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AMENDED IN SENATE JUNE 9, 2016

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2488

Introduced by Assembly Member Dababneh
(Coauthor: Senator Hertzberg)

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2488, as amended, 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~~ *conditions, including the adoption of an adaptive management process*, are satisfied. *The bill would require the Metropolitan Water District of Southern California, if it applies for and receives a permit under the bill, to report to the department on July 1, 2018, and every 10 years thereafter, on the effectiveness of the adaptive management process in contributing to the conservation of the unarmored threespine stickleback.*

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Foothill Feeder below Castaic Dam in the County of
- 4 Los Angeles is the primary conduit for water from the State Water
- 5 Project for the Southern California region served by the
- 6 Metropolitan Water District of Southern California. The
- 7 Metropolitan Water District of Southern California is a public
- 8 agency comprised of 26 member public agencies – 14 cities, 11
- 9 municipal water districts, and one county water authority – and
- 10 provides water to more than 19 million people in the Counties of
- 11 Los Angeles, Orange, Riverside, San Bernardino, San Diego, and
- 12 Ventura.
- 13 (b) Water supplies from the State Water Project are a critical
- 14 part of Southern California’s water supply portfolio, and any
- 15 interruption of that supply must be minimized to ensure delivery
- 16 of clean and reliable water supplies for municipal and industrial
- 17 uses, including health and human safety, and to water agencies
- 18 and cities that rely upon water supply deliveries from the
- 19 Metropolitan Water District of Southern California.
- 20 (c) Periodic dewatering, inspection, maintenance, modification,
- 21 or repair, including emergency repairs, require that all or a portion
- 22 of the Foothill Feeder be dewatered into the Santa Clara River and
- 23 certain of its tributaries where unarmored threespine stickleback
- 24 (*Gasterosteus aculeatus williamsoni*) may be present during these

1 activities. Thus, the incidental take of unarmored threespine
2 stickleback must be permitted for the periodic dewatering,
3 inspection, maintenance, modification, or repair of the Foothill
4 Feeder to protect Southern California water supplies.

5 ~~(d) It is the intent of the Legislature that, in the course of issuing~~
6 ~~a permit for the incidental take of the unarmored threespine~~
7 ~~stickleback pursuant to Section 2081.10 of the Fish and Game~~
8 ~~Code, the Department of Fish and Wildlife should consult with~~
9 ~~the Metropolitan Water District of Southern California to consider~~
10 ~~feasible measures to avoid and minimize incidental take of~~
11 ~~unarmored threespine stickleback, taking into account physical,~~
12 ~~technological, logistical, legal, financial, and environmental~~
13 ~~constraints. It is also the intent of the Legislature that both agencies~~
14 ~~*The Department of Fish and Wildlife and the Metropolitan Water*~~
15 ~~*District of Southern California* should consult with the United~~
16 ~~States Fish and Wildlife Service with respect to feasible mitigation~~
17 ~~and conservation measures to design them consistent with a~~
18 ~~comprehensive and consistent multiagency and multiparty approach~~
19 ~~to the long-term conservation of the species in the Santa Clara~~
20 ~~River watershed. that may be adopted pursuant to Section 2081.10~~
21 ~~of the Fish and Game Code to design these measures to be~~
22 ~~consistent with any state or federal wildlife agency recovery plan~~
23 ~~adopted for the long-term conservation of the unarmored~~
24 ~~threespine stickleback in the Santa Clara River watershed.~~

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

27 2081.10. (a) The department may authorize, under this chapter,
28 the incidental take of unarmored threespine stickleback
29 (*Gasterosteus aculeatus williamsoni*) attributable to the periodic
30 dewatering, inspection, maintenance, modification, or ~~repair~~ *repair*,
31 *including emergency repair*, of the Metropolitan Water District of
32 Southern California's Foothill Feeder water supply facility from
33 Castaic Dam to the Joseph Jensen Treatment Plant in the County
34 of Los Angeles, contingent upon the fulfillment of the following
35 conditions:

36 (1) The department ~~has determined~~ *determines* that the
37 requirements of subdivisions (b) and (c) of Section 2081 are
38 satisfied for the take of the unarmored threespine stickleback.

