

**FISH AND GAME CODE - FGC**

**DIVISION 3. FISH AND GAME GENERALLY [2000 - 2948]**

*( Division 3 enacted by Stats. 1957, Ch. 456. )*

**CHAPTER 1.5. Endangered Species [2050 - 2115.5]**

*( Chapter 1.5 repealed and added by Stats. 1984, Ch. 1240, Sec. 2. )*

**ARTICLE 1. General Provisions [2050 - 2069]**

*( Article 1 added by Stats. 1984, Ch. 1240, Sec. 2. )*

**2050.**

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

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

**2051.**

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.

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

**2052.**

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.

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

**2052.1.**

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.

*(Amended by Stats. 1998, Ch. 485, Sec. 74. Effective January 1, 1999.)*

### **2053.**

The Legislature further finds and declares that it is the policy of the state that state 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.

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.

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

### **2054.**

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.

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

### **2055.**

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.

*(Repealed and added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2056.**

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.

*(Amended by Stats. 1987, Ch. 286, Sec. 1.)*

#### **2060.**

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

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2061.**

“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.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2062.**

“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."

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2063.**

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

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2064.**

"Project" means project as defined in Section 21065 of the Public Resources Code.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2065.**

"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).

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2067.**

"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."

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### **2068.**

"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.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

**2069.**

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

(1) "Desert Renewable Energy Conservation Plan" means the completed conservation plan in the Mojave and Colorado Desert regions adopted pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800)), and covers the geographical area described in the Draft Planning Agreement, as amended by, and among, the department, Energy Commission, United States Bureau of Land Management, and United States Fish and Wildlife Service for the Desert Renewable Energy Conservation Plan.

(2) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(b) The department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, may design and implement actions, including the purchase of land and conservation easements, to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered species, threatened species, or candidate species, for purposes of paragraph (2) of subdivision (b) of Section 2081 and Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, resulting from solar thermal, photovoltaic, wind, and geothermal powerplants in the Desert Renewable Energy Conservation Plan planning area that meet either of the following requirements:

(1) Either the Energy Commission determines that the application for certification is complete by December 31, 2011, or the lead agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has determined the project permit application is complete or has issued a notice of preparation of an environmental impact report by December 31, 2011.

(2) The developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this paragraph, "funding" means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009.

(c) A mitigation action may only be used for the mitigation purposes described in subdivision (b) if it meets one of the following conditions:

(1) The department has implemented the mitigation action and determined that the action has resulted in the protection, restoration, or enhancement of the habitat of one or more species that are proposed to be covered by the Desert Renewable Energy Conservation Plan, and that are located in the planning area, and, based upon that determination, can be used, for purposes of paragraph (2) of subdivision (b) of Section 2081, to fully mitigate for the impacts of the take of those species from one or more projects that meet the requirement of subdivision (b).

(2) The mitigation action is included in an interim mitigation strategy for projects that meet the requirement of subdivision (b). An interim mitigation strategy pursuant to this paragraph shall be developed by the department, in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, and shall include all of the following:

(A) A description of specific mitigation areas and specific actions on public or private land within the Desert Renewable Energy Conservation Plan planning area that are to be implemented, including a focus on habitat preservation, while also including enhancement or restoration actions that will do all of the following:

(i) Contribute to the conservation of each candidate species, threatened species, or endangered species for which a permit is issued.

(ii) Adopt a regional planning perspective that provides a foundation for, or that will complement, any conservation strategy to be developed for the Desert Renewable Energy Conservation Plan.

(iii) Implement mitigation actions within a reasonable period of time relative to the impact to the affected candidate species, threatened species, or endangered species, including, where feasible, advance mitigation. For purposes of this clause, "advance mitigation" means mitigation implemented before, and in anticipation of, future impacts to natural resources.

(iv) Include a description of the species that would be benefited by each mitigation action and how it would be benefited.

(B) A cost estimate for each action, whether on public or private land, using total cost accounting, including, as applicable, land acquisition costs, conservation easement costs, monitoring costs, transaction costs, restoration costs, the amount of a perpetual endowment account for land management or easement stewardship costs by the department or other management entity, and administrative costs.

(d) The interim mitigation strategy shall be based on best available science and shall be reviewed by the Desert Renewable Energy Conservation Plan independent science advisers. The department shall seek and consider comments from the Desert Renewable Energy Conservation Plan independent science

advisers in the design and location of each mitigation action implemented pursuant to this section. If the department elects to not incorporate comments of the independent science advisers into mitigation actions, the department shall explain the reasons for that decision in writing.

