan to implement the preferred alternative. The proposed funding plan shall include a determination of the moneys that are, or may be, available to construct and operate the preferred project, including, but not limited to, all of the following moneys:
 - (i) Moneys in the Salton Sea Restoration Fund established by Section 2932.
 - (ii) State water and environmental bond moneys.
 - (iii) Federal authorizations and appropriations.



- (iv) Moneys available through a Salton Sea Infrastructure Financing District established pursuant to Section 53395.9 of the Government Code and local assessments by the Salton Sea Authority or its member agencies.
- (v) Moneys derived from user or other fees.

(3) The study identifying the preferred alternative shall be submitted to the Legislature on or before December 31, 2006.

(4) The Secretary of the Resources Agency shall establish an advisory committee for purposes of this subdivision as follows:

(A) The advisory committee shall be selected to provide balanced representation of the following interests:

- (i) Agriculture.
- (ii) Local governments.
- (iii) Conservation groups.
- (iv) Tribal governments.
- (v) Recreational users.
- (vi) Water agencies.
- (vii) Air pollution control districts.
- (viii) Geothermal energy development.

(B) Appropriate federal agency representatives may be asked to serve in an ex officio capacity.

(C) The Resources Agency shall consult with the advisory committee throughout all stages of the alternative selection process.

(D) The advisory committee shall meet no fewer than six times annually.

(E) The secretary shall appoint a vice chair of the advisory committee from the committee membership. The vice chair shall work with the secretary to develop advisory committee agendas and to schedule meetings of the committee. The secretary and vice chair shall appoint an agenda subcommittee to assist in the preparation of advisory committee agendas.

(F) The advisory committee shall submit to the Resources Agency recommendations to assist the agency in preparation of its restoration plan. The Resources Agency shall develop a schedule for the completion of these recommendations to ensure that these recommendations will be considered by the agency in a timely and



meaningful manner as the restoration plan is developed. These recommendations may include, but are not limited to:

- (i) The specific goals and objectives of the restoration plan.
- (ii) The range of alternative restoration actions that must be developed and analyzed.
- (iii) The no action alternative.
- (iv) The criteria for determining economic and technical feasibility of the alternatives.
- (v) The range of options for funding the restoration plan.
- (vi) The selection of a preferred alternative for a restoration plan.

(G) The Resources Agency shall periodically provide an update to the advisory committee of the current work plan and schedule for the development of the restoration plan.

(f) This section shall not be construed to exempt from any other provision of law the Quantification Settlement Agreement and the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998.

§ 2081.8. Necessary activities to assess protection of recreational opportunities

The Resources Agency shall undertake the necessary activities to assess the protection of recreational opportunities, including, but not limited to, hunting, fishing, boating, and birdwatching, and the creation of opportunities for improved local economic conditions, surrounding the Salton Sea. The Resources Agency shall not undertake any of those activities if the agency determines they would constitute a project purpose for environmental documentation that is prepared pursuant to Section 2081.7.

§ 2081.9. Incidental take of limestone salamander; construction of section

(a) Notwithstanding Section 5050, the department may authorize, under this chapter, the incidental take of limestone salamander (*Hydromantes brunus*) resulting from impacts attributable to the Department of Transportation's implementation of the Ferguson Slide Permanent Restoration Project on State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa County, contingent upon the fulfillment of the following conditions:

- (1) The Department of Transportation begins construction of the Ferguson Slide Permanent Restoration Project on or before January 1, 2016.
- (2) The department has determined that the Department of Transportation will adopt appropriate avoidance and mitigation measures to protect the limestone salamander through enforceable commitments that, at a minimum, include the following:



