

**Introduced by Senator Wolk  
(Coauthor: Senator Berryhill)**

February 22, 2013

---

---

An act to amend Section 2087 of, to amend, repeal, and add Sections 2074.2, 2074.6, 2074.8, and 2075.5 of, and to add Sections 1745.1 and 3517 to, the Fish and Game Code, relating to fish and wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 749, as introduced, Wolk. Habitat protection: endangered species.

(1) Existing law authorizes the Department of Fish and Wildlife to enter into contracts or other agreements with nonprofit conservation groups, as specified, for the management and operation of department-managed lands, defined to include public shooting grounds, state marine recreational management areas, ecological reserves, and wildlife management areas.

This bill would authorize the department to lease department-managed lands for agricultural activities, as specified. The bill would require the moneys collected from those agricultural leases to be used to support the maintenance and operations of department-managed lands from where the moneys were originally collected.

(2) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the department to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. Under CESA, an interested person may petition the commission to add a species to, or remove a species from, either the list of endangered species or the list of threatened species, and existing law requires the commission to consider the petition at a meeting, as prescribed.

This bill, until January 1, 2017, would establish an alternate process for the review of a petition, including public hearings.

(3) CESA also provides, until January 1, 2014, that the accidental take of candidate, threatened, or endangered species resulting from acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited by the act.

This bill would extend this exception to January 1, 2024, and would define “accidental” for these purposes.

(4) Existing law defines resident game birds and upland game bird species. Existing law permits the taking of certain nongame birds.

This bill would require the policies and regulations of the department and the Fish and Game Commission to encourage the restoration and enhancement of upland nesting cover and associated waterfowl brood habitat on both public and private lands to support the production of resident waterfowl, upland game birds, and other birds. The bill would prohibit or otherwise restrict, unless expressly authorized by law, the establishment of these habitats for the purpose of propagating waterfowl or other protected birds without the concurrence of the department.

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

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

1 SECTION 1. Section 1745.1 is added to the Fish and Game  
2 Code, to read:

3 1745.1. (a) For purposes of this section, “department-managed  
4 lands” includes lands, or lands and water, acquired for public  
5 shooting grounds, state marine (estuarine) recreational management  
6 areas, ecological reserves, and wildlife management areas.

7 (b) (1) Notwithstanding Section 1745, the leasing of  
8 department-managed lands for agricultural activities, such as the  
9 cultivation of wildlife-friendly crops and grazing to enhance the  
10 value of habitat, shall be permitted where those activities are  
11 compatible with the department’s management plan for the area.

12 (2) The moneys collected from agricultural leases entered into  
13 pursuant to paragraph (1) shall be used to support the maintenance  
14 and operations of department-managed lands from where the  
15 moneys were originally collected.

16 SEC. 2. Section 2074.2 of the Fish and Game Code is amended  
17 to read:

1 2074.2. (a) *At the meeting scheduled pursuant to Section 2074,*  
2 *the commission shall hold a public hearing on the petition and*  
3 *shall receive information, written or otherwise, and oral testimony.*  
4 *After the conclusion of oral testimony from the commission and*  
5 *department staff, the petitioner, or any other persons, the*  
6 *commission may close the public hearing and administrative record*  
7 *for the commission’s decision pursuant to this section.*

8 (b) *After the commission closes the public hearing, the*  
9 *administrative record for the commission’s decision is closed and*  
10 *it shall not be reopened except as provided in subdivision (c). Once*  
11 *the public hearing is closed, no person shall submit further*  
12 *information to the commission for consideration on that petition*  
13 *and the commission shall not accept any further information for*  
14 *consideration on that petition except as provided in subdivision*  
15 *(c).*

16 (c) *The administrative record for the commission’s decision*  
17 *pursuant to this section shall not be reopened once the commission*  
18 *closes the public hearing unless one of the following occurs prior*  
19 *to the commission’s decision:*

