

Assembly Bill No. 1973

Passed the Assembly May 3, 2012

Chief Clerk of the Assembly

Passed the Senate June 28, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

This bill would authorize the department to authorize under CESA the incidental take of 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.

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

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

2081.9. (a) Notwithstanding Section 5050, the department may authorize, under this chapter, the incidental take of limestone salamander (*Hydromantes brunus*) resulting from impacts attributable to the Department of Transportation's implementation of the Ferguson Slide Permanent Restoration Project on State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa County, contingent upon the fulfillment of the following conditions:

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

(2) The department has determined that the Department of Transportation will adopt appropriate avoidance and mitigation

measures to protect the limestone salamander through enforceable commitments that, at a minimum, include the following:

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

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

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

(D) All ground-disturbing activities within 100 feet will cease if a limestone salamander is detected in an active construction site until the animal can be safely removed from the area according to an agreed-upon salvage plan.

(3) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the limestone salamander.

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

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

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

(7) Any observations of the species in the worksite and any accidental injury or mortality from vehicle strikes or other means will be reported to the department immediately and the onsite biological monitor will notify the resident engineer who will halt the work immediately.

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

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

5050. (a) (1) Except as provided in Section 2081.7, 2081.9, or 2835, fully protected reptiles and amphibians or parts thereof 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 permits or licenses to take any fully protected reptile or amphibian, and no permits or licenses heretofore issued shall have any force or effect for that purpose. However, the department may authorize the taking of those species for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Prior to authorizing the take of any of those species, 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 any relevant information and comments on the proposed authorization.

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

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

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

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

Approved _____, 2012

Governor