- (A) A construction work window that prevents initial ground-disturbing construction activities from occurring on the southern slope during the salamander's active season of December to March, inclusive.
 - (B) Environmentally sensitive area fencing in the form of five-foot orange plastic mesh, as well as salamander protection exclusionary fencing in the form of 24-inch sheet metal, will be erected if construction-related activities will occur adjacent to limestone salamander habitat during their active season.
 - (C) A biological monitor will be onsite during active building to inspect the worksite and all exclusionary fencing.
 - (D) All ground-disturbing activities within 100 feet will cease if a limestone salamander is detected in an active construction site until the animal can be safely removed from the area according to an agreed-upon salvage plan.
- (3) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the limestone salamander.
 - (4) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the project.
 - (5) The take authorization provides for the development and implementation, in cooperation with the department, of an adaptive management process for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take. The adjusted measures are subject to Section 2052.1.
 - (6) The failure to appropriate funds does not relieve the applicant of the obligations of paragraphs (1) and (2).
- (7) Any observations of the species in the worksite and any accidental injury or mortality from vehicle strikes or other means will be reported to the department immediately and the onsite biological monitor will notify the resident engineer who will halt the work immediately.
- (b) This section shall not be construed to exempt the Ferguson Slide Permanent Restoration Project on State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa County from any other law.

§ 2081.10. Incidental take of unarmored threespine stickleback; conditions; construction of section

- (a) The department may authorize, under this chapter, the incidental take of unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) attributable to the periodic dewatering, inspection, maintenance, modification, or repair, including emergency repair, of the Metropolitan Water District of Southern California's Foothill Feeder water supply facility from Castaic Dam to the Joseph Jensen Treatment Plant in the County of Los Angeles, contingent upon the fulfillment of the following conditions:



- (1) The department determines that the requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the unarmored threespine stickleback.
- (2) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the project.
- (3) The take authorization provides for the development and implementation, in cooperation with the department, of an adaptive management plan for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take and to satisfy the conservation standard of subdivision (d) of Section 2805.
- (4) A biologist who has substantial relevant experience evaluating impacts to inland fisheries is on duty whenever an activity is conducted that may affect the unarmored threespine stickleback.
- (5) The Metropolitan Water District of Southern California consults with the department to consider feasible measures to avoid and minimize incidental take of unarmored threespine stickleback. For purposes of this paragraph, "feasible" has the same meaning as defined in Section 15364 of Title 14 of the California Code of Regulations.

(b) The take authorization shall cover any incidental take of unarmored threespine stickleback attributable to the periodic dewatering, inspection, maintenance, modification, or repair, including emergency repair, of the Foothill Feeder that may occur in the following locations:

- (1) Within the Santa Clara River, from the Bouquet Canyon Road Bridge to a point located 4,000 feet downstream of where Commerce Center Drive, as of January 1, 2016, dead-ends adjacent to the Santa Clara River.
- (2) From the confluence with the Santa Clara River upstream to the following locations:
 - (A) In Charlie Canyon to a point 1,000 feet upstream of the Foothill Feeder facility dewatering structure.
 - (B) In San Francisquito Creek to the Copper Hill Drive bridge.
 - (C) In Placerita Creek to the Hacienda Lane crossing.
 - (D) In Bouquet Creek to the Newhall Ranch Road Bridge.

(c) The take authorization shall also cover any incidental take of unarmored threespine stickleback that may occur in the course of implementing mitigation or conservation actions required in the permit issued pursuant to subdivision (a) as may be modified through an adaptive management plan adopted pursuant to paragraph (3) of subdivision (a).

(d) The permit issued pursuant to subdivision (a) shall include conditions that cover biological and scientific considerations including, but not limited to, criteria for the handling of stranded fish and their relocation into suitable habitat, the dewatering of the Foothill Feeder, and the reasonable and feasible mimicking of streamflows. The permit conditions shall be in



compliance with the project description, mitigation measures, and release plan set forth in the certified environmental impact report known as the “Foothill Feeder Repair and Future Inspections Project Environmental Impact Report, January 2005, State Clearinghouse Number 2005071082.” The permit conditions are subject to amendment when required by the adaptive management plan or when modified by a subsequent final environmental document pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(e) This section shall not be construed to exempt from any other law the periodic dewatering, inspection, maintenance, modification, or repair of the Foothill Feeder.

