



Bees are fish! And not just tuna.

That was the question before the Third District of the California Court of Appeal. The California Fish and Game Commission [had accepted petitions](#) to list four species of native California bees for protection under the California Endangered Species Act (CESA). A group of agricultural trade associations challenged the decision as exceeding the Commission's authority under CESA, on the grounds that terrestrial invertebrates are not covered by CESA. The provisions of CESA allow the Commission to designate native species of "bird, mammal, fish, amphibian, reptile or plant." California Fish and Game Code Sections 2062, 2067, and 2068. A separate section of the California Fish and Game Code (Section 45), in the general definitions for the Fish and Game Code overall, defines fish to include "wild fish, mollusk, crustacean, invertebrate, or amphibian." The Commission argued that the Section 45 definition applies to the term "fish" in CESA, authorizing the listing of invertebrates.

The Third District [agreed](#) with the Commission in a long and thorough opinion that goes

deep (very deep) into the weeds of the legislative history of CESA and Section 45, and canvasses a range of statutory interpretation principles. I think it's unlikely the California Supreme Court takes up this case to reverse the Third District.

My interest here, however, is not the merits (or demerits) of the Court of Appeal's analysis. The Commission now has a strong basis for listing more species of invertebrates under CESA. Given the large number of endangered invertebrate species in California, and their importance for ecosystems around the state, that is generally a good thing from a conservation perspective. [When I wrote up a range of proposals for reforming and improving CESA last year, one of the issues I flagged](#) was the uncertainty around whether invertebrates could be protected under CESA, and I encouraged the legislature to resolve that uncertainty by adding invertebrates explicitly to CESA. Now that the courts have mostly resolved that uncertainty, that's an important step towards making CESA work better, though there's a lot more to do.