



Why does the California Native Plant Society oppose the Native Plant Protection Act? *Because it's bad for native plants!*

What is the Native Plant Protection Act?

The Native Plant Protection Act (NPPA) of 1977 was one of the first species conservation laws in the United States. Unfortunately it provided only limited protection for plants and mandated such sweeping exceptions that even its weak provisions are rarely used to protect plants. In fact, some are trying to use the law to destroy our rarest native plants.

How can the NPPA be used to destroy plants?

The current California Endangered Species Act (CESA) was enacted in 1984 to remedy the inadequacies of previous species protection laws, including the NPPA. CESA prohibits destruction of state-listed plants and animals except under limited and controlled conditions. In recent years, however, there have been concerted attempts to remove protection from plants by reinterpreting CESA's relationship with the NPPA.

In June, 1998 Attorney General Dan Lungren issued an opinion asserting that the NPPA takes precedence over CESA. This opinion contended that the NPPA exempts the 213 state listed plants from almost all of CESA's protection. Under the Lungren opinion, NPPA's exemptions could be interpreted to allow unlimited destruction of state-listed plants during a wide range of land-use activities, such as commercial development, mining and logging. The opinion reached the illogical conclusion that state law protects listed animals, but not listed plants from destruction.

Also in 1998, the Department of Fish and Game published new regulations to implement portions of CESA. Those regulations appeared to support the Lungren Opinion. The publication of the opinion and regulations have increased the likelihood that developers and others will attempt to use the broad exemptions in NPPA to kill listed plants. Indeed, that process has begun. A 1999 article by developer attorneys in the California Land Use Law and Policy Reporter argued that landowners may knowingly destroy listed plants and habitat without a CESA permit or meaningful mitigation. If this interpretation is formally adopted by the courts or by the Department of Fish and Game, destruction of California's listed plants and their habitats could increase dramatically. The threat is elevated by California's rapidly escalating land values that increase pressure for destruction of native plant and wildlife habitat to pave the way for speculative development.



The striped adobe lily is listed as threatened under CESA. It lives in coastal Marin and Sonoma Counties. Photo: Brother Eric Vogel, St. Mary's College

State Law Supports Equal Protection for Plants

The California Native Plant Society (CNPS) and others argue that plants should not be treated as second class citizens and that the California Legislature has made it clear that state-listed threatened and endangered plants are to be managed and protected under CESA just as animals are.

The evidence supports our position. First, the legislative history shows that the Legislature consciously extended CESA protection to threatened and endangered plants when it enacted the current form of CESA in 1984. In fact it explicitly assigned endangered status under the new CESA to plants that had been listed as endangered under NPPA. Second, the Legislature has consistently treated listed plants and animals as equals since CESA was enacted. Finally, and perhaps most important, the broad allowances for killing endangered and threatened plants with impunity under the Lungren interpretation would be contrary to current laws and policies of the state of California – not to mention popular sentiment – all of which provide a strong and consistent mandate for conservation of rare species (Contact CNPS or visit our web page – www.cnps.org - for more detailed legal analysis).

CESA Contains Ambiguous Language

Despite the clear intent of the Legislature to protect plants, there is some unintentional ambiguity in the language of CESA that encourages attempts to circumvent CESA protection for California listed plants. Until CESA is clarified, California can expect continued confusion among landowners, land use planners and agencies, and battles in the courts. CNPS is developing strategies to clarify CESA so that the intent of the Legislature and the goals of CESA can be fulfilled.

Native Plants are Disappearing

Our irreplaceable native plants are increasingly at risk. Threats from speculative development, excessive logging, mining, and other activities are at unprecedented levels. A recent report by the World Conservation Union found that 29% of plant species in the U.S. are at risk of extinction. CNPS reports that at least 13% of our flora (more than 850 species) are at risk in California.

Action Is Needed Now!

It is critically important that we act now to clarify CESA so that threatened and endangered plants unequivocally receive all of the same protections and efforts towards recovery as animals do. The public strongly and consistently supports effective biological diversity conservation, but unless plants are protected, efforts to conserve California's natural heritage will fail. The California Legislature has always understood this and has mandated equal treatment for threatened and endangered plants and animals since 1984. Now is the time to remove the confusion and reaffirm the intent of the Legislature that California's native plants receive equal treatment under the law.



Carpenteria californica is listed as Endangered under CESA. This shrub lives in the foothills of the southern Sierra Nevada.
Photo: Brother Eric Vogel, St. Mary's College

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