

AMENDED IN SENATE AUGUST 19, 2014

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 17, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

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 and repeal Chapter 6.5 (commencing with Section 1650) ~~to~~ of 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, *or a project that has received certification pursuant to a specified order of the State Water Resources Control Board* if specified conditions are met as determined by the director. The act

would create the Habitat Restoration and Enhancement Account 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~~ *require* the department to ~~impose a schedule of assess~~ fees for a project, ~~based on the cost of the project, sufficient to recover all~~ *according to a specified fee schedule but would prohibit those fees from exceeding* reasonable administrative and implementation costs of the department relating to the project. Moneys in the account would be available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing the Habitat Restoration and Enhancement Act. *The bill would require the department to submit a report on the implementation of the act to the Legislature no later than December 31, 2020.* The bill would repeal the act on January 1, 2022.

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 (4) Demand for these environmentally beneficial projects far
- 15 outpaces the regulatory approval process. As a result, hundreds of
- 16 small-scale projects designed to benefit California’s most
- 17 vulnerable species and natural habitats are not being implemented.
- 18 (5) Expedited and coordinated agency permitting processes for
- 19 small-scale restoration projects have been shown to greatly boost
- 20 the number and geographic distribution of environmentally

1 beneficial projects across California – projects that cumulatively
2 improve water quality and aid in the recovery of salmon and
3 steelhead populations, migratory birds, and other sensitive species.

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

8 (1) Provide an individual and cumulative net environmental
9 benefit.

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

13 (3) Follow applicable preexisting state and federal agency
14 permits, certifications, and exemptions.

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

17
18 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT
19 ACT
20

21 1650. This chapter shall be known, and may be cited, as the
22 Habitat Restoration and Enhancement Act.

23 1651. As used in this chapter:

24 (a) “Fish passage guidelines” means those guidelines specified
25 in the department’s California Salmonid Stream Habitat Restoration
26 Manual and the National Marine Fisheries Service, Southwest
27 Region, Guidelines for Salmonid Passage at Stream Crossings,
28 and subsequent amendments or updates to either document.

29 (b) “Habitat restoration or enhancement project” means a project
30 with the primary purpose of ~~accomplishing one or more of the~~
31 ~~following:~~ *improving fish and wildlife habitat. A habitat restoration*
32 *or enhancement project shall meet the eligibility requirements for*
33 *the State Water Resources Control Board’s Order for Clean Water*
34 *Act Section 401 General Water Quality Certification for Small*
35 *Habitat Restoration Projects, or its current equivalent, at the time*
36 *the director reviews a project, which may also include*
37 *programmatic waivers or waste discharge requirements for small*
38 *habitat restoration projects for waters of the state that include*
39 *similar conditions.*

- 1 ~~(1) Stream, river, or other waterway bank stabilization with~~
2 ~~native vegetation or other predominantly nonrock bioengineering~~
3 ~~techniques, or both, to reduce or eliminate erosion and~~
4 ~~sedimentation and improve habitat.~~
- 5 ~~(2) Modification, replacement, or removal of existing fish~~
6 ~~passage barriers to improve water quality and fish passage,~~
7 ~~including associated bridge installation. Examples of fish passage~~
8 ~~barriers include, but are not limited to, road crossings and fords,~~
9 ~~or both; small permanent or flashboard dams; weirs, sills, and~~
10 ~~aprons; and poorly designed, undersized, or failed culverts.~~
- 11 ~~(3) 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) Placement or installation of anchored and unanchored large~~
17 ~~wood, rootwads, spawning gravel, and other in-stream habitat~~
18 ~~structures or materials that benefit native fish by enhancing habitat,~~
19 ~~increasing stream channel complexity, or both.~~
- 20 ~~(5) Sediment source reduction on existing roads and trails,~~
21 ~~including outsloping, berm removal, installation of rolling dips,~~
22 ~~culvert and drainage upgrades, road decommissioning, and other~~
23 ~~techniques designed to improve water quality and habitat for~~
24 ~~species.~~
- 25 ~~(6) Upland erosion control using bioengineering techniques and~~
26 ~~native revegetation for the purpose of improving water or habitat~~
27 ~~quality for species.~~
- 28 ~~(7) Control and removal of aquatic and terrestrial invasive plant~~
29 ~~species.~~
- 30 ~~(8) Excluding or managing livestock to protect the bed and~~
31 ~~banks of streams, or other sensitive habitats, using wildlife friendly~~
32 ~~fencing and associated alternative stockwater supply based upon~~
33 ~~an existing water right.~~
- 34 ~~(9) Restoration of freshwater wetlands, excluding vernal pools,~~
35 ~~to improve fish and wildlife habitat.~~
- 36 ~~(10) Creation of off-channel habitat to restore historic rearing~~
37 ~~and flow refugia for native fisheries and other aquatic species.~~
- 38 ~~(11) Restoration of floodplains to restore natural hydrologic~~
39 ~~function, including, but not limited to, revegetation.~~

