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SB-147 Fully protected species: California Endangered Species Act: authorized take. (2023-2024)

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Senate Bill No. 147

CHAPTER 59

An act to amend Sections 395, 3511, 4700, 5050, and 5515 of, and to add Section 2081.15 to, the Fish and Game Code, relating to fully protected species, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 10, 2023. Filed with Secretary of State July 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 147, Ashby. Fully protected species: California Endangered Species Act: authorized take.

The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species and to add or remove species from either list if it finds, upon the receipt of sufficient scientific information, as specified, that the action is warranted. The act prohibits the taking of an endangered or threatened species, except in certain situations, including, if specified conditions are met, through the issuance of a permit commonly known as an incidental take permit.

Existing law also enumerates fully protected species and prohibits the take of fully protected species, except under limited circumstances.

This bill would, until December 31, 2033, authorize the Department of Fish and Wildlife to issue a permit under CESA that would authorize the take of a fully protected species resulting from impacts attributable to the implementation of specified projects if certain conditions are satisfied, including, among others, the conditions required for the issuance of an incidental take permit. The bill would require the department to develop a plan on or before July 1, 2024, to assess the population status of each fully protected species. The bill would require the department, on or before July 1, 2025, and annually thereafter, to prepare and submit a report to certain committees of the Legislature regarding the implementation of the authorization to issue these permits for the take of fully protected species.

The bill would also remove the American peregrine falcon, brown pelican, and thicktail chub as fully protected species.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 395 of the Fish and Game Code is amended to read:

395. (a) The commission may adopt regulations for the possession or training, and the capture, importation, exportation, or intrastate transfer, of any bird in the orders Falconiformes and Strigiformes (birds-of-prey) used in the practice of falconry and

may authorize the issuance and provide for the revocation of licenses and permits to persons for the practice of falconry.

(b) It is unlawful to capture, possess, or train any bird in the orders Falconiformes and Strigiformes (birds-of-prey) in the practice of falconry without procuring a falconry license.

(c) Regulations shall not be adopted pursuant to subdivision (a) for the possession, training, capture, importation, exportation, or intrastate transfer of American peregrine falcons used in the practice of falconry unless the Legislature provides an appropriation in the annual Budget Act or another statute for that purpose.

SEC. 2. Section 2081.15 is added to the Fish and Game Code, to read:

2081.15. (a) Notwithstanding Sections 3511, 4700, 5050, and 5515, and subject to the requirements set forth in subdivisions (c) to (g), inclusive, the department may authorize under this chapter by permit the take of species listed in subdivision (b) of Section 3511, subdivision (b) of Section 4700, subdivision (b) of Section 5050, and subdivision (b) of Section 5515 resulting from impacts attributable to the implementation of the projects identified in subdivision (b) if all of the following conditions are satisfied:

(1) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied as to the species for which take is authorized.

(2) The department ensures that all further measures necessary to satisfy the conservation standard of subdivision (d) of Section 2805 and take is avoided to the maximum extent possible as to the species for which take is authorized are incorporated into each project.

(3) The take authorization permit provides for the development and implementation, in cooperation with the department, and federal and state agencies, as applicable, of a monitoring program and an adaptive management plan, approved by the department, that satisfy the conservation standard of subdivision (d) of Section 2805 for monitoring the effectiveness of, and amending, as necessary, the measures to minimize and fully mitigate the impacts of the authorized take.

(4) The applicant pays a permit application fee consistent with Section 2081.2.

(b) Projects or categories of projects eligible for a take authorization permit pursuant to this section are limited to all of the following:

(1) A maintenance, repair, or improvement project to the State Water Project, including existing infrastructure, undertaken by the Department of Water Resources.

(2) A maintenance, repair, or improvement project to critical regional or local water agency infrastructure.

(3) A transportation project, including any associated habitat connectivity and wildlife crossing project, undertaken by a state, regional, or local agency, that does not increase highway or street capacity for automobile or truck travel.

(4) A wind project and any appurtenant infrastructure improvement, and any associated electric transmission project carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority.

(5) A solar photovoltaic project and any appurtenant infrastructure improvement, and any associated electric transmission project carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority.

(c) A permit issued pursuant to subdivision (a) shall cover any incidental take of a species for which take is authorized that may occur in the course of implementing mitigation or conservation actions required in the permit.

(d) The permit conditions are subject to amendment when required by the monitoring program and adaptive management plan adopted pursuant to paragraph (3) of subdivision (a).