20 (1) *There is a change in state or federal law or regulation that*  
21 *has a direct and significant impact on the commission’s*  
22 *determination as to whether the petition provides sufficient*  
23 *information to indicate that the petitioned action may be warranted.*

24 (2) *The commission determines that it requires further*  
25 *information to evaluate whether the petition provides sufficient*  
26 *information to indicate that the petitioned action may be warranted.*  
27 *If the commission makes that determination during its deliberation,*  
28 *the commission may request, on the record at the scheduled*  
29 *meeting or at a continued meeting, further information on any*  
30 *issue relevant to making its determination as to whether the petition*  
31 *provides sufficient information to indicate that the petitioned action*  
32 *may be warranted. Any request by the commission pursuant to this*  
33 *paragraph shall specify a date by which the information must be*  
34 *submitted to the commission and shall serve to reopen the*  
35 *administrative record for the limited purpose of receiving further*  
36 *information relating to the issues specified by the commission in*  
37 *the request. Commission and department staff, the petitioner, or*  
38 *any other person may submit information in response to a request*  
39 *pursuant to this paragraph.*

1 (d) In its discretion, the commission may either close the public  
2 hearing and continue the meeting on the petition for the purpose  
3 of deliberation or continue both the public hearing and the meeting  
4 on the petition to a subsequent date, which shall be no later than  
5 90 days after the meeting scheduled pursuant to Section 2074, and  
6 subject to applicable notice and agenda requirements. If the  
7 commission closes the public hearing but continues the meeting  
8 for the purpose of deliberation, a person shall not submit, and the  
9 commission shall not receive, further information relating to the  
10 petition except as provided in subdivision (c).

11 (e) ~~At the scheduled meeting,~~ meeting scheduled pursuant to  
12 Section 2074 or at a continued meeting scheduled pursuant to  
13 subdivision (d), the commission shall consider the petition, the  
14 department's written report, ~~and~~ written comments received, and  
15 ~~the~~ oral testimony provided during the public hearing, and the  
16 commission shall make and enter in its ~~public~~ record one of the  
17 following findings:

18 (1) If the commission finds that the petition does not provide  
19 sufficient information to indicate that the petitioned action may  
20 be warranted, the commission shall publish a notice of finding that  
21 the petition is rejected, including the reasons why the petition is  
22 not sufficient.

23 (2) If the commission finds that the petition provides sufficient  
24 information to indicate that the petitioned action may be warranted,  
25 the commission shall publish a notice of finding that the petition  
26 is accepted for consideration. If the accepted petition recommends  
27 the addition of a species to either the list of endangered species or  
28 the list of threatened species, the commission shall include in the  
29 notice that the petitioned species is a candidate species. The  
30 commission shall maintain a list of species which are candidate  
31 species.

32 ~~(b)~~  
33 (f) The commission shall publish and distribute the findings  
34 relating to the petition pursuant to Section 2078.

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

38 SEC. 3. Section 2074.2 is added to the Fish and Game Code,  
39 to read:

1 2074.2. (a) At the scheduled meeting, the commission shall  
2 consider the petition, the department's written report, and  
3 comments received, and the commission shall make and enter in  
4 its public record one of the following findings:

5 (1) If the commission finds that the petition does not provide  
6 sufficient information to indicate that the petitioned action may  
7 be warranted, the commission shall publish a notice of finding that  
8 the petition is rejected, including the reasons why the petition is  
9 not sufficient.

10 (2) If the commission finds that the petition provides sufficient  
11 information to indicate that the petitioned action may be warranted,  
12 the commission shall publish a notice of finding that the petition  
13 is accepted for consideration. If the accepted petition recommends  
14 the addition of a species to either the list of endangered species or  
15 the list of threatened species, the commission shall include in the  
16 notice that the petitioned species is a candidate species. The  
17 commission shall maintain a list of species which are candidate  
18 species.