1 ~~(12) Restoration and maintenance, including spillway repair~~
2 ~~and sediment removal, of an existing off-stream pond that does~~
3 ~~not exceed a diversion of 10 acre-feet per year and two acres in~~
4 ~~surface area or a livestock stockpond that does not exceed a~~
5 ~~diversion of 10 acre-feet per year and two acres in surface area to~~
6 ~~benefit native aquatic species and their habitat. For purposes of~~
7 ~~this paragraph, “livestock stockpond” means a water impoundment~~
8 ~~structure used pursuant to a water right obtained pursuant to Article~~
9 ~~2.7 (commencing with Section 1228) of Chapter 1 of Part 2 of~~
10 ~~Division 2 of the Water Code.~~

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

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

18 ~~(e) “Wildlife friendly fencing” means fencing intended to~~
19 ~~preclude domestic grazing and browsing stock while providing~~
20 ~~unrestricted access for native wildlife species.~~

21 ~~1652. (a) Before a project proponent submits a written request~~
22 ~~to the director pursuant to subdivision (b), the project proponent~~
23 ~~may request a meeting with the department to discuss the project~~
24 ~~proposal, required information, and the application process.~~

25 ~~(b)~~

26 *1652. (a) A project proponent may submit a written request*
27 *to approve a habitat restoration or enhancement project to the*
28 *director. director pursuant to this section if the project has not yet*
29 *received certification pursuant to the State Water Resources*
30 *Control Board’s Order for Clean Water Act Section 401 General*
31 *Water Quality Certification for Small Habitat Restoration Projects.*
32 *If the project has received certification pursuant to that order, the*
33 *project proponent may submit a request for approval of the project*
34 *pursuant to Section 1653.*

35 ~~(e)~~

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

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

1 (2) A full description of the habitat restoration and enhancement
2 project that includes the designs and techniques to be used for the
3 project, restoration or enhancement methods, an estimate of
4 temporary restoration- or enhancement-related disturbance, project
5 schedule, anticipated activities, and how the project is expected
6 to result in a net benefit to any affected habitat and ~~species,~~
7 ~~consistent with paragraph (4) of subdivision (d).~~ *species.*

8 (3) An assessment of the project area that provides a description
9 of the existing flora and fauna and the potential presence of
10 sensitive species or habitat. The assessment shall include preproject
11 photographs of the project area that include a descriptive title, date
12 taken, the photographic monitoring point, and photographic
13 orientation.

14 (4) A geographic description of the project site including maps,
15 land ownership information, and other relevant location
16 information.

17 (5) A description of the environmental protection measures
18 incorporated into the project design, so that no potentially
19 significant adverse effects on the environment, as defined in
20 Section 15382 of Title 14 of the California Code of Regulations,
21 are likely to occur with application of the specified environmental
22 protection measures. Environmental protection measures may
23 include, but are not limited to, appropriate seasonal work
24 limitations, measures to avoid and minimize impacts to water
25 quality and potentially present species protected by state and
26 federal law, and the use of qualified professionals for standard
27 preconstruction surveys where protected species are potentially
28 present.

