

ASSEMBLY BILL

No. 1253

Introduced by Assembly Member Fuller

February 27, 2009

An act to amend Sections 711.4, 2363, 2764, 7361, 7856, 8370, 8371, 8670, 8685.5, 8685.6, 8685.7, 8756, and 15301 of, to add Section 2305 to, and to repeal Section 2359 of, the Fish and Game Code, and to amend Section 5841.5 of the Public Resources Code, relating to fish.

LEGISLATIVE COUNSEL'S DIGEST

AB 1253, as introduced, Fuller. Striped bass.

Existing law regulating fishing imposes various restrictions on the take, transport, and sale of specified fish, including striped bass.

Existing law, until January 1, 2010, requires the funds generated by the imposition of a Bay-Delta Sport Fishing Enhancement Stamp or validation to be deposited in a separate account in the Fish and Game Preservation Fund, to be used solely for the long term, sustainable benefit of the primary Bay-Delta sport fisheries, as specified, including the striped bass fishery.

This bill would prohibit a person from possessing, importing, shipping, or transporting in the state, or placing, planting, or causing to be placed or planted in any water within the state, striped bass. The bill would subject any person who violates that prohibition, or who resists, delays, obstructs, or interferes with its implementation, to a civil penalty of not less than \$500 and not more than \$10,000. The bill would require the Department of Fish and Game to adopt regulations to carry out those provisions. The bill would delete striped bass from various existing provisions restricting the take, transport, and sale of specified fish. The

bill would delete the striped bass fishery from the fisheries for which Bay-Delta Sport Fishing Enhancement Stamp revenues are to be used.

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. (a) Fish of the genus *Morone* (striped bass) are
2 a harmful and highly invasive species that is not native to this state.
- 3 (b) Striped bass, including hybrid species commonly referred
4 to as sunshine bass, palmetto bass, wiper, Virginia bass, Maryland
5 bass, and paradise bass, are native to the eastern coast of the United
6 States, and are typically found from Florida to the St. Lawrence
7 Seaway. Striped bass were intentionally introduced to California
8 in 1879 from the Navesink River in New Jersey.
- 9 (c) Striped bass are common in the San Francisco
10 Bay-Sacramento-San Joaquin River Delta, and are estimated to
11 have a population that has fluctuated from a low of 600,000 to a
12 high of 3,000,000.
- 13 (d) Striped bass are known to prey upon and consume a variety
14 of native fish species valued by the people of this state that are
15 protected under the state and federal endangered species acts,
16 including Sacramento River winter-run Chinook salmon, Central
17 Valley spring-run Chinook salmon, Central Valley steelhead, and
18 delta smelt.
- 19 (e) The predation habits and diet of striped bass are contributing
20 to the decline and extirpation of native fish species populations
21 from the San Francisco Bay-Sacramento-San Joaquin River Delta.
- 22 (f) In order to protect and preserve the existing populations of
23 native fish species that live in and migrate through the San
24 Francisco Bay and Sacramento-San Joaquin River Delta, it is the
25 intent of the Legislature to establish an effective program to prevent
26 additional striped bass from entering the state, to discourage the
27 promotion of the San Francisco Bay-Sacramento-San Joaquin
28 River Delta as a striped bass sport fishery, to immediately end any
29 existing program for the enhancement, expansion, or improvement
30 of striped bass populations and their habitat, and to eliminate any
31 and all legal restrictions regarding the size or number of striped
32 bass that may be taken, and the season or location in which striped
33 bass may be taken, pursuant to a valid California fishing license.

1 SEC. 2. Section 711.4 of the Fish and Game Code is amended
2 to read:

3 711.4. (a) The department shall impose and collect a filing fee
4 in the amount prescribed in subdivision (d) to defray the costs of
5 managing and protecting fish and wildlife trust resources,
6 including, but not limited to, consulting with other public agencies,
7 reviewing environmental documents, recommending mitigation
8 measures, developing monitoring requirements for purposes of the
9 California Environmental Quality Act (Division 13 (commencing
10 with Section 21000) of the Public Resources Code), consulting
11 pursuant to Section 21104.2 of the Public Resources Code, and
12 other activities protecting those trust resources identified in the
13 review pursuant to the California Environmental Quality Act.