(f) If the Metropolitan Water District of Southern California receives a permit under this section, the permit shall require the district to report to the department within six months after every dewatering of the Foothill Feeder. The report shall address compliance with the permit conditions and the effectiveness of the adaptive management plan in contributing to the conservation of the unarmored threespine stickleback. The Metropolitan Water District of Southern California shall ensure that each report is made available to the public.

(g) As used in this section, “modification” does not include alterations to expand the maximum physical capacity of the Foothill Feeder to deliver water.

§ 2081.11. Authorization of take or possession of the Lost River sucker; shortnose sucker; sampling; construction of section

(a) The department may authorize, under this chapter, the take or possession of the Lost River sucker (*Deltistes luxatus* and *Catostomus luxatus*) and shortnose sucker (*Chasmistes brevirostris*) resulting from impacts attributable to or otherwise related to the decommissioning and removal of the Iron Gate Dam, the Copco 1 Dam, the Copco 2 Dam, or the J.C. Boyle Dam, each located on the Klamath River, consistent with the Klamath Hydroelectric Settlement Agreement, if all of the following conditions are met:

- (1) The department finds the authorized take will not jeopardize the continued existence of the Lost River sucker or shortnose sucker.
- (2) The impacts of the authorized take are minimized.
- (3) The take authorization requires department approval of a sampling, salvage, and relocation plan to be implemented and that describes the measures necessary to minimize the take of adult Lost River sucker and shortnose sucker associated with the department’s authorization. The plan shall provide for a sampling effort, the results of which will provide information used to make decisions and to implement the plan while utilizing the principles of adaptive management.

(b) This section shall not be construed to exempt the project described in subdivision (a) from any other law.

§ 2081.12. Authorization of take or possession of the blunt-nosed leopard lizard; permit; construction of section



(a) The department may authorize, under this chapter, by permit, the take or possession of the blunt-nosed leopard lizard (*Gambelia sila*) resulting from impacts attributable to or otherwise related to the Allensworth Community Services District's drilling and construction of a new water well, connection of the new water well to the existing distribution system, and construction of a new water storage tank, if both of the following conditions are met:

- (1) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the blunt-nosed leopard lizard.
- (2) The take authorization provides for the development and implementation of a monitoring program and an adaptive management plan, approved by the department, for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take.

(b) The permit issued pursuant to subdivision (a) shall cover any incidental take of a blunt-nosed leopard lizard that may occur in the course of implementing mitigation or conservation actions required in the permit.

(c) The permit conditions are subject to amendment when required by the monitoring program and adaptive management plan adopted pursuant to paragraph (2) of subdivision (a).

(d) This section shall not be construed to exempt the projects described in subdivision (a) from any other law.

§ 2082. Possession prior to listing; sales not prohibited

This chapter does not prohibit the sale of any endangered species or threatened species, or any part or product thereof, when the owner can demonstrate that the species, or part or product thereof, was in the person's possession before the date upon which the commission listed the species as an endangered species or threatened species or as an endangered animal or rare animal prior to January 1, 1985, and shall not prohibit the sale of that part or product by an individual not normally engaged in that sale if it was originally possessed by the seller for the seller's own use and so used by that seller. However, it shall be unlawful to sell any species, or part or product thereof, if that sale would have been unlawful prior to the date upon which the commission added the species to the listing of endangered species or threatened species or to the listing of endangered animals or rare animals prior to January 1, 1985.

§ 2083. Application and scope of section; restrictions

This chapter does not apply to the taking of fish otherwise authorized pursuant to Part 3 (commencing with Section 7600) of Division 6 or to the possession of individual animals which were lawfully possessed before the commission listed the species as an endangered species or as a threatened species or as an endangered animal or rare animal prior to January 1, 1985.

