
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 223 **Hearing Date:** July 13, 2021
Author: Ward
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Wildlife: dudleya: taking and possession*

HISTORY

Source: California Native Plant Society

Prior Legislation: Not applicable

Support: Audubon California; California Association of Resource Conservation Districts; California Botanic Garden; California Native Plant Society; California Releaf; California Wilderness Coalition; Californians for Western Wilderness; Center for Biological Diversity; Center for Plant Conservation; Defenders of Wildlife; Endangered Habitats League; Environmental Center of San Diego; Friends of Hedionda Creek; Friends of The Inyo; Great Old; Broads for Wilderness; Los Angeles Audubon Society; Los Padres Forestwatch; Mojave Desert Land Trust; Morongo Basin Conservation Association; Mountain Lion Foundation; National Parks Conservation Association; Natural Resources Defense Council; Pacific Forest Trust; San Diego Audubon Society; Santa Barbara Audubon Society; Sierra Club California; Sierra Forest Legacy; The Nature Conservancy; The Urban Wildlands Group; The Wildlands Conservancy; Theodore Payne Foundation for Wild Flowers & Native Plants; Tuleyome; Vet Voice Foundation

Opposition: ACLU Action

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to make it a misdemeanor to uproot, harvest or cut dudleya from state or local government property or from private property without permission and to sell, export, purchase dudleya that was taken illegally.

Existing law establishes the Department of Fish and Wildlife (department) and the Fish and Game Commission (commission) in the California Natural Resources Agency.

- a) The department's charge is to manage the state's diverse fish, wildlife, and plant resources, among other things.
- b) In general, the commission sets regulations that the department implements and enforces.

Existing law prohibits the taking of species listed as endangered or threatened under the California Endangered Species Act (CESA) as specified. (Fish and Game Code (FGC) §§2050 *et seq.*),

Existing law provides that under CESA, the commission is authorized to designate species, including plants, as threatened or endangered.

Existing federal law under the federal Endangered Species Act (ESA)(Title 16, United States Code, §§1531 – 1544) predates CESA by about a decade, and similarly prohibits the take of federally listed threatened or endangered species, as provided.

Existing law establishes the Native Plant Protection Act which authorizes the commission to designate plants as rare or endangered, and also prohibits the take of those species, except as specified. The commission has designated 64 plant species, subspecies, or varieties as “rare.”

(FGC §§1900 *et seq.*)

Existing law establishes the California Desert Native Plants Act which seeks to prevent the illegal harvesting of native desert plants in certain desert regions of the state. (Food and Agriculture Code (FAC) §§80000 *et seq.*)

Existing law makes it misdemeanor punishable by up to 6 months in jail and/or a \$1,000 fine to willfully or negligently cut, destroy, mutilate, or remove plant material that is growing upon state or county highway rights-of-way. Additionally, a person shall not willfully or negligently cut, destroy, mutilate, or remove plant material that is growing upon public land or upon land that is not his or hers without a written permit, as specified, from the owner of the land, and a person shall not knowingly sell, offer or expose for sale, or transport for sale, plant material that is cut or removed in violation of these provisions. (Penal Code §384a)

This bill would make it a misdemeanor to uproot, remove, harvest, or cut dudleya from land owned by the state or a local government or from property not their own without written permission from the landowner in their immediate possession and to sell, offer for sale, possess with intent to sell, transport for sale, export for sale, or purchase dudleya that has been illegally uprooted, removed, harvested, or cut.

This bill would make the misdemeanor penalty for the above offense:

- a) For a first offense, up to 6 months in the county jail and/or a fine of not less than \$5,000 per plant (plus penalty assessments).
- b) For a second offense, up to 6 months in the county jail and/or a fine of not less than \$40,000 per plant (plus penalty assessments)

This bill defines “dudleya” as a succulent plant that belongs to the genus *Dudleya* and referred to commonly as “live-forevers” or “dudleya” that is native to California and grows in natural habitats.

This bill provides that a person who has a license or permit to take dudleya may take plants consistent with the permit.

This bill makes a number of codified legislative findings regarding the importance of and illegal sale of dudleya.

COMMENTS

1. Need for This Bill

According to the author:

As the popularity of succulents grow internationally, cases of illegal poaching of the state's native dudleya have risen alarmingly, necessitating action and enforcement that will disincentivize it. These succulents can be grown in nurseries, but a fixation from buyers on larger, more-mature dudleya that have been shaped by growing conditions in their natural habitat and have visible signs of weathering, has driven up the price of dudleya taken from natural areas of the state to as much as \$1,000 per plant. As a result, plant poachers have been motivated to collect dudleya from the state's natural areas by the thousands, shipping them for sale on the black market in other countries, in line with the highest demand.

Investigators estimate that the [state has lost several hundreds of thousands of dudleya](#) worth tens of millions of dollars to illegal poaching activity already, but because not all poaching operations are found or effectively pursued, it is difficult to truly quantify the full scale of this problem.

The state must be equipped to respond to the increasing rates of dudleya poaching, in the same way it is able to respond to the poaching and sale of other wildlife and wildlife byproducts. As noted by the California Fish and Game Warden Supervisors and Managers Association in their letter supporting AB 223, by clearly making it unlawful to take or sell dudleya taken from their natural habitat in the state, and establishing strict penalties for violations, this bill would strengthen enforcement capacity for dudleya poaching as well as disincentive future poaching operations.

2. Dudleya

Dudleya is a genus of succulent perennial plants native to southwestern North America. A perennial plant is one that persists over at least two growing seasons, and some species of Dudleya are reported to live as long as 100 years. Dudleya are sometimes referred to as "live-forevers."

