

AMENDED IN SENATE AUGUST 22, 2014
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) 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 require the department to assess ~~fees an application fee~~ for a project ~~according to a specified fee schedule submitted to the department consistent with specified fees adopted by the department~~ but would prohibit ~~those fees the application fee~~ 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

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

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

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

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

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

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

18

19 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT
20 ACT

21

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

24 1651. As used in this chapter:

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

30 (b) “Habitat restoration or enhancement project” means a project
31 with the primary purpose of improving fish and wildlife habitat.
32 A habitat restoration or enhancement project shall meet the
33 eligibility requirements for the State Water Resources Control
34 Board’s Order for Clean Water Act Section 401 General Water
35 Quality Certification for Small Habitat Restoration Projects, or its
36 current ~~equivalent~~, *equivalent* at the time the ~~director reviews a~~
37 ~~project, which project proponent submits a written request~~
38 ~~pursuant to Section 1652 or 1653. The order or current equivalent~~
39 ~~may also~~ include programmatic waivers or waste discharge

1 requirements for small habitat restoration ~~projects for waters of~~
2 ~~the state that include similar conditions:~~ *projects.*

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

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

10 1652. (a) A project proponent may submit a written request
11 to approve a habitat restoration or enhancement project to the
12 director pursuant to this section if the project has not yet received
13 certification pursuant to the State Water Resources Control Board’s
14 Order for Clean Water Act Section 401 General Water Quality
15 Certification for Small Habitat Restoration ~~Projects.~~ *Projects, or*
16 *its current equivalent at the time the project proponent submits*
17 *the written request.* If the project has received certification pursuant
18 to that order, *or its current equivalent,* the project proponent may
19 submit a request for approval of the project pursuant to Section
20 1653.

21 (b) A written request to approve a habitat restoration or
22 enhancement project *pursuant to this section* shall contain all of
23 the following:

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

27 (2) A full description of the habitat restoration and enhancement
28 project that includes the designs and techniques to be used for the
29 project, restoration or enhancement methods, an estimate of
30 temporary restoration- or enhancement-related disturbance, project
31 schedule, anticipated activities, and how the project is expected
32 to result in a net benefit to any affected habitat and ~~species:~~ *species,*
33 *consistent with paragraph (4) of subdivision (c).*

34 (3) An assessment of the project area that provides a description
35 of the existing flora and fauna and the potential presence of
36 sensitive species or habitat. The assessment shall include preproject
37 photographs of the project area that include a descriptive title, date
38 taken, the photographic monitoring point, and photographic
39 orientation.

1 (4) A geographic description of the project site including maps,
2 land ownership information, and other relevant location
3 information.

4 (5) A description of the environmental protection measures
5 incorporated into the project design, so that no potentially
6 significant adverse effects on the environment, as defined in
7 Section 15382 of Title 14 of the California Code of Regulations,
8 are likely to occur with application of the specified environmental
9 protection measures. Environmental protection measures may
10 include, but are not limited to, appropriate seasonal work
11 limitations, measures to avoid and minimize impacts to water
12 quality and potentially present species protected by state and
13 federal law, and the use of qualified professionals for standard
14 preconstruction surveys where protected species are potentially
15 present.

16 (6) Substantial evidence to support a conclusion that the project
17 meets the requirements set forth in this section. Substantial
18 evidence shall include references to relevant design criteria and
19 environmental protection measures found in the documents
20 specified in paragraph (4) of subdivision (c).

21 (7) A certifying statement that the project ~~complies~~ *will comply*
22 with the California Environmental Quality Act (Division 13
23 (commencing with Section ~~21000~~) 21000) of the Public Resources
24 Code, ~~by conforming Code~~, *which may include, but not be limited*
25 to, the requirements of Section 15333 of Title 14 of the California
26 Code of Regulations.

27 (c) Notwithstanding any other law, within 60 days after receiving
28 a written request to approve a habitat restoration or enhancement
29 project, the director shall approve a habitat restoration or
30 enhancement project if the director determines that the written
31 request includes all of the required information set forth in
32 subdivision (b), and the project meets all of the following
33 requirements:

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

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

39 (3) The project meets the eligibility requirements of the State
40 Water Resources Control Board's Order for Clean Water Act

1 Section 401 General Water Quality Certification for Small Habitat
2 Restoration Projects, *or its current equivalent at the time the*
3 *project proponent submits the written request*, but has not ~~yet~~
4 received certification pursuant to that order *or its equivalent*.