§ 2084. Authorization of taking of listed candidate species; department recommendations

(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.

§ 2085. Application of article to candidate species; notice

The provisions of this article shall apply to any species designated as a candidate species under Section 2074.2 if notice has been given pursuant to Section 2074.4.

§ 2086. Habitat for threatened or endangered species; locally designated voluntary programs; regulations; takings incidental to agricultural activities; renewal of authorizations

(a) The department, in cooperation with the Department of Food and Agriculture, agricultural commissioners, extension agents, farmers, ranchers, and other agricultural experts, shall adopt regulations that authorize locally designed voluntary programs for routine and ongoing agricultural activities on farms or ranches that encourage habitat for candidate, threatened, and endangered species, and wildlife generally. Agricultural commissioners, extension agents, farmers, ranchers, or other agricultural experts, in cooperation with conservation groups, may propose those programs to the department. The department shall propose regulations for those programs not later than July 1, 1998.

(b) Programs authorized under subdivision (a) shall do all of the following:

- (1) Include management practices that will, to the maximum extent practicable, avoid and minimize take of candidate, endangered, and threatened species, while encouraging the enhancement of habitat.
- (2) Be supported by the best available scientific information for both agricultural and conservation practices.
- (3) Be consistent with the policies and goals of this chapter.
- (4) Be designed to provide sufficient flexibility to maximize participation and to gain the maximum wildlife benefits without compromising the economics of agricultural operations.
- (5) Include terms and conditions to allow farmers or ranchers to cease participation in a program without penalty. The terms and conditions shall include reasonable measures to minimize take during withdrawal from the program.

(c) Any taking of candidate, threatened, or endangered species incidental to routine and ongoing agricultural activities that occurs while the management practices specified by paragraph (1) of subdivision (b) are followed, is not prohibited by this chapter.



(d) (1) The department shall automatically renew the authorization for these voluntary programs every five years, unless the Legislature amends or repeals this section in which case the program shall be revised to conform to this section.

(2) Commencing in 2000, and every five years thereafter, the department shall post a report regarding the effect of the programs on its Internet Web site. The department shall consult with the Department of Food and Agriculture in evaluating the programs and preparing the report. The report shall address factors such as the temporary and permanent acreage benefiting from the programs, include an estimate of the amount of land upon which routine and ongoing agricultural activities are conducted, provide examples of farmer and rancher cooperation, and include recommendations to improve the voluntary participation by farmers and ranchers.

(e) If the authorization for these programs is not renewed or is modified under subdivision (d), persons participating in the program shall be allowed to cease participating in the program in accordance with the terms and conditions specified in paragraph (5) of subdivision (b), without penalty.

(f) (1) The department may approve an application submitted by an agricultural-based nonprofit organization or other entity registered as a California nonprofit organization to initiate and undertake public education and outreach activities that promote the achievement of the objectives of this chapter. An application submitted pursuant to this subdivision shall include the following:

(A) The name and contact information of the participating organization.

(B) A brief description of the planned outreach activities.

(C) An end date for the outreach activities.

(2) The department may require a participating organization to submit, for approval by the department, educational materials and outreach materials that are disseminated to the public in furtherance of this subdivision.

(3) A participating organization shall file an annual report with the department before the end of each calendar year during the time period specified in the application. The report shall include, but is not limited to, the following:

(A) Complete information on the activities conducted by the participating organization in the prior year, including a description of all means of communicating to the public and agricultural community, including personal visits, electronic communications, organized meetings, or other means.

(B) A compilation of responses from the public and members of the agricultural community that will assist the participating organization and the department to modify or improve public education and outreach activities on an ongoing basis.

(C) An assessment of the existing knowledge within the agricultural community of programs and prohibitions under this chapter and a review of outreach activities that could be used to adapt and improve future outreach efforts.



(D) Information on a farm or ranch that has expressed interest in participating in a voluntary program pursuant to this section or the safe harbor agreement program contained in Article 3.7 (commencing with Section 2089.2). This provision does not require the annual report to include the identification to the department of an individual, farm, or ranch.

