California State Safe Harbor Agreement Program Act

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Ryan's Caveats

- My talk is intended to provide an overview of the California State Safe Harbor Agreement Program Act as it is set forth in ***Fish and Game Code***.
- My talk does not provide a definitive overview of the subject and should not be treated as the ***final word*** of CDFW.
- Information, examples, or recommendations discussed should not be treated as CDFW guidelines, instructions, standards, permit requirements, etc.
- How the statutes are interpreted and applied to a particular project will vary on a project-by-project and species-by-species basis.

Topics I will cover

1. Safe Harbor Agreements (SHA) as they apply to the California Endangered Species Act (CESA)
2. Details of the SHA process
3. Common concerns with SHA
4. Examples of completed SHA

Safe Harbor Agreements and CESA

History of California's Legislative and Regulatory Actions to Protect Wildlife

1909 Non-game birds protected

1957 Fully protected birds and mammals introduced into Fish and Game Code

1970 California Endangered Species Act (CESA) enacted to protect rare and endangered species

1977 Native Plant Protection Act (NPPA) enacted

1983 California Environmental Quality Act (CEQA) amended to define and protect rare and endangered species

2009 Safe Harbor Agreements introduced to Fish and Game Code

Western meadowlark (*Sturnella neglecta*). Photo by Cathie Vouchilas, CDFW

Southern sea otter (*Enhydra lutris nereis*), fully protected. Photo by Dave Feliz, CDFW

Giant garter snake (*Thamnophis gigas*), threatened. Photo by Margaret Mantor, CDFW

Sonoma sunshine (*Blennosperma bakeri*), endangered. Photo by Jeb Bjerke, CDFW

Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), endangered. Photo by Cathie Vouchilas, CDFW

California tiger salamander (*Ambystoma californiense*), threatened. Photo by Margaret Mantor, CDFW

1909 → 2009

1913 Sea otters protected

1971 Commission declared 42 animals endangered or rare

1970 California Species Preservation Act enacted
- Criteria developed for rare and endangered designations
- Fully protected amphibians, reptiles, and fish introduced to Fish and Game Code

1984 CESA amended
- Rare reclassified as threatened
- Candidate species introduced
- Plants included
- Incidental take of listed species allowed through memoranda of understanding

1997 CESA amended to allow incidental take of listed spceies through
- Incidental take permits (ITPs)
- Consistency determinations (CDs)
- Voluntary Local Program (VLP)

Conserving California's Natural Resources *yesterday, today, and tomorrow.*

Authorizing take of listed species

- CDFW oversees several exceptions to the prohibition against take of listed species (Fish & G. Code, § 2080).
- Incidental take permits, research and management permits, consistency determinations, natural community conservation plans, and safe harbor agreements.
- Few similarities between the federal Endangered Species Act and California Endangered Species Act. Safe harbor agreements are the closest.
- Candidate species have same protection as threatened and endangered (e.g., COTO)

Statutory Authority

- Senate Bill 448 (Pavley); October, 11 2009
  Fish & G. Code, §§ 2089.2 – 2089.26

Article 3.7. California State Safe Harbor Agreement Program Act

2089.2. California State Safe Harbor Agreement Program Act; Legislative Findings

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

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

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

(d) This article does not relieve landowners of any legal obligation with respect to endangered, threatened, or candidate species existing on their land. The program established by this article is designed to increase species populations, create new habitats, and enhance existing habitats. Although this increase may be temporary or long-term, California state safe harbor agreements shall not reduce the existing populations of species present at the time the baseline is established by the department.

(AD '09)

Legislature's findings for the California Safe Harbor Agreement Program Act

- Because many CESA listed species occur primarily or exclusively on privately owned property it is ***critical to species' recovery*** to ***collaborate with private landowners*** to conserve, protect, restore, and enhance listed species and their habitats.