(e) The interim mitigation strategy shall be completed by the department no later than 60 days following the operative date of the act adding this section.

(f) (1) This section does not modify the requirements of Section 2081, including the requirement to avoid and minimize impacts, where feasible, or the requirements of Division 13 (commencing with Section 21000) of, or Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code, or affect the existing authority of the department to authorize mitigation actions to comply with this chapter.

(2) With respect to the Energy Commission, in the case of an applicant seeking certification for a solar thermal or geothermal powerplant pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, or a lead agency, as defined in Section 21067 of the Public Resources Code, in the case of an applicant seeking approval of a renewable energy powerplant not subject to the Energy Commission's jurisdiction, the sole effect of a mitigation action described in subdivision (c), and paid for through the deposit of fees as described in Section 2099, is to relieve an applicant of the obligation to directly take actions that are taken instead by the department or its contractor or designee pursuant to subdivision (b) to meet the applicant's obligations with respect to mitigating the powerplant's impacts to species and habitat. The mitigation action and deposit of fees shall not relieve the applicant of any other obligation, or the Energy Commission or the lead agency of any of its existing requirements of Division 13 (commencing with Section 21000) of, or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of, the Public Resources Code to analyze, avoid, minimize, or mitigate impacts to species and habitat, or make the findings required by those statutes.

(g) The mitigation actions implemented pursuant to this section shall be incorporated into the Desert Renewable Energy Conservation Plan upon the finalization of the plan, to the extent the mitigation actions are consistent with the plan's conservation strategy.

*(Amended by Stats. 2015, Ch. 154, Sec. 50. Effective January 1, 2016.)*

## **ARTICLE 2. Listing of Endangered Species [2070 - 2079]**

*( Article 2 added by Stats. 1984, Ch. 1240, Sec. 2. )*

### **2070.**

The commission shall establish a list of endangered species and a list of threatened species. The commission shall add or remove species from either list

if it finds, upon the receipt of sufficient scientific information pursuant to this article, that the action is warranted.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### 2071.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2071.5.

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

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2072.

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

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2072.3.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2072.7.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

### **2073.**

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

### **2073.3.**

(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.

*(Amended by Stats. 1997, Ch. 515, Sec. 1. Effective January 1, 1998.)*

### **2073.4.**

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

(b) Within 10 days after receiving information pursuant to subdivision (a), the department shall notify the petitioner regarding its content.

*(Added by Stats. 1997, Ch. 515, Sec. 2. Effective January 1, 1998.)*

### **2073.5.**

(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.

*(Amended by Stats. 1997, Ch. 515, Sec. 3. Effective January 1, 1998.)*

#### 2073.7.

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.

*(Added by Stats. 1997, Ch. 515, Sec. 4. Effective January 1, 1998.)*

#### 2074.

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.

*(Amended by Stats. 1997, Ch. 515, Sec. 5. Effective January 1, 1998.)*

## 2074.2.

(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). 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.

(g) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 387, Sec. 3. Effective January 1, 2014. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Sec. 4 of Ch. 387.)*

#### 2074.2.

(a) At the scheduled meeting, the commission shall consider the petition, the department's written report, and comments received, and the commission shall make and enter in its public 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.

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

(c) This section shall become operative on January 1, 2017.

*(Repealed (in Sec. 3) and added by Stats. 2013, Ch. 387, Sec. 4. Effective January 1, 2014. Section operative January 1, 2017, by its own provisions.)*

#### 2074.4.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2074.6.

(a) 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.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 387, Sec. 5. Effective January 1, 2014. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Sec. 6 of Ch. 387.)*

#### 2074.6.

(a) 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 by the commission pursuant to paragraph (2) of subdivision (a) of Section 2074.2, the department shall provide a written report to the commission, 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.

(b) This section shall become operative on January 1, 2017.

*(Repealed (in Sec. 5) and added by Stats. 2013, Ch. 387, Sec. 6. Effective January 1, 2014. Section operative January 1, 2017, by its own provisions.)*

#### 2074.8.

(a) 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.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 387, Sec. 7. Effective January 1, 2014. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Sec. 8 of Ch. 387.)*

#### 2074.8.

(a) 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.

(b) This section shall become operative on January 1, 2017.