§ 2087. Accidental take resulting from acts occurring on farms or ranches

(a) An accidental take of a candidate, threatened, or endangered species resulting from an act by a person acting as a farmer or rancher, a bona fide employee of a farmer or rancher, or an individual otherwise contracted by a farmer or rancher that occurs on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited by this chapter.

(b) When an accidental take is known to occur under subdivision (a), the person shall report the take to the department within 10 days.

(c) For purposes of this section, “accidental” means unintended or unforeseen.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2024, deletes or extends that date.

§ 2088. Fish species; timber harvesting; application of article

This article does not authorize the take of fish species and does not apply to timber harvesting governed by the State Board of Forestry. “Fish species” as used in this section means a member of the class Osteichthyes.

§ 2089. Routine and ongoing agricultural activities; regulations to define

Routine and ongoing agricultural activities shall be defined by the department by regulation and shall not include the conversion of agricultural land to a nonagricultural use.

§ 2089.2. Short title; legislative findings; purpose; landowner obligations

(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.

§ 2089.4. Definitions

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.

§ 2089.5. Properties subject to conservation easement; priority; reliance on easement to fulfill requirements; application of section

(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.

§ 2089.6. Agreement authorizing acts otherwise prohibited by § 2080; conditions

(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.

§ 2089.7. Authorization for taking of Owens pupfish

The department may authorize the taking of the Owens pupfish in the Owens River watershed if the take is authorized under an agreement pursuant to this article.

§ 2089.8. Materials required to be submitted by landowner

The landowner shall submit all of the following:

- (a) A detailed map depicting the land proposed to be enrolled in the agreement.
- (b) The common and scientific names of the species for which the landowner requests incidental take authorization.



(c) A detailed description of the landowner's current land and water use and management practices that affect the covered species, and the habitat of the covered species, for which the landowner requests incidental take authorization.

(d) A detailed description of the landowner's future land and water use and management practices that may affect the covered species, and the habitat of the covered species, for which the landowner requests incidental take authorization. This description shall be used only for informational and planning purposes.

(e) The proposed duration of the agreement that is sufficient to provide a net conservation benefit to the species covered in the permit and an explanation of the basis for this conclusion.

(f) A detailed description of the proposed management actions and the timeframe for implementing them.

(g) A description of the possible incidental take that may be caused by the management actions and of the anticipated species populations and habitat changes over the duration of the permit.

(h) A detailed description of the proposed monitoring program.

(i) Any other information that the department may reasonably require in order to evaluate the application.

§ 2089.9. Proprietary information received by department; release or disclosure prohibited; exceptions

(a) As used in this section, "proprietary information" means information that is all of the following:

- (1) Related to an agricultural operation or land that is a part of an agricultural operation.
- (2) A trade secret, or commercial or financial information, that is privileged or confidential, and is identified as such by the person providing the information to the department.
- (3) Not required to be disclosed under any other provision of law or any regulation affecting the land or the agricultural operation on the land.

(b) Proprietary information received by the department pursuant to Section 2089.8 is not public information, and the department shall not release or disclose the proprietary information to any person, including any federal, state, or local governmental agency, outside of the department.

(c) Notwithstanding subdivision (b), the department may release or disclose proprietary information received pursuant to Section 2089.8 to the following entities under the following circumstances:

- (1) Any person or federal, state, or local governmental agency, to enforce this article.



- (2) Any person or federal, state, or local governmental agency working in cooperation with the department to provide technical or financial assistance for the purposes of implementing the program established by this article.
- (3) Any entity, to the extent that the owner, operator, or producer has consented to the release or disclosure.
- (4) The general public, if the information has been transformed into a statistical or aggregate form without identifying any individual owner, operator, or producer, or the specific location from which the information was gathered.

