

Introduced by Senator Pavley

February 26, 2009

An act to add Article 3.7 (commencing with Section 2089.2) to Chapter 1.5 of Division 3 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

SB 448, as introduced, Pavley. California State Safe Harbor Agreement Program Act.

Existing law establishes various programs designed to conserve and protect endangered species and wildlife.

This bill would enact the California State Safe Harbor Agreement Program Act, which would establish a program to encourage landowners to manage their lands voluntarily, by means of state safe harbor agreements approved by the Department of Fish and Game, to benefit endangered, threatened, or candidate species without being subject to additional regulatory restrictions as a result of their conservation efforts.

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. Article 3.7 (commencing with Section 2089.2)
- 2 is added to Chapter 1.5 of Division 3 of the Fish and Game Code,
- 3 to read:

1 Article 3.7. California State Safe Harbor Agreement Program
2 Act
3

4 2089.2. (a) This article shall be known and may be cited as
5 the California State Safe Harbor Agreement Program Act.

6 (b) The Legislature finds that a key to the goals set forth in this
7 article of conserving, protecting, restoring, and enhancing
8 endangered, threatened, and candidate species, is their habitat. A
9 significant portion of the state's current and potential habitat for
10 these species exists on property owned by private citizens,
11 municipalities, tribes, and other nonstate and federal entities.
12 Conservation efforts on these lands and waters are critical to help
13 these declining species. Using a collaborative stewardship approach
14 to these lands and waters will help ensure the success of these
15 efforts.

16 (c) The purpose of this article is to establish a program that will
17 encourage landowners to manage their lands voluntarily to benefit
18 endangered, threatened, or candidate species and not be subject to
19 additional regulatory restrictions as a result of their conservation
20 efforts.

21 (d) This article does not relieve landowners of any legal
22 obligation to avoid, minimize, or mitigate impacts to endangered,
23 threatened, or candidate species existing on their land. The program
24 established by this article is designed to increase the number of
25 species, create new habitats, and to enhance existing habitats.
26 Although this increase may be temporary or long-term, California
27 state safe harbor agreements shall not reduce the existing number
28 of species present at the time the baseline is established by the
29 department.

30 2089.4. As used in this article, the following definitions apply:

31 (a) "Agreement" means a state safe harbor agreement approved
32 by the department pursuant to this article.

33 (b) "Baseline conditions" means the existing estimated
34 population size and the extent and quality of habitat for the species
35 on the land to be enrolled in the agreement that sustain seasonal
36 or permanent use by the covered species. Baseline conditions shall
37 be determined by the department in consultation with the applicant
38 and shall be at least the estimated population size and extent and
39 quality of habitat for the covered species at the time when the
40 agreement is executed. Baseline conditions shall be established or

1 approved by the department, based on objective scientific
2 methodologies.

3 (c) “Department” means the Department of Fish and Game,
4 acting through its director or his or her designee.

5 (d) “Landowner” means any nonstate or federal entity or entities
6 that lawfully hold any interest in land or water to which they are
7 committing to implement the requirements of this article.

8 (e) “Management actions” means activities on the enrolled land
9 or water that are reasonably expected by the department to provide
10 a net benefit to the species or their habitat, or both.

11 (f) “Monitoring program” means a program established or
12 approved by the department in accordance with subdivision (f) of
13 Section 2089.6.

14 (g) “Net conservation benefit” means the cumulative benefits
15 of the management activities identified in the agreement that
16 provide for an increase in a species’ population or the enhancement,
17 restoration, or maintenance of covered species’ suitable habitats
18 within the enrolled property. Net conservation benefit shall take
19 into account the length of the agreement, any offsetting adverse
20 effects attributable to the incidental taking allowed by the
21 agreement, and other mutually agreed upon factors such as floods,
22 unplanned fires, and catastrophic events. Net conservation benefits
23 shall be sufficient to contribute either directly or indirectly to the
24 recovery of the covered species. These benefits include, but are
25 not limited to, reducing fragmentation and increasing the
26 connectivity of habitats, maintaining or increasing populations,
27 enhancing and restoring habitats, and buffering protected areas.

28 (h) “Return to baseline” means, at the termination of an
29 agreement, activities undertaken by the landowner to return the
30 species population or acres of habitat to baseline, excluding
31 catastrophic events such as floods, unplanned fires, or earthquakes,
32 and other factors mutually agreed upon prior to permit issuance
33 and that are beyond the control of the landowner.

34 2089.6. In addition to the other provisions of this article, the
35 department may authorize acts that are otherwise prohibited
36 pursuant to Section 2080 through an agreement, if all the following
37 conditions are met:

38 (a) The department receives a complete application containing
39 all of the information described in Section 2089.8.

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

1 (c) The department finds that the implementation of the
2 agreement is reasonably expected to provide a net conservation
3 benefit to the species listed in the application. This finding shall
4 be based, at a minimum, upon the determination that the agreement
5 is of sufficient duration and has appropriate assurances to realize
6 these benefits.