*(Repealed (in Sec. 7 ) and added by Stats. 2013, Ch. 387, Sec. 8. Effective January 1, 2014. Section operative January 1, 2017, by its own provisions.)*

#### 2075.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

#### 2075.5.

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

(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, in which case the commission shall publish a notice of that finding and a notice of proposed rulemaking pursuant to Section 11346.4 of the Government Code, to add the species to, or remove the species from, the list of endangered species or the list of threatened species. Further proceedings of the commission on the petitioned action shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 387, Sec. 9. Effective January 1, 2014. Repealed as of January 1, 2017, by its own provisions. See later operative version added by Sec. 10 of Ch. 387.)*

#### 2075.5.

(a) At the meeting scheduled pursuant to Section 2075, the commission shall make one of the following findings:

(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, in which case the commission shall publish a notice of that finding and a notice of proposed rulemaking pursuant to Section 11346.4 of the Government Code to add the species to, or remove the species from, the list of endangered species or the list of threatened species. Further proceedings of the commission on the petitioned action shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) This section shall become operative on January 1, 2017.

*(Repealed (in Sec. 9) and added by Stats. 2013, Ch. 387, Sec. 10. Effective January 1, 2014. Section operative January 1, 2017, by its own provisions.)*

## 2076.

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

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

## 2076.5.

Notwithstanding Sections 2071 to 2075.5, inclusive, the commission may adopt a regulation which adds a species to the list of endangered species or to the list of threatened species as an emergency regulation pursuant to Article 1.5 (commencing with Section 240) to Chapter 2 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 such an emergency regulation pursuant to the methods described in Section 2074.4.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

## 2077.

(a) The department shall 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 which is consistent with the information specified in Section 2072.3 and which 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 of species that are listed by both the commission and the United States Department of Interior will be conducted in conjunction with the five-year review process of the United States Department of 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 which 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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

## **2078.**

(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.

*(Amended by Stats. 1991, Ch. 974, Sec. 3.)*

## 2079.

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.

*(Amended by Stats. 2012, Ch. 728, Sec. 44. Effective January 1, 2013.)*

### **ARTICLE 3. Taking, Importation, Exportation, or Sale [2080 - 2085]**

*( Article 3 added by Stats. 1984, Ch. 1240. )*

## 2080.

No person 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).

*(Amended by Stats. 1994, Ch. 1148, Sec. 1. Effective January 1, 1995.)*

### 2080.1.

(a) Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to subdivision (c), if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement pursuant to Section 1536 of Title 16 of the United States Code or an incidental take permit pursuant to Section 1539 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 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 both 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.A. Sec. 1531 et seq.).

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

(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, 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 1536 or Section 1539 of Title 16 of the United States Code that alters the requirements for issuing an incidental take statement or an incidental take permit, as applicable.

*(Added by Stats. 1997, Ch. 508, Sec. 1. Effective January 1, 1998. Repealed conditionally by its own provisions.)*

## 2080.2.

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.

*(Added by Stats. 2010, Ch. 291, Sec. 1. Effective January 1, 2011.)*

### 2080.3.

(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.

*(Added by Stats. 2010, Ch. 291, Sec. 2. Effective January 1, 2011. Repealed conditionally by its own provisions.)*

#### 2080.4.

(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.

*(Added by Stats. 2010, Ch. 291, Sec. 3. Effective January 1, 2011.)*

## 2081.

The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

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

(2) The impacts of the authorized take shall be minimized and fully mitigated.

The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

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

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

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

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

*(Amended by Stats. 1997, Ch. 567, Sec. 2. Effective January 1, 1998.)*

## 2081.1.

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.

*(Added by Stats. 1997, Ch. 567, Sec. 3. Effective January 1, 1998.)*

#### 2081.5.

If an ongoing surface mining operation has been issued a permit pursuant to Section 2770 of the Public Resources Code by the lead agency, as defined in Section 2728 of the Public Resources Code, is in compliance with the permit with regard to matters relating to plants, and is in compliance with any memorandum of understanding with the department for any of the purposes specified in Section 2081 of this code, the following provisions shall apply:

