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AB-2640 Fully protected species: Lost River sucker and shortnose sucker limited take authorization: California condor limited take authorization. (2017-2018)

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Assembly Bill No. 2640

CHAPTER 586

An act to amend Section 5515 of, and to add Sections 2081.11 and 3858 to, the Fish and Game Code, relating to fish and wildlife.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2640, Wood. Fully protected species: Lost River sucker and shortnose sucker limited take authorization: California condor limited take authorization.

(1) The California Endangered Species Act (CESA) prohibits the taking of an endangered or threatened species, except as specified. Under CESA, the Department of Fish and Wildlife may authorize, by permit, the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

Existing law prohibits the taking or possession of a fully protected fish, except as provided, and designates the Lost River sucker and the shortnose sucker as fully protected fish.

This bill would permit the department to authorize, under CESA, the take or possession of the Lost River sucker and shortnose sucker resulting from impacts attributable to or otherwise related to the decommissioning and removal of the Iron Gate Dam, the Copco 1 Dam, the Copco 2 Dam, or the J.C. Boyle Dam, each located on the Klamath River, consistent with the Klamath Hydroelectric Settlement Agreement, if specified conditions are met.

(2) The federal Endangered Species Act of 1973 (ESA) directs federal agencies, in consultation with the United States Secretary of the Interior or the United States Secretary of Commerce, as appropriate, to carry out conservation programs for endangered or threatened species listed under ESA. ESA generally prohibits activities affecting these threatened and endangered species unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. ESA provides for enhancement of survival permits to allow actions necessary for the establishment and maintenance of experimental populations designated pursuant to ESA.

Existing law provides that a person who obtains a federal enhancement of survival permit that authorizes the taking of an endangered or threatened species that is also listed as an endangered, threatened, or candidate species under CESA, in order to establish or maintain an experimental population of the species pursuant to ESA, requires no further authorization or approval under CESA for that person to take that species as identified in, and in accordance with, the enhancement of survival permit, if specified requirements are met. Existing law also authorizes the incidental take of an endangered, threatened, or candidate species that is designated as an experimental population under ESA, without the need for further authorization or approval under CESA, if specified requirements are met.

Existing law prohibits the taking or possession of a fully protected bird, except as provided, and designates the California condor as a fully protected bird. Existing law authorizes the department to carry out a California condor preservation project that has objectives including habitat protection, field research, a captive breeding program, and a condor release program. Existing law requires the department, jointly with a specified federal-state condor recovery team established pursuant to ESA, to develop a plan to respond to these objectives.

This bill would provide that if the take of California condors under the Northern California Condor Restoration Program, as defined, is exempt from further authorization or approval under CESA based on acquisition of a federal enhancement of survival permit or based on a federal experimental population designation, and the Director of Fish and Wildlife finds the permit or designation, as applicable, to be consistent with the objectives and plans of the California condor preservation project, the take or possession of California condors under the Northern California Condor Restoration Program shall also be exempt from the above-described prohibitions against the taking or possession of any fully protected bird.

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

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

SECTION 1. Section 2081.11 is added to the Fish and Game Code, to read:

2081.11. (a) The department may authorize, under this chapter, the take or possession of the Lost River sucker (*Deltistes luxatus* and *Catostomus luxatus*) and shortnose sucker (*Chasmistes brevirostris*) resulting from impacts attributable to or otherwise related to the decommissioning and removal of the Iron Gate Dam, the Copco 1 Dam, the Copco 2 Dam, or the J.C. Boyle Dam, each located on the Klamath River, consistent with the Klamath Hydroelectric Settlement Agreement, if all of the following conditions are met:

(1) The department finds the authorized take will not jeopardize the continued existence of the Lost River sucker or shortnose sucker.

(2) The impacts of the authorized take are minimized.

(3) The take authorization requires department approval of a sampling, salvage, and relocation plan to be implemented and that describes the measures necessary to minimize the take of adult Lost River sucker and shortnose sucker associated with the department's authorization. The plan shall provide for a sampling effort, the results of which will provide information used to make decisions and to implement the plan while utilizing the principles of adaptive management.

(b) This section shall not be construed to exempt the project described in subdivision (a) from any other law.

SEC. 2. Section 3858 is added to the Fish and Game Code, to read:

3858. (a) For purposes of this section, the term "Northern California Condor Restoration Program" means the California condor restoration program in northern California associated with the California Condor Recovery Plan published by the United States Fish and Wildlife Service in April 1996, or a subsequent revision of that plan.

(b) Notwithstanding Section 3511, if the take of California condors under the Northern California Condor Restoration Program is exempt from further authorization or approval under Chapter 1.5 (commencing with Section 2050) of Division 3 pursuant to Section 2080.5 or 2080.6, and the director finds the enhancement of survival permit described in subdivision (a) of Section 2080.5 or federal regulations described in paragraph (1) of subdivision (b) of Section 2080.6, as applicable, to be consistent with the objectives and plans developed pursuant to this chapter, the take or possession of California condors under the Northern California Condor Restoration Program shall also be exempt from the prohibitions in Section 3511.

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 2081.4, 2081.6, 2081.7, 2081.10, 2081.11, 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*).

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

(4) Lost River sucker (*Deltistes luxatus* and *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*).