§ 2089.10. Alteration or modification of enrolled property

If an agreement has been approved and the department finds that the agreement is being properly implemented, the department shall allow the landowner to alter or modify the enrolled property, even if that alteration or modification will result in the incidental take of a listed species, to the extent that the alteration or modification returns the species to baseline conditions.

§ 2089.12. Landowner required to provide advance notice of specified events; exceptions; access to land or water to remove or salvage species

(a) Unless the department determines that it is inappropriate to do so based on the nature of the management actions being proposed, the species listed in the permit, or other factors, the agreement shall require that the landowner provide the department with at least 60 days' advance notice of any of the following:

- (1) Any incidental take that is anticipated to occur under the agreement.
- (2) The landowner's plan to return to baseline at the end of the agreement.
- (3) Any plan to transfer or alienate the landowner's interest in the land or water.

(b) (1) If the department receives any notice described in subdivision (a), the landowner shall provide the department, its contractors, or agents with access to the land or water for purposes of safely removing or salvaging the species.

(2) The department shall provide notice to the landowner at least seven days prior to accessing the land or water for the purposes of paragraph (1). The notice shall identify each person selected by the department, its contractors, or agents to access the land or water.

(3) Notwithstanding paragraph (1), during the seven-day notice period, a landowner may object, in writing, to a person selected to access the land or water. If a landowner objects, another person shall be selected by the department, its contractors, or agents, and notification shall be provided to the landowner pursuant to paragraph (2). However, if a landowner objects to a selection on two successive occasions, the landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents.

Failure by a landowner to object to the selection within the seven-day notice period shall



be deemed consent to access the land or water by a person selected by the department, its contractors, or agents.

(4) If the landowner objects to a person selected to access the land or water pursuant to paragraph (3), the 60-day notice period described in subdivision (a) shall be tolled for the period between the landowner's objection to a person selected for access to the land or water and the landowner's consent to a person selected for access to the land or water.

§ 2089.14. Amendment of agreement

An agreement may be amended with the mutual consent of the landowner and the department.

§ 2089.16. Sale, transfer, or alienation of land or water enrolled in agreement; duty of person or entity assuming interest

If a landowner seeks to sell, transfer, or otherwise alienate the land or water enrolled in the agreement during the term of the agreement, the person or entity assuming that interest in the property shall (a) assume the existing landowner's duties under the agreement, (b) enter into a new agreement with the department, or (c) withdraw from an existing agreement under the terms provided in the agreement, as approved by the department.

§ 2089.18. Suspension and revocation of agreement; regulations

The suspension and revocation of the agreement shall be governed by suspension and revocation regulations adopted by the department.

§ 2089.20. Access to land or water proposed to be enrolled; notice to landowner; objections; landowner's responsibilities; liability for injuries

(a) This section does not provide the public a right of entry onto the enrolled land or water. The landowner shall provide the department, its contractors, or agents with access to the land or water proposed to be enrolled in the agreement to develop the agreement, determine the baseline conditions, monitor the effectiveness of management actions, or safely remove or salvage species proposed to be taken.

(b) The department shall provide notice to the landowner at least seven days before accessing the land or water for the purposes of subdivision (a). The notice shall identify each person selected by the department, its contractors, or agents to access the land or water.

(c) Notwithstanding subdivision (a), during the seven-day notice period, a landowner may object, in writing, to a person selected to access the land or water. If a landowner objects, another person shall be selected by the department, its contractors, or agents, and notification shall be provided to the landowner pursuant to subdivision (b). However, if a landowner objects to a selection on two successive occasions, the landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents. Failure by a landowner to object to the selection within the seven-day notice period shall be deemed consent to access the land or water by a person selected by the department, its contractors, or agents.