29 (6) Substantial evidence to support a conclusion that the project
30 meets the requirements set forth in this section. Substantial
31 evidence shall include references to relevant design criteria and
32 environmental protection measures found in the documents
33 specified in paragraph (4) of subdivision ~~(d)~~. *(c).*

34 (7) *A certifying statement that the project complies with the*
35 *California Environmental Quality Act (Division 13 (commencing*
36 *with Section 21000)) of the Public Resources Code, by conforming*
37 *to the requirements of Section 15333 of Title 14 of the California*
38 *Code of Regulations.*

39 ~~(d)~~

1 (c) Notwithstanding any other law, within 60 days after receiving
2 a written request to approve a habitat restoration or enhancement
3 project, the director shall approve a habitat restoration or
4 enhancement project if the director determines that the written
5 request includes all of the required information set forth in
6 subdivision (e), ~~the project will maintain existing levels of human~~
7 ~~health and safety protection, including, but not limited to, flood~~
8 ~~protection;~~ (b), and the project meets all of the following
9 requirements:

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

12 (2) The project is not part of a regulatory permit for a nonhabitat
13 restoration or enhancement construction activity, a regulatory
14 settlement, a regulatory enforcement action, or a court order.

15 ~~(3) The project is no larger than five acres in size, measured by~~
16 ~~calculating the direct area of construction and construction-related~~
17 ~~impact. The maximum length of stream that may be dewatered is~~
18 ~~1,000 feet. For purposes of this paragraph, “dewater” means to~~
19 ~~temporarily remove or divert, or both, groundwater, standing water,~~
20 ~~or streamflow to allow for project construction such that~~
21 ~~downstream water quality and flows are maintained.~~

22 (3) *The project meets the eligibility requirements of the State*
23 *Water Resources Control Board’s Order for Clean Water Act*
24 *Section 401 General Water Quality Certification for Small Habitat*
25 *Restoration Projects, but has not yet received certification pursuant*
26 *to that order.*

27 (4) The project is consistent with, or identified in, sources that
28 describe best available restoration and enhancement methodologies,
29 including one or more of the following:

30 (A) Federal- and state-listed species recovery plans or published
31 protection measures, ~~programmatic and individual project~~
32 ~~biological opinions~~; or previously approved department agreements
33 and permits issued for voluntary habitat restoration or enhancement
34 projects.

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

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

1 (D) Guidance documents and practice manuals that describe
2 best available habitat restoration or enhancement methodologies
3 that are utilized or approved by the department.

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

8 (e)

9 (d) If the director determines that the written request does not
10 contain all of the information required by subdivision ~~(e)~~, (b), or
11 fails to meet the requirements set forth in subdivision ~~(d)~~, (c), or
12 both, the director shall deny the written request and inform the
13 project proponent of the reason or reasons for the denial.

14 (f)

15 (e) The director’s approval of a habitat restoration or
16 enhancement project pursuant to subdivision ~~(d)~~, (c), shall be in
17 lieu of any other permit, agreement, license, or other approval
18 issued by the department, including, but not limited to, those issued
19 pursuant to Chapter 1.5 (commencing with Section 2050) of
20 Division 3, Chapter 10 (commencing with Section 1900) of
21 Division 2, and Chapter 6 (commencing with Section 1600) of
22 Division 2.

23 (g)

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

33 (i) (1) ~~During project implementation, the project proponent~~
34 ~~shall notify the department within 48 hours of any minor~~
35 ~~amendments to the project.~~

36 (2) ~~A minor amendment shall not create potentially significant~~
37 ~~environmental impacts, trigger other permit requirements, or~~
38 ~~change the scope of the project as a whole.~~

39 (j)

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

24 ~~(k) A project proponent shall submit a notice of completion to
25 the department no later than 30 days after completion of the project.
26 The notice of completion shall demonstrate that the project has
27 been carried out in accordance with the project's description. The
28 notice of completion shall include a map of the project location,
29 including final boundaries of the restoration area or areas and
30 post-project photographs. Each photograph shall include a
31 descriptive title, date taken, photographic monitoring point, and
32 photographic orientation.~~

33 (h) (1) *The project proponent shall submit a monitoring plan,
34 monitoring report, and notice of completion to the department in
35 a manner to be determined by the department.*

36 (2) *A project proponent may comply with the requirements of
37 paragraph (1) by submitting to the department a monitoring report,
38 monitoring plan, and notice of completion required to be completed
39 pursuant to the State Water Resources Control Board's Order for*

1 *Clean Water Act Section 401 General Water Quality Certification*
 2 *for Small Habitat Restoration Projects or its equivalent.*

3 (†)

4 (i) Pursuant to Section 818.4 of the Government Code, the
 5 department and any other state agency exercising authority under
 6 this section shall not be liable with regard to any determination or
 7 authorization made pursuant to this section.

