

California's Endangered Species Act

Its Role as an Overlay to the Federal ESA & Key Areas of Difference

Presented by

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LSI Endangered Species in California Seminar

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The Cornerstones

Listing

**Take
Prohibition**

**Take
Authorization**

**Penalties &
Enforcement**

Listing – Stats

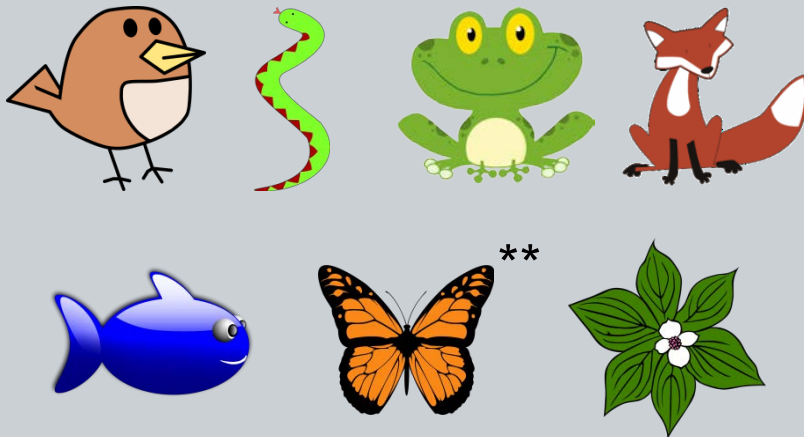
**USFWS
NOAA Fisheries/
NMFS**

Endangered
Species Act

16 USC § 1531
et seq. (1973)