- (a) The surface mining operator is not liable for criminal prosecution pursuant to this code for any take of a threatened or endangered plant species that is incidental to the surface mining operation.
- (b) If a plant species that exists on the private property of the surface mining operator is added to the list of threatened species or endangered species pursuant to this chapter after the date that the operator was issued the permit, or if a plant species on the list of threatened species or endangered species adopted pursuant to this chapter is newly discovered on the private property of the operator after that date, the department shall notify the operator by mail within 14 days of the addition to the list or knowledge of the new discovery by

the department. Within 30 days from the date of the notification, the department shall meet with the operator to discuss an interim and permanent plan for the protection of the newly added or newly discovered plant species. Within 60 days of the initial meeting with the operator, the department shall issue reasonable and feasible interim management measures required to protect the newly added or newly discovered plant species that take into account the economic impact on the surface mining operation. The department shall work with the operator to develop and finalize a reasonable memorandum of understanding for one of the purposes specified in Section 2081 for the protection of the newly added or newly discovered plant species as expeditiously as possible. Both the interim management measures and the final memorandum of understanding shall, to the extent feasible, avoid interference with ongoing surface mining operations. The department shall send a copy of the final memorandum of understanding to the lead agency that issued the permit to the operator for the lead agency's information.

(c) The surface mining operator shall pay a fee to the department in the amount the department determines is necessary to pay the department's actual costs incurred in preparing interim management measures and developing and finalizing a memorandum of understanding for the protection of the newly added or newly discovered plant species. The fees shall be deposited in the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the department for purposes of implementing this section.

*(Added by Stats. 1994, Ch. 1148, Sec. 2. Effective January 1, 1995.)*

#### 2081.6.

(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.

*(Added by Stats. 2015, Ch. 620, Sec. 2. Effective October 8, 2015.)*

#### 2081.7.

(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.

*(Amended by Stats. 2004, Ch. 614, Sec. 1. Effective January 1, 2005.)*

### 2081.8.

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.

*(Added by Stats. 2004, Ch. 614, Sec. 2. Effective January 1, 2005.)*

### 2081.9.

(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.

*(Added by Stats. 2012, Ch. 121, Sec. 1. Effective January 1, 2013.)*

## 2082.

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.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

## 2083.

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.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### 2084.

The commission may authorize, subject to terms and conditions it prescribes, the taking of any candidate species, or the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

#### 2085.

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.

*(Added by Stats. 1984, Ch. 1162, Sec. 6.)*

### **ARTICLE 3.5. Incidental Take Associated with Routine and Ongoing Activities [2086 - 2089]**

*( Article 3.5 added by Stats. 1997, Ch. 528, Sec. 1. )*

#### 2086.

(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.

*(Amended by Stats. 2012, Ch. 728, Sec. 45. Effective January 1, 2013.)*

### 2087.

(a) Accidental take of candidate, threatened, or endangered species resulting from an act 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) For purposes of this section, "accidental" means unintended or unforeseen.

(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

*(Amended by Stats. 2013, Ch. 387, Sec. 11. Effective January 1, 2014. Repealed as of January 1, 2020, by its own provisions.)*

### 2088.

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.

*(Added by Stats. 1997, Ch. 528, Sec. 1. Effective January 1, 1998.)*

### 2089.

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.

*(Added by Stats. 1997, Ch. 528, Sec. 1. Effective January 1, 1998.)*

## **ARTICLE 5. Funding [2098 - 2100]**

*( Article 5 added by Stats. 1984, Ch. 1240, Sec. 2. )*

2098.

The department shall pay the costs of administration of this chapter from the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

*(Added by Stats. 1984, Ch. 1240, Sec. 2.)*

2099.

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

(1) "Eligible project" means a solar thermal powerplant, photovoltaic powerplant, wind powerplant, or geothermal powerplant meeting the requirements of paragraph (1) or (2) of subdivision (b) of Section 2069 or meeting the definition of a "covered activity" in the final Desert Renewable Energy Conservation Plan, as approved by the department.

(2) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(b) (1) The Renewable Energy Resources Development Fee Trust Fund is hereby established in the State Treasury. The department shall collect a fee from the owner or developer of an eligible project that elects to use mitigation actions developed and approved by the department pursuant to Section 2069, and all moneys received for purposes of mitigation actions pursuant to Section 2069 shall be deposited in the fund and shall be held in trust and be expended solely for the purposes of, and in conformity with, that section, applicable permit or certification requirements for eligible projects, and any contractual agreement between the Energy Commission or department and the owner or developer of an eligible project. The department may contract with, or award grants to, third parties to implement mitigation actions in conformity with Section 2069 and this section.

(2) Upon direction by the department, the Controller shall create any accounts or subaccounts within the fund that the department determines are necessary or convenient to facilitate management of the fund.

