

State of California
Fish and Game Commission
Finding of Emergency and Statement of Proposed Emergency Regulatory Action

Emergency Action to Add Section 749.15
Title 14, California Code of Regulations
Re: Conditional Take of Western Spadefoot

Date of Statement: August 10, 2026

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Background

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

On September 24, 2025, the California Fish and Game Commission (Commission) received a petition (the Petition) from the Center for Biological Diversity to list the northern and southern populations of western spadefoot (*Spea hammondi*), as threatened and endangered under the California Endangered Species Act (CESA), respectively.

The western spadefoot was petitioned to be listed under the Endangered Species Act (ESA, 16 U.S.C. § 1531 et seq.) in 2012 (USFWS 2015). The U.S. Fish and Wildlife Service (USFWS) proposed to list the northern and southern distinct population segments (DPS) as threatened in 2023 (USFWS 2023). The USFWS has not published a final determination regarding the federal petition. Furthermore, critical habitats for the northern and southern DPSs were not determined due to lack of sufficient data.

On October 6, 2025, the Commission referred the Petition to the Department of Fish and Wildlife (Department) for evaluation. At its meeting on October 8, 2025, the Commission officially acknowledged receipt of the petition. At its meeting on December 10, 2025, the Commission granted the Department's request for a 30-day extension of the period to review the petition and prepare this petition evaluation. In January 2026, the Department submitted to the Commission its evaluation of the Petition.

On April 16, 2026, the Commission closed the public hearing and continued the deliberation and decision on whether listing western spadefoot as threatened or endangered under CESA may be warranted to the Commission's June 17-18, 2026, meeting. Continuing the deliberation and decision allowed the Commission to consider a potential Fish and Game Code Section 2084 regulation in the same Commission meeting in which the Commission might make a may-be-warranted finding that would make western spadefoot a candidate species under CESA. At its June meeting, the Commission further continued the hearing on the petition for listing to its August 12-13, 2026, regularly scheduled meeting.

The Commission received a petition for regulation change associated with the proposed regulation and confirmed its completeness on June 9, 2026. The petition was scheduled for consideration at the Commission's August 12-13, 2026, meeting.

Statutory Authority

Candidate-species are protected from take under CESA pursuant to Fish and Game Code sections 2080 and 2085. Fish and Game Code Section 86 states that “[t]ake means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.” Under Fish and Game Code Section 2084, CESA provides that the Commission may adopt regulations to authorize take of candidate species, based on the best available scientific information, when the take is otherwise consistent with CESA. As with all regulations, the Commission may adopt a regulation under Section 2084 on an emergency basis when it determines that a situation exists that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

Consistency Determinations (CD) pursuant to Fish and Game Code Section 2080.1 or Incidental Take Permits (ITP) pursuant to Fish and Game Code Section 2081, subdivision (b), may also authorize the take of CESA candidate species. CESA take may only be authorized through a CD after the Department has determined that a project’s federal take authorization under the federal Endangered Species Act meets certain CESA criteria; some federal take authorizations will likely not entirely meet those criteria. Moreover, and in any event, because the species is not federally listed, a CD cannot be made. The Department may authorize CESA take through an ITP on a project-specific basis, which would be a substantially more lengthy and costly process for getting CESA take authorization than through this proposed emergency regulation.

II. Proposed Emergency Regulations

Incidental take of western spadefoot during the candidacy period that may result from activities relating to qualifying renewable energy projects.

The Commission will authorize the incidental take of western spadefoot during the candidacy period that may result from activities incidental to certain solar energy and solar/Battery Energy Storage System (BESS) projects. This authorization will only apply to the projects qualifying for, and registered under, the regulation.

