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AB-353 Protected species: take: Bouquet Canyon: habitat restoration project. (2015-2016)

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Assembly Bill No. 353

CHAPTER 620

An act to amend Section 5515 of, and to add Section 2081.6 to, the Fish and Game Code, relating to fish, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 353, 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, maintain, and improve riparian habitat on public lands in a prescribed portion of Bouquet Creek 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that the environmental degradation of Bouquet Creek in Bouquet Canyon caused by a devastating wildfire in 2002 and the historic floods in the winter of 2004–05 has severely impacted the habitat of the unarmored threespine stickleback. In order to restore the environment for this fully protected species, the Los Angeles County Department of Public Works, the Los Angeles Department of Water and Power, and the United States Department of Agriculture, Forest Service, must be authorized to take the unarmored threespine stickleback to complete their environmental restoration project on Bouquet Creek in Bouquet Canyon.

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

2081.6. (a) The department may authorize, under this chapter, the take of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) resulting from impacts attributable to the habitat restoration project to restore, maintain, and improve riparian habitat on public lands in the geographic area defined in paragraph (1) and projects to restore the flow capacity to Bouquet Creek in Bouquet Canyon on public lands, undertaken by the Los Angeles County Department of Public Works, the Los Angeles Department of Water and Power, and the United States Department of Agriculture, Forest Service, if all of the following conditions are satisfied:

(1) The take authorization is limited to the portion of Bouquet Creek located from a position normal to mile marker 8.3 on Bouquet Canyon Road to a position normal to mile marker 16.3 on Bouquet Canyon Road, inclusive.

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

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

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

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

(6) The take authorization provides for the development and implementation, in cooperation with federal and state agencies, of a monitoring program and an adaptive management process that satisfy the conservation standard of subdivision (d) of Section 2805 for monitoring the effectiveness of, and adjusting, as necessary, the measures to minimize and fully mitigate the impacts of the authorized take.

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

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

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

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

5515. (a) (1) Except as provided in Section 2081.6, 2081.7, or 2835, fully protected fish 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 fish, 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. Before 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 fish or parts thereof may be possessed under a permit issued by the department.

(b) The following are fully protected fish:

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

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

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

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

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

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

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

(8) Owens River pupfish (*Cyprinodon radiosus*).

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

(10) Rough sculpin (*Cottus asperimus*).

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

5515. (a) (1) Except as provided in this section, Section 2081.6, Section 2081.7, or Section 2835, a fully protected fish 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 a permit or license to take a fully protected fish, and no permit or license previously issued shall have force or effect for that purpose. However, the department may authorize the taking of a fully protected fish for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected fish, 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 relevant information and comments on the proposed authorization.

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

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

(b) The following are fully protected fish:

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

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

(10) Rough sculpin (*Cottus asperimus*).

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 5515 of the Fish and Game Code proposed by both this bill and Assembly Bill 1527. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, but this bill becomes operative first, (2) each bill amends Section 5515 of the Fish and Game Code, and (3) this bill is enacted after Assembly Bill 1527, in which case Section 5515 of the Fish and Game Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of Assembly Bill 1527, at which time Section 3.5 of this bill shall become operative.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the unarmored threespine stickleback habitat restoration project on Bouquet Creek in Bouquet Canyon proposed by the Los Angeles County Department of Public Works to receive a take permit from the Department of Fish and Wildlife so that this project may begin as soon as possible, it is necessary for this act to take effect immediately.