7 (d) The take authorized by the agreement will not jeopardize
8 the continued existence of the species. This determination shall
9 be made based on the provisions of subdivision (c) of Section
10 2081.

11 (e) The department finds that the landowner has agreed, to the
12 maximum extent practicable, to avoid or minimize any incidental
13 take authorized in the agreement, including returning to baseline.

14 (f) The department has established or approved a monitoring
15 program, based upon objective scientific methodologies, to provide
16 information for the department to evaluate the effectiveness and
17 efficiency of the agreement program, including whether the net
18 conservation benefits set forth in the agreement are being achieved
19 and whether the participating landowner is implementing the
20 provisions of the agreement.

21 (g) The department has determined that sufficient funding is
22 ensured, for it or its contractors or agents, to determine baseline
23 conditions on the property, for the landowner to carry out
24 management actions, and for monitoring for the duration of the
25 agreement.

26 (h) Implementation of the agreement will not be in conflict with
27 any existing department-approved conservation or recovery
28 programs for the species covered by the agreement.

29 2089.8. The landowner shall submit all of the following:

30 (a) A detailed map depicting the land proposed to be enrolled
31 in the agreement.

32 (b) The common and scientific names of the species for which
33 the landowner requests incidental take authorization.

34 (c) A detailed description of the current land and water uses for
35 the geographic area proposed to be enrolled and the landowner's
36 objectives for future uses of this land or water.

37 (d) The proposed duration of the agreement that is sufficient to
38 provide a net conservation benefit to the species covered in the
39 permit and an explanation of the basis for this conclusion.

1 (e) A detailed description of the proposed management actions
2 and the timeframe for implementing them.

3 (f) A description of the possible incidental take that may be
4 caused by the management actions and of the anticipated species
5 populations and habitat changes over the duration of the permit.

6 (g) A detailed description of the proposed monitoring program.

7 2089.10. If an agreement has been approved and the department
8 finds that the agreement is being properly implemented, the
9 department shall allow the landowner to alter or modify the
10 enrolled property, even if that alteration or modification will result
11 in the incidental take of a listed species, to the extent that the
12 alteration or modification returns the species to baseline conditions.

13 2089.12. (a) Unless the department determines that it is
14 inappropriate to do so based on the nature of the management
15 actions being proposed, the species listed in the permit, or other
16 factors, the agreement shall require that the landowner provide the
17 department with at least 60 days advance notice of any of the
18 following:

19 (1) Any incidental take that is anticipated to occur under the
20 agreement.

21 (2) The landowner's plan to return to baseline at the end of the
22 agreement.

23 (3) Any plan to transfer or alienate the landowner's interest in
24 the land or water.

25 (b) If the department receives any notice described in this
26 section, the landowner shall provide the department, its contractors,
27 or agents with access to the land or water for purposes of safely
28 removing or salvaging the species.

29 2089.14. An agreement may be amended with the mutual
30 consent of the landowner and the department.

31 2089.16. If a landowner seeks to sell, transfer, or otherwise
32 alienate the land or water enrolled in the agreement during the
33 term of the agreement, the person or entity assuming that interest
34 in the property shall (a) assume the existing landowner's duties
35 under the agreement, (b) enter into a new agreement with the
36 department, or (c) withdraw from an existing agreement under the
37 terms provided in the agreement, as approved by the department.

38 2089.18. The suspension and revocation of the agreement shall
39 be governed suspension and revocation regulations adopted by the
40 department.

1 2089.20. This section does not provide the public a right of
2 entry onto the enrolled land or water. The landowner shall provide
3 the department, its contractors, or agents with access to the land
4 or water proposed to be enrolled in the agreement to develop the
5 agreement, determine the baseline conditions, monitor the
6 effectiveness of management actions, or safely remove or salvage
7 species proposed to be taken.

8 2089.22. (a) If a federal safe harbor agreement has been
9 approved pursuant to applicable provisions of federal law and the
10 federal safe harbor agreement contains species that are endangered,
11 threatened, or are candidate species pursuant to this chapter, no
12 further authorization or approval is necessary under this article for
13 that person to take the species identified in and in accordance with
14 the federal Safe Harbor Agreement, if that person and the
15 department follow all of the procedures specified in Section 2080.1,
16 except that the determination of consistency shall be made by the
17 department based only on the issuance criteria contained in this
18 article.

19 (b) The department may adopt nonregulatory guidelines to
20 clarify how the provisions of this chapter may be used in
21 connection with voluntary local programs for routine and ongoing
22 agricultural activities adopted pursuant to Article 3.5 (commencing
23 with Section 2086) and natural community conservation plans
24 adopted pursuant to Chapter 10 (commencing with Section 2800).

25 2089.24. The department may promulgate regulations to
26 implement this article.