Section 749.15 (New)

- (a) This subsection defines key terms for the proposed regulation, including an “aquatic resource” with the potential to serve biological needs of western spadefoot, “suitable spadefoot habitat,” and “occupied spadefoot habitat.”
- (b) This subsection defines the criteria for certain categories of renewable energy projects to be eligible for take authorization pursuant to the proposed regulation. A qualifying project must be a solar photovoltaic or combined solar photovoltaic and battery energy storage project, including any associated electric generation-tie line carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority, and which interconnects or will interconnect at a voltage of 115 or more kilovolts (kv). Further, to qualify a project must be substantially located on managed or cultivated agricultural land on the San Joaquin Valley floor within the Counties of Madera, Fresno, Kern, King, Tulare, Merced, Stanislaus, or San Joaquin, and no more than 10 percent of the disturbed area shall be open space, undeveloped, or other land substantially in its natural condition.

The project must also be included in the California Independent System Operator's interconnection Cluster 15 or a lower-numbered cluster, and reasonably be expected to qualify for the Clean Energy Investment Tax Credit under Section 48E of the Internal Revenue Code, including transferability under Section 6418, as implemented through applicable Treasury regulations (26 CFR Part 1) and Internal Revenue Service (IRS) guidance, based on a valid beginning of construction on or before July 4th, 2026 and satisfaction of continuity requirements pursuant to applicable IRS Notices.

- (c) This subsection describes the process by which take may be authorized pursuant to the proposed regulation. Within 60 days of the effective date of the regulation, a project proponent must submit a written request for registration pursuant to the regulation, and the department shall include any qualifying project on a public registry within 30 days of such submission. However, authorization for the incidental take of western spadefoot shall only be effective upon the department's determination that the project has completed focused surveys for aquatic resources, complies with the minimization and mitigation requirements of the proposed regulation, after California Environmental Quality Act (CEQA) review for the project is complete, and after the project has received all necessary land use approvals, licenses, and entitlements from the relevant public agency, among other requirements.
- (d) This subsection describes avoidance and minimization measures for western spadefoot required for each project to obtain and maintain take authorization pursuant to the regulation. These include avoidance of occupied spadefoot habitat and aquatic resources, and limitations on work during the western spadefoot breeding and dispersal season, and annual status reports, among other avoidance and minimization measures.
- (e) This subsection describes required mitigation for western spadefoot, in the form of mitigation ponds created and conserved on-site, or conserved off-site ("constructed ponds" and "off-site" ponds, respectively), at ratios to the number and acreage of the aquatic resources that are destroyed or materially adversely altered on the project site. The required ratios of mitigation ponds to aquatic resources destroyed or materially adversely altered increases if those aquatic resources are replaced with impermeable features, and if the aquatic resources are in occupied spadefoot habitat rather than in suitable spadefoot habitat. Mitigation shall be on-site (on the project site or within 1,000 feet of the project site) unless the size, design, or some other feature of the project or project site does not reasonably allow for some or all mitigation to be located on-site.
- (f) This subsection describes the required performance security which the project proponent must provide to the department before proceeding with development, construction, or operations activities that have the potential to take western spadefoot, unless the project proponent has completed the required mitigation.
- (g) This subsection describes the expiration of take authorization. The project proponent shall remain liable for the completion of all mitigation required for the project. If the project proponent has not completed the project activities that could result in take of western spadefoot, the project proponent may apply for a F&G Code Section 2081 incidental take permit. The department shall credit the project proponent for existing mitigation as well as make all reasonable efforts to incorporate the terms and conditions of the proposed regulation into the incidental take permit. The project proponent may also apply for a F&G Code Section 2081, subdivision (a) management permit if take authorization is needed for the ongoing management of mitigation ponds.

- (h) This subsection authorizes take of western spadefoot in the course of ongoing research and monitoring by public agencies other than the Department and by private parties holding a Scientific Collecting Permit for western spadefoot, California tiger salamander, or California red-legged frog, provided that a written, detailed project progress report describing objectives, methods (gear, sampling schedules and locations), efforts to minimize adverse effects to the species, and estimated level of take of the species shall be provided to the Department's Habitat Conservation Planning Branch chief. Pursuant to F&G Code Section 2081, the Department may also authorize take of western spadefoot for research and monitoring activities not addressed above.
- (i) This subsection describing responsibility of project proponent to ensure consistency with all applicable laws is necessary to clarify the limitations of the intended effect of this emergency regulation.