8 1653. (a) A person may carry out a project that has received
 9 certification pursuant the State Water Resources Control Board's
 10 Order for Clean Water Act Section 401 General Water Quality
 11 Certification for Small Habitat Restoration Projects without
 12 obtaining a permit, agreement, license, or other approval that
 13 would otherwise be required to carry out the project pursuant to
 14 Chapter 1.5 (commencing with Section 2050) of Division 3,
 15 Chapter 10 (commencing with Section 1900) of Division 2, and
 16 Chapter 6 (commencing with Section 1600) of Division 2, if the
 17 person meets the requirements of subdivision (b) and the director
 18 approves the project pursuant to subdivision (d).

19 (b) (1) The person shall submit a written request to the director
 20 to approve the project described in subdivision (a). The written
 21 request shall contain all of the following:

22 (A) A statement that the person has received a notice of
 23 applicability that indicates that the project has received
 24 certification pursuant to the State Water Resources Control
 25 Board's Order for Clean Water Act Section 401 General Water
 26 Quality Certification for Small Habitat Restoration Projects.

27 (B) A copy of the notice of intent that the person provided to
 28 the State Water Resources Control Board or a regional water
 29 quality control board.

30 (C) A copy of the notice of applicability.

31 (2) The person shall submit to the director the fees required
 32 pursuant to Section 1654.

33 (c) Upon receipt of the written request, the director shall
 34 immediately have published in the General Public Interest section
 35 of the California Regulatory Notice Register the receipt of the
 36 written request.

37 (d) Within 30 days after receiving a written request to approve
 38 a project described in subdivision (a), the director shall approve
 39 the project if the director determines that the written request
 40 satisfies all of the requirements set forth in subdivision (b) and

1 *that, based upon substantial evidence, the project meets all of the*
2 *requirements set forth in subdivision (c) of Section 1652.*

3 *(e) The director shall immediately publish the determination*
4 *made pursuant to subdivision (d) in the General Public Interest*
5 *section of the California Regulatory Notice Register.*

6 ~~1653.~~

7 *1654. (a) The Habitat Restoration and Enhancement Account*
8 *is hereby created in the Fish and Game Preservation Fund.*

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

15 ~~*(c) The department may impose a schedule of fees for a project,*~~
16 ~~*based on the cost of the project, sufficient to recover all reasonable*~~
17 ~~*administrative and implementation costs of the department relating*~~
18 ~~*to the project.*~~ *shall assess fees for projects approved pursuant to*
19 *Sections 1652 and 1653 according to the fee schedule found in*
20 *paragraph (2) of subdivision (b) of Section 699.5 of Title 14 of the*
21 *California Code of Regulations, but those fees shall not exceed*
22 *the reasonable administrative and implementation costs of the*
23 *department relating to the project.*

24 *(d) Moneys in the account shall be available to the department,*
25 *upon appropriation by the Legislature, for the purposes of*
26 *administering and implementing this chapter.*

27 *1655. (a) The department shall submit a report on the*
28 *implementation of this chapter to the Legislature no later than*
29 *December 31, 2020, which shall include, but not be limited to, the*
30 *number, type, and geographical distribution of approved projects,*
31 *funding adequacy, and recommendations for changes and*
32 *improvements in the program.*

33 *(b) A report to be submitted pursuant to subdivision (a) shall*
34 *be submitted in compliance with Section 9795 of the Government*
35 *Code.*

1 ~~1654.~~
2 1656. This chapter shall remain in effect only until January 1,
3 2022, and as of that date is repealed, unless a later enacted statute,
4 that is enacted before January 1, 2022, deletes or extends that date.

O