

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1961

Introduced by Assembly Member Huffman
**(~~Coauthor:~~ ~~Coauthors:~~ ~~Assembly Member~~ *Members Allen and*
Chesbro)**

February 23, 2012

An act to add and repeal Chapter 9 (commencing with Section 6950) of Part 1 of Division 6 of the Fish and Game Code, relating to fish.

LEGISLATIVE COUNSEL'S DIGEST

AB 1961, as amended, Huffman. Coho salmon: habitat.

Existing law requires the Department of Fish and Game to develop and implement a recovery strategy pilot program for the coho salmon and repeals that authority on January 1, 2014, but requires any recovery strategy that has been approved or implemented prior to that date to remain in effect.

Existing law also establishes the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act to protect and increase the naturally spawning salmon, steelhead trout, and anadromous, as defined, fishery resources of the state.

This bill would establish the Coho Salmon Habitat Enhancement Leading to Preservation Act *or Coho HELP Act* (Coho Act) and require ~~the department~~ *Director of the Department of Fish and Game* to approve a coho salmon habitat enhancement project, as defined, if specified conditions are met as determined by the director ~~of the department~~, as prescribed. This bill would create the Coho Salmon Recovery Account within the Fish and Game Preservation Fund and permit the department to enter into an agreement to accept funds to achieve the purposes of

the Coho Act and deposit those funds into that account. This bill would authorize the department to adopt emergency regulations for the implementation of the Coho Act. This bill would repeal the provisions of the Coho Act on January 1, 2018.

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. Chapter 9 (commencing with Section 6950) is
2 added to Part 1 of Division 6 of the Fish and Game Code, to read:

3

4 CHAPTER 9. COHO SALMON HABITAT ENHANCEMENT LEADING
5 TO PRESERVATION

6

7 6950. This chapter shall be known and may be cited as the
8 Coho Salmon Habitat Enhancement Leading to Preservation Act
9 or *Coho HELP Act*.

10 6951. The Legislature finds and declares all of the following:

11 (a) The coho salmon (*Oncorhynchus kisutch*) is a fish native to
12 many northern California coastal streams and consists of two
13 distinct Evolutionary Significant Units (ESU), the Southern
14 Oregon/Northern California Coast (SONCC) and the Central
15 California Coast (CCC) ESUs. The historical range of the SONCC
16 ESU includes coastal rivers and tributaries in Del Norte, Siskiyou,
17 Humboldt, Trinity, Mendocino, and Lake Counties. The historical
18 range for the CCC ESU includes coastal rivers and tributaries in
19 parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano,
20 Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara,
21 and Santa Cruz Counties.

22 (b) All coho salmon runs in California have declined
23 dramatically over the past 40 to 50 years. Population numbers,
24 including hatchery stocks, were estimated at 6 to 15 percent of
25 1940 levels in 2004. Since 2004, populations in all monitored
26 streams have continued to decline with an estimated 1 percent
27 remaining of the original population. While a few coastal rivers
28 such as the Russian River did show an increase in population for
29 2011, it is not yet known whether the increase is sustainable, and
30 the species remains at critical risk of extinction.

1 (c) Both the SONCC and the CCC ESUs are listed pursuant to
2 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531
3 et seq.) and the California Endangered Species Act (Chapter 1.5
4 (commencing with Section 2050) of Division 3). The populations
5 south of the San Francisco Bay are listed as endangered and
6 considered to be virtually extinct. The populations between San
7 Francisco Bay and Punta Gorda to the north are listed as
8 endangered, and the populations from Punta Gorda to the Oregon
9 Border are listed as threatened.

10 (d) California’s salmon populations need freshwater habitat that
11 includes cold and clean water, appropriate water depth, quantity,
12 and flow velocities, upland and riparian vegetation to stabilize soil
13 and shade, clean gravel for spawning and ~~egg-rearing~~ *egg rearing*,
14 large woody debris to provide resting and hiding places, adequate
15 food, and varied channel forms.

16 (e) An urgency exists due to the extraordinarily small numbers
17 of coho salmon remaining in California. In order to prevent their
18 extinction from northern California waters, it is imperative that
19 habitat restoration efforts be expedited and increased as soon as
20 possible.