319 endangered or threatened*

5 current candidates/proposed*



*In California

**Includes insects, arachnids, and other invertebrate animals

**CDFW/
CDFG**

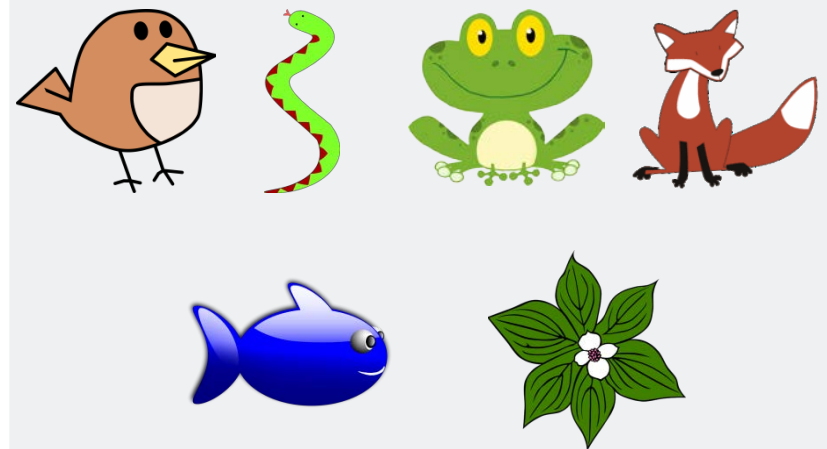
CA Endangered
Species Act

**Cal. Fish &
Game Comm'n**

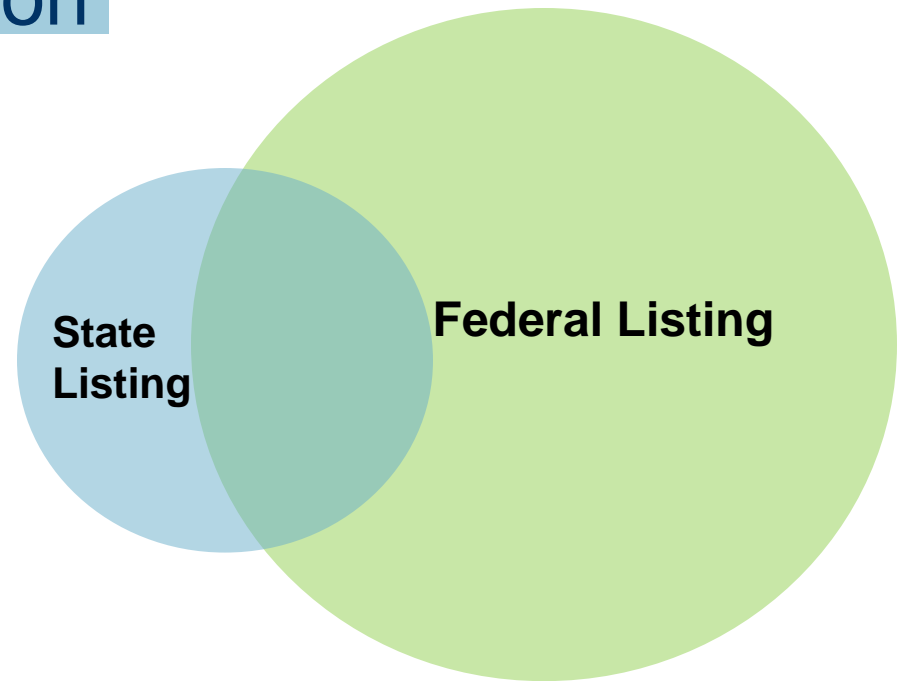
CA FGC § 2050
et seq. (1970)

239 endangered or threatened

7 current candidates



Listing – The Intersection



Dual Listings:

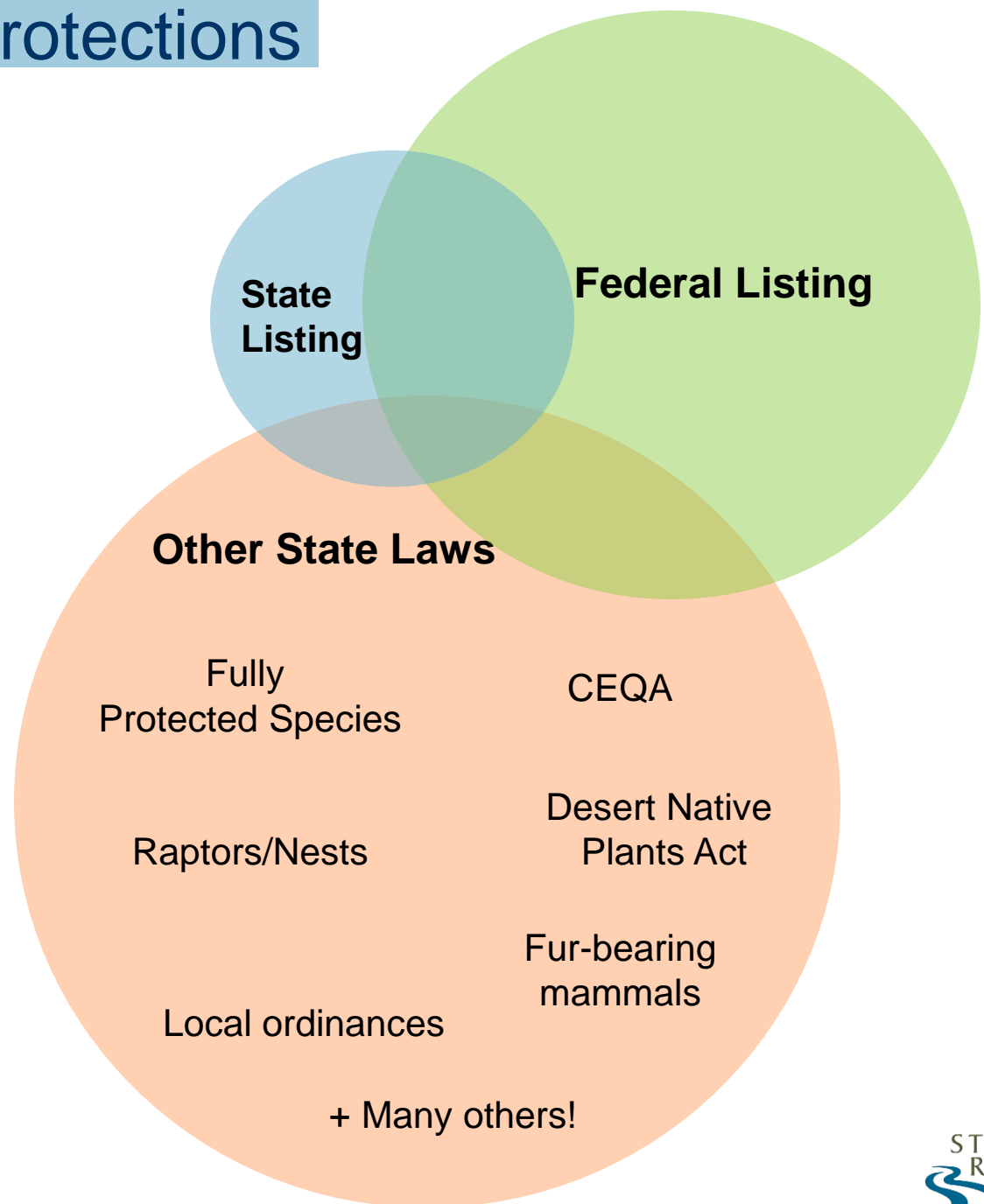
52 animals (61% of all CESA listed animals)

