



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
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AB-2488 Protected species: unarmored threespine stickleback: taking or possession. (2015-2016)

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Assembly Bill No. 2488

CHAPTER 387

An act to amend Section 5515 of, and to add Section 2081.10 to, the Fish and Game Code, relating to fish.

[Approved by Governor September 16, 2016. Filed with Secretary of State September 16, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2488, Dababneh. Protected species: unarmored threespine stickleback: taking or possession.

Existing law prohibits the taking or possession of a fully protected fish, except as provided, and designates the unarmored threespine stickleback as a fully protected fish. The California Endangered Species Act prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Wildlife may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

This bill would permit the department to authorize, under the California Endangered Species Act, the take of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) attributable to the periodic dewatering, inspection, maintenance, modification, or repair of the Metropolitan Water District of Southern California's Foothill Feeder water supply facility from Castaic Dam to the Joseph Jensen Treatment Plant in the County of Los Angeles, as specified, if certain conditions, including the adoption of an adaptive management plan, are satisfied. The bill would require the Metropolitan Water District of Southern California, if it receives a permit under the bill, to report certain information to the department within 6 months after every dewatering of the Foothill Feeder.

This bill would incorporate additional changes to Section 5515 of the Fish and Game Code, proposed by AB 1845 and AB 2001, that would become operative only if this bill and either or both of those bills are chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Foothill Feeder below Castaic Dam in the County of Los Angeles is the primary conduit for water from the State Water Project for the southern California region served by the Metropolitan Water District of Southern California. The Metropolitan Water District of Southern California is a public agency comprised of 26 member public agencies – 14 cities, 11 municipal water districts, and one county water authority – and provides water to approximately 19 million people in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.

(b) Water supplies from the State Water Project are a critical part of southern California's water supply portfolio, and any interruption of that supply must be minimized to ensure delivery of clean and reliable water supplies for municipal and industrial uses, including health and human safety, and to water agencies and cities that rely upon water supply deliveries from the Metropolitan Water District of Southern California.

(c) Periodic dewatering, inspection, maintenance, modification, or repair, including emergency repairs, require that all or a portion of the Foothill Feeder be dewatered into the Santa Clara River and certain of its tributaries where unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) may be present during these activities. Thus, to protect southern California water supplies, the incidental take of unarmored threespine stickleback must be permitted for the periodic dewatering, inspection, maintenance, modification, or repair of the Foothill Feeder.

(d) During the permit application process pursuant to Section 2081.10 of the Fish and Game Code, the Metropolitan Water District of Southern California shall consult with the Department of Fish and Wildlife and the United States Fish and Wildlife Service with respect to feasible mitigation and conservation measures that may be adopted pursuant to that section. These measures shall be consistent with any state or federal wildlife agency recovery plan adopted for the long-term conservation of the unarmored threespine stickleback in the Santa Clara River watershed.

SEC. 2. Section 2081.10 is added to the Fish and Game Code, to read:

2081.10. (a) The department may authorize, under this chapter, the incidental take of unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) attributable to the periodic dewatering, inspection, maintenance, modification, or repair, including emergency repair, of the Metropolitan Water District of Southern California's Foothill Feeder water supply facility from Castaic Dam to the Joseph Jensen Treatment Plant in the County of Los Angeles, contingent upon the fulfillment of the following conditions:

(1) The department determines that the requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the unarmored threespine stickleback.

(2) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 are incorporated into the project.

(3) The take authorization provides for the development and implementation, in cooperation with the department, of an adaptive management plan for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take and to satisfy the conservation standard of subdivision (d) of Section 2805.

(4) A biologist who has substantial relevant experience evaluating impacts to inland fisheries is on duty whenever an activity is conducted that may affect the unarmored threespine stickleback.

(5) The Metropolitan Water District of Southern California consults with the department to consider feasible measures to avoid and minimize incidental take of unarmored threespine stickleback. For purposes of this paragraph, "feasible" has the same meaning as defined in Section 15364 of Title 14 of the California Code of Regulations.

(b) The take authorization shall cover any incidental take of unarmored threespine stickleback attributable to the periodic dewatering, inspection, maintenance, modification, or repair, including emergency repair, of the Foothill Feeder that may occur in the following locations:

(1) Within the Santa Clara River, from the Bouquet Canyon Road Bridge to a point located 4,000 feet downstream of where Commerce Center Drive, as of January 1, 2016, dead-ends adjacent to the Santa Clara River.