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

8 (A) Federal- and state-listed species recovery plans or published
9 protection measures, or previously approved department
10 agreements and permits issued for voluntary habitat restoration or
11 enhancement projects.

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

14 (C) The department's California Salmonid Stream Habitat
15 Restoration Manual.

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

19 (5) The project will not result in cumulative ~~negative~~ *adverse*
20 environmental impacts that are significant when viewed in
21 connection with the effects of past, current, or probable future
22 projects.

23 (d) If the director determines that the written request does not
24 contain all of the information required by subdivision (b), or fails
25 to meet the requirements set forth in subdivision (c), or both, the
26 director shall deny the written request and inform the project
27 proponent of the reason or reasons for the denial.

28 ~~(e) The director's approval of a habitat restoration or~~
29 ~~enhancement project pursuant to subdivision (e), shall be in lieu~~
30 ~~of any other permit, agreement, license, or other approval issued~~
31 ~~by the department, including, but not limited to, those issued~~
32 ~~pursuant to Chapter 1.5 (commencing with Section 2050) of~~
33 ~~Division 3, Chapter 10 (commencing with Section 1900) of~~
34 ~~Division 2, and Chapter 6 (commencing with Section 1600) of~~
35 ~~Division 2.~~

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

39 ~~(g) (1) If the director determines at any time that the project is~~
40 ~~no longer consistent with subdivision (e), due to a material change~~

1 between the project as submitted and the project being implemented
2 or a change in the environmental circumstances in the area of
3 implementation, the director shall notify the project proponent in
4 writing and project implementation shall be suspended. Written
5 notice from the director shall be delivered in person, by certified
6 mail, or by electronic communication to the project proponent and
7 shall specify the reasons why approval of the project was
8 suspended. The approval for a project shall not be revoked pursuant
9 to this subdivision unless it has first been suspended pursuant to
10 this subdivision.

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

19 ~~(3) The director shall revoke approval or lift the suspension of~~
20 ~~project approval within 30 days after receiving the project~~
21 ~~proponent's objection pursuant to paragraph (2).~~

22 ~~(h) (1) The project proponent shall submit a monitoring plan,~~
23 ~~monitoring report, and notice of completion to the department in~~
24 ~~a manner to be determined by the department.~~

25 ~~(2) A project proponent may comply with the requirements of~~
26 ~~paragraph (1) by submitting to the department a monitoring report,~~
27 ~~monitoring plan, and notice of completion required to be completed~~
28 ~~pursuant to the State Water Resources Control Board's Order for~~
29 ~~Clean Water Act Section 401 General Water Quality Certification~~
30 ~~for Small Habitat Restoration Projects or its equivalent.~~

31 ~~(i) Pursuant to Section 818.4 of the Government Code, the~~
32 ~~department and any other state agency exercising authority under~~
33 ~~this section shall not be liable with regard to any determination or~~
34 ~~authorization made pursuant to this section.~~

35 ~~(e) The project proponent shall submit a notice of completion~~
36 ~~to the department no later than 30 days after the project approved~~
37 ~~pursuant to this section is completed. The notice of completion~~
38 ~~shall demonstrate that the project has been carried out in~~
39 ~~accordance with the project's description. The notice of completion~~
40 ~~shall include a map of the project location, including the final~~

1 boundaries of the restoration area or areas and postproject
2 photographs. Each photograph shall include a descriptive title,
3 date taken, photographic monitoring point, and photographic
4 orientation.

5 (f) The project proponent shall submit a monitoring report
6 describing whether the restoration project is meeting each of the
7 restoration goals stated in the project application. Each report
8 shall include photographs with a descriptive title, date taken,
9 photographic monitoring point, and photographic orientation. The
10 monitoring reports for Section 401 Water Quality Certification or
11 waste discharge requirements of the State Water Resources Control
12 Board or a regional water quality control board, or for department
13 or federal voluntary habitat restoration programs, including, but
14 not limited to, the Fisheries Restoration Grant Program, may be
15 submitted in lieu of this requirement.

