

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2193

Introduced by Assembly Member Gordon

February 20, 2014

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 amended, 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) *Recovery of listed species depends largely on significant*
12 *improvements in habitat quality and requires numerous habitat*
13 *restoration projects statewide.*

14 (3)

15 (4) Tremendous demand exists for small-scale ecosystem
16 restoration projects aimed to benefit these species, yet current
17 regulatory mechanisms do not allow many willing private
18 landowners and local governments to efficiently access the
19 necessary environmental permits.

20 (4)

21 (5) Demand for these environmentally beneficial projects far
22 outpaces the regulatory approval process. As a result, hundreds of
23 small-scale projects designed to benefit California's most
24 vulnerable species and natural habitats are not being implemented.

25 (5)

26 (6) Expedited and coordinated agency permitting processes for
27 small-scale restoration projects have been shown to greatly boost
28 the number and geographic distribution of environmentally
29 beneficial projects across ~~California~~ *California – projects*
30 that cumulatively improve water quality and aid in the recovery
31 of salmon and steelhead populations, migratory birds, and other
32 sensitive species.

1 (b) It is the intent of the Legislature in enacting this measure to
2 provide for substantial permitting efficiency and thereby encourage
3 increased implementation of voluntary, environmentally beneficial,
4 small-scale habitat restoration projects that do all of the following:

5 (1) Provide an individual and cumulative net environmental
6 benefit.

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

10 (3) Follow applicable preexisting state and federal agency
11 permits, certifications, and exemptions.

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

14 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT
15 ACT
16

17
18 1650. This chapter shall be known, and may be cited, as the
19 Habitat Restoration and Enhancement Act.

20 1651. As used in this chapter:

21 ~~(a) “Adopted species recovery plan” means a guidance document
22 published by a government agency that identifies recovery actions,
23 based upon the best scientific and commercial data available,
24 necessary for the protection and recovery of listed species.~~

25 ~~(b)~~

26 (a) “Fish passage guidelines” means *those guidelines specified*
27 *in the department’s California Salmonid Stream Habitat Restoration*
28 *Manual, and the National Marine Fisheries Service, Southwest*
29 *Region, Guidelines for Salmonid Passage at Stream Crossings,*
30 ~~either of those documents as they may be subsequently amended~~
31 ~~or updated, or salmonid fish passage project guidelines~~
32 ~~subsequently adopted by the department, the National Marine~~
33 ~~Fisheries Service, or both. and subsequent amendments or updates~~
34 *to either document.*

35 ~~(c)~~

36 (b) “Habitat restoration or enhancement project” means a project
37 with the primary purpose of accomplishing one or more of the
38 following:

39 (1) Stream or river ~~bank bank, lake, or other waterway~~
40 revegetation, the primary purpose of which is to improve habitat.

- 1 (2) Stream or river bank stabilization with native vegetation or
 2 other *predominantly nonrock* bioengineering techniques, or both,
 3 to reduce or eliminate erosion and sedimentation.
- 4 (3) Modification, replacement, or removal of existing fish
 5 passage barriers to improve water quality and fish passage,
 6 including associated bridge installation. Examples of fish passage
 7 barriers include, but are not limited to, road crossings and fords,
 8 or both; small permanent, flashboard, and seasonal dams; weirs,
 9 sills, and aprons; and poorly designed, undersized, or failed
 10 culverts.
- 11 (4) *Modifications of existing water diversion infrastructure to*
 12 *enhance stream flow and improve fish habitat and survival,*
 13 *including, but not limited to, pump relocation or removal and fish*
 14 *screen installation, operation, and maintenance, when the project*
 15 *does not increase total water diversion.*
- 16 ~~(4)~~
- 17 (5) Placement or installation of anchored and unanchored large
 18 wood, ~~rootwads~~ *rootwads*, *spawning gravel*, and other in-stream
 19 habitat structures *or materials* that benefit native fish by enhancing
 20 habitat, increasing stream channel complexity, or both.
- 21 ~~(5) Erosion control, invasive species removal, and native~~
 22 ~~revegetation activities for the purpose of improving water or habitat~~
 23 ~~quality for species, or both.~~
- 24 (6) *Sediment source reduction on existing roads, including*
 25 *outsloping, berm removal, installation of rolling dips, culvert and*
 26 *drainage upgrades, road decommissioning, and other techniques*
 27 *designed to improve water quality and habitat for species.*
- 28 (7) *Upland erosion control using bioengineering techniques*
 29 *and native revegetation for the purpose of improving water or*
 30 *habitat quality for species.*
- 31 (8) *Control and removal of aquatic and terrestrial invasive*
 32 *plant species.*
- 33 ~~(6)~~
- 34 (9) Installation of fencing *and associated alternative stockwater*
 35 *supply infrastructure* for the purpose of excluding or managing
 36 livestock to protect the bed and banks of streams, or other sensitive
 37 habitats.
- 38 ~~(7)~~
- 39 (10) Restoration of freshwater and tidal hydrologic functions
 40 in wetlands and estuaries to improve fish and wildlife habitat.