14 (b) The filing fees shall be proportional to the cost incurred by
15 the department and shall be annually reviewed and adjustments
16 recommended to the Legislature in an amount necessary to pay
17 the full costs of department programs as specified. The department
18 shall annually adjust the fees pursuant to Section 713.

19 (c) (1) All project applicants and public agencies subject to the
20 California Environmental Quality Act shall pay a filing fee for
21 each proposed project, as specified in subdivision (d).

22 (2) Notwithstanding paragraph (1), a filing fee shall not be paid
23 pursuant to this section if any of the following conditions exist:

24 (A) The project has no effect on fish and wildlife.

25 (B) The project is being undertaken by the department.

26 (C) The project costs are payable by the department from any
27 of the following sources that are held by the department:

28 (i) The Public Resources Account in the Cigarette and Tobacco
29 Products Surtax Fund.

30 (ii) The California Wildlife, Coastal, and Park Land
31 Conservation Fund of 1988.

32 (iii) The Habitat Conservation Fund.

33 (iv) The Fisheries Restoration Account in the Fish and Game
34 Preservation Fund.

35 (v) The Commercial Salmon Stamp Account in the Fish and
36 Game Preservation Fund.

37 ~~(vi) Striped bass stamp funds collected pursuant to Section 7360.~~

38 ~~(vii)~~

39 (vi) The California Ocean Resource Enhancement Account.

1 (D) The project is implemented by the department through a
2 contract with either a nonprofit entity or a local government
3 agency.

4 (3) Filing fees shall be paid at the time and in the amount
5 specified in subdivision (d). Notwithstanding Sections 21080.5
6 and 21081 of the Public Resources Code, a project shall not be
7 operative, vested, or final, and local government permits for the
8 project shall not be valid, until the filing fees required pursuant to
9 this section are paid.

10 (d) The fees shall be in the following amounts:

11 (1) For a project that is statutorily or categorically exempt from
12 the California Environmental Quality Act, including those certified
13 regulatory programs that incorporate statutory and categorical
14 exemptions, a filing fee shall not be paid.

15 (2) For a project for which a negative declaration is prepared
16 pursuant to subdivision (c) of Section 21080 of the Public
17 Resources Code, the filing fee is one thousand eight hundred
18 dollars (\$1,800). A local agency collecting the filing fee shall remit
19 the fee to the county clerk at the time of filing a notice of
20 determination pursuant to Section 21152 of the Public Resources
21 Code. A state agency collecting the filing fee shall remit the fee
22 to the Office of Planning and Research at the time of filing a notice
23 of determination pursuant to Section 21108 of the Public Resources
24 Code.

25 (3) For a project with an environmental impact report prepared
26 pursuant to the California Environmental Quality Act, the filing
27 fee is two thousand five hundred dollars (\$2,500). A local agency
28 collecting the filing fee shall remit the fee to the county clerk at
29 the time of filing a notice of determination pursuant to Section
30 21152 of the Public Resources Code. A state agency collecting
31 the filing fee shall remit the fee to the Office of Planning and
32 Research at the time of filing a notice of determination pursuant
33 to Section 21108 of the Public Resources Code.

34 (4) For a project that is subject to a certified regulatory program
35 pursuant to Section 21080.5 of the Public Resources Code, the
36 filing fee is eight hundred fifty dollars (\$850). The filing fee shall
37 be paid to the department before the filing of the notice of
38 determination pursuant to Section 21080.5 of the Public Resources
39 Code.

1 (e) The county clerk may charge a documentary handling fee
2 of fifty dollars (\$50) per filing in addition to the filing fee specified
3 in subdivision (d).

