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Kenyon Yeates prevails on behalf of coho salmon in California Court of Appeal

Representing California Trout, Inc. and a coalition of environmental organizations, KenyonYeates has helped defend the California Fish and Game Commission's listing of coho salmon as threatened and endangered under the California Endangered Species Act ("CESA"). On November 20, 2007, the Court of Appeal for the Third Appellate District filed its opinion rejecting all of the attacks brought against this listing. You can read the court's published opinion here. [\[link\]](#)

In July of 2000, California Trout, Inc. led a coalition of organizations petitioning the California Fish and Game Commission to list the coho salmon as an endangered species from San Francisco Bay to the California/Oregon border. (Coho south of San Francisco were already listed as endangered.). The Department of Fish and Game reviewed the status of the coho salmon and determined that its listing under CESA should be divided along the coho's two Evolutionarily Significant Units ("ESUs"), which faced differing degrees of threats. The Department determined that the Central California Coast ESU, which had already been extirpated from several rivers and streams, qualified as an endangered species under CESA, while the somewhat healthier Southern Oregon/Northern California Coast ESU qualified as a threatened species. The listing process was finally completed in August of 2004.

In June of 2005, the California Forestry Association led a coalition in filing suit in Sacramento Superior Court to overturn this listing. These groups alleged that the Commission did not have the authority to divide the listing of species into ESUs, arguing that all groups of a species must receive the exact same protections or none at all. These groups also contended that CESA required evaluation of a species' health worldwide, and not just in California.

The Court of Appeal rejected all of these arguments. Justice Ronald Robie, writing for a unanimous Court of Appeal, upheld the listing of distinct ESUs as within the agencies' discretion. The Court held that CESA's lack of a specific definition of "species" gave the agencies discretion to interpret that term to include ESUs, and that this interpretation was within the scope of their authority because the agencies found that ESUs "were integral to maintaining the diversity of the species and therefore to protecting the species as a whole." The Court stated that "deference to their interpretation is consistent with the liberal construction we accord laws such as the CESA and furthers the policy of that statute to 'conserve, protect, restore, and enhance any endangered species or any threatened species' (§ 2052)."

The Court also held that the Department and Commission may look only in California when determining whether to list a species as threatened or endangered. "[T]he Legislature declared that endangered and threatened species were of 'value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern.'"

The Court's ruling in this case not only upholds the hard-earned listing protections that the coho salmon will need to survive as a species in California, but also closes the door to future legal challenges that would otherwise delay and impede the important protections that these severely imperiled species must have.