

Following up on [my prior post about the proposed changes to the federal Endangered Species Act \(ESA\) regulations](#) that protect against habitat modification, what might California do to protect the species within its border? California currently has 140 federally listed animal species, and 182 federally listed plant species, 19% of the 1684 species listed under the ESA in the United States. California also has its own endangered species law, the California Endangered Species Act (CESA), which provides substantial protections for listed species independent of the federal ESA. Thus, California can provide an important backstop for protection of endangered species within its borders, regardless of what happens under the federal ESA, and because of the number of listed species in California, California's efforts would make a significant impact in protecting biodiversity.

So what can California do? The three most important steps, at least initially, draw on points I made when [I last discussed important reforms that could be made to CESA](#). First, CESA could be amended to automatically list for protection under CESA species that are listed for protection under the federal ESA. There are currently [80 animal species](#) and [65 plant species](#) in California listed only under the federal ESA, but not under CESA – for these species, loss of federal protection from habitat modification can not be provided for under CESA until they are listed under CESA. While the Fish and Wildlife Commission could list these species under CESA administratively, a statutory fix would make the transition quicker, avoiding any risks to these species if federal protections disappear quickly. It would also ensure ongoing protection for any federally listed species going forward.

Second, as I noted in my [prior post](#), “there is significant debate over whether CESA protects against modification of habitat that CESA-listed species depend on.” Eliminating any uncertainty is important if CESA is now the primary protection for California species from habitat modification. (A different California law, the Natural Community Conservation Planning Act (NCCP) creates a permitting system that protects against CESA liability that might exist for habitat modification, but that is a permitting, not regulatory, statute.)

Third, [California law currently provides as a default that federal permits under the ESA also apply for CESA purposes](#), unless the state Department of Fish and Wildlife concludes within 30 days that the ESA permit does not meet state standards. If habitat modification protection disappears under the ESA, federal incidental take permits will no longer protect against habitat modification (if they apply at all). The Department of Fish and Wildlife could individually require additional state permits in this situation, but it may be preferable to change state law so that as long as

federal law does not protect against habitat modification, federal ESA permits no longer receive default approval for CESA purposes. Alternatively, the statute could be amended to give the Fish and Wildlife Commission the power to issue regulations that can require CESA permits across the board for certain types of actions, regardless of federal permitting, so long as federal law does not protect against habitat modification.