

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1973

Introduced by Assembly Member Olsen
(Principal coauthor: Senator Berryhill)

February 23, 2012

An act to amend Section 5050 of, and to add Section 2081.9 to, the Fish and Game Code, relating to wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as amended, Olsen. Protected species: take: Ferguson Slide Permanent Restoration Project.

The California Endangered Species Act (CESA) prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Game 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.

~~The Natural Community Conservation Planning Act (NCCPA) authorizes the department to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The NCCPA authorizes the department to authorize by permit the taking of any covered species whose conservation and management is provided for in an approved plan.~~

This bill would authorize the department to authorize under CESA ~~or the NCCPA~~ the incidental take of the ring-tailed cat (genus *Bassariseus*) and the limestone salamander (*Hydromantes brunus*)

resulting from impacts attributable to the Department of Transportation’s implementation of the Ferguson Slide Permanent Restoration Project, contingent upon the fulfillment of prescribed conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2081.9 is added to the Fish and Game
2 Code, to read:

3 2081.9. (a) Notwithstanding ~~Sections 4700 and Section 5050,~~
4 the department may authorize, under this chapter ~~or Chapter 10~~
5 ~~(commencing with Section 2800),~~ the incidental take of limestone
6 salamander (*Hydromantes brunus*) ~~and ring-tailed cat (genus~~
7 ~~*Bassariseus*)~~ resulting from impacts attributable to the Department
8 of Transportation’s implementation of the Ferguson Slide
9 Permanent Restoration Project on State Route 140 from 8 miles
10 east of Briceburg to 7.6 miles west of El Portal in Mariposa County,
11 contingent upon the fulfillment of the following conditions:

12 (1) The Department of Transportation begins construction of
13 the Ferguson Slide Permanent Restoration Project on or before
14 January 1, 2016.

15 (2) The department has determined that the Department of
16 Transportation will adopt appropriate avoidance and mitigation
17 measures to protect the limestone salamander through enforceable
18 commitments that, at a minimum, include the following:

19 (A) A construction work window that prevents initial
20 ground-disturbing construction activities from occurring on the
21 southern slope during the salamander’s active season of December
22 to March, inclusive.

23 (B) Environmentally sensitive area fencing in the form of
24 five-foot orange plastic mesh, as well as salamander protection
25 exclusionary fencing in the form of 24-inch sheet metal, will be
26 erected if construction-related activities will occur adjacent to
27 limestone salamander habitat during their active season.

28 (C) A biological monitor will be onsite during active building
29 to inspect the worksite and all exclusionary fencing.

30 (D) All ground-disturbing activities within 100 feet will cease
31 if a limestone salamander is detected in an active construction site

1 until the animal can be safely removed from the area according to
2 an agreed-upon salvage plan.

3 ~~(3) The department has determined that the Department of~~
4 ~~Transportation will adopt appropriate avoidance and mitigation~~
5 ~~measures to protect the ring-tailed cat through enforceable~~
6 ~~commitments that, at a minimum, include the following:~~

7 ~~(A) If ground disturbance occurs during the ring-tailed cat~~
8 ~~reproductive season, defined as March to August, inclusive, a~~
9 ~~qualified biologist will conduct a field identification survey for~~
10 ~~active dens. If an active den is located, construction activities~~
11 ~~within 150 feet of that den will be temporarily stopped, and the~~
12 ~~department will be consulted about how to protect the den.~~

13 ~~(B) A biological monitor will be present onsite during active~~
14 ~~building.~~

15 ~~(C) If a ring-tail cat is detected in an active construction site,~~
16 ~~all ground-disturbing activities will cease within 150 feet of the~~
17 ~~den until the animal can be safely removed from the area.~~

18 ~~(4) All of the following conditions are met:~~

19 ~~(A)~~

20 ~~(3) The requirements of subdivisions (b) and (c) of Section 2081~~
21 ~~are satisfied as to the species for which take is authorized for the~~
22 ~~take of the limestone salamander.~~

23 ~~(4) The department ensures that all further measures necessary~~
24 ~~to satisfy the conservation standard of subdivision (d) of Section~~
25 ~~2805 are incorporated into the project.~~

26 ~~(B)~~

27 ~~(5) The take authorization provides for the development and~~
28 ~~implementation, in cooperation with the department, of an adaptive~~
29 ~~management process for monitoring the effectiveness of, and~~
30 ~~adjusting as necessary, the measures to minimize and fully mitigate~~
31 ~~the impacts of the authorized take. The adjusted measures are~~
32 ~~subject to Section 2052.1.~~

33 ~~(C)~~

34 ~~(6) The failure to appropriate funds does not relieve the applicant~~
35 ~~of the obligations of paragraphs (1) and (2).~~

36 ~~(D)~~

37 ~~(7) Any observations of the species in the worksite and any~~
38 ~~accidental injury or mortality from vehicle strikes or other means~~
39 ~~will be reported to the department immediately and the onsite~~

1 biological monitor will notify the resident engineer who will halt
2 the work immediately.

3 ~~(E) The requirements of subparagraph (A) may be satisfied if~~
4 ~~the take is authorized under Chapter 10 (commencing with Section~~
5 ~~2800).~~

6 (b) This section shall not be construed to exempt the Ferguson
7 Slide Permanent Restoration Project on State Route 140 from 8
8 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa
9 County from any other ~~provision~~ of law.

10 *SEC. 2. Section 5050 of the Fish and Game Code is amended*
11 *to read:*

12 5050. (a) (1) Except as provided in Section 2081.7, 2081.9,
13 or 2835, fully protected reptiles and amphibians or parts thereof
14 may not be taken or possessed at any time. No provision of this
15 code or any other law shall be construed to authorize the issuance
16 of permits or licenses to take any fully protected reptile or
17 amphibian, and no permits or licenses heretofore issued shall have
18 any force or effect for that purpose. However, the department may
19 authorize the taking of those species for necessary scientific
20 research, including efforts to recover fully protected, threatened,
21 or endangered species. Prior to authorizing the take of any of those
22 species, the department shall make an effort to notify all affected
23 and interested parties to solicit information and comments on the
24 proposed authorization. The notification shall be published in the
25 California Regulatory Notice Register and be made available to
26 each person who has notified the department, in writing, of his or
27 her interest in fully protected species and who has provided an
28 e-mail address, if available, or postal address to the department.
29 Affected and interested parties shall have 30 days after notification
30 is published in the California Regulatory Notice Register to provide
31 any relevant information and comments on the proposed
32 authorization.

33 (2) As used in this subdivision, “scientific research” does not
34 include any actions taken as part of specified mitigation for a
35 project, as defined in Section 21065 of the Public Resources Code.

36 (3) Legally imported fully protected reptiles or amphibians or
37 parts thereof may be possessed under a permit issued by the
38 department.

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

40 (1) Blunt-nosed leopard lizard (*Crotaphytus wislizenii silus*).

- 1 (2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).
- 2 (3) Santa Cruz long-toed salamander (*Ambystoma*
- 3 *macrodactylum croceum*).
- 4 (4) Limestone salamander (*Hydromantes brunus*).
- 5 (5) Black toad (*Bufo boreas exsul*).

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