

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 749

**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, and to add Article 2.5 (commencing with Section 1758) to Chapter 7.5 of Division 2 of, the Fish and Game Code, relating to fish and wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 749, as amended, 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. *Existing law states that it is the policy of the state to maintain sufficient populations of all species of wildlife and native plants and the habitat necessary to insure their continued existence at the optimum levels possible to insure, among other things, the policy to perpetuate native plants and all species of wildlife for their intrinsic and ecological values, as well as for their direct benefits to humanity.*

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

department-managed lands from ~~where~~ *which* the moneys were originally collected. *The bill would require the department to identify which department-managed lands the department will manage for the purpose of restoring and enhancing upland nesting cover and associated waterfowl brood habitat to support the production of resident waterfowl and upland game birds. The bill would also require the department, in the manner it deems appropriate, to annually solicit comment and recommendations regarding the management of these lands from nonprofit waterfowl and upland game bird conservation groups.*

(2) The California Endangered Species Act (~~CEESA~~) 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 ~~CEESA~~ *the California Environmental Quality Act*, 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) ~~CEESA~~ *The California Environmental Quality Act* 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 *make a technical change to these provisions and extend this exception to January 1, 2024, and 2020. The bill 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, a state agency from prohibiting or otherwise restricting the establishment of these habitats upland nesting cover and associated waterfowl brood habitat for the purpose of propagating waterfowl, upland game birds, 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)–~~

8 1745.1. (a) Notwithstanding Section 1745, the leasing of
9 department-managed lands for agricultural activities, ~~such as the~~
10 ~~cultivation of wildlife-friendly crops and grazing to enhance the~~
11 ~~value of habitat, shall be permitted where those activities are~~
12 ~~compatible with the department’s management plan for the area.~~
13 *shall be consistent with the purpose for which the lands were*
14 *acquired and compatible with the department’s approved*
15 *management plan for the area, if available.*

16 ~~(2) The~~

17 (b) *Notwithstanding subdivision (c) of Section 1348, the moneys*
18 *collected from agricultural leases entered into pursuant to paragraph*
19 ~~(1) shall~~ *subdivision (a) may be used to support the maintenance*
20 *and operations of department-managed lands from where which*
21 *the moneys were originally collected.*

22 SEC. 2. Article 2.5 (commencing with Section 1758) is added
23 to Chapter 7.5 of Division 2 of the Fish and Game Code, to read:

24

25

Article 2.5. Bird Habitat Conservation

26

27 1758. (a) *The department shall identify which*
28 *department-managed lands, within the meaning of paragraph (1)*
29 *of subdivision (a) of Section 1745, the department will manage for*
30 *the purpose of restoring and enhancing upland nesting cover and*
31 *associated waterfowl brood habitat to support the production of*
32 *resident waterfowl and upland game birds.*

33 (b) *For lands identified in subdivision (a), the department, in*
34 *the manner it deems appropriate, shall annually solicit comment*
35 *and recommendations regarding the management of these lands*

1 *from nonprofit waterfowl and upland game bird conservation*
2 *groups.*

3 ~~SEC. 2.~~

4 SEC. 3. Section 2074.2 of the Fish and Game Code is amended
5 to read:

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

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

21 (c) The administrative record for the commission’s decision
22 pursuant to this section shall not be reopened once the commission
23 closes the public hearing unless one of the following occurs prior
24 to the commission’s decision:

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

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

1 information relating to the issues specified by the commission in
2 the request. Commission and department staff, the petitioner, or
3 any other person may submit information in response to a request
4 pursuant to this paragraph.

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

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

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

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

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

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

1 ~~SEC. 3.~~

2 *SEC. 4.* Section 2074.2 is added to the Fish and Game Code,
3 to read:

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

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

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

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

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

25 ~~SEC. 4.~~

26 *SEC. 5.* Section 2074.6 of the Fish and Game Code is amended
27 to read:

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

1 scientific information from the independent peer review. The
2 revised report shall be posted on the department's Internet Web
3 site for a minimum of 30 days for public review prior to the hearing
4 scheduled pursuant to Section 2075. The commission may grant
5 an extension of up to six months if the director determines an
6 extension is necessary to complete independent peer review of the
7 report, and to provide a minimum of 30 days for public review of
8 the peer reviewed report prior to the public hearing specified in
9 Section 2075.