Dudleya have waxy leaves, and, generally, prefer dry and warm conditions. The plant's leaves store water, and the plants are drought-tolerant. They are found on rock outcroppings, cliff faces, and are thought to help prevent erosion. Dudleya are also found by roadsides and other locations throughout the state.

There are about 47 known species of Dudleya, and 26 of these are native to California.

Ten species of Dudleya are currently listed as federally threatened or endangered, or state threatened or endangered or rare, or some combination thereof. These include, for example, the federally and state endangered Santa Barbara Island Dudleya (*dudleya traskiae*), and the federally threatened and state rare "marcescent dudleya" (*dudleya cymosa ssp. marcescens*).

Panamint Dudleya (*dudleya saxosa*) is protected under the California Desert Native Plants Act and cannot be harvested, except as specified. (FAC §80072)

According to the Department of Fish and Game, illegal poaching of the state's native plants has grown considerably in the last few years. Several species of Dudleya have become extremely popular as houseplants in many Southeast Asian countries (despite the fact that the plants are not suited for the hot and humid weather, and likely die within a year or two). A single Dudleya plant can be sold for \$40 - \$80, and news reports indicate that an older plant – particularly one 50 – 100 years old with visible signs of weathering – may sell for \$1,000 or more.

Poachers have been collecting wild Dudleya along the state's coast from both public and private lands. The plants are exported and sold overseas. It is unknown how many plants have been illegally dug up and exported, but the department estimates in the last few years that poachers have stolen several hundred thousand plants worth millions or tens of millions of dollars overseas.

In 2018, a couple were found with over 600 Dudleya poached from public lands – including state parks – near Big Sur. Also in 2018 a group of three was caught with over 2,300 poached Dudleya plants in Humboldt County. It is likely that group of poachers had already shipped over 5,000 plants to Asia.

As noted above, many species of Dudleya are already acknowledged to be at considerable risk. Illegal poaching increases those risks. In addition the loss of Dudleya degrades ecosystem services.

3. Misdemeanor

Existing law already makes it a misdemeanor with a penalty of up to 6 months in county jail and/or a fine of \$1,000, plus penalty assessments, to remove plant material that is growing on public land or private property without written permission of the owner of the land. (Penal Code Section 384a)

This bill would make it a 6 month misdemeanor with a fine of \$5,000 per plant for a first offense and \$40,000 per plant for a second offense to uproot, remove, harvest, cut dudleya from land owned by the state or local government, or from private property without permission and to sell, transport for sale, export for sale, or purchase dudleya that has been thus removed.

The author and sponsor believe the high fines are necessary because the plants are being sold for such a high price.

The misdemeanor applies to a purchaser as well as a person who removed the plants or who is selling or exporting the plants. Should there be some sort of knew or should have known requirement for the purchaser? It is clear the intent is to go after a purchaser who buys large quantities from a person who has removed the plant to turn around and sell or export the plants but the language could apply to someone who stops at a yard sale or a sale on the side of the road to buy a couple plants not knowing they were illegally taken or even that they were protected.

4. Argument in Support

The California Native Plant Society states:

AB 223 would make it illegal to harvest *Dudleya* (liveforevers) from land in California without a permit or landowner permission. This bill would establish stiff penalties for *Dudleya* poaching, with fines of \$5000 per plant, for first offenders. *Dudleya* includes 68 named species, subspecies, and varieties, 42 of which are native to California. Ten *Dudleya* are listed as threatened or endangered by the state and/or federal government and a total of 29 are included in the California Native Plant Society Rare Plant Inventory.

Officials estimate that potentially hundreds of thousands of *Dudleya* have been removed from habitats in California. The vast majority of these have been exported and are available for sale internationally. Mature *Dudleya* can be decades old, and specimens such as these can fetch as much \$1000. Some of these plants for sale are common species, such as *Dudleya farinosa* (powdery liveforever), but, dishearteningly, some recent poaching operations have targeted extremely rare species. In 2020, posts on social media pointed to shipments of *Dudleya candelabrum* (candleholder liveforever) harvested from California and destined for sale in Korea. Candleholder liveforever is restricted to San Miguel, Santa Rosa, and Santa Cruz Islands off the coast of Ventura County. Furthermore, searches of online marketplaces including Etsy and Ebay reveal large, mature, possibly poached plants of numerous rare species, including *Dudleya gnoma* (munchkin liveforever), which is known from a single population, for sale. The harvest of rare and imperiled species such as these could place them at risk of extinction.

The Department of Fish and Wildlife needs an effective way to enforce action against *Dudleya* poaching operations and to dissuade future poaching activity. AB 223 would make it unlawful to uproot, remove, harvest, or cut *Dudleya* on lands owned by the state government, local governments, or private landowners, and establishes substantial penalties for violations, thereby making the potential profits from selling *Dudleya* on the black market less attractive.

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5. Argument in Opposition

ACLU Action opposes this bill stating:

Under existing law, a person can already be prosecuted for the taking of dudleya. Depending on the circumstances and the specific species taken, the defendant could be prosecuted under the federal Endangered Species Act,¹ California Endangered Species Act,² the Native Plant Protection Act,³ the California Desert Native Plants Act,⁴ or simply under the Penal Code provision making it a crime to take plant material from public land or land that belongs to another person.⁵ As former Governor Jerry Brown said, “[t]his multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.”⁶ Given the availability of existing laws, we do not believe a separate crime is necessary for the taking of dudleya.

Indeed, in the high profile dudleya poaching case from Humboldt county in 2018, each of the three defendants was convicted of felony charges including false filings with the government and conspiracy, in addition to misdemeanor charges, and received prison sentences and were charged fines of \$10,000 each. (The prison terms were suspended on the condition that the defendants, foreign nationals, are prohibited from entering the U.S. without permission.) New penalties are simply not needed to prosecute those who wrongfully take dudleya from public or private lands

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