122 plants (79% of all CESA listed plants)

Why have dual listings?

Listing – Other Protections

Don't stop
at the Federal ESA
or California ESA!



Attempted Listings under Both

- Petition both USFWS and CFGC/CDFW
- Lower standard for candidacy under CESA?

Status Review

- 5-year status review required under both laws
- Prior lawsuits challenged USFWS failure to review; current lawsuit against CDFW

Listing Delays

- Only a federal problem; no similar delays under state law

Take Prohibition – Scope

State

Endangered

Threatened

Candidate*

*Unless a 2084 exemption

Hunt

Capture

Kill

Pursue

Catch

Federal

Endangered*

Threatened*

*limited protection for plants

Hunt

Capture

Kill

Pursue

Collect

Trap

Shoot

Wound

Harass

Harm

Take Prohibition – Harass

Federal ESA

Harass includes an “intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns...”

50 C.F.R. Section 17.3

No clear guidance.
E.g., use of audio, visual and mechanical devices prior to establishment of nests to haze tricolored blackbird “would not likely rise to the level of take.” If nests, take could occur.

CDFW March 2015 Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015

California ESA

Take Prohibition – Harm

Federal ESA

Harm includes “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns...”

50 C.F.R. Section 17.3

“We reject any insinuation that the definition of “take” ... encompasses the taking of habitat alone or the impacts of the taking.”

Envtl. Council of Sacramento v. City of Sacramento,
142 Cal. App. 4th 1018, 1040, 48 Cal. Rptr. 3d 544, 559-60 (2006)

California ESA

Take Authorization

Federal

Section 7/BiOp

Section 10 ITP/HCP

No Take



State Listed Species?



Meet Narrower State "Take" Definition?



Seek State Authorization for "Incidental Take"

Take Authorization - Options

Consistency Determination

- Dual listed species
- Federal BiOp/HCP consistent with CESA
- 30-day clock (no CEQA review)
- No new conditions

2081 ITP

- Fully mitigate impacts
- Mitigation and management plans
- CEQA compliance

Natural Community Conservation Plan

- Broad-based plans
- Cover large areas
- Listed and non-listed species; fully protected species
- Multi-agency