1 ~~(8)~~
2 (11) Creation of off-channel habitat to restore historic rearing
3 and flow refugia for native fisheries and other aquatic species.

4 ~~(9)~~
5 (12) Restoration of floodplains to restore natural hydrologic
6 function, ~~including~~ including, but not limited to, levee and dike
7 setback and breaching.

8 ~~(10)~~
9 (13) Restoration and maintenance of existing off-stream ~~ponds~~
10 ponds, including spillway repair and sediment removal, to benefit
11 native amphibian and other species.

12 ~~(11)~~
13 (14) Other habitat restoration projects requiring permits from
14 the department whose primary purpose is to recover listed species,
15 and are included in a state or federal species recovery plan or
16 priority other department-identified habitat and related species
17 recovery actions, as determined by the director.

18 ~~(d)~~
19 (c) “Project proponent” means a person, public agency, or
20 nonprofit organization seeking to implement a habitat restoration
21 or enhancement project.

22 (d) “Species recovery plan” means a guidance document
23 prepared by a government agency that identifies recovery actions,
24 based upon the best scientific and commercial data available,
25 necessary for the protection and recovery of listed species.

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.~~ is no larger than five
35 acres in size, measured by calculating the direct area of
36 construction and construction-related impact.

37 (3) The project ~~complies with~~ is consistent with, or identified
38 in, one or more of the following:

- 1 (A) ~~Adopted Federal- and state-listed species recovery plans-~~
 2 ~~plans or published protection measures, biological opinions, or~~
 3 ~~previously approved department agreements and permits.~~
 4 (B) ~~Fish Department and National Marine Fisheries Service~~
 5 ~~fish screening criteria or fish passage guidelines.~~
 6 (C) The department's California Salmonid Stream Habitat
 7 Restoration Manual.
 8 (D) Scientifically researched studies, guidance documents, and
 9 practice manuals that describe best available habitat restoration or
 10 enhancement methodologies that are utilized or approved by the
 11 department.
 12 (4) The project will not result in cumulative negative
 13 environmental impacts that are significant when viewed in
 14 connection with the effects of past, current, or probable future
 15 projects.
 16 (b) The director's approval of a habitat restoration or
 17 enhancement project pursuant to subdivision (a) shall be in lieu
 18 of any other permit, *agreement*, license, or other approval issued
 19 by the department, including, but not limited to, those issued
 20 pursuant to Chapter 1.5 (commencing with Section 2050) of
 21 Division 3, Chapter 10 (commencing with Section 1900) of
 22 Division 2, and Chapter 6 (commencing with Section 1600) of
 23 Division 2.
 24 (c) *Nothing in this chapter shall be construed as expanding the*
 25 *scope of projects requiring a permit, agreement, license, or other*
 26 *approval issued by the department.*
 27 (e)
 28 (d) The director's approval of a habitat restoration or
 29 enhancement project pursuant to subdivision (a) shall constitute
 30 an action taken by a regulatory agency, as authorized by state law,
 31 to ensure the maintenance, restoration, or enhancement of a natural
 32 resource where the regulatory process involves procedures for the
 33 protection of the environment.
 34 (d)
 35 (e) Within 60 days after the director receives a written request
 36 to approve a habitat restoration or enhancement ~~project containing~~
 37 ~~the information required pursuant to subdivision (e),~~ *project*, the
 38 director shall determine whether ~~substantial evidence exists that~~
 39 ~~the project is consistent with subdivision (a).~~ *the written request*

