

## Endangered Species Reforms Should Promote Balanced Approach Based on Science

### Background

Endangered species protections continue to confront and confound business activities in California. Housing, transportation, agriculture, and basic infrastructure needs, including water, gas, electricity and alternative energy sources like wind and solar, are complicated by encroaching environmental laws like the federal and state endangered species acts. It becomes a balancing act to provide basic human needs with species protections while trying to invigorate business productivity that adds to a stable economy.

### Current State and Federal Regulations

California is one of a handful of states that is subject to regulation by three endangered species laws—the federal Endangered Species Act, the California Endangered Species Act (CESA) and the California Fully Protected Species Act. Endangered species laws require that no activity be allowed which threatens the well-being of the listed species unless permission to “take” the species is granted. “Take” is defined in Section 86 of the state Fish and Game Code as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

In California, the Department of Fish and Wildlife may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions to take an endangered species for scientific, education, or management purposes.

The classification of “fully protected” was the state’s initial effort in the 1960s to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals, amphibians, reptiles and birds. Most fully protected species also have been listed as threatened or endangered species under the more recent endangered species laws and regulations.

Fully protected species may not be taken or possessed at any time, and no licenses or permits may be issued for their take, except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock.

Federal endangered species law has similar provisions for take and in addition, federal law requires critical habitat designations within one year of listing. Critical habitat is a “specific geographic area(s) that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by a species that will be needed for its recovery.”

The process for listing a species as endangered or threatened generally begins with the species being placed on the candidate list while undergoing consideration. Once information has been collected, a decision is made to either start the process to list the species as endangered or leave the species on the candidate list because not enough information is currently available to list it, or the species is found not to be endangered or threatened and should be removed from the candidate list.

### Recent Activities

According to the Department of Fish and Wildlife, California has six species on the state candidate list as of October 2017—foothill yellow-legged frog, tricolored blackbird, Humboldt marten, Livermore tarplant, coast yellow leptosiphon, and the Lassics lupine.

Once a species is listed as a candidate in California, the species is protected, meaning a take permit is required before harming the species or disturbing its habitat. These rules are onerous and restrict landowners’ ability to use their property.

On the federal level, there have been numerous conversations about changing the federal act to make it less restrictive. Legislation has been introduced but has not progressed. The U.S. Fish and Wildlife Service entered into a settlement agreement with the environmental community to make initial decisions on 757 species for listing purposes. Work on this had been progressing until the change in administrations. As with any new administration, there is a period of adjustment and staff changes. It appears that some of the prior administration’s rules regarding endangered species are being changed. The environmental community has sued over the changes, which have mostly been to delist species or not move forward with critical habitat designations.

### Expected Activity in 2018

The state Fish and Game Commission will continue to collect information about species on the candidate list. The agricultural community and the business community should continue to submit reports and studies on the species and comment on regulatory

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proposals. Sharing privately funded research results and research funded through universities with regulators will help them form a better understanding of species, habitat needs, and possible mitigation techniques.

On the federal level, look for more rollbacks of regulations protecting endangered species, especially those adopted just before the changeover in administrations. There probably will be a continuing stream of lawsuits by the environmental community over the delistings and lack of enforcement of endangered species regulations.

Endangered species regulations cost the agricultural and business communities a substantial amount of money every year. Development of much-needed infrastructure, such as new water storage, new or upgraded drinking water and sanitation facilities, roads, new housing, hospitals, schools, etc. is being delayed while costs continue to increase. Farmers and ranchers work hard to accommodate species on their lands and should be encouraged with incentives instead of saddled with more limitations.

### **CalChamber Position**

The California Chamber of Commerce supports reforms to state and federal laws that achieve a balanced approach between environmental protection and social economic progress. Environmental regulations should be based on sound science, subject to peer review. Economic impacts should be evaluated to ensure that the benefits outweigh the social costs of imposing mitigation measures.

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