

AMENDED IN SENATE JULY 16, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 353

Introduced by Assembly Member Lackey

February 17, 2015

An act to amend Section 5515 of, and to add Section 2081.6 to, the Fish and Game Code, relating to fish.

LEGISLATIVE COUNSEL'S DIGEST

AB 353, as amended, Lackey. Protected species: take: Bouquet Canyon: habitat restoration project.

Existing law prohibits the taking or possession of any 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*) resulting from impacts attributable to the habitat restoration project to ~~restore~~ *restore, maintain*, and improve riparian habitat on public lands in the Bouquet Canyon area, and projects to restore the flow capacity to Bouquet Creek in Bouquet Canyon on public lands, as specified, if certain conditions are satisfied.

This bill would incorporate additional changes in Section 5515 of the Fish and Game Code, proposed by AB 1527, to be operative only if AB 1527 and this bill are chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

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 that the
 2 environmental degradation of Bouquet Creek in Bouquet Canyon
 3 caused by a devastating wildfire in 2002 and the historic floods in
 4 the winter of 2004–05 has severely impacted the habitat of the
 5 unarmored threespine stickleback. In order to restore the
 6 environment for this fully protected species, the Los Angeles
 7 County Department of Public Works, the Los Angeles Department
 8 of Water and Power, and the United States Department of
 9 Agriculture, Forest Service, must be authorized to take the
 10 unarmored threespine stickleback to complete their environmental
 11 restoration project on Bouquet Creek in Bouquet Canyon.

12 SEC. 2. Section 2081.6 is added to the Fish and Game Code,
 13 to read:

14 2081.6. (a) The department may authorize, under this chapter,
 15 the take of the unarmored threespine stickleback (*Gasterosteus*
 16 *aculeatus williamsoni*) resulting from impacts attributable to the
 17 habitat restoration project to ~~restore~~ *restore, maintain,* and improve
 18 riparian habitat on public lands in the Bouquet Canyon area, and
 19 projects to restore the flow capacity to Bouquet Creek in Bouquet
 20 Canyon on public lands, undertaken by the Los Angeles County
 21 Department of Public Works, the Los Angeles Department of
 22 Water and Power, and the United States Department of Agriculture,
 23 Forest Service, if all of the following conditions are satisfied:

24 (1) *The take authorization is limited to the portion of Bouquet*
 25 *Creek located from the outlet of Bouquet Reservoir to the boundary*
 26 *of the Los Angeles National Forest.*

27 (a)

28 (2) The department has determined that the appropriate
 29 agreements have been executed to address environmental impacts
 30 at the Bouquet Canyon area, including, but not limited to, Bouquet
 31 Creek.

1 ~~(b)~~

2 (3) The requirements of subdivisions (b) and (c) of Section 2081
3 are satisfied for the take of the unarmored threespine stickleback.

4 (4) *The department ensures that all further measures necessary*
5 *to satisfy the conservation standard of subdivision (d) of Section*
6 *2805 are incorporated into the projects.*

7 (5) *A biologist will be on duty whenever an activity is conducted*
8 *that may affect the unarmored threespine stickleback.*

9 ~~(e)~~

10 (6) The take authorization provides *for a monitoring program*
11 *and for the development and implementation, in cooperation with*
12 *federal and state agencies, of an adaptive management process for*
13 *monitoring the effectiveness of, and adjusting, as necessary, the*
14 *measures to minimize and fully mitigate the impacts of the*
15 *authorized take. ~~The adjusted measures are subject to Section~~*
16 *2052.1.*

17 ~~(d)~~

18 (7) The take authorization provides for the development and
19 implementation, in cooperation with state and federal agencies, of
20 an adaptive management process that substantially contributes to
21 the long-term conservation of the unarmored threespine stickleback.

