

**ASSEMBLY BILL**

**No. 2193**

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**Introduced by Assembly Member Gordon**

February 20, 2014

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An act to add Chapter 6.5 (commencing with Section 1650) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as introduced, Gordon. Habitat Restoration and Enhancement Act.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency, administered by the Director of Fish and Wildlife. Existing law requires the director to administer various programs for the protection and conservation of fish and wildlife resources.

This bill would enact the Habitat Restoration and Enhancement Act and require the director to approve a habitat restoration or enhancement project, as defined, if specified conditions are met as determined by the director. The act would create the Habitat Restoration and Enhancement Fund within the Fish and Game Preservation Fund and authorize the department to enter into an agreement to accept funds to achieve the purposes of the Habitat Restoration and Enhancement Act and deposit those funds into that account. The act would authorize the department to impose a schedule of fees for projects, based on the cost of a project, sufficient to recover all reasonable administrative and implementation costs of the department relating to the project, but not to exceed fees adopted by the department for standard lake or streambed alteration agreements for projects of comparable cost. Moneys in the account would be available to the department, upon appropriation, for the

purposes of administering and implementing the Habitat Restoration and Enhancement Act.

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) The Legislature finds and declares all of the
- 2 following:
- 3 (1) California is home to over 300 animal and plant species
- 4 listed as either threatened or endangered by the state and federal
- 5 governments. Some of these species' populations are so low that
- 6 recovery actions must be taken immediately to avoid further
- 7 population declines or extinctions of the species.
- 8 (2) Historic and continued degradation of our state's ecosystems,
- 9 whether in remote areas or in our cities, continues to impact the
- 10 habitats of these protected species and other animals and plants.
- 11 (3) Tremendous demand exists for small-scale ecosystem
- 12 restoration projects aimed to benefit these species, yet current
- 13 regulatory mechanisms do not allow many willing private
- 14 landowners and local governments to efficiently access the
- 15 necessary environmental permits.
- 16 (4) Demand for these environmentally beneficial projects far
- 17 outpaces the regulatory approval process. As a result, hundreds of
- 18 small-scale projects designed to benefit California's most
- 19 vulnerable species and natural habitats are not being implemented.
- 20 (5) Expedited and coordinated agency permitting processes for
- 21 small-scale restoration projects have been shown to greatly boost
- 22 the number and geographic distribution of environmentally
- 23 beneficial projects across California-projects that cumulatively
- 24 improve water quality and aid in the recovery of salmon and
- 25 steelhead populations, migratory birds, and other sensitive species.
- 26 (b) It is the intent of the Legislature in enacting this measure to
- 27 provide for substantial permitting efficiency and thereby encourage
- 28 increased implementation of voluntary, environmentally beneficial,
- 29 small-scale habitat restoration projects that do all of the following:
- 30 (1) Provide an individual and cumulative net environmental
- 31 benefit.

1 (2) Incorporate measures to protect against any short-term  
2 substantial, or potentially substantial, adverse change in any of the  
3 physical conditions within the area affected by the project.

4 (3) Follow applicable preexisting state and federal agency  
5 permits, certifications, and exemptions.

6 SEC. 2. Chapter 6.5 (commencing with Section 1650) is added  
7 to Division 2 of the Fish and Game Code, to read:

8  
9 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT  
10 ACT

11  
12 1650. This chapter shall be known, and may be cited, as the  
13 Habitat Restoration and Enhancement Act.

14 1651. As used in this chapter:

15 (a) “Adopted species recovery plan” means a guidance document  
16 published by a government agency that identifies recovery actions,  
17 based upon the best scientific and commercial data available,  
18 necessary for the protection and recovery of listed species.

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

26 (c) “Habitat restoration or enhancement project” means a project  
27 with the primary purpose of accomplishing one or more of the  
28 following:

29 (1) Stream or river bank revegetation, the primary purpose of  
30 which is to improve habitat.

31 (2) Stream or river bank stabilization with native vegetation or  
32 other bioengineering techniques, or both, to reduce or eliminate  
33 erosion and sedimentation.

34 (3) Modification, replacement, or removal of existing fish  
35 passage barriers to improve water quality and fish passage,  
36 including associated bridge installation. Examples of fish passage  
37 barriers include, but are not limited to, road crossings and fords,  
38 or both; small permanent, flashboard, and seasonal dams; weirs,  
39 sills, and aprons; and poorly designed, undersized, or failed  
40 culverts.

1 (4) Placement or installation of anchored and unanchored large  
2 wood, rootwads and other in-stream habitat structures that benefit  
3 native fish by enhancing habitat, increasing stream channel  
4 complexity, or both.

5 (5) Erosion control, invasive species removal, and native  
6 revegetation activities for the purpose of improving water or habitat  
7 quality for species, or both.

8 (6) Installation of fencing for the purpose of excluding or  
9 managing livestock to protect the bed and banks of streams, or  
10 other sensitive habitats.

11 (7) Restoration of freshwater and tidal hydrologic functions in  
12 wetlands and estuaries to improve fish and wildlife habitat.

13 (8) Creation of off-channel habitat to restore historic rearing  
14 and flow refugia for native fisheries and other aquatic species.

15 (9) Restoration of floodplains to restore natural hydrologic  
16 function, including levee and dike setback and breaching.