(3) The fund shall serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects to deposit fees to complete mitigation actions meeting the conditions of subdivision (c) of Section 2069 and for the purpose of meeting the requirements of this chapter or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code by funding mitigation actions implemented by the department or third parties in a contractual relationship with the department. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby

continuously appropriated to the department, without regard to fiscal years, for the purposes enumerated in this section and Section 2069. An expenditure shall not be made from the fund except as authorized by the department.

(4) The sum of ten million dollars (\$10,000,000) previously transferred, as a loan, from the Renewable Resource Trust Fund to the fund shall be repaid from the fund to the Renewable Resource Trust Fund no later than December 31, 2013. The department shall use these funds, pursuant to paragraph (1) of subdivision (c) of Section 2069, to purchase mitigation lands or conservation easements, and to cover related restoration, monitoring, and transaction costs incurred in advance of the receipt of fees pursuant to paragraph (5) and to cover the department's administrative costs for the program.

(5) A developer or owner of an eligible project that elects to use mitigation actions developed and authorized by the department pursuant to Section 2069 shall remit fees to the department for deposit into the fund for those mitigation actions in an amount that reflects the determination by the Energy Commission, with respect to a solar thermal or geothermal powerplant subject to its jurisdiction, or the department, with respect to a renewable energy powerplant not subject to the Energy Commission's jurisdiction, of the costs attributable to the mitigation actions that meet the standards of this chapter. The amount of fees to be paid by a developer or owner of an eligible project to meet the standards of this chapter shall be calculated on a per acre basis, using total cost accounting, and shall include, as applicable, land acquisition or conservation easement costs, monitoring costs, restoration costs, transaction costs, the amount of a perpetual endowment account for land management or easement stewardship costs by the department or other management entity, and administrative costs and funds sufficient to repay any expenditure of state funds made pursuant to paragraph (4). To ensure the funds deposited pursuant to this section are sufficient to meet the standards of this chapter, the project developer or owner, in addition to payment of those funds, shall provide security, in a form and amount, not to exceed 5 percent of the amount of the funds, excluding any portion of the funds to be used for a perpetual endowment, to be determined by the Energy Commission, with respect to a solar thermal or geothermal powerplant subject to its jurisdiction, or to be determined by the department, with respect to a renewable energy powerplant not subject to the Energy Commission's jurisdiction.

(c) The department shall monitor the implementation of the mitigation actions and the progress of the construction of the eligible projects. The department shall report all deposits, and the source of those deposits, on its Internet Web site. The department shall also report all expenditures from the fund on its Internet Web site and identify the mitigation activities or programs that each expenditure funded and its relationship to the permitted project. The Energy Commission, with respect to a solar thermal or geothermal powerplant subject to

its jurisdiction, and the department, with respect to a renewable energy powerplant not subject to the Energy Commission's jurisdiction, shall ensure that moneys paid pursuant to this section are used only for purposes of satisfying the standards of paragraph (2) of subdivision (b) of Section 2081. Where moneys are used to fund mitigation actions, including the acquisition of lands or conservation easements, or the restoration of lands, that use shall be in addition to, and not duplicative of, mitigation obtained through any other means.

(d) The department and the Energy Commission shall not allow any use of the interim mitigation strategy subsequent to a determination by the department that the time and extent of mitigation actions are not being implemented in rough proportion to the impacts of those projects. The department shall reinstitute the use of the interim mitigation strategy when the department determines the rough proportionality between mitigation actions and impacts of eligible projects has been reestablished by the completion of additional mitigation actions.

*(Amended by Stats. 2012, Ch. 559, Sec. 18. Effective January 1, 2013.)*

#### 2099.5.

(a) The department shall collect a permit application fee from the owner or developer of an eligible project, as defined in Section 2099, to support its permitting of eligible projects pursuant to this chapter. The owner or developer of a proposed eligible project shall pay a one-time permit application fee of seventy-five thousand dollars (\$75,000) to the department.

(b) The department shall collect the permit application fee, at the time the owner or developer submits its permit application or, for eligible projects for which an application has already been submitted, within 30 days of the operative date of this section. The department shall utilize the permit application fee to pay for all or a portion of the department's cost of processing incidental take permit applications pursuant to subdivision (b) of Section 2081 and Section 2080.1. If the permit application fee is insufficient to complete permitting work due to the complexity of a project or timeline delays, the department may collect an additional fee from the owner or developer to pay for its actual costs, not to exceed an additional seventy-five thousand dollars (\$75,000).