(2) From the confluence with the Santa Clara River upstream to the following locations:

(A) In Charlie Canyon to a point 1,000 feet upstream of the Foothill Feeder facility dewatering structure.

(B) In San Francisquito Creek to the Copper Hill Drive bridge.

(C) In Placerita Creek to the Hacienda Lane crossing.

(D) In Bouquet Creek to the Newhall Ranch Road Bridge.

(c) The take authorization shall also cover any incidental take of unarmored threespine stickleback that may occur in the course of implementing mitigation or conservation actions required in the permit issued pursuant to subdivision (a) as may be modified through an adaptive management plan adopted pursuant to paragraph (3) of subdivision (a).

(d) The permit issued pursuant to subdivision (a) shall include conditions that cover biological and scientific considerations including, but not limited to, criteria for the handling of stranded fish and their relocation into suitable habitat, the dewatering of the

Foothill Feeder, and the reasonable and feasible mimicking of streamflows. The permit conditions shall be in compliance with the project description, mitigation measures, and release plan set forth in the certified environmental impact report known as the "Foothill Feeder Repair and Future Inspections Project Environmental Impact Report, January 2005, State Clearinghouse Number 2005071082." The permit conditions are subject to amendment when required by the adaptive management plan or when modified by a subsequent final environmental document pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(e) This section shall not be construed to exempt from any other law the periodic dewatering, inspection, maintenance, modification, or repair of the Foothill Feeder.

(f) If the Metropolitan Water District of Southern California receives a permit under this section, the permit shall require the district to report to the department within six months after every dewatering of the Foothill Feeder. The report shall address compliance with the permit conditions and the effectiveness of the adaptive management plan in contributing to the conservation of the unarmored threespine stickleback. The Metropolitan Water District of Southern California shall ensure that each report is made available to the public.

(g) As used in this section, "modification" does not include alterations to expand the maximum physical capacity of the Foothill Feeder to deliver water.

SEC. 3. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.6, 2081.7, 2081.10, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected fish may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

(1) Colorado River squawfish (*Ptychocheilus lucius*).

(2) Thicktail chub (*Gila crassicauda*).

(3) Mohave chub (*Gila mohavensis*).

(4) Lost River sucker (*Catostomus luxatus*).

(5) Modoc sucker (*Catostomus microps*).

(6) Shortnose sucker (*Chasmistes brevirostris*).

(7) Humpback sucker (*Xyrauchen texanus*).

(8) Owens River pupfish (*Cyprinodon radiosus*).

(9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).

(10) Rough sculpin (*Cottus asperimus*).

SEC. 3.1. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, 2081.10, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that

purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected fish may be possessed under a permit issued by the department.

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(7) Humpback sucker (*Xyrauchen texanus*).

(8) Owens River pupfish (*Cyprinodon radiosus*).

(9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).

(10) Rough sculpin (*Cottus asperimus*).

SEC. 3.2. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.6, 2081.7, 2081.10, 2089.7, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected fish may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

(1) Colorado River squawfish (*Ptychocheilus lucius*).

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(4) Lost River sucker (*Catostomus luxatus*).

(5) Modoc sucker (*Catostomus microps*).

- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

SEC. 3.3. Section 5515 of the Fish and Game Code is amended to read:

5515. (a) (1) Except as provided in this section or Section 2081.4, 2081.6, 2081.7, 2081.10, 2089.7, or 2835, a fully protected fish shall not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected fish may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

- (1) Colorado River squawfish (*Ptychocheilus lucius*).
- (2) Thicktail chub (*Gila crassicauda*).
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- (6) Shortnose sucker (*Chasmistes brevirostris*).
- (7) Humpback sucker (*Xyrauchen texanus*).
- (8) Owens pupfish (*Cyprinodon radiosus*).
- (9) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (10) Rough sculpin (*Cottus asperimus*).

SEC. 4. (a) Section 3.1 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by both this bill and Assembly Bill 1845. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 5515 of the Fish and Game Code, (3) Assembly Bill 2001 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1845, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by both this bill and Assembly Bill 2001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 5515 of the Fish and Game Code, (3) Assembly Bill 1845 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 2001 in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by this bill, Assembly Bill 1845, and Assembly Bill 2001. It shall only become operative if (1) all three bills are enacted and become effective on or

before January 1, 2017, (2) all three bills amend Section 5515 of the Fish and Game Code, and (3) this bill is enacted after Assembly Bill 1845 and Assembly Bill 2001, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.