1 (2) The department ensures that all further measures necessary
 2 to satisfy the conservation standard of subdivision (d) of Section
 3 2805 are incorporated into the project.

4 (3) The take authorization provides for the development and
 5 implementation, in cooperation with the department, of an adaptive
 6 management process for monitoring the effectiveness of, and
 7 adjusting as necessary, the measures to minimize and fully mitigate
 8 the impacts of the authorized take. ~~The adjusted measures are~~
 9 ~~subject to Section 2052.1. take and to satisfy the conservation~~
 10 ~~standard of subdivision (d) of Section 2805.~~

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

15 (5) *The Metropolitan Water District of Southern California*
 16 *consults with the department to consider feasible measures to*
 17 *avoid and minimize incidental take of unarmored threespine*
 18 *stickleback, taking into account physical, technological, logistical,*
 19 *legal, financial, and environmental constraints.*

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

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

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

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

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

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

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

36 (c) The take authorization shall also cover any incidental take
 37 of unarmored threespine stickleback that may occur in the course
 38 of implementing mitigation or conservation actions required in the
 39 permit issued pursuant to subdivision (a) as may be modified

1 through an adaptive management plan adopted pursuant to
2 paragraph (3) of subdivision (a).

3 *(d) The permit issued pursuant to subdivision (a) shall include*
4 *conditions that cover biological and scientific considerations*
5 *including, but not limited to, criteria for the handling of stranded*
6 *fish and their replacement into the stream, the dewatering of the*
7 *Foothill Feeder, and the reasonable and feasible mimicking of*
8 *streamflows. The permit conditions shall be in substantial*
9 *compliance with the certified environmental impact report known*
10 *as the “Foothill Feeder Repair and Future Inspections Project*
11 *Environmental Impact Report, January 2005, State Clearinghouse*
12 *Number 2005071082.” The permit conditions are subject to*
13 *amendment when required by the adaptive management process*
14 *or when modified by a subsequent final environmental document*
15 *pursuant to the California Environmental Quality Act (Division*
16 *13 (commencing with Section 21000) of the Public Resources*
17 *Code).*

18 ~~(d)~~

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

22 *(f) If the Metropolitan Water District of Southern California*
23 *applies for and receives a permit under this Section, the district*
24 *shall report on July 1, 2018, and every 10 years thereafter, to the*
25 *department in a report that is available to the public on the*
26 *effectiveness of the adaptive management process in contributing*
27 *to the conservation of the unarmored threespine stickleback.*

28 ~~(e)~~

29 *(g) As used in this section, “modification” does not include*
30 *alterations to expand the maximum physical capacity of the Foothill*
31 *Feeder to deliver water.*

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

34 5515. (a) (1) Except as provided in this section, Section
35 2081.6, Section 2081.7, Section 2081.10, or Section 2835, a fully
36 protected fish shall not be taken or possessed at any time. No
37 provision of this code or any other law shall be construed to
38 authorize the issuance of a permit or license to take a fully
39 protected fish, and no permit or license previously issued shall
40 have force or effect for that purpose. However, the department

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

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

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

20 (b) The following are fully protected fish:

- 21 (1) Colorado River squawfish (*Ptychocheilus lucius*).
- 22 (2) Thicktail chub (*Gila crassicauda*).
- 23 (3) Mohave chub (*Gila mohavensis*).
- 24 (4) Lost River sucker (*Catostomus luxatus*).
- 25 (5) Modoc sucker (*Catostomus microps*).
- 26 (6) Shortnose sucker (*Chasmistes brevirostris*).
- 27 (7) Humpback sucker (*Xyrauchen texanus*).
- 28 (8) Owens River pupfish (*Cyprinoden radiosus*).
- 29 (9) Unarmored threespine stickleback (*Gasterosteus aculeatus*
30 *williamsoni*).
- 31 (10) Rough sculpin (*Cottus asperimus*).