(d) (1) Notwithstanding any other law, the landowner is not required to do either of the following:

- (A) Maintain enrolled land or water, or land or water proposed to be enrolled in an agreement, in a condition that is safe for access, entry, or use by the department, its contractors, or agents for purposes of providing access pursuant to subdivision (a).
- (B) Provide to the department, its contractors, or agents, any warning of a hazardous condition, use, structure, or activity on enrolled land or water, or land or water proposed to be enrolled in an agreement, for purposes of providing access pursuant to subdivision (a).

(2) Notwithstanding any other law, the landowner shall not be liable for any injury, and does not owe a duty of care, to the department, its contractors, or agents resulting from any act or omission described in subparagraph (A) or (B) of paragraph (1).

(3) The provision of access to land pursuant to subdivision (a) shall not be construed as any of the following:

- (A) An assurance that the land or water is safe.
- (B) A grant to the person accessing the land or water of a legal status for which the landowner would owe a duty of care.
- (C) An assumption of responsibility or liability for any injury to a person or property caused by any act of the person to whom access to the land or water is provided.

(4) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision shall not be construed to limit a landowner's liability for an injury under either of the following circumstances:

- (A) Willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity on the land or water.
- (B) Express invitation to a person by the landowner to access the land or water, in a manner that is beyond the access required to be provided pursuant to subdivision (a).

(e) Nothing in this section creates a duty of care or a ground of liability for injury to person or property.

§ 2089.22. Endangered, threatened, candidate, or declining or vulnerable species covered by federal agreement; no further authorization or approval needed to take; procedures; termination of authority

(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.

§ 2089.23. Property enrolled in agreement; incidental take permits; neighboring landowner not required to undertake management activities; conditions; neighboring landowner to provide notice of specified events; objections

(a) A landowner that owns land that abuts a property enrolled in a state safe harbor agreement shall not be required, for purposes of an incidental take permit, to undertake the management activities set forth in the state safe harbor agreement, if all of the following conditions are met:

- (1) The neighboring landowner allows the department to determine baseline conditions on the property.
- (2) The neighboring landowner agrees to maintain the baseline conditions for the duration specified in the safe harbor agreement.
- (3) The department determines that allowing the neighboring landowner to receive an incidental take permit for the abutting property does not undermine the net conservation benefit determination made by the department in the approval of the safe harbor agreement.
- (4) The take authorized by the department will not jeopardize the continued existence of the species. This determination shall be made in accordance with subdivision (c) of Section 2081.

(b) (1) Unless the department determines that it is inappropriate to do so based on the species listed in the permit, or any other factors, the neighboring landowner shall provide the department with at least 60 days' advance notice of any of the following:

- (A) Any incidental take that is anticipated to occur under the permit.
- (B) The neighboring landowner's plan to return to baseline conditions.
- (C) Any plan to transfer or alienate the neighboring landowner's interest in the land or water.

(2) (A) If the department receives any notice described in paragraph (1), the neighboring landowner shall provide the department, its contractors, or agents with access to the land or water for purposes of safely removing or salvaging the species.

(B) The department shall provide notice to the neighboring landowner at least seven days before accessing the land or water for the purposes of subparagraph (A). The notice shall identify each person selected by the department, its contractors, or agents to access the land or water.



(C) Notwithstanding subparagraph (B), during the seven-day notice period, the neighboring landowner may object, in writing, to a person selected to access the land or water. If the neighboring landowner objects, another person shall be selected by the department, its contractors, or agents, and notification shall be provided to the neighboring landowner pursuant to subparagraph (B). However, if the neighboring landowner objects to a selection on two successive occasions, the neighboring landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents. Failure by the neighboring landowner to object to the selection within the seven-day notice period shall be deemed consent to access the land or water by the person selected by the department, its contractors, or agents.

§ 2089.24. Persons who have worked on approved agreements and former program administrators; list of qualified persons or entities

The department, for informational purposes, shall maintain a list of qualified persons who have worked with the department on an approved agreement, and persons, entities, and organizations serving as program administrators for approved agreements.

§ 2089.25. Implementation; regulations

The department may promulgate regulations to implement this article.