4 (1) The county clerk of each county and the Office of Planning
5 and Research shall maintain a record, both electronic and in paper,
6 of all environmental documents received. The record shall include,
7 for each environmental document received, the name of each
8 applicant or lead agency, the document filing number, the project
9 name as approved by the lead agency, and the filing date. The
10 record shall be made available for examination or audit by
11 authorized personnel of the department during normal business
12 hours.

13 (2) The filing fee imposed and collected pursuant to subdivision
14 (d) shall be remitted monthly to the department within 30 days
15 after the end of each month. The remittance shall be accompanied
16 with the information required pursuant to paragraph (1). The
17 amount of fees due shall be reported on forms prescribed and
18 provided by the department.

19 (3) The department shall assess a penalty of 10 percent of the
20 amount of fees due for a failure to remit the amount payable when
21 due. The department may pursue collection of delinquent fees
22 through the Controller's office pursuant to Section 12419.5 of the
23 Government Code.

24 (f) Notwithstanding Section 12000, failure to pay the fee under
25 subdivision (d) is not a misdemeanor. All unpaid fees are a
26 statutory assessment subject to collection under procedures as
27 provided in the Revenue and Taxation Code.

28 (g) Only one filing fee shall be paid for each project unless the
29 project is tiered or phased, or separate environmental documents
30 are required.

31 (h) This section does not preclude or modify the duty of the
32 department to recommend, require, permit, or engage in mitigation
33 activities pursuant to the California Environmental Quality Act.

34 (i) The permit process of the California Coastal Commission,
35 as certified by the Secretary of the *Natural Resources Agency*, is
36 exempt from the payment of the filing fees prescribed by paragraph
37 (4) of subdivision (d) insofar as the permits are issued under any
38 of the following regulations:

39 (1) Subchapter 4 (commencing with Section 13136) of Chapter
40 5 of Division 5.5 of Title 14 of the California Code of Regulations.

1 (2) Subchapter 1 (commencing with Section 13200), Subchapter
 2 3 (commencing with Section 13213), Subchapter 3.5 (commencing
 3 with Section 13214), Subchapter 4 (commencing with Section
 4 13215), Subchapter 4.5 (commencing with Section 13238),
 5 Subchapter 5 (commencing with Section 13240), Subchapter 6
 6 (commencing with Section 13250), and Subchapter 8 (commencing
 7 with Section 13255.0) of Chapter 6 of Division 5.5 of Title 14 of
 8 the California Code of Regulations.

9 SEC. 3. Section 2305 is added to the Fish and Game Code, to
 10 read:

11 2305. (a) Except as authorized by the department, a person
 12 shall not possess, import, ship, or transport in the state, or place,
 13 plant, or cause to be placed or planted in any water within the state,
 14 striped bass.

15 (b) (1) In addition to any other penalty provided by law, any
 16 person who violates this section, or any order or regulation adopted
 17 pursuant to this section, or who resists, delays, obstructs, or
 18 interferes with the implementation of this section, is subject to a
 19 civil penalty of not less than five hundred dollars (\$500) and not
 20 more than ten-thousand dollars (\$10,000). The department may
 21 imposed this civil penalty administratively.

22 (2) A penalty shall not be imposed pursuant to paragraph (1)
 23 unless the department has adopted regulations specifying the
 24 amount of the penalty and the procedure for imposing and
 25 appealing the penalty.

26 (c) The department shall adopt regulations to carry out this
 27 section.