Purpose of the California Safe Harbor Agreement Program Act

- "Encourage landowners to ***manage their lands voluntarily*** to benefit endangered, threatened, or candidate species ***and not be subject to additional regulatory restrictions*** as a result of their conservation efforts."

Limitations of safe harbor agreements

- They do not relieve landowners of any legal obligation with respect to endangered, threatened, or candidate species existing on their land.
- They are designed to increase species' populations, create new habitats, and enhance existing habitats. Although this increase may be ***temporary*** or ***long-term***, safe harbor agreements ***shall not reduce the existing populations of species*** present at the time the baseline is established.

Assurances to Enrolled Landowners

- Allows the landowner to alter or modify enrolled property back to the agreed upon baseline conditions if desired, even if such alteration or modification results in the incidental take of a listed species.

Key Terms

- **"Baseline conditions"** means the existing estimated population size, the extent and quality of habitat, or both population size and the extent and quality of habitat, for the species on the land to be enrolled in the agreement.

Key Terms

- **"Landowner"** means any person or non-state or non-federal entity or entities that lawfully hold any interest in land or water.

Key Terms

- **"Management actions"** means activities on the enrolled land that are reasonably expected by CDFW to provide a ***net conservation benefit*** to the species or their habitat, or both.

Key Terms

- **"Net conservation benefit"** means the cumulative benefits of the management activities identified in the agreement that provide for an increase in a species' population or the enhancement, restoration, or maintenance of covered species' suitable habitats within the enrolled property.
- Can be temporary or long-term

Key Terms

- **"Programmatic agreement"** is a SHA issued to a governmental or nongovernmental program administrator. The program administrator for a programmatic SHA works with landowners and CDFW to implement the agreement. The program administrator and CDFW are responsible for ensuring compliance with the terms of the agreement.

Key Terms

- **"Return to baseline"** means the collective actions of the landowner to return the species population or quality of habitat back to baseline conditions, excluding catastrophic events, and other factors mutually agreed upon prior to permit issuance and that are beyond the control of the landowner.

The SHA Process

Basic Components of a SHA

1. Establish baseline conditions – habitat, populations, or both
2. Identify management practices that will benefit the listed species – provide a "net conservation benefit"
   - ❑reduce fragmentation and increase the connectivity of habitats, maintain or increase populations, enhance and restore habitats, or buffer protected areas.
3. Develop a monitoring plan to evaluate effectiveness of 2.
   - ❑Ensure sufficient funding to carry out 1, 2, & 3.

Landowner Application

A detailed map depicting the land proposed to be enrolled in the agreement.

The common and scientific names of the species for which the landowner requests incidental take authorization.

A detailed description of the landowner's ***current land and management practices*** that may affect the covered species.

A detailed description of the landowner's ***future land and management practices*** that may affect the covered species

Proposed duration of the agreement to provide ***net conservation benefit***.

Landowner Application - Continued

A detailed description of the proposed ***management actions*** (net cons. benefit) and the timeframe for implementing them.

A description of the possible incidental take that may be caused by the ***management actions*** and of the anticipated species populations and habitat changes over the duration of the permit.

A detailed description of the proposed monitoring program.

Any other information that the department may reasonably require in order to evaluate the application.

CDFW's Criteria to Issue SHA

The department receives a complete application.

CDFW finds that the implementation of the SHA is **reasonably expected to provide a net conservation benefit** to the species listed in the application.

CDFW finds that the landowner has agreed, to the maximum extent practicable, to **avoid or minimize any incidental take** authorized in the agreement, including returning to baseline.

CDFW has **established or approved a monitoring program**.

CDFW **determined that sufficient funding is ensured**, to determine baseline conditions, to carry out management actions, and for monitoring for the duration of the agreement.