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

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

22 SEC. 4. Section 2074.6 of the Fish and Game Code is amended  
23 to read:

24 2074.6. (a) The department shall promptly commence a review  
25 of the status of the species concerned in the petition. Within 12  
26 months of the date of publication of a notice of acceptance of a  
27 petition for consideration ~~by the commission~~ pursuant to paragraph  
28 (2) of subdivision ~~(a)~~ (e) of Section 2074.2, the department shall  
29 ~~provide a written report to the commission,~~ *produce and make*  
30 *publicly available on the department's Internet Web site a written*  
31 *peer reviewed report*, based upon the best scientific information  
32 available to the department, which indicates whether the petitioned  
33 action is warranted, which includes a preliminary identification of  
34 the habitat that may be essential to the continued existence of the  
35 species, and which recommends management activities and other  
36 recommendations for recovery of the species. *The department shall*  
37 *amend the draft status review report as appropriate to incorporate*  
38 *scientific information from the independent peer review. The*  
39 *revised report shall be posted on the department's Internet Web*  
40 *site for a minimum of 30 days for public review prior to the hearing*

1 *scheduled pursuant to Section 2075. The commission may grant*  
2 *an extension of up to six months if the director determines an*  
3 *extension is necessary to complete independent peer review of the*  
4 *report, and to provide a minimum of 30 days for public review of*  
5 *the peer reviewed report prior to the public hearing specified in*  
6 *Section 2075.*

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

10 SEC. 5. Section 2074.6 is added to the Fish and Game Code,  
11 to read:

12 2074.6. (a) The department shall promptly commence a review  
13 of the status of the species concerned in the petition. Within 12  
14 months of the date of publication of a notice of acceptance of a  
15 petition for consideration by the commission pursuant to paragraph  
16 (2) of subdivision (a) of Section 2074.2, the department shall  
17 provide a written report to the commission, based upon the best  
18 scientific information available to the department, which indicates  
19 whether the petitioned action is warranted, which includes a  
20 preliminary identification of the habitat that may be essential to  
21 the continued existence of the species, and which recommends  
22 management activities and other recommendations for recovery  
23 of the species.

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

25 SEC. 6. Section 2074.8 of the Fish and Game Code is amended  
26 to read:

27 2074.8. ~~Nothing in this~~ *(a) This article imposes does not*  
28 *impose any duty or obligation for, or otherwise requires require,*  
29 *the commission or the department to undertake independent studies*  
30 *or other assessments of any species when reviewing a petition and*  
31 *its attendant documents and comments. However, the department*  
32 *shall seek independent scientific peer review of the department's*  
33 *status report. The director may approve an extension of time for*  
34 *completion of the status report if necessary for the purposes of*  
35 *obtaining independent peer review pursuant to Section 2074.6.*

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

39 SEC. 7. Section 2074.8 is added to the Fish and Game Code,  
40 to read:

1 2074.8. (a) This article does not impose any duty or obligation  
2 for, or otherwise require, the commission or the department to  
3 undertake independent studies or other assessments of any species  
4 when reviewing a petition and its attendant documents and  
5 comments.

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

7 SEC. 8. Section 2075.5 of the Fish and Game Code is amended  
8 to read:

9 2075.5. (a) At the meeting scheduled pursuant to Section  
10 2075, the commission shall ~~make one of the following findings:~~  
11 *hold a public hearing on the petition and shall receive information,*  
12 *written or otherwise, and oral testimony. After the conclusion of*  
13 *oral testimony from department staff, the petitioner, or any other*  
14 *persons, the commission may close the public hearing and the*  
15 *administrative record for the department's decision pursuant to*  
16 *this section.*

17 (b) *After the commission closes the public hearing the*  
18 *administrative record for the commission's decision is closed and*  
19 *it shall not be reopened except as provided in subdivision (c). Once*  
20 *the public hearing is closed a person shall not submit further*  
21 *information to the department for consideration on that petition*  
22 *and the commission shall not accept any further information for*  
23 *consideration on that petition except as provided in subdivision*  
24 *(c).*