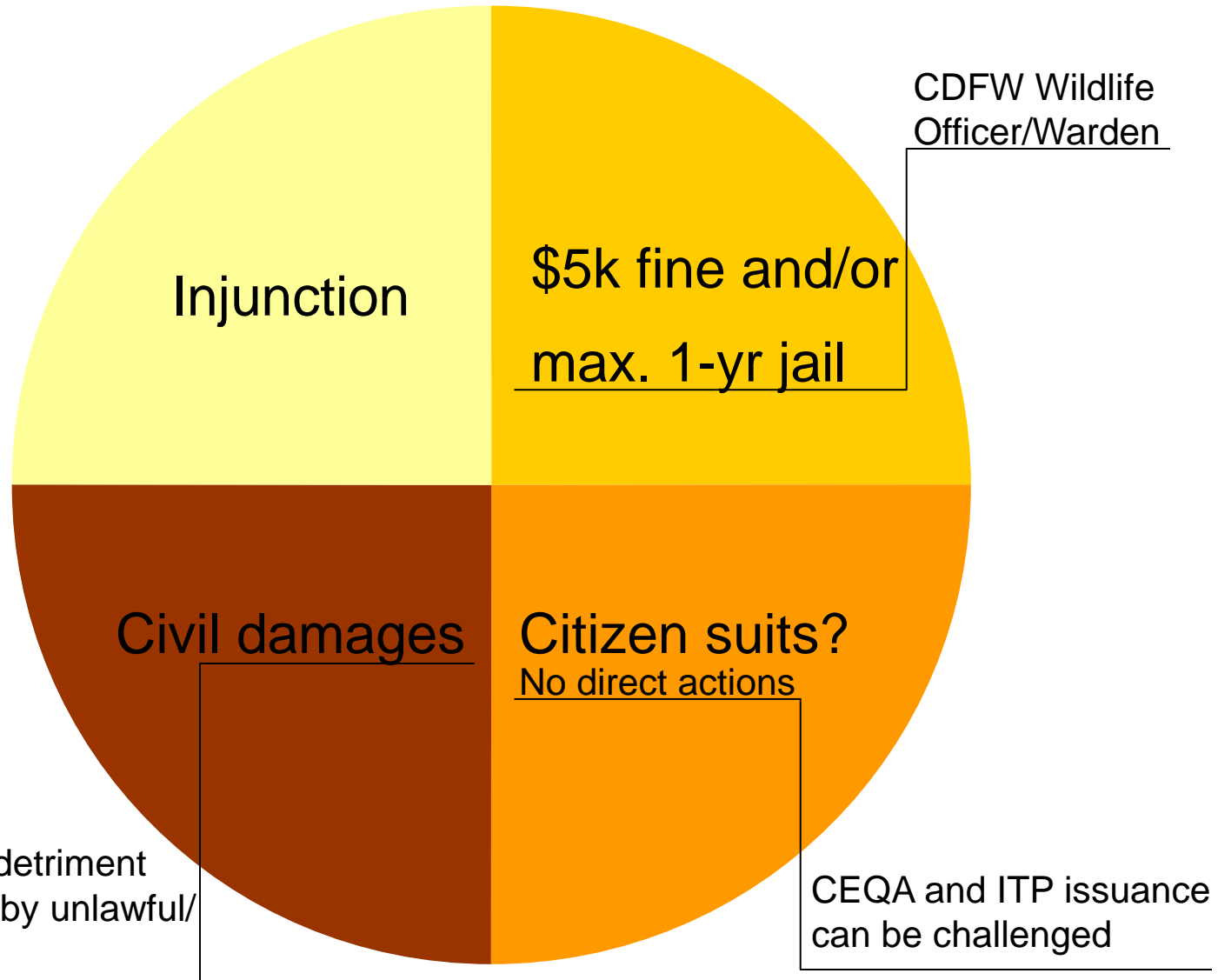
Safe Harbor Program/ Voluntary Local Programs

- Voluntary efforts by private landowners to recover species; also give take coverage
- Federal and state programs are similar

Informal Consultations?

- As required mitigation by local lead agencies during CEQA process

Penalties & Enforcement



See *Dep't of Fish & Game v. Anderson-Cottonwood Irrigation Dist.*, 8 Cal. App. 4th 1554, 1564 (1992) (injunctive relief); Cal. Fish & Game Code § § 2014 (civil damages), 12008 (imprisonment and fine)

Listing:

Independent, but often see dual listings

Take Prohibition:

**Narrower under CESA
(habitat ≠ take)**

Take Authorization:

**Early coordination
between federal/state
agencies can be key**

Penalties/Enforcement:

**Similar, but no direct
citizen suits under CESA**

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