28 SEC. 4. Section 2359 of the Fish and Game Code is repealed.

29 ~~2359. Except as provided in Section 2363, no striped bass may~~
 30 ~~be transported or carried out of or into this state, except striped~~
 31 ~~bass taken from the Colorado River by sportfishing licensees to~~
 32 ~~the extent and in the manner following:~~

33 ~~(a) A resident of California, or the holder of a valid nonresident~~
 34 ~~California sportfishing license, lawfully taking such fish on the~~
 35 ~~waters or from the Arizona shore of the river may transport or~~
 36 ~~carry such fish into California.~~

37 ~~(b) A resident of Arizona, or the holder of a valid nonresident~~
 38 ~~Arizona sportfishing license, lawfully taking such fish on the waters~~
 39 ~~or from the California shore of the river may transport or carry~~
 40 ~~such fish into Arizona.~~

1 SEC. 5. Section 2363 of the Fish and Game Code is amended
2 to read:

3 2363. ~~Striped bass, sturgeon, Sturgeon~~ or shad or parts thereof
4 ~~of those fish~~ legally taken in another state, ~~which~~ *that* permits the
5 sale of that fish, may be imported into the state under regulations
6 of the commission. Before the commission adopts any regulation
7 pursuant to this section, a public hearing shall be held in the San
8 Francisco or Sacramento area.

9 SEC. 6. Section 2764 of the Fish and Game Code is amended
10 to read:

11 2764. The director shall consult with other responsible state
12 agencies and appropriate fishery advisory committees, including,
13 but not limited to, the Advisory Committee on Salmon and
14 Steelhead Trout ~~and the Striped Bass Stamp Advisory Committee~~,
15 in developing projects to be funded pursuant to Section 2762.

16 SEC. 7. Section 7361 of the Fish and Game Code is amended
17 to read:

18 7361. (a) Fees received by the department pursuant to Section
19 7360 shall be deposited in a separate account in the Fish and Game
20 Preservation Fund.

21 (b) The department shall expend the funds in that account for
22 the long-term, sustainable benefit of the primary Bay-Delta sport
23 fisheries, including, but not limited to, ~~striped bass, sturgeon, black~~
24 ~~bass, halibut, salmon, surf perch, steelhead trout, and American~~
25 ~~shad~~. Funds shall be expended to benefit sport fish populations,
26 sport fishing opportunities, and anglers within the geographic
27 parameters established in Section 7360, and consistent with the
28 requirements of the federal Endangered Species Act of 1973 (16
29 U.S.C. Sec. 1531 et seq.) and the California Endangered Species
30 Act (Chapter 1.5 (commencing with Section 2050) of Division 3,
31 the ecosystem restoration component of the CALFED
32 Programmatic Record of Decision dated August 28, 2000, and
33 applicable commission policies.

34 (c) It is the intent of the Legislature that these funds be used to
35 augment, not replace, funding that would otherwise be allocated
36 to Bay-Delta sport fisheries from the sale of fishing licenses, the
37 California Bay-Delta Authority, or other federal, state, or local
38 funding sources.

39 (d) *It is the intent of the Legislature that none of the funds*
40 *received by the department pursuant to Section 7360 be used to*

1 *benefit a striped bass fishery, including striped bass populations*
2 *and habitat.*

3 SEC. 8. Section 7856 of the Fish and Game Code is amended
4 to read:

5 7856. Notwithstanding any other provision of this division,
6 except as provided in subdivision (f) and except when prohibited
7 by federal law, fish may be prepared for human consumption
8 aboard a commercial fishing vessel only under the following
9 conditions:

10 (a) The fish are taken under all existing commercial fishing laws
11 and regulations and, except as provided in subdivision (f), the fish
12 is of a species and size that can be lawfully taken under sportfishing
13 regulations in the area where taken and are taken incidental to
14 normal commercial fishing operations.

15 (b) The fish is separated from other fish and stored with other
16 foodstuff for consumption by the crew and passengers aboard the
17 vessel.

18 (c) The fish, or parts thereof, shall not be bought, sold, offered
19 for sale, transferred to any other person, landed, brought ashore,
20 or used for any purpose except for consumption by the crew and
21 passengers.

22 (d) (1) All fish shall be maintained in such a condition that the
23 species can be determined, and the size or weight can be
24 determined if a size or weight limit applies, until the fish is
25 prepared for immediate consumption.