21 (f) Therefore, it is the intent of the Legislature in enacting this
22 policy that the department seek agreements and partnerships with
23 state and federal agencies to efficiently and effectively permit
24 habitat enhancement projects necessary to prevent the extinction
25 of coho salmon populations in California coastal watersheds and
26 that the department expedite and streamline the permitting and
27 approval of coho salmon habitat enhancement projects, including,
28 in particular, large woody debris restoration projects, in northern
29 California streams.

30 (g) *By eliminating barriers to fish passage, stabilizing banks,*
31 *increasing stream channel complexity, and otherwise restoring*
32 *and enhancing habitat, these projects will result in a net benefit*
33 *to coho salmon and other species.*

34 6952. For the purposes of this chapter:

35 (a) “Coho salmon habitat enhancement project” means a
36 *restoration* project within a region described in an adopted state
37 or federal coho salmon recovery plan with the primary purpose of
38 accomplishing one or more of the following:

1 (1) Modification of existing water crossings for the purposes
 2 of eliminating a barrier to fish passage. Modification includes the
 3 removal of road crossings, replacement of culverts, or both.

4 (2) Restoration of eroded or denuded streambanks by utilizing
 5 nonrock bioengineering practices and revegetating stream corridors
 6 with native riparian species. Restoration shall be focused on
 7 promoting tree establishment along the active channel and on
 8 streambanks for the purposes of bank stabilization, bank
 9 development, and live wood complexity.

10 (3) Wood placement that benefits naturally reproducing fish
 11 stocks by creating or enhancing fish habitat, increasing stream
 12 complexity, or both.

13 (b) “Coho salmon recovery plans” means the department’s
 14 Recovery Strategy for California Coho Salmon, the National
 15 Marine Fisheries Service’s Recovery Plan for the Evolutionary
 16 Significant Unit of Central Coast Coho Salmon, the National
 17 Marine Fisheries Service’s Recovery Plan for the Southern
 18 Oregon/Northern California Coast Evolutionary Significant Unit
 19 of Coho Salmon, or subsequently adopted ~~Coho~~ *coho* salmon
 20 recovery plans.

21 (c) “Fish passage guidelines” means the department’s Coho
 22 Salmon Stream Restoration Manual, the National Marine Fisheries
 23 Service’s Guidelines for Salmonid Stream Passage at Stream
 24 Crossings, either of those documents as they may be subsequently
 25 amended or updated, or salmonid fish passage project guidelines
 26 subsequently adopted by the department, the National Marine
 27 Fisheries Service, or both.

28 (d) “Project proponent” means a person, public agency, or
 29 nonprofit organization seeking to implement a coho salmon habitat
 30 enhancement project.

31 6953. (a) Notwithstanding any other provision of law, the
 32 ~~department~~ *director* shall approve a coho salmon habitat
 33 enhancement project if ~~it~~ *the project* will maintain existing levels
 34 of human health and safety protection and ~~is consistent with both~~
 35 *meets all* of the following:

36 (1) ~~Fish~~ *The project is consistent with fish passage guidelines*
 37 *and coho salmon recovery plans.*

38 (2) ~~Coho salmon recovery plans.~~

39 (2) *The primary project purpose is for voluntary restoration.*

1 (3) *The project is no larger than five acres or 500 linear feet in*
2 *size, measured by calculating the direct area of impact.*

3 (4) *Completion of all phases of the coho salmon habitat*
4 *enhancement project shall not exceed five years.*

5 (5) *The project will not result in cumulative negative*
6 *environmental impacts that are significant when viewed in*
7 *connection with the effects of past, current, or probable future*
8 *projects.*

9 (b) *The director's approval of a coho salmon habitat*
10 *enhancement project pursuant to subdivision (a) shall be in lieu*
11 *of any other permit, license, or other approval issued by the*
12 *department, including, but not limited to, those issued pursuant*
13 *to Chapter 1.5 (commencing with Section 2050) of Division 3,*
14 *Chapter 10 (commencing with Section 1900) of Division 2, and*
15 *Chapter 6 (commencing with Section 1600) of Division 2.*

16 (c) *The director's approval of a coho salmon habitat*
17 *enhancement project pursuant to subdivision (a) shall constitute*
18 *an action taken by a regulatory agency, as authorized by state*
19 *law, to ensure the maintenance, restoration, or enhancement of a*
20 *natural resource where the regulatory process involves procedures*
21 *for protection of the environment.*

22 (b)

23 (d) ~~Within 30~~ 60 days after the ~~department~~ director receives a
24 written request to approve a coho salmon habitat enhancement
25 project containing the information required pursuant to subdivision
26 ~~(e)~~ (e), the director shall determine whether *substantial evidence*
27 *exists that* the coho salmon habitat enhancement project is
28 consistent with subdivision (a). ~~If the director determines within~~
29 ~~that 30-day period, based upon substantial evidence, that the coho~~
30 ~~salmon enhancement project is consistent with subdivision (a), no~~
31 ~~further departmental approval shall be necessary.~~

32 (e)

33 (e) A written request to approve a coho salmon habitat
34 enhancement project shall contain all of the following:

35 (1) The name, address, title, organization, telephone number,
36 and electronic mail address of the natural person or persons who
37 will be the main point of contact for the project proponent.

38 (2) A full description of the coho salmon habitat enhancement
39 project that includes the design criteria used for the project, ~~best~~
40 ~~management practices incorporated in the project design, and a~~

1 ~~map clearly identifying the project location~~ *restoration or*
2 *enhancement methods, an estimate of temporary restoration or*
3 *enhancement-related disturbance, project schedule, and how the*
4 *project will result in a net benefit to coho salmon and other affected*
5 *species.*

6 (3) *A map clearly identifying the project location and*
7 *photographs of the project site.*

8 (4) *An assessment of the project area that provides a description*
9 *of existing flora and fauna and the potential presence of sensitive*
10 *species or habitat.*

11 (5) *A description of environmental protection measures*
12 *incorporated into the project design, including, but not limited to,*
13 *measures to avoid and minimize impacts to water quality and*
14 *potentially present species protected by state law, so that no*
15 *potentially significant negative environmental impacts will result*
16 *from the project.*

17 ~~(3)~~

18 (6) *Substantial evidence to support a conclusion that the project*
19 *meets the criteria set forth in this section. Substantial evidence*
20 *shall cite to relevant design criteria and best management practices*
21 *environmental protection measures that are set forth in the fish*
22 *passage guidelines and coho salmon recovery plans.*

23 ~~(d)~~

24 (f) (1) *If the director determines at any time that the project is*
25 *no longer consistent with subdivision (a), due to a material change*
26 *between the project as submitted and the project being implemented*
27 *or a change in environmental circumstances in the area of*
28 *implementation, the director shall notify the project proponent in*
29 *writing and project implementation shall be suspended or approval*
30 *pursuant to this chapter revoked. Written notice from the director*
31 *shall be delivered in person or by certified mail to the project*
32 *proponent and shall specify the reasons why ministerial approval*
33 *of the project was suspended or revoked. The approval for a project*
34 *shall not be revoked pursuant to this subdivision unless it has first*
35 *been suspended pursuant to this subdivision.*

36 (2) *Within 30 days of receipt of a notice of suspension, the*
37 *project proponent may file an objection with the director. Any*
38 *objection shall be in writing and state the reasons why the project*
39 *proponent objects to the suspension.*

1 (3) The director shall make a decision whether to revoke
2 approval or to lift the suspension of project implementation within
3 30 days after the end of the objection period in paragraph (2).

4 6954. The department may enter into an agreement to accept
5 funds from any *public agency*, person, business entity, or
6 organization to achieve the purposes of this chapter. Any funds so
7 received shall be deposited in the Coho Salmon Recovery Account,
8 which is hereby created in the Fish and Game Preservation Fund.
9 The funds received shall supplement existing resources for projects
10 and programs that enhance the recovery of ~~Coho~~ *coho* salmon.

11 6955. The department may adopt emergency regulations for
12 the implementation of this chapter. Emergency regulations adopted
13 pursuant to this section, any amendment thereto, or subsequent
14 adjustments to the regulations, shall be adopted by the department
15 in accordance with Chapter 3.5 (commencing with Section 11340)
16 of Part 1 of Division 3 of Title 2 of the Government Code. The
17 adoption of ~~any such~~ *these* regulations is an emergency and shall
18 be considered by the Office of Administrative Law as necessary
19 for the immediate preservation of the public peace, health, safety,
20 and general welfare. Notwithstanding Chapter 3.5 (commencing
21 with Section 11340) of Part 1 of Division 3 of Title 2 of the
22 Government Code, any emergency regulations adopted by the
23 department shall remain in effect until revised by the department.

24 6956. This chapter shall remain in effect only until January 1,
25 2018, and as of that date is repealed, unless a later enacted statute,
26 that is enacted before January 1, 2018, deletes or extends that date.