Common Concerns with SHA

COMMON CONCERNS: Public Information

- **Proprietary information** means information that is all of the following:
- (1) Related to an agricultural operation or land that is a part of an agricultural operation.
- (2) A trade secret, or commercial or financial information, that is **privileged or confidential**, and is identified as such by the person providing the information to the department.
- (3) Not required to be disclosed under any other provision of law or any regulation affecting the land or the agricultural operation on the land.
- (b) Proprietary information received by the department pursuant to Section 2089.8 **is not public information,** and the department **shall not release or disclose the proprietary information** to any person, including any federal, state, or local governmental agency, **outside of the department**.

COMMON CONCERNS: Neighboring Landowners

- For the landowners that neighbor **enrolled lands** – nothing happens.
- If concerned or interested, a neighboring landowner may be eligible to receive incidental take coverage if:
- (1) The neighboring landowner allows CDFW to determine **baseline conditions** on the property.
- (2) The neighboring landowner **agrees to maintain the baseline conditions** for the duration specified in the ***neighbors safe harbor agreement***.

COMMON CONCERNS: Selling Enrolled Lands

If a landowner wants to **sell the enrolled lands** during the term of the agreement, the person buying the land can (a) **assume the existing landowner's duties** under the agreement, (b) enter into a **new agreement** with CDFW, or (c) **withdraw** from an existing agreement under the terms provided in the agreement.

COMMON CONCERNS: Dually Listed Species

- If a **federal SHA** has been approved and authorizes take of a ***dually listed*** species, **no further authorization** or approval is necessary, if that person and the department **follow all of the procedures specified in Section 2080.1**
- CDFW issues SHA consistency determination

Examples of Issued SHA

Completed State SHA

1. 2012, Agriculture and Land Based Training Association (ALBA), Monterey County, **California tiger salamander**.
2. 2012, Kerns Pond, Shasta County, **Shasta crayfish** (CD)
3. 2015, Morrison Ranch, Alameda County, **large-flowered fiddleneck**
4. 2015, Fireworks America, San Joaquin County, **large-flowered fiddleneck**
5. 2015, Carrington Coast Ranch, Sonoma County, **Townsend's big-eared bat**
6. 2016, PG&E Rock Creek, Shasta County, **Shasta crayfish**

Federal SHA for Managed Timberlands

Date	Species	State	Title	Actions
6/9/2016	NSO	OR	Weyerhaeuser in the Oregon Coast Ranges Study Area	Barred owl removal
1/19/2016	NSO	OR	Roseburg Resources and Oxbow Timber	Barred owl removal
11/20/2015	NSO & MAMU	WA	City of Everett Lake Chaplain Tract SHA	Habitat
10/26/2012	NSO	OR/WA	SDS Lumber & Broughton Lumber	Habitat
7/26/2009	NSO	OR	Oregon Department of Forestry	Habitat
5/22/2009	NSO & MAMU	WA	Port Blakely (Morton Block)	Habitat
2/19/2004	NSO & MAMU	WA	Tagshinny Tree Farm	Habitat
6/18/2002	NSO	CA	Forster-Gill, Inc.	Habitat

Net Conservation Benefit Examples from City of Everett Lake Chaplain Tract SHA (Washington)

Activity	Without SHA	With SHA	Difference (net conservation benefit)
Plant and Monitor	Plant 400-450 seedlings/acre and unlikely to sustain functional NSO foraging habitat	Plant no more than 250 seedlings/acre	Enrolled lands likely to sustain NSO foraging habitat
Mid-rotation (commercial thin)	No commercial thinning / greater canopy coverage hinders understory shrubs for NSO prey	Lands thinned / canopy reduced to 60%	Habitat for prey items / develop large DBH trees
Regeneration Harvest	Stands harvested at 45 years old	Stands harvested at 60 years old	Suitable NSO habitat retained 15 years longer than without SHA

Conclusion

- Benefit for the landowners, 1) greater flexibility to manage lands, 2) incidental take authorization for the covered species, and 3) the landowner receives a “Safe Harbor” assurance from violating section 2080.

- Benefit for the species: “net conservation benefits” are likely to contribute, directly or indirectly, to the recovery of a species over time.

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