III. Findings for the Existence of an Emergency

The Commission considered the following factors in determining whether an emergency exists: public health, safety, and general welfare, as well as the magnitude of potential harm; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation and has determined that an emergency regulation authorized under Fish and Game Code Section 2084 is needed.

In this case, an emergency exists because of the immediate, serious harm to the public health, safety, or general welfare that would be caused by work delays or stoppages for qualifying solar and solar/BESS projects, which must "begin construction" within the meaning of the federal Investment Tax Credit according to deadlines established by the "One Big Beautiful Bill Act" in order to avail themselves of the Investment Tax Credit.

Governor Newsom's Executive Order N-33-25, responding to the federal "One Big Beautiful Bill Act" which pared back the Investment Tax Credit (ITC), directs state agencies that work on the permitting and interconnection of renewable energy projects to "accelerate and prioritize all permitting, approval, and other agency actions that would enable and expedite [their] development." Developing solar and solar/BESS projects requires substantial coordination, financing must be secured to fund engineering and construction contracts, and major equipment must be procured and developed to enable development to occur on schedule. The potential listing of the western spadefoot under CESA, absent a streamlined process for take authorization, could put near-term ITC projects in jeopardy and could stall the development (and consequently impact the cost) of renewable energy projects without which the State cannot meet its multi-sector decarbonization targets.

Climate change impacts in California pose a clear threat to public health and are identified in the petition for listing as a primary threat to the western spadefoot. The proposed emergency regulation is necessary to allow qualifying renewable energy projects to proceed with groundbreaking activities during western spadefoot candidacy under CESA. The projects are integral components in California's strategy to achieve greenhouse gas reduction goals and mitigate the State's contribution to global climate change. The limited authorization of incidental take of western spadefoot specific incidental to qualifying renewable energy projects, paired with minimization and mitigation measures, will contribute to the species' recovery in the long-term. The conservation measures required by the proposed regulation have the potential to provide a

net conservation benefit for western spadefoot as compared to current agricultural practices on managed and cultivated agricultural lands.

The Magnitude of Potential Harm

The Legislature has found that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.” (Health & Safety Code Section 38501(a)(1))

As stated above, any delay in the ability of ITC-eligible solar and solar/BESS projects threatens their ability to “begin construction” within the meaning of the ITC, and therefore to qualify for the ITC at all. Absent the federal tax credit, certain renewable energy projects may not be able to timely proceed with development, or they may lose financing and therefore fail altogether. The consequence of either outcome would be that the State’s renewable energy targets may not be reached. Given the escalating impacts of global climate change, including increased severity of drought, wildfire, and extreme weather conditions, the State’s failure to reduce its contribution to global greenhouse gas emissions would have a deleterious effect on the State’s economy, public health, and environment. The western spadefoot itself is threatened by the impacts of climate change, which may reduce the viability and availability of breeding ponds and otherwise change western spadefoot habitat in unpredictable ways.

Therefore, the Commission determines that the prompt adoption of the proposed regulation is necessary to mitigate the anticipated impacts of climate change on the State and on the western spadefoot.

The Existence of a Crisis Situation

As above, the Legislature has determined that global warming is a “serious threat” to the State’s economy, public health, and environment. Among other recent legislation, in 2025, the Legislature passed and the Governor signed Assembly Bill 1207 to expand the State Air Resources Board’s regulation of greenhouse gas emissions through the Cap-and-Invest-Program.

Based on its evaluation of the petition to list the western spadefoot as threatened or endangered under CESA, the Commission has determined that climate change likely poses a major threat to the species, and that efforts to reduce the State’s contribution to global climate change and therefore reduce future warming of western spadefoot habitat are necessary to limit harm to the species in future decades.