1 *includes all of the required information set forth in subdivision*
2 *(f).*

3 ~~(e)~~

4 *(f)* A written request to approve a habitat restoration or
5 enhancement project shall contain all of the following:

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

9 (2) A full description of the habitat restoration and enhancement
10 project that includes the ~~design criteria~~ *designs and techniques*
11 *be used for the project, restoration* ~~restoration~~ or enhancement
12 methods, an estimate of temporary restoration or
13 enhancement-related disturbance, project schedule, *anticipated*
14 *maintenance activities*, and how the project will result in a net
15 benefit to any affected ~~species~~ *habitat and species, consistent with*
16 *paragraph (3) of subdivision (a).*

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

20 (4) A description of the environmental protection measures
21 incorporated into the project design, including, but not limited to,
22 measures to avoid and minimize impacts to water quality and
23 potentially present species protected by state and federal law, ~~and~~
24 ~~findings such that no potentially significant negative effects on~~
25 the environment, as defined in Section 15382 of Title 14 of the
26 California Code of Regulations, ~~will result from the project.~~ *are*
27 *likely to occur with the application of the specified environmental*
28 *protection measures.*

29 (5) Substantial evidence to support a conclusion that the project
30 meets the ~~criteria~~ *requirements* set forth in this section. Substantial
31 evidence shall ~~cite~~ *include references to* relevant design criteria
32 and environmental protection measures found in the documents
33 specified in paragraph (3) of subdivision (a).

34 *(g) During project implementation, the project proponent shall*
35 *notify the department within seven days of any minor amendments*
36 *to the project necessary for improving the project's habitat*
37 *restoration and enhancement outcome or further avoidance of*
38 *impacts.*

39 ~~(f)~~

1 (h) (1) If the director determines at any time that the project is
 2 no longer consistent with subdivision (a), due to a material change
 3 between the project as submitted and the project being implemented
 4 or a change in the environmental circumstances in the area of
 5 implementation, the director shall notify the project proponent in
 6 writing and project implementation shall be suspended. Written
 7 notice from the director shall be delivered in person, by certified
 8 mail, or by electronic communication to the project proponent and
 9 shall specify the reasons why approval of the project was
 10 suspended. The approval for a project shall not be revoked pursuant
 11 to this subdivision unless it has first been suspended pursuant to
 12 this subdivision.

13 (2) Within 30 days of receipt of a notice of suspension, the
 14 project proponent may file an objection with the director. Any
 15 objection shall be in writing and state the reasons why the project
 16 proponent objects to the suspension. The project proponent may
 17 provide additional environmental protection measures, design
 18 modifications, or other evidence that the project is consistent with
 19 subdivision (a) and request that the notice of suspension should
 20 be lifted and approval granted.

21 (3) The director shall revoke approval or lift the suspension of
 22 project approval within 30 days after the end of the objection period
 23 ~~in~~ *receiving the project proponent's objection pursuant to*
 24 *paragraph (2).*

25 1653. (a) The Habitat Restoration and Enhancement Account
 26 is hereby created in the Fish and Game Preservation Fund.

27 (b) The department may enter into an agreement to accept funds
 28 from any public agency, person, business entity, or organization
 29 to achieve the purposes of this chapter. The department shall
 30 deposit any funds so received in the account. The funds received
 31 shall supplement existing resources for projects and programs.

32 (c) The department may impose a schedule of fees for projects,
 33 based on the cost of a project, sufficient to recover all reasonable
 34 administrative and implementation costs of the department relating
 35 to the project, but not to exceed fees adopted by the department
 36 pursuant to Chapter 6 (commencing with Section 1600) of Division
 37 2 for standard lake or streambed alteration agreements for projects
 38 of comparable cost.

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

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