

Assembly Bill No. 350

CHAPTER 974

An act to add and repeal Article 7 (commencing with Section 2105) of Chapter 1.5 of Division 3 of the Fish and Game Code, relating to endangered and threatened species.

[Approved by Governor September 27, 1996. Filed
with Secretary of State September 27, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 350, Bustamante. Endangered and threatened species.

(1) Existing law does not provide for a recovery strategy program relating to threatened or endangered species.

This bill would require the Department of Fish and Game to develop and implement a recovery strategy pilot program until January 1, 2004. The bill would require the Fish and Game Commission to identify 5 species on either the list of threatened or endangered species for which recovery strategies are to be developed and would authorize the commission to identify one or more species added to those lists after January 1, 1995, based on specified factors. The bill would require the department to assemble a recovery strategy team for each species identified to aid in the development of the recovery strategy for that species. The bill would require the recovery strategy to be approved by the commission at a noticed hearing. The bill would require the department to adopt rules and guidelines to implement the policies of the department in implementing the recovery strategies. The bill would require the department to report annually on the status and progress of the implementation of the recovery strategies.

(2) Existing law requires the department to pay the costs of administration of the California Endangered Species Act from the continuously appropriated Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

This bill would provide that the provisions described in (1) would become operative only if funds are appropriated by the annual Budget Bill or another statute to fund the cost of implementing the bill and that the continuous appropriation to pay the costs of the administration of the California Endangered Species Act does not apply to any costs relating to those provisions of the bill.

The bill would repeal the provisions described in (1) on January 1, 2004, except that the repeal would not apply to any recovery strategy approved or implemented on or before that date.

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

SECTION 1. Article 7 (commencing with Section 2105) is added to Chapter 1.5 of Division 3 of the Fish and Game Code, to read:

Article 7. Recovery Strategy Pilot Program

2105. The department shall develop and implement a recovery strategy pilot program. The objective of this pilot program is the development of recovery strategies with the goal that the regulations or other protections for species listed pursuant to this chapter are no longer necessary.

2106. On or before January 1, 1997, the commission, based on recommendations from the department, shall identify five species that are listed as either threatened species or endangered species for which recovery strategies shall be developed and implemented. The commission may also identify one or more species for inclusion in the recovery strategy pilot program that are added after January 1, 1995, to the list of threatened species or the list of endangered species pursuant to Section 2075.5.

2106.5. In determining the species to be identified in the recovery strategy pilot program pursuant to Section 2106, the commission shall consider the following factors:

- (a) The intensity and immediacy of the threat facing the species.
- (b) Whether recovery strategy planning for the species would provide benefits for multiple species.
- (c) The extent to which landowners and other persons affected by the regulation of the species are willing to participate in the recovery strategy planning.
- (d) Whether the species is already the subject of a recovery plan prepared by the federal government.
- (e) The public and private costs of achieving recovery.
- (f) The need to use recovery strategy planning for different types of species under different circumstances and in different regions of the state.

2107. (a) For each species identified by the commission for the recovery strategy pilot program pursuant to Section 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.

2109. (a) After identification of the five species to be included in the recovery strategy pilot program pursuant to Section 2105, the department shall promptly commence preparation of a recovery strategy for each of those species.

(b) Within 12 months of the identification of a species included in the recovery strategy pilot program, the department shall submit a recovery strategy for that species to the commission for review and approval.

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

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

(2) An explanation of interim and long-term recovery goals. The interim goals shall be specifically stated. The long-term goals may be specifically stated if the department determines that adequate information exists to reasonably identify long-term goals; if not, the strategy may contain general long-term goals that will be clarified as the recovery strategy is updated pursuant to paragraph (7).

(3) A range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the activities it recommends.

(4) 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.

(5) A description of actions and recommendations, including voluntary incentives and objective criteria for delisting and deregulation, that will be needed to minimize the adverse social and economic impacts of implementation of the recovery strategy and a discussion of the range of recovery alternatives considered in the strategy.

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

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

(B) Methods of private and public cooperation.



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

(7) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy. If final recovery goals are not specifically stated, the strategy shall contain a timetable for an update of the plan to clarify the long-term goals.

(8) Objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery and downlisting or delisting.

(9) An implementation schedule.

2110. If the department determines, based on the best scientific evidence available, that the recovery strategy should also contain specifications regarding allowable taking of the species and guidelines for consultation, the recommended recovery strategy shall also contain general policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081, permits pursuant to Section 2081.4, and the department's consultation procedures to be followed pursuant to Section 2090. The general policies shall be consistent with the recommended recovery strategy.

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 and implementation schedule are capable of being carried out in a scientifically, technologically, and economically reasonable manner.

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

(d) The recovery strategy represents an equitable apportionment of both public and private and regulatory and nonregulatory obligations.

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.

2112. If a recovery strategy for one of the species identified pursuant to Section 2106 includes policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081,



permits pursuant to Section 2081.4, 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 permit pursuant to Section 2081.4 or a memorandum of understanding pursuant to Section 2081.

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.

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.

2115. This article shall become operative only if funds are appropriated in the annual Budget Bill or another statute to fund the cost of implementing this article. Section 2098 does not apply to any costs relating to this article.

2116. This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, 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, 2004, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

SEC. 2. For purposes of implementing subdivision (c) of Section 2107 of the Fish and Game Code, it is the intent of the Legislature that, for example, if the species addressed in the recovery strategy



exist on land used for agriculture or if agricultural practices affect the species, the Department of Fish and Game consult with the county agricultural commissioner where the land is located and other agricultural experts to ensure that the recovery strategy, to the extent possible, will permit routine agricultural activities to be carried out with as little direct regulatory control as possible.

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