In the absence of a legal avenue for eligible solar projects to take western spadefoot, those projects run the risk of not being able to take advantage of the ITC. This could result in costly delays or even failure for those projects.

The Immediacy of the Need

As described above, ITC-eligible solar and solar/BESS projects are under a statutory deadline to qualify for the federal ITC, and must promptly “begin construction” for the tax credit to remain available. Consequently, these renewable energy projects need prompt authorization for the incidental take of western spadefoot because they must receive the ITC in order to remain economically viable and for their development to proceed as planned.

Legislation signed by President Trump (HR 1), and IRS implementing guidance issued in 2025, curtailed the availability of the 30% federal ITC for solar facilities in the midst of California’s efforts to reach carbon neutrality and at the time California has identified the need to add significant new resources – primarily from utility-scale solar – to the electricity system to ensure grid reliability. The State needs to take steps to ensure California meets its stated reliability targets and progresses on its climate goals, while doing so more affordably by securing the ITC’s 30% or more project cost savings. The permitting pathway and mitigation cost predictability for solar projects that adoption of this regulation will provide is critical for the successful development of the affected solar projects.

Governor Newsom’s Executive Order N-33-25 (Aug. 29, 2025) recognized the need for emergency action to accelerate efforts to bring solar facilities on line, stating (in part):

WHEREAS in 2025, Congress enacted and President Trump signed HR 1, which aims to reverse the IRA’s technological and economic progress and to impair clean energy projects, including projects already under development in California, by accelerating the expiration of the federal production and investment tax credits for clean energy projects; and

WHEREAS the Trump Administration, through IRS Notice 2025-42, has imposed accelerated deadlines requiring most projects above 1.5 MW to demonstrate “physical work of a significant nature” before July 4, 2026, and to be placed in service by December 31, 2027, placing billions of dollars in tax credit value at risk if California projects cannot meet these artificially and unjustifiably rushed deadlines, with consequences for ratepayers, grid reliability, project developers, and the state’s climate commitments; and

WHEREAS streamlining new clean energy resources, and securing the benefit of federal tax credits for such resources, helps reduce the cost of electricity for Californians; and

WHEREAS immediate action is needed to maximize the expiring federal production and incentive tax credits for clean energy projects able to begin construction by July 2026 or come online by December 2027.

HR 1 required projects to have begun construction on or before July 4, 2026, and specified that such projects must be placed into service by the end of 2030 to qualify for the ITC. Projects that do not meet the July 4, 2026 begin-construction safe harbor deadline must be placed in service by December 31, 2027 to qualify for the ITC. IRS guidance provides that projects can meet the begin construction stipulation by satisfying the “physical work test” - physical work of a significant nature at the project site and/or off-site at a factory. Such off-site work may include the manufacture of components, mounting equipment, support structures such as racks and rails, inverters,

transformers, and other power conditioning equipment. On-site work may include the installation of racks or other structures to affix PV panels, collectors, or solar cells to a site.

Utility-scale solar projects require hundreds of millions of dollars for solar panels and other equipment and for construction costs. Developers are increasingly having to make those commitments and payments earlier in the project development timelines in order to minimize supply-chain risks that have bedeviled renewables development over much of the last decade due to COVID disruptions and, more recently, tariffs. While payments and contractual commitments of some amounts will have been made by projects in order to meet the July 4, 2026, deadline, most such projects will have to spend much more to be completed. To provide the financing to complete these projects on the required timelines (including off taker power purchase agreement (PPA) milestones and commercial operation dates (deadlines for delivering electricity)), lenders and investors (including tax equity) require the clear line-of-sight on a permitting mechanism for incidental take authorization and associated mitigation fees that the regulation will provide. It is imperative that the regulation be adopted through emergency rulemaking because the permitting and mitigation cost uncertainties during the approximately 8-month period (at the very least) from candidacy to the effective date of the regulation under the standard rulemaking process would impede that necessary financing, delay project development and risk the projects missing the project placed-into-service dates the State is depending on to meet electricity demands, and may even result in the cancellation of some projects altogether.