(c) For an eligible project seeking site certification, pursuant to Chapter 6 (commencing with Section 25500) of Division 1 of the Public Resources Code, by the Energy Commission, as defined in Section 2099, the owner or developer shall pay the permit application fee directly to the department. The permit application fee paid to the department shall fund the department's participation in the Energy Commission's site certification process as the state's trustee for natural resources. The permit application fee shall be in addition to any application fees

collected directly by the Energy Commission. The permit application fee shall be due and payable within 30 days of the operative date of this section.

(d) Permit application fees paid pursuant to this chapter shall be deposited in the Fish and Game Preservation Fund and shall be eligible for expenditure by the department pursuant to subdivision (b) of Section 2081 and Section 2080.1.

(e) The sum of one million six hundred fifty thousand dollars (\$1,650,000) is hereby appropriated to the department from the Fish and Game Preservation Fund for the purposes of this section. These funds shall be available for expenditure through June 30, 2011.

(f) If an owner or developer withdraws a project within 30 days after paying the permit application fee, the department shall refund any unused portion of the fee to the owner or developer.

*(Added by Stats. 2010, 8th Ex. Sess., Ch. 9, Sec. 3. Effective March 22, 2010.)*

#### 2099.20.

(a) As used in this section, "eligible project" has the same meaning as defined in Section 2099.10.

(b) (1) At the request of the applicant, the department shall meet with the applicant in person or by telephone to develop a plan for processing the application and, to the extent feasible, identify and clarify information that will be needed in an application for a project subject to Section 2099.10 prior to its submittal to the department.

(2) Within 45 days after the department receives an application for a project subject to Section 2099.10, the department shall determine whether the application is complete or incomplete and shall notify the applicant of its determination. If the department determines that the application is incomplete, it shall concurrently identify and inform the applicant in writing of the specific information or supporting documentation that is needed to complete the application currently under review, unless otherwise requested in writing by the applicant. The department shall make all reasonable efforts to consolidate its information request into a single request.

(3) Within 30 days of receipt of the information requested of the applicant pursuant to paragraph (2), the department shall make a determination whether the application is complete.

(4) If the department determines pursuant to paragraph (3) that additional information is needed to complete the application, the department shall inform the applicant in writing of the specific information or supporting documentation that is needed to complete the application, and the director, or his or her designee reporting directly to the director, shall offer to meet with the applicant to review the application and establish a plan and a timeframe to complete the application, unless otherwise requested in writing by the applicant.

(c) Except as otherwise provided in subdivisions (d) and (e), the department shall approve or reject an incidental take permit application for an eligible project 60 days or less from the date the application is deemed complete, unless a longer period is agreed upon by the department and the applicant. If the department has not made a determination to reject or approve the incidental take permit application within 45 days after deeming the application complete, the director, or his or her designee reporting directly to the director, shall offer to meet with the applicant to review the status of the application.

(d) If the department deems an application is complete more than 60 days before the project is certified under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) by an agency other than the department, the department shall reject or approve the incidental take permit application within 30 days after the California Environmental Quality Act certification, unless a longer period is agreed upon by the department and the applicant. If the department is the lead agency under the California Environmental Quality Act, the department shall reject or approve the incidental take permit application concurrently with the California Environmental Quality Act certification.

(e) Subdivision (c) does not apply to projects that the department determines are eligible to obtain a consistency determination pursuant to Section 2080.1, in which case the department shall approve or reject a consistency determination application for these projects within 30 days after the director has received notice pursuant to Section 2080.1 that a federal permit has been issued.

(f) (1) By January 1, 2014, the department shall provide an accounting to the Legislature on incidental take permit applications for eligible projects. This accounting shall include, but shall not be limited to, all of the following:

(A) The number of applications received.

(B) The number of applications approved, rejected, or withdrawn.

(C) The type and nature of the incidental take permits sought, including, but not limited to, the number of acres in each permit, the location of the project, the list of endangered or threatened species and whether the species were state or federally listed, the land ownership, the other permits involved in the project during the permit review period and which agencies were involved, and any relevant special resource issues.

(D) The time that elapsed between when a permit was deemed complete and when it was approved, if the permit was approved.

(E) The staff time spent on each permit.