25 (c) *The administrative record for the commission's decision*  
26 *pursuant to this section shall not be reopened once the department*  
27 *closes the public hearing unless one of the following occurs prior*  
28 *to the commission's decision:*

29 (1) *There is a change in state or federal law or regulation that*  
30 *has a direct and significant impact on the commission's*  
31 *determination as to whether the petitioned action is warranted.*

32 (2) *The commission determines that it requires further*  
33 *information to evaluate whether the petitioned action is warranted.*  
34 *If the commission makes that determination during its deliberation,*  
35 *the commission may request, on the record at the scheduled*  
36 *meeting or at a continued meeting, further information on any*  
37 *issue relevant to making its determination as to whether the*  
38 *petitioned action is warranted. Any request by the commission*  
39 *pursuant to this paragraph shall specify a date by which the*  
40 *information must be submitted to the commission and shall serve*

1 to reopen the administrative record for the limited purpose of  
2 receiving further information relating to the issues specified by  
3 the commission in the request. Commission and department staff,  
4 the petitioner, or any other person may submit information in  
5 response to a request pursuant to this paragraph.

6 (d) The commission, in its discretion, may either close the public  
7 hearing and continue the meeting on the petition for the purpose  
8 of deliberation or continue both the public hearing and the meeting  
9 on the petition to a subsequent date which is no later than 90 days  
10 after the meeting scheduled pursuant to Section 2075, and subject  
11 to applicable notice and agenda requirements. If the commission  
12 closes the public hearing but continues the meeting for the purpose  
13 of deliberation, a person shall not submit, and the commission  
14 shall not receive, further information relating to the petition except  
15 as provided in subdivision (c).

16 (e) At the meeting scheduled pursuant to Section 2075, or at a  
17 continued meeting scheduled pursuant to subdivision (d), the  
18 commission shall make one of the following findings:

19 (1) The petitioned action is not warranted, in which case the  
20 finding shall be entered in the public records of the commission  
21 and the petitioned species shall be removed from the list of  
22 candidate species maintained pursuant to Section 2074.2.

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

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

35 SEC. 9. Section 2075.5 is added to the Fish and Game Code,  
36 to read:

37 2075.5. (a) At the meeting scheduled pursuant to Section 2075,  
38 the commission shall make one of the following findings:

39 (1) The petitioned action is not warranted, in which case the  
40 finding shall be entered in the public records of the commission

1 and the petitioned species shall be removed from the list of  
2 candidate species maintained pursuant to Section 2074.2.

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

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

13 SEC. 10. Section 2087 of the Fish and Game Code is amended  
14 to read:

15 2087. (a) Accidental take of candidate, threatened, or  
16 endangered species resulting from acts that occur on a farm or a  
17 ranch in the course of otherwise lawful routine and ongoing  
18 agricultural activities is not prohibited by this chapter.

19 (b) *For purposes of this section “accidental” means unintended,*  
20 *unforeseen, and injurious.*

21 ~~(b)~~

22 (c) This section shall remain in effect only until January 1, ~~2014~~  
23 ~~2024~~, and as of that date is repealed, unless a later enacted statute,  
24 that is enacted before January 1, ~~2014~~ ~~2024~~, deletes or extends  
25 that date.

26 SEC. 11. Section 3517 is added to the Fish and Game Code,  
27 to read:

28 3517. (a) The policies and regulations of the department and  
29 commission shall encourage the restoration and enhancement of  
30 upland nesting cover and associated waterfowl brood habitat on  
31 both public and private lands to support the production of resident  
32 waterfowl, upland game birds, and other birds.

33 (b) Unless expressly authorized by law, no governmental entity  
34 shall prohibit or otherwise restrict the establishment of these  
35 habitats for the purpose of propagating waterfowl or other birds  
36 protected pursuant to this code without the concurrence of the  
37 department.