26 (2) If the fish is filleted, a patch of skin shall be retained on each
27 fillet as prescribed by the commission in the sportfishing
28 regulations until the fish is prepared for immediate consumption.

29 (3) Fillets from fish possessed under sportfishing regulations
30 shall be of the minimum length prescribed by commission
31 regulations.

32 (e) No fish which may be possessed under sportfishing
33 regulations may be possessed in excess of the sport bag limit for
34 each crew member and passenger on board the vessel.

35 (f) Notwithstanding other provisions of this section, kelp bass,
36 sand bass, spotted bass, yellowfin croaker, spotfin croaker,
37 California corbina, and marlin, shall not be possessed aboard a
38 commercial fishing vessel while that vessel is on a commercial
39 fishing trip. Lobster, salmon, or abalone shall not be possessed
40 aboard a commercial fishing vessel while that vessel is on a

1 commercial fishing trip for preparation for human consumption
2 pursuant to this section unless that lobster, salmon, or abalone is
3 taken and possessed in compliance with all applicable laws
4 pertaining to commercial fishing methods of take, licenses, permits,
5 and size limits. ~~Sturgeon or striped bass~~ shall not be possessed
6 aboard a commercial fishing vessel. No person shall take or possess
7 any fish on a commercial fishing vessel under a sportfishing license
8 while that vessel is engaged in a commercial fishing activity,
9 including going to or from an area where fish are taken for
10 commercial purposes.

11 SEC. 9. Section 8370 of the Fish and Game Code is amended
12 to read:

13 8370. (a) ~~Any striped bass,~~ salmon, or sturgeon, if alive, that
14 is taken in any type of net in any district shall be immediately
15 liberated from the net by the fishermen and immediately returned
16 to the water without further harm.

17 (b) ~~Any striped bass,~~ salmon, or sturgeon that is taken in any
18 type of nets in any district shall be removed from the net by the
19 fisherman and immediately returned to the water, regardless of the
20 condition of the fish.

21 (c) The holder of a commercial fishing license shall not have
22 in his or her possession, except when releasing fish from the net,
23 ~~any striped bass,~~ salmon, or sturgeon, whether dead or alive, at
24 any time when conducting netting operations or when going to or
25 from those operations.

26 (d) Fish returned to the water in accordance with this section is
27 not deterioration, waste, or spoilage of fish for purposes of Section
28 7704.

29 SEC. 10. Section 8371 of the Fish and Game Code is amended
30 to read:

31 8371. ~~Striped bass or salmon~~ *Salmon*, or parts thereof, may be
32 sold or offered for sale only under the following conditions:

33 ~~(a) If the striped bass, or parts thereof, is taken or possessed by,~~
34 ~~and is the cultured progeny of, an aquaculturist who is registered~~
35 ~~under Section 15101, that striped bass may be sold or purchased~~
36 ~~subject to regulations of the commission.~~

37 ~~(b) If the striped bass, or parts thereof, is taken legally in another~~
38 ~~state that permits the sale of that fish and if the fish is lawfully~~
39 ~~imported under Section 2363, the striped bass, or parts thereof,~~
40 ~~may be possessed, sold, or purchased.~~

1 (e)

2 (a) If the salmon, or parts thereof, is taken legally in another
3 state that permits the sale of salmon, and is lawfully imported
4 consistent with Section 2361, the salmon, or parts thereof, may be
5 possessed, sold, or purchased.

6 (d)

7 (b) If the salmon, or parts thereof, is taken in accordance with
8 Article 4 (commencing with Section 8210.2), the salmon, or parts
9 thereof, may be possessed, sold, or purchased.

