Introducing 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


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.


The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California is home to over 300 animal and plant species listed as either threatened or endangered by the state and federal governments. Some of these species’ populations are so low that recovery actions must be taken immediately to avoid further population declines or extinctions of the species.

(2) Historic and continued degradation of our state’s ecosystems, whether in remote areas or in our cities, continues to impact the habitats of these protected species and other animals and plants.

(3) Recovery of listed species depends largely on significant improvements in habitat quality and requires numerous habitat restoration projects statewide.

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

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

(6) Expedited and coordinated agency permitting processes for small-scale restoration projects have been shown to greatly boost the number and geographic distribution of environmentally beneficial projects across California—projects that cumulatively improve water quality and aid in the recovery of salmon and steelhead populations, migratory birds, and other sensitive species.
(b) It is the intent of the Legislature in enacting this measure to
provide for substantial permitting efficiency and thereby encourage
increased implementation of voluntary, environmentally beneficial,
small-scale habitat restoration projects that do all of the following:
(1) Provide an individual and cumulative net environmental
benefit.
(2) Incorporate measures to protect against any short-term
substantial, or potentially substantial, adverse change in any of the
physical conditions within the area affected by the project.
(3) Follow applicable preexisting state and federal agency
permits, certifications, and exemptions.
SEC. 2. Chapter 6.5 (commencing with Section 1650) is added
to Division 2 of the Fish and Game Code, to read:

Chapter 6.5. Habitat Restoration and Enhancement
Act

1650. This chapter shall be known, and may be cited, as the
Habitat Restoration and Enhancement Act.
1651. As used in this chapter:
(a) “Adopted species recovery plan” means a guidance document
published by a government agency that identifies recovery actions,
based upon the best scientific and commercial data available,
necessary for the protection and recovery of listed species.
(b) “Fish passage guidelines” means those guidelines specified
in the department’s California Salmonid Stream Habitat Restoration
Manual, and the National Marine Fisheries Service, Southwest
Region, Guidelines for Salmonid Passage at Stream Crossings,
either of those documents as they may be subsequently amended
or updated, or salmonid fish passage project guidelines
subsequently adopted by the department, the National Marine
Fisheries Service, or both, and subsequent amendments or updates
to either document.
(e) “Habitat restoration or enhancement project” means a project
with the primary purpose of accomplishing one or more of the
following:
(1) Stream or river—bank, lake, or other waterway
revegetation, the primary purpose of which is to improve habitat.
(2) Stream or river bank stabilization with native vegetation or other predominantly nonrock bioengineering techniques, or both, to reduce or eliminate erosion and sedimentation.

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

(4) Modifications of existing water diversion infrastructure to enhance stream flow and improve fish habitat and survival, including, but not limited to, pump relocation or removal and fish screen installation, operation, and maintenance, when the project does not increase total water diversion.

(5) Placement or installation of anchored and unanchored large wood, rootwads, spawning gravel, and other in-stream habitat structures or materials that benefit native fish by enhancing habitat, increasing stream channel complexity, or both.

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

(6) Sediment source reduction on existing roads, including outsloping, berm removal, installation of rolling dips, culvert and drainage upgrades, road decommissioning, and other techniques designed to improve water quality and habitat for species.

(7) Upland erosion control using bioengineering techniques and native revegetation for the purpose of improving water or habitat quality for species.

(8) Control and removal of aquatic and terrestrial invasive plant species.

(9) Installation of fencing and associated alternative stockwater supply infrastructure for the purpose of excluding or managing livestock to protect the bed and banks of streams, or other sensitive habitats.

(10) Restoration of freshwater and tidal hydrologic functions in wetlands and estuaries to improve fish and wildlife habitat.
(8) Creation of off-channel habitat to restore historic rearing and flow refugia for native fisheries and other aquatic species.

(11) Restoration of floodplains to restore natural hydrologic function, including, but not limited to, levee and dike setback and breaching.

(12) Restoration and maintenance of existing off-stream ponds, including spillway repair and sediment removal, to benefit native amphibian and other species.

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

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

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

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

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

(2) The project meets the requirements of Section 15333 of Title 14 of the California Code of Regulations; is no larger than five acres in size, measured by calculating the direct area of construction and construction-related impact.

(3) The project complies with, or identified in, one or more of the following:
(A) Adopted Federal- and state-listed species recovery plans, plans or published protection measures, biological opinions, or previously approved department agreements and permits.

(B) Fish and Wildlife Department and National Marine Fisheries Service fish screening criteria or fish passage guidelines.

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

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

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

(b) The director’s approval of a habitat restoration or enhancement project pursuant to subdivision (a) shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3, Chapter 10 (commencing with Section 1900) of Division 2, and Chapter 6 (commencing with Section 1600) of Division 2.

(c) Nothing in this chapter shall be construed as expanding the scope of projects requiring a permit, agreement, license, or other approval issued by the department.

(d) The director’s approval of a habitat restoration or enhancement project pursuant to subdivision (a) shall constitute an action taken by a regulatory agency, as authorized by state law, to ensure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for the protection of the environment.

(e) Within 60 days after the director receives a written request to approve a habitat restoration or enhancement project containing the information required pursuant to subdivision (e), the written request...
includes all of the required information set forth in subdivision (f).

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

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

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

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

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

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

(g) During project implementation, the project proponent shall notify the department within seven days of any minor amendments to the project necessary for improving the project’s habitat restoration and enhancement outcome or further avoidance of impacts.
(h) (1) If the director determines at any time that the project is no longer consistent with subdivision (a), due to a material change between the project as submitted and the project being implemented or a change in the environmental circumstances in the area of implementation, the director shall notify the project proponent in writing and project implementation shall be suspended. Written notice from the director shall be delivered in person, by certified mail, or by electronic communication to the project proponent and shall specify the reasons why approval of the project was suspended. The approval for a project shall not be revoked pursuant to this subdivision unless it has first been suspended pursuant to this subdivision.

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

(3) The director shall revoke approval or lift the suspension of project approval within 30 days after the end of the objection period in receiving the project proponent’s objection pursuant to paragraph (2).

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

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

(c) The department may 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 pursuant to Chapter 6 (commencing with Section 1600) of Division 2 for standard lake or streambed alteration agreements for projects of comparable cost.
(d) Moneys in the account shall be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing this chapter.