(F) Other information determined by the department to be relevant in assessing whether the permit approval process, including the deadlines prescribed by this section, provide for an efficient review process in furtherance of the department's statutory obligations.

(2) By January 1, 2012, and annually thereafter for two years until 2014, the department shall report to the Legislature on the extent to which it arranges for entities other than itself to provide all or part of the environmental review of eligible projects. The 2014 report may be combined with the report described in paragraph (1).

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(4) Pursuant to Section 10231.5 of the Government Code, this subdivision is inoperative on January 1, 2016.

*(Added by Stats. 2011, Ch. 311, Sec. 2. Effective September 22, 2011. Operative December 10, 2011, pursuant to Sec. 4 of Ch. 311.)*

### 2100.

(a) The commission established pursuant to Section 2099 shall represent the full range of opinions and viewpoints regarding the protection of candidate, endangered, and threatened species and the regulatory taking of private property. The membership of the commission shall consist of equal numbers of persons meeting each of the following criteria:

(1) Persons who advocate the primacy of the market. This group shall include advocates of the free market philosophy and representatives of regulated industries and landowners, including the extractive industries.

(2) Persons who advocate that natural resources and endangered species are public trust resources, the protection of which should be regulated. This group shall include conservation biologists, environmental economists, historic preservationists, and others who advocate that the market should take full account of the claims of public trust values associated with protection of the public's natural heritage and the cost of environmental degradation.

(b) The California Research Bureau shall provide staffing for the commission.

*(Added by Stats. 1996, Ch. 972, Sec. 2. Effective January 1, 1997.)*

## **ARTICLE 7. Recovery Strategy Pilot Program [2106 - 2115.5]**

*( Article 7 added by Stats. 1996, Ch. 974, Sec. 1. )*

### 2106.

(a) The department may develop and implement a recovery strategy pilot program for coho salmon.

(b) The department shall seek private and federal funding for implementation of the coho salmon recovery strategy pilot program. No additional state funds may

be expended for the implementation of the program until the Legislature specifically appropriates funds for that purpose.

*(Amended by Stats. 2003, Ch. 854, Sec. 1. Effective January 1, 2004. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2107.

(a) For each species identified pursuant to Sections 2105 and 2106, the department shall assemble a recovery strategy team consisting of, but not limited to, department personnel, other state agency personnel if found by the department to be appropriate, federal agency personnel to the extent permitted by federal law if found by the department to be appropriate, representatives of affected local governments, representatives of affected landowners, and representatives of environmental groups, as well as persons who possess scientific expertise.

(b) Each recovery team shall work collaboratively to aid the department in developing the recovery strategy for that species for which the recovery team is assembled.

(c) The department shall consider information from all persons likely to be affected by the implementation of a recovery strategy and from persons knowledgeable in those subject areas pertinent to the species' recovery in developing the recovery strategy for each species.

*(Amended by Stats. 1997, Ch. 522, Sec. 4. Effective September 29, 1997. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2109.

A recovery strategy for a species shall contain all of the following information:

(a) An explanation of scientific knowledge and assumptions regarding the biology, habitat requirements, and threats to the existence of the species.

(b) An explanation of interim and long-term goals and objectives for the conservation of the species. The recovery goals and objectives shall be specifically stated.

(c) A range of alternative interim and long-term conservation and management goals and activities. An explanation of any recommended activities shall be included in the recovery strategy.

(d) An estimate of the time and costs required to meet the interim recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting final recovery goals. These costs shall include direct and indirect costs and public and private costs.

(e) Objective measurable criteria to determine whether the goals and objectives of the recovery strategy are being met and that contain procedures for the recognition of successful recovery, that may include commercial use where appropriate, and downlisting or delisting, if applicable.

(f) A description of actions and recommendations to implement the recovery strategy. The implementation plan shall include, if appropriate, recommendations to reduce adverse social and economic impacts of implementation of the recovery strategy. These recommendations shall be consistent with the recovery goals and objectives.

(g) A description of the following elements necessary to achieve the goals of the recovery strategy:

(1) The availability and use of public lands for the conservation, protection, restoration, and enhancement of the species.

(2) Methods of private and public cooperation.

(3) Procedures and programs for notice, education, research, monitoring, and strategy modification.

(h) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy.

(i) An implementation schedule.

*(Amended by Stats. 2008, Ch. 411, Sec. 2. Effective January 1, 2009. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

## **2110.**

The department shall include general policies to guide the department's issuance of a permit pursuant to Section 2080.1 or 2081 if the department determines, based on the best available scientific information, that the general policies are consistent with the recommended recovery strategy.