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

13 ~~SEC. 5.~~

14 *SEC. 6.* Section 2074.6 is added to the Fish and Game Code,
15 to read:

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

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

29 ~~SEC. 6.~~

30 *SEC. 7.* Section 2074.8 of the Fish and Game Code is amended
31 to read:

32 2074.8. (a) This article does not impose any duty or obligation
33 for, or otherwise require, the commission or the department to
34 undertake independent studies or other assessments of any species
35 when reviewing a petition and its attendant documents and
36 comments. However, the department shall seek independent
37 scientific peer review of the department's status report. The director
38 may approve an extension of time for completion of the status
39 report if necessary for the purposes of obtaining independent peer
40 review pursuant to Section 2074.6.

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

4 ~~SEC. 7.~~

5 *SEC. 8.* Section 2074.8 is added to the Fish and Game Code,
6 to read:

7 2074.8. (a) This article does not impose any duty or obligation
8 for, or otherwise require, the commission or the department to
9 undertake independent studies or other assessments of any species
10 when reviewing a petition and its attendant documents and
11 comments.

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

13 ~~SEC. 8.~~

14 *SEC. 9.* Section 2075.5 of the Fish and Game Code is amended
15 to read:

16 2075.5. (a) At the meeting scheduled pursuant to Section 2075,
17 the commission shall hold a public hearing on the petition and
18 shall receive information, written or otherwise, and oral testimony.
19 After the conclusion of oral testimony from department staff, the
20 petitioner, or any other persons, the commission may close the
21 public hearing and the administrative record for the department’s
22 decision pursuant to this section.

23 (b) After the commission closes the public hearing the
24 administrative record for the commission’s decision is closed and
25 it shall not be reopened except as provided in subdivision (c). Once
26 the public hearing is closed a person shall not submit further
27 information to the department for consideration on that petition
28 and the commission shall not accept any further information for
29 consideration on that petition except as provided in subdivision
30 (c).

31 (c) The administrative record for the commission’s decision
32 pursuant to this section shall not be reopened once the department
33 closes the public hearing unless one of the following occurs prior
34 to the commission’s decision:

35 (1) There is a change in state or federal law or regulation that
36 has a direct and significant impact on the commission’s
37 determination as to whether the petitioned action is warranted.

38 (2) The commission determines that it requires further
39 information to evaluate whether the petitioned action is warranted.
40 If the commission makes that determination during its deliberation,

1 the commission may request, on the record at the scheduled
2 meeting or at a continued meeting, further information on any
3 issue relevant to making its determination as to whether the
4 petitioned action is warranted. Any request by the commission
5 pursuant to this paragraph shall specify a date by which the
6 information must be submitted to the commission and shall serve
7 to reopen the administrative record for the limited purpose of
8 receiving further information relating to the issues specified by
9 the commission in the request. Commission and department staff,
10 the petitioner, or any other person may submit information in
11 response to a request pursuant to this paragraph.

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

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

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

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

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

1 ~~SEC. 9.~~

2 *SEC. 10.* Section 2075.5 is added to the Fish and Game Code,
3 to read:

4 2075.5. (a) At the meeting scheduled pursuant to Section 2075,
5 the commission shall make one of the following findings:

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

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

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

20 ~~SEC. 10.~~

21 *SEC. 11.* Section 2087 of the Fish and Game Code is amended
22 to read:

23 2087. (a) Accidental take of candidate, threatened, or
24 endangered species resulting from ~~acts that occur~~ *an act that occurs*
25 on a farm or a ranch in the course of otherwise lawful routine and
26 ongoing agricultural activities is not prohibited by this chapter.

27 (b) For purposes of this section “accidental” means unintended,
28 unforeseen, and injurious.

29 (c) This section shall remain in effect only until January 1, ~~2024~~
30 ~~2020~~, and as of that date is repealed, unless a later enacted statute,
31 that is enacted before January 1, ~~2024~~ ~~2020~~, deletes or extends
32 that date.

33 ~~SEC. 11.~~

34 *SEC. 12.* Section 3517 is added to the Fish and Game Code,
35 to read:

36 ~~3517. (a) The policies and regulations of the department and~~
37 ~~commission shall encourage the restoration and enhancement of~~
38 ~~upland nesting cover and associated waterfowl brood habitat on~~
39 ~~both public and private lands to support the production of resident~~
40 ~~waterfowl, upland game birds, and other birds.~~

1 ~~(b) Unless expressly authorized by law, no governmental entity~~
2 3517. A state agency shall *not* prohibit or otherwise restrict the
3 establishment of ~~these habitats~~ *upland nesting cover and associated*
4 *waterfowl brood habitat* for the purpose of propagating waterfowl,
5 *upland game birds*, or other birds protected pursuant to this code
6 without the concurrence of the department.

O