16 1653. (a) A person may carry out a project that has received
17 certification pursuant to the State Water Resources Control Board's
18 Order for Clean Water Act Section 401 General Water Quality
19 Certification for Small Habitat Restoration Projects without
20 obtaining a permit, agreement, license, or other approval that would
21 otherwise be required to carry out the project pursuant to Chapter
22 1.5 (commencing with Section 2050) of Division 3, Chapter 10
23 (commencing with Section 1900) of Division 2, and Chapter 6
24 (commencing with Section 1600) of Division 2, if the person meets
25 the requirements of subdivision (b) and the director approves the
26 project pursuant to subdivision (d).

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

30 (A) A statement that the person has received a notice of
31 applicability that indicates that the project has received certification
32 pursuant to the State Water Resources Control Board's Order for
33 Clean Water Act Section 401 General Water Quality Certification
34 for Small Habitat Restoration Projects.

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

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

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

1 ~~(e) Upon receipt of the written request, the director shall~~
2 ~~immediately have published in the General Public Interest section~~
3 ~~of the California Regulatory Notice Register the receipt of the~~
4 ~~written request.~~

5 ~~(d) Within 30 days after receiving a written request to approve~~
6 ~~a project described in subdivision (a), the director shall approve~~
7 ~~the project if the director determines that the written request~~
8 ~~satisfies all of the requirements set forth in subdivision (b) and~~
9 ~~that, based upon substantial evidence, the project meets all of the~~
10 ~~requirements set forth in subdivision (c) of Section 1652.~~

11 ~~(e) The director shall immediately publish the determination~~
12 ~~made pursuant to subdivision (d) in the General Public Interest~~
13 ~~section of the California Regulatory Notice Register.~~

14 *1653. (a) A project proponent may submit a written request*
15 *to approve a habitat restoration or enhancement project to the*
16 *director pursuant to this section if the project has received*
17 *certification pursuant to the State Water Resources Control*
18 *Board's Order for Clean Water Act Section 401 General Water*
19 *Quality Certification for Small Habitat Restoration Projects, or*
20 *its current equivalent at the time the project proponent submits*
21 *the written request.*

22 *(b) A written request to approve a habitat restoration or*
23 *enhancement project pursuant to this section shall include all of*
24 *the following:*

25 *(1) Notice that the project proponent has received a notice of*
26 *applicability that indicates that the project is authorized pursuant*
27 *to the State Water Resources Control Board's Order for Clean*
28 *Water Act Section 401 General Water Quality Certification for*
29 *Small Habitat Restoration Projects, or its equivalent at the time*
30 *the project proponent submits the written request.*

31 *(2) A copy of the notice of applicability.*

32 *(3) A copy of the notice of intent provided to the State Water*
33 *Resources Control Board or a regional water quality control*
34 *board.*

35 *(4) A description of species protection measures incorporated*
36 *into the project design, but not already included in the notice of*
37 *intent, to avoid and minimize impacts to potentially present species*
38 *protected by state and federal law, such as appropriate seasonal*
39 *work limitations and the use of qualified professionals for standard*

1 *preconstruction surveys where protected species are potentially*
2 *present.*

3 *(5) The fees required pursuant to Section 1655.*

4 *(c) Upon receipt of the notice specified in paragraph (1) of*
5 *subdivision (b), the director shall immediately have published in*
6 *the General Public Interest section of the California Regulatory*
7 *Notice Register the receipt of that notice.*

8 *(d) Within 30 days after the director has received the notice of*
9 *applicability described in subdivision (b), the director shall*
10 *determine whether the written request accompanying the notice*
11 *of applicability is complete.*

12 *(e) If the director determines within that 30-day period, based*
13 *upon substantial evidence, that the written request is not complete,*
14 *then the project may be authorized under Section 1652.*

15 *(f) The director shall immediately publish the determination*
16 *pursuant to subdivision (d) in the General Public Interest section*
17 *of the California Regulatory Notice Register.*

18 *(g) The project proponent shall submit the monitoring plan,*
19 *monitoring report, and notice of completion to the department as*
20 *required by the State Water Resources Control Board's Order*
21 *Clean Water Act Section 401 General Water Quality Certification*
22 *for Small Habitat Restoration Projects, or its current equivalent*
23 *at the time the project proponent submits the written request. The*
24 *order or its current equivalent may include programmatic waivers*
25 *or waste discharge requirements for small scale restoration*
26 *projects.*

27 *1654. (a) The director's approval of a