At the same time, the California Independent System Operator is requiring developers to demonstrate they have executed PPAs earlier in the interconnection process and, therefore, earlier in the project permitting process. The advancement of species to candidacy exacerbates uncertainties about development timelines and mitigation costs, in turn making marketing projects to off takers more difficult, while at the same time impairing financing. This could delay some projects and result in the cancellation of others.

The Commission's authority to adopt emergency regulations is set out in Fish and Game Code Section 240 and Government Code Section 11346.1(b), which permit emergency rulemaking upon a finding that immediate action is necessary to avoid serious harm to the public peace, health, safety, or general welfare. That serious harm and the need to avoid it by immediate action are present here. Under the standard rulemaking process, the regulation would not become effective for approximately 8 months at the very earliest, a timeline that does not align with the financing decisions and/or PPA milestones developers face between now and April 2027. Absent the clear permitting mechanism and mitigation fee certainty that the rule would provide, developers may be unable to secure financing commitments or successfully market projects to power purchasers as planned and scheduled. As a result, some projects will be delayed and others may never be built, setting back progress on the State's reliability and climate commitments, increasing project costs that would be passed through to ratepayers, and delaying upgrades in grid reliability. Emergency rulemaking is necessary to avoid these harms to the general welfare.

Whether the Anticipation of Harm Has a Basis Firmer than Simple Speculation:

For the reasons discussed above, the harm to renewable energy projects that cannot qualify for the ITC, and therefore will be unable to proceed with development, is clear.

Additionally, a robust corpus of scientific evidence is clear that global climate change is an ongoing and increasingly severe meteorological phenomenon affecting the State of California and the habitat of the State's wildlife species. The petition to list the western spadefoot identifies scientific literature that discusses the impact of climate change on amphibian species including the western spadefoot, and concludes that climate change represents a major stressor to the species and its habitat. Consequently, the anticipated harms of climate change to the State and to the western spadefoot are clear and nonspeculative.

IV. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The proposed emergency action is expected to create fiscal impacts for the Department. The review and approval process to vet applications for take authorization will require several positions to complete, including those of regional program managers. Staff time is required to review intake documents, including assessing whether the provided habitat mitigation plan is acceptable. The costs for regional staff and certain Habitat Conservation Planning Branch (HCPB) staff under the emergency timeframe of 180 days are detailed below in Table 1. The provided hours are for the estimated 10 projects that are situated in the San Joaquin valley floor as defined in the regulations.

Table 1. Estimated Department Implementation Costs for Making Determinations as Required Under this Emergency Regulation Relating to Take of Western Spadefoot

Department Classification	Activity/Task	Hourly Rate*	Hours Projected	Projected Cost
Regional Manager	Document review and approval	\$ 218.04	100	\$ 21,804.00
Environmental Program Manager Supervisory	Document and permit review (includes both regional and HCPB staff time)	\$ 159.19	650	\$ 103,473.50
Senior Environmental Scientist Supervisor	Document and permit review (regional staff)	\$ 137.67	400	\$ 55,068.00
Senior Environmental Scientist Specialist	Document and permit review (includes both regional and HCPB staff time)	\$ 109.50	1250	\$ 136,875.00
Environmental Scientist	Document and permit review	\$ 95.10	500	\$ 47,550.00
Analyst II	Administrative Support	\$ 77.00	100	\$ 7,700.00
Attorney III	Review time for habitat conservation easements, subordination agreements	\$ 156.36	200	\$ 31,272.00

Department Classification	Activity/Task	Hourly Rate*	Hours Projected	Projected Cost
Supervisor I	Processing of securities	\$ 90.91	60	\$ 5,454.60
Cons. Engineering (Engineering Geologist)	Reviews of pond construction design plans	\$ 124.63	200	\$ 24,926.00
Supervising Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 122.24	800	\$ 97,792.00
Senior Land Surveyor	Plat map, title, and boundary reviews	\$ 146.06	3040	\$ 444,022.40
Senior Right of Way Agent	Conservation easement language review, encumbrance, and other easement on title reviews	\$ 110.02	6400	\$ 704,128.00
			Total	\$1,680,065.50

*Rates include Department 56.17% standard benefit rate, and 20.68% overhead rates.

