

**ASSEMBLY BILL**

**No. 2420**

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**Introduced by Assembly Member Huffman**

February 19, 2010

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An act to amend Section 2080.1 of the Fish and Game Code, relating to protected species.

LEGISLATIVE COUNSEL'S DIGEST

AB 2420, as introduced, Huffman. Protected species: incidental take: consistency determinations.

Under the California Endangered Species Act (CESA), if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement or incidental take permit pursuant to the federal Endangered Species Act of 1973 that authorizes the taking of an endangered species or threatened species listed pursuant to the federal act that is an endangered species, threatened species, or candidate species pursuant to CESA, no further authorization or approval is necessary under CESA for that person to take that species, if that person notifies the Director of Fish and Game, as specified, and the director determines that the statement or permit is consistent with CESA.

This bill would revise those provisions to require that both a biological opinion and an incidental take statement or a conservation plan and an incidental take permit be obtained. The bill would require additional information to be included in the notice to the director, and would give the director 7 days to determine if the notice is complete. The bill would require the director, if the director determines that the notice is not complete, to immediately provide a written response to the person submitting the notice that sets forth the deficiencies in the notice. The bill would exempt a consistency determination from the California

Environmental Quality Act. The bill would authorize the department to adopt regulations to implement those revised incidental take and consistency determination provisions.

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 2080.1 of the Fish and Game Code is  
2 amended to read:

3 2080.1. (a) Notwithstanding any other provision of this chapter,  
4 or Chapter 10 (commencing with Section 1900) or Chapter 11  
5 (commencing with Section 1925) of Division 2, but subject to  
6 subdivision (c), if any person obtains from the Secretary of the  
7 Interior or the Secretary of Commerce *a biological opinion and*  
8 *an incidental take statement* pursuant to Section 1536 of Title 16  
9 of the United States Code or *a conservation plan and an incidental*  
10 *take permit* pursuant to Section 1539 of Title 16 of the United  
11 States Code that authorizes the taking of an endangered species  
12 or a threatened species that is listed pursuant to Section 1533 of  
13 Title 16 of the United States Code and that is an endangered  
14 species, threatened species, or a candidate species pursuant to this  
15 chapter, no further authorization or approval is necessary under  
16 this chapter for that person to take that endangered species,  
17 threatened species, or candidate species identified in, and in  
18 accordance with, the *biological opinion and the incidental take*  
19 *statement, or the conservation plan and the incidental take permit,*  
20 if that person ~~does~~ *receives a determination of consistency in*  
21 *accordance with subdivision (c) after doing both of the following:*

22 (1) ~~Notifies~~ *Notifying* the director in writing that the person has  
23 received *a biological opinion and an incidental take statement or*  
24 *a conservation plan and an incidental take permit* issued pursuant  
25 to the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec.  
26 1531 et seq.).

27 (2) ~~Includes~~ *Including* in the notice to the director ~~a:~~  
28 (A) *References to the required measures in the biological*  
29 *opinion and the incidental take statement or the conservation plan*  
30 *and the incidental take permit that meet the minimization, full*  
31 *mitigation, funding, and compliance monitoring requirements of*  
32 *subdivision (b) of Section 2081.*

1 (B) A copy of the *biological opinion and the incidental take*  
2 *statement or the conservation plan and the incidental take permit.*

3 (b) Upon receipt of the notice specified in ~~paragraph~~ *paragraphs*  
4 *(1) and (2) of subdivision (a), the director shall have seven days*  
5 *to determine if the notice is complete. If the director determines*  
6 *that the notice is complete, the director shall immediately have*  
7 *published in the General Public Interest section of the California*  
8 *Regulatory Notice Register the receipt of that notice. If the director*  
9 *determines that the notice is not complete, the director shall*  
10 *immediately provide a written response to the person submitting*  
11 *the notice that sets forth the deficiencies in the notice.*

12 (c) Within 30 days after the director has received ~~the a complete~~  
13 *notice, as described in subdivision (a) that an incidental take*  
14 *statement or an incidental take permit has been issued pursuant to*  
15 *the federal Endangered Species Act of 1973, the director shall*  
16 *determine whether the biological opinion and the incidental take*  
17 *statement or the conservation plan and the incidental take permit*  
18 *is are consistent with this chapter. If the director determines within*  
19 *that 30-day period, based upon substantial evidence, that the*  
20 *biological opinion and the incidental take statement or the*  
21 *conservation plan and the incidental take permit is are not*  
22 *consistent with this chapter, then the taking of that species may*  
23 *only be authorized pursuant to this chapter.*

24 (d) The director shall immediately publish the determination  
25 pursuant to subdivision (c) in the General Public Interest section  
26 of the California Regulatory Notice Register. *A determination*  
27 *pursuant to subdivision (c) is effective upon publication in*  
28 *accordance with this subdivision, and shall be exempt from*  
29 *Division 13 (commencing with Section 21000) of the Public*  
30 *Resources Code.*

31 (e) Unless deleted or extended by a later enacted statute that is  
32 chaptered before the date this section is repealed, this section shall  
33 remain in effect only until, and is repealed on, the effective date  
34 of an amendment to Section 1536 or Section 1539 of Title 16 of  
35 the United States Code that alters the requirements for issuing *a*  
36 *biological opinion and an incidental take statement or a*  
37 *conservation plan and an incidental take permit, as applicable.*

1     (f) *The department may adopt regulations to implement this*  
2     *section.*

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