

Species Listed Under State and/or Federal Endangered Species Acts

The California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA) were established to protect animal and plant species that are biologically determined to be threatened or endangered due to their low populations. Many species are listed under one or both laws, which helps ensure the protection of these species. While there are important benefits to multiple listings, such listings often present significant challenges.

In California, the Fish and Game Commission (FGC) determines the listing status of species under CESA. The Department of Fish and Game (DFG) provides scientific data and consultation to FGC for this purpose, and is charged with the protection, management and recovery/restoration efforts for listed species. When FGC lists a species under CESA that already is listed under ESA, conflicts can result since the state and federal laws differ in their requirements for listing. In addition, the definition of take differs between the state and federal laws.

It is recognized that a protected species may be harmed by otherwise acceptable activities such as an approved development project. Under this scenario, an Incidental Take Permit (ITP), which allows for incidental take of a listed species during the course of a project, can be issued by the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) for species listed under ESA. Under CESA, DFG has the authority to review the activity or project, determine the potential impact to the state-listed species and issue an ITP for CESA-listed species. A challenge occurs when a species is listed under both ESA and CESA, and an ITP is already issued under ESA. In these situations, DFG has several options. It could issue a second ITP pursuant to CESA for state-listed species, or if the terms and conditions of the federal ITP are consistent with the requirements of CESA, render a consistency determination (CD), which is a streamlined process that allows a project that already has a federal ITP to proceed without obtaining a second ITP from the state.

Environmental, conservation and wildlife organizations support the thorough review and prudent permitting of projects that may impact a protected species. The extensive review under CESA of projects already permitted under ESA can create delays in project review and approval, however, and result in impacts to infrastructure, development and other land use change projects. These delays concern developers and other constituent groups needing take authorization for their activities or projects. Significant frustration also occurs for these groups when an ESA-approved project is stalled because of required CESA review.

DFG is working with the USFWS to develop acceptable language that can be used in the ESA permitting process to assist DFG in expediting CDs under CESA. Staff also continues to coordinate with the USFWS on multiple species issues and encourages early project consultation with the proposed permittee, and state and federal agencies.