(e) (1) This section does not apply to the design or construction of through-delta water conveyances in the Sacramento-San Joaquin Delta.

(2) This section does not apply to the design or construction of ocean desalination projects.

(f) This section shall not be construed to exempt the projects or categories of projects identified in paragraphs (1) to (5), inclusive, of subdivision (b) from any other law.

(g) (1) The department shall not issue new take authorization permits pursuant to this section on or after December 31, 2033.

(2) Take authorization permits issued pursuant to this section before December 31, 2033, shall continue to remain in effect.

(h) The department shall develop a plan on or before July 1, 2024, to assess the population status of each fully protected species. The plan shall include recommendations to the Legislature for resources necessary to determine the scientific status of each fully

protected species.

(i) On or before July 1, 2025, and annually thereafter, the department shall prepare and submit a report to the relevant policy and budget committees of the Legislature regarding the implementation of this section. The report shall include, at a minimum, all of the following information:

(1) For each individual permit issued to take a fully protected species pursuant to this section, all of the following information:

(A) The type and location of the project for which the permit was issued, including the county in which the project is located.

(B) The fully protected species at risk due to the project and any take of the fully protected species due to the project in the preceding calendar year.

(C) Actions taken to avoid, minimize, and fully mitigate the take of, and to conserve, the fully protected species.

(D) A description of the monitoring program, including observation frequency, and any adaptive management-driven modifications to the monitoring program in the preceding calendar year.

(2) The cost to the department of the implementation of this section in the preceding calendar year broken down by task.

SEC. 3. Section 3511 of the Fish and Game Code is amended to read:

3511. (a) (1) Except as provided in this section or Section 2081.7, 2081.15, or 2835, a fully protected bird may 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 bird, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected bird for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of a fully protected bird pursuant to a permit for the protection of livestock. Before authorizing the take of a fully protected bird, 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 that person's 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 bird may be possessed under a permit issued by the department.

(b) The following are fully protected birds:

(1) California black rail (*Laterallus jamaicensis coturniculus*).

(2) California clapper rail (*Rallus longirostris obsoletus*).

(3) California condor (*Gymnogyps californianus*).

(4) California least tern (*Sterna albifrons browni*).

(5) Golden eagle.

(6) Greater sandhill crane (*Grus canadensis tabida*).

(7) Light-footed clapper rail (*Rallus longirostris levipes*).

(8) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).

(9) Trumpeter swan (*Cygnus buccinator*).

(10) White-tailed kite (*Elanus leucurus*).

(11) Yuma clapper rail (*Rallus longirostris yumanensis*).

SEC. 4. Section 4700 of the Fish and Game Code is amended to read:

4700. (a) (1) Except as provided in this section or Section 2081.7, 2081.15, or 2835, a fully protected mammal may 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 mammal, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected mammal for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected mammal, 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 that person's 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 mammal may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

(1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).

(2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.

(3) Northern elephant seal (*Mirounga angustirostris*).

(4) Guadalupe fur seal (*Arctocephalus townsendi*).

(5) Ring-tailed cat (genus *Bassariscus*).

(6) Pacific right whale (*Eubalaena sieboldi*).

(7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).

(8) Southern sea otter (*Enhydra lutris nereis*).

(9) Wolverine (*Gulo luscus*).

SEC. 5. Section 5050 of the Fish and Game Code is amended to read:

5050. (a) (1) Except as provided in this section, or Section 2081.5, 2081.7, 2081.9, 2081.12, 2081.15, or 2835, a fully protected reptile or amphibian may 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 reptile or amphibian, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected reptile or amphibian for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected reptile or amphibian, 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 that person's 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 reptile or amphibian may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (*Gambelia sila*).

(2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

(3) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

(4) Limestone salamander (*Hydromantes brunus*).

(5) Black toad (*Bufo boreas exsul*).

SEC. 6. 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, 2081.15, 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 that person's 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) Mohave chub (*Gila mohavensis*).
- (3) Lost River sucker (*Deltistes luxatus* and *Catostomus luxatus*).
- (4) Modoc sucker (*Catostomus microps*).
- (5) Shortnose sucker (*Chasmistes brevirostris*).
- (6) Humpback sucker (*Xyrauchen texanus*).
- (7) Owens pupfish (*Cyprinodon radiosus*).
- (8) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).
- (9) Rough sculpin (*Cottus asperimus*).

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To promote environmental protection and safeguard economic development of California's diverse public resources and people, and enhance the state's ability to maximize federal funding to support those efforts, it is necessary for this act to take effect immediately.