(b) Nondiscretionary Costs/Savings to Local Agencies

This emergency regulation will not introduce nondiscretionary costs or savings to local agencies.

(c) Programs Mandated on Local Agencies or School Districts

None

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(e) Effect on Housing Costs

None

V. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon:

A summary of general scientific information on the life history of western spadefoot is presented in the Department's January 2026 Petition Evaluation for Western Spadefoot (*Spea hammondi*), <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=239898>.

Alvarez, J. A., and T. S. Kerss. 2023. Microhabitat use by post-metamorphic western spadefoot (*Spea hammondi*) in Central California. *Sonoran Herpetologist* 36:13-14.

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Pyke, C. R. (2005). Assessing Climate Change Impacts on Vernal Pool Ecosystems and Endemic Branchiopods. *Ecosystems*, 8(1), 95–105.

Shedd, J. D. 2016. Distribution of the western spadefoot (*Spea hammondi*) in the Northern Sacramento Valley of California, with comments on status and survey methodology. Pages 19-29 in R. A. Schlising, E. E. Gottschalk Fisher, and C. M. Williams, editors. *Vernal Pools in Changing Landscapes*. California State University, Chico, CA.

Thomson, R. C., Wright, A. N., & Shaffer, H. B. (2016). *California amphibian and reptile species of special concern*. University of California Press.

The California Independent System Operator's (CAISO) documentation regarding the interconnection "Clusters" is available on the CAISO website at <https://www.caiso.com/library/generator-interconnection>.

VI. Authority and Reference

The Commission adopts this emergency action pursuant to the authority vested by Sections 399 and 2084 of the Fish and Game Code to implement, interpret, or make specific Sections 399 and 2084 of the Fish and Game Code.

VII. Fish and Game Code Section 399 Finding

Climate change impacts in California pose a clear threat to public health and are identified in the petition for listing as a primary threat to the western spadefoot. The proposed emergency regulation is necessary to allow qualifying renewable energy projects to proceed with groundbreaking activities during western spadefoot candidacy under CESA. The projects are integral components in California's strategy to achieve greenhouse gas reduction goals and mitigate the State's contribution to global climate change. The allowance of incidental take of western spadefoot specific to qualifying renewable energy projects will contribute to the species' recovery in the long-term.

Pursuant to Section 399, subdivision (b), of the Fish and Game Code, the Commission finds, based on the information above, that adopting this regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Informative Digest/Policy Statement Overview

Background

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Proposed Emergency Regulations

The proposed addition of subsection 749.15, Title 14, California Code of Regulations creates a special order allowing incidental take of western spadefoot during CESA candidacy for certain

renewable energy projects that will provide renewable energy sources needed to meet California's goals in reducing fossil fuels use and the State's contribution to climate change impacts.

Benefits of the Regulation

Because climate change is a principal threat to western spadefoot identified in the listing petition, the solar and solar/BESS projects that will receive take authorization pursuant to the proposed regulation will contribute to the species' recovery in the long-term. However, mitigation must occur for any unavoidable impacts. The conservation measures required by the proposed regulation have the potential to provide a net conservation benefit for western spadefoot as compared to current agricultural practices on managed and cultivated agricultural lands.

Consistency and Compatibility with Existing Regulations

Commission staff have searched the California Code of Regulations and have found no other state regulation relating to the Commission's ability to allow for incidental take of the candidate species under CESA, and therefore conclude that the proposed regulation is neither inconsistent nor incompatible with existing state regulation.