10 SEC. 11. Section 8670 of the Fish and Game Code is amended
11 to read:

12 8670. It is unlawful for any person to use, operate, or assist in
13 using or operating any net to take salmon, steelhead, ~~striped bass,~~
14 sturgeon, or shad for commercial purposes in any of the tidal waters
15 lying upstream from the Carquinez Bridge, or to possess on any
16 boat in these waters any net the use of which is illegal in ~~such~~ those
17 waters.

18 SEC. 12. Section 8685.5 of the Fish and Game Code is
19 amended to read:

20 8685.5. Notwithstanding any other provision of law, gill nets
21 ~~may~~ shall not be used to take salmon; or steelhead; ~~or striped bass.~~

22 SEC. 13. Section 8685.6 of the Fish and Game Code is
23 amended to read:

24 8685.6. It is unlawful to sell or possess for sale any salmon;
25 or steelhead; ~~or striped bass which~~ that were taken in California
26 waters by the use of a gill net.

27 SEC. 14. Section 8685.7 of the Fish and Game Code is
28 amended to read:

29 8685.7. (a) It is unlawful for any person to knowingly purchase
30 any salmon; or steelhead; ~~or striped bass which~~ that were taken in
31 California waters by the use of a gill net.

32 For

33 (b) For the purpose of this section, “person” includes a broker
34 who purchases salmon; or steelhead; ~~or striped bass which~~ that
35 were unlawfully taken by gill net for the purpose of reselling those
36 fish.

37 SEC. 15. Section 8756 of the Fish and Game Code is amended
38 to read:

39 8756. Salmon, steelhead, ~~striped bass,~~ or shad ~~may~~ shall not
40 be taken with purse or round haul nets.

1 SEC. 16. Section 15301 of the Fish and Game Code is amended
2 to read:

3 15301. (a) The department may sell wild aquatic plants or
4 animals, except rare, endangered, or fully protected species, for
5 aquaculture use at a price approximating the administrative cost
6 to the department for the collection or sale of the plants or animals.
7 The commission shall set this price.

8 (b) Aquatic plants and animals may be collected by a registered
9 aquaculturist only with the written approval of the department.
10 The department may specify the time, place, and manner of
11 collection and may collect a fee from the aquaculturist in an amount
12 sufficient to cover the cost of processing the approval.

13 (c) Notwithstanding subdivision (a), the fee for collecting
14 sturgeon ~~or striped bass~~ broodstock shall be five hundred dollars
15 (\$500).

16 SEC. 17. Section 5841.5 of the Public Resources Code is
17 amended to read:

18 5841.5. (a) The American River Parkway and its environs
19 contribute to the quality of life within the City of Sacramento and
20 the County of Sacramento, enhance the image of the city and the
21 county as desirable places to live, provide for the public safety and
22 welfare of the community, and thereby contribute to the economic
23 well-being of the community.

24 (b) The lower American River serves as a floodway channel,
25 protecting the community from runoff, rainfall, and snowmelt.

26 (c) The lower American River sustains a myriad of fish
27 populations, including steelhead, king salmon, ~~striped bass~~, shad,
28 and other fish and wildlife populations, which in turn annually
29 support millions of recreation user-days and commercial, scientific,
30 and educational uses and benefits.

31 (d) The recreation capacity of the American River Parkway is
32 immense, including such diverse activities as hiking, bicycling,
33 picnicking, birding, horseback riding, canoeing, kayaking, rafting,
34 sailing, and power cruising.

35 (e) It is essential that the function of the lower American River
36 and its environs, as a regional open-space resource within the
37 center of the City of Sacramento and County of Sacramento, be
38 supported and maintained.

1 (f) Actions undertaken by a state agency can drastically affect
2 the American River Parkway and negate planning steps taken by
3 appropriate local agencies.

4 (g) Adoption of the American River Parkway Plan by the State
5 of California provides necessary recognition so that local planning
6 efforts are eligible to receive planning grants through the Land
7 and Water Conservation Fund, technical staff assistance through
8 the National Park Service, and financial assistance through the
9 Soil Conservation Service's Cooperative River Basin Planning
10 Program.