22 **(b)** *This section shall not be construed to exempt the projects*
23 *described in subdivision (a) from any other law.*

24 **(c)** *This section shall not be construed to affect the contractual*
25 *obligations of the Los Angeles Department of Water and Power*
26 *to provide water from Bouquet Reservoir.*

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

29 5515. (a) (1) Except as provided in Section 2081.6, 2081.7,
30 or 2835, fully protected fish or parts thereof may not be taken or
31 possessed at any time. No provision of this code or any other law
32 shall be construed to authorize the issuance of permits or licenses
33 to take any fully protected fish, and no permits or licenses
34 heretofore issued shall have any force or effect for that purpose.
35 However, the department may authorize the taking of those species
36 for necessary scientific research, including efforts to recover fully
37 protected, threatened, or endangered species. Before authorizing
38 the take of any of those species, the department shall make an
39 effort to notify all affected and interested parties to solicit
40 information and comments on the proposed authorization. The

1 notification shall be published in the California Regulatory Notice
 2 Register and be made available to each person who has notified
 3 the department, in writing, of his or her interest in fully protected
 4 species and who has provided an e-mail ~~email~~ address, if available,
 5 or postal address to the department. Affected and interested parties
 6 shall have 30 days after notification is published in the California
 7 Regulatory Notice Register to provide any relevant information
 8 and comments on the proposed authorization.

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

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

14 (b) The following are fully protected fish:

15 (1) Colorado River squawfish (*Ptychocheilus lucius*).

16 (2) Thicktail chub (*Gila crassicauda*).

17 (3) Mohave chub (*Gila mohavensis*).

18 (4) Lost River sucker (*Catostomus luxatus*).

19 (5) Modoc sucker (*Catostomus microps*).

20 (6) Shortnose sucker (*Chasmistes brevirostris*).

21 (7) Humpback sucker (*Xyrauchen texanus*).

22 (8) Owens River pupfish (*Cyprinoden radiosus*).

23 (9) Unarmored threespine stickleback (*Gasterosteus aculeatus*
 24 *williamsoni*).

25 (10) Rough sculpin (*Cottus asperrimus*).

26 *SEC. 3.5. Section 5515 of the Fish and Game Code is amended*
 27 *to read:*

28 5515. (a) (1) Except as provided in *this section, Section*
 29 *2081.6, Section ~~2081.7~~ 2081.7, or Section 2835, a fully protected*
 30 *fish or parts thereof may not be taken or possessed at any time.*
 31 *No provision of this code or any other law shall be construed to*
 32 *authorize the issuance of ~~permits a permit or licenses license~~ to*
 33 *take ~~any~~ a fully protected fish, and no ~~permits permit or licenses~~*
 34 *heretofore license previously issued shall have ~~any~~ force or effect*
 35 *for that purpose. However, the department may authorize the taking*
 36 *of ~~those species a fully protected fish~~ for necessary scientific*
 37 *research, including efforts to recover fully protected, threatened,*
 38 *or endangered species. ~~Prior to~~ Before authorizing the take of ~~any~~*
 39 *of those species, a fully protected fish, the department shall make*
 40 *an effort to notify all affected and interested parties to solicit*

1 information and comments on the proposed authorization. The
2 notification shall be published in the California Regulatory Notice
3 Register and be made available to each person who has notified
4 the department, in writing, of his or her interest in fully protected
5 species and who has provided an ~~e-mail~~ *email* address, if available,
6 or postal address to the department. Affected and interested parties
7 shall have 30 days after notification is published in the California
8 Regulatory Notice Register to provide ~~any~~ relevant information
9 and comments on the proposed authorization.

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

14 (3) ~~Legally~~ *A legally* imported fully protected fish ~~or parts~~
15 ~~thereof~~ may be possessed under a permit issued by the department.

16 (b) The following are fully protected fish:

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

28 *SEC. 4. Section 3.5 of this bill incorporates amendments to*
29 *Section 5515 of the Fish and Game Code proposed by both this*
30 *bill and Assembly Bill 1527. It shall only become operative if (1)*
31 *both bills are enacted and become effective on or before January*
32 *1, 2016, (2) each bill amends Section 5515 of the Fish and Game*
33 *Code, and (3) this bill is enacted after Assembly Bill 1527, in which*
34 *case Section 3 of this bill shall not become operative.*