*(Amended by Stats. 2008, Ch. 411, Sec. 3. Effective January 1, 2009. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

## **2111.**

After the department submits the recovery strategy to the commission, the commission shall hold a public hearing to consider approval of the recovery strategy. The commission shall approve the recovery strategy if, considering all relevant evidence, the commission finds that the recovery strategy meets all of the following criteria:

(a) The recovery strategy would conserve, protect, restore, and enhance the species.

(b) The recovery strategy is supported by the best available scientific data.

(c) The recovery strategy would recover a formerly commercially valuable species to a level of abundance that would permit commercial use of that species.

(d) The recovery strategy contains all of the information required by Section 2109.

*(Amended by Stats. 2008, Ch. 411, Sec. 4. Effective January 1, 2009. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2111.5.

If the commission does not approve the recovery strategy pursuant to Section 2111 because it could not make all of the necessary findings, it shall specify why the required finding could not be made. If the commission determines that the strategy could be amended to address the issues identified by the commission, it may direct the department to revise the recovery strategy within six months and resubmit it to the commission.

*(Added by Stats. 1996, Ch. 974, Sec. 1. Effective January 1, 1997. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2112.

If a recovery strategy for one of the species identified pursuant to Section 2105 or 2106 includes policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081 and the department's consultation procedures pursuant to Section 2090, the department shall develop and adopt rules and guidelines to implement those policies. The rules and guidelines shall be based upon the best available scientific evidence and shall be consistent with the recovery strategy adopted. The rules and guidelines may clearly specify conditions and circumstances under which the taking of a species listed as a threatened species or endangered species would be prohibited by the department, or, conversely, when it would not require a memorandum of understanding pursuant to Section 2081.

*(Amended by Stats. 1997, Ch. 522, Sec. 6. Effective September 29, 1997. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2113.

After approval of a recovery strategy by the commission, the department shall consult with the recovery strategy team assembled for that species pursuant to Section 2107 and report to the commission on an annual basis on the status and

progress of the implementation of the recovery strategy. The strategy shall be the basis for the species reviews pursuant to Section 2077.

*(Added by Stats. 1996, Ch. 974, Sec. 1. Effective January 1, 1997. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### **2114.**

If the commission elects to authorize the preparation of a recovery strategy prior to or in conjunction with a decision to add a species to a list pursuant to Section 2075.5, the required rulemaking pursuant to subdivision (b) of that section shall be delayed not more than one year, which the commission may extend for not more than an additional six months, until a final determination is made on the recovery strategy. The rulemaking proceedings shall include all policies, rules, or guidelines adopted pursuant to Sections 2111 and 2112 and shall consider the recovery strategy and information received in its development and adoption. The recovery strategy itself shall have no regulatory significance, shall not be considered to be a regulation for any purpose, including the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, and is not a regulatory action or document.

*(Added by Stats. 1996, Ch. 974, Sec. 1. Effective January 1, 1997. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### **2115.**

The two hundred thousand dollars (\$200,000) appropriated in the Budget Act of 1997 for the purposes of this article shall be used for the Greater Sandhill crane. Any money that is not used to develop a recovery plan for that species may be used by the department to implement the recovery plan for that species. Section 2098 does not apply to any costs relating to this article.

*(Amended by Stats. 2007, Ch. 285, Sec. 29. Effective January 1, 2008. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### **2115.1.**

This article does not affect the recovery strategy for coho salmon prepared by the department in August 2003. This article does not affect regulations adopted pursuant to Section 2112 by the State Board of Forestry and Fire Protection, or preclude that board from amending those regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This article does not

change the existing requirements for the issuance of incidental take permits pursuant to Section 2081.

*(Added by Stats. 2008, Ch. 411, Sec. 5. Effective January 1, 2009. Repealed as of January 1, 2017, with remaining effect, as prescribed in Section 2115.5.)*

#### 2115.5.

This article shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2017, deletes or extends that date. However, this section does not apply to a recovery strategy that is approved or implemented pursuant to this article on or before January 1, 2017, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

*(Amended by Stats. 2013, Ch. 387, Sec. 12. Effective January 1, 2014. Repealed as of January 1, 2017, with remaining effect, by its own provisions. Note: Repeal affects Article 7, commencing with Section 2106.)*