17 (10) Restoration and maintenance of existing off-stream ponds  
18 to benefit native amphibian and other species.

19 (11) Other habitat restoration projects requiring permits from  
20 the department whose primary purpose is to recover listed species,  
21 and are included in a species recovery plan or priority habitat and  
22 related species recovery actions, as determined by the director.

23 (d) “Project proponent” means a person, public agency, or  
24 nonprofit organization seeking to implement a habitat restoration  
25 or enhancement project.

26 1652. (a) Notwithstanding any other law, the director shall  
27 approve a habitat restoration or enhancement project if the project  
28 will maintain existing levels of human health and safety protection,  
29 including, but not limited to, flood protection, and meets all of the  
30 following requirements:

31 (1) The project purpose is voluntary habitat restoration and is  
32 not required as mitigation.

33 (2) The project meets the requirements of Section 15333 of Title  
34 14 of the California Code of Regulations.

35 (3) The project complies with one or more of the following:

36 (A) Adopted species recovery plans.

37 (B) Fish passage guidelines.

38 (C) The department’s California Salmonid Stream Habitat  
39 Restoration Manual.

1 (D) Scientifically researched studies, guidance documents, and  
2 practice manuals that describe best available habitat restoration or  
3 enhancement methodologies that are utilized or approved by the  
4 department.

5 (4) 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 habitat restoration or  
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 to  
13 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 habitat restoration or  
17 enhancement project pursuant to subdivision (a) shall constitute  
18 an action taken by a regulatory agency, as authorized by state law,  
19 to ensure the maintenance, restoration, or enhancement of a natural  
20 resource where the regulatory process involves procedures for the  
21 protection of the environment.

22 (d) Within 60 days after the director receives a written request  
23 to approve a habitat restoration or enhancement project containing  
24 the information required pursuant to subdivision (e), the director  
25 shall determine whether substantial evidence exists that the project  
26 is consistent with subdivision (a).

27 (e) A written request to approve a habitat restoration or  
28 enhancement project shall contain all of the following:

29 (1) The name, address, title, organization, telephone number,  
30 and email address of the natural person or persons who will be the  
31 main point of contact for the project proponent.

32 (2) A full description of the habitat restoration and enhancement  
33 project that includes the design criteria used for the project,  
34 restoration or enhancement methods, an estimate of temporary  
35 restoration or enhancement-related disturbance, project schedule,  
36 and how the project will result in a net benefit to any affected  
37 species.

38 (3) An assessment of the project area that provides a description  
39 of the existing flora and fauna and the potential presence of  
40 sensitive species or habitat.

1 (4) A description of the environmental protection measures  
2 incorporated into the project design, including, but not limited to,  
3 measures to avoid and minimize impacts to water quality and  
4 potentially present species protected by state and federal law, and  
5 findings that no potentially significant negative effects on the  
6 environment, as defined in Section 15382 of Title 14 of the  
7 California Code of Regulations, will result from the project.

8 (5) Substantial evidence to support a conclusion that the project  
9 meets the criteria set forth in this section. Substantial evidence  
10 shall cite relevant design criteria and environmental protection  
11 measures found in the documents specified in paragraph (3) of  
12 subdivision (a).

13 (f) (1) If the director determines at any time that the project is  
14 no longer consistent with subdivision (a), due to a material change  
15 between the project as submitted and the project being implemented  
16 or a change in the environmental circumstances in the area of  
17 implementation, the director shall notify the project proponent in  
18 writing and project implementation shall be suspended. Written  
19 notice from the director shall be delivered in person, by certified  
20 mail, or by electronic communication to the project proponent and  
21 shall specify the reasons why approval of the project was  
22 suspended. The approval for a project shall not be revoked pursuant  
23 to this subdivision unless it has first been suspended pursuant to  
24 this subdivision.

25 (2) Within 30 days of receipt of a notice of suspension, the  
26 project proponent may file an objection with the director. Any  
27 objection shall be in writing and state the reasons why the project  
28 proponent objects to the suspension. The project proponent may  
29 provide additional environmental protection measures, design  
30 modifications, or other evidence that the project is consistent with  
31 subdivision (a) and request that the notice of suspension should  
32 be lifted and approval granted.

33 (3) The director shall revoke approval or lift the suspension of  
34 project approval within 30 days after the end of the objection period  
35 in paragraph (2).

36 1653. (a) The Habitat Restoration and Enhancement Account  
37 is hereby created in the Fish and Game Preservation Fund.

38 (b) The department may enter into an agreement to accept funds  
39 from any public agency, person, business entity, or organization  
40 to achieve the purposes of this chapter. The department shall

1 deposit any funds so received in the account. The funds received  
2 shall supplement existing resources for projects and programs.

3 (c) The department may impose a schedule of fees for projects,  
4 based on the cost of a project, sufficient to recover all reasonable  
5 administrative and implementation costs of the department relating  
6 to the project, but not to exceed fees adopted by the department  
7 pursuant to Chapter 6 (commencing with Section 1600) of Division  
8 2 for standard lake or streambed alteration agreements for projects  
9 of comparable cost.

10 (d) Moneys in the account shall be available to the department,  
11 upon appropriation by the Legislature, for the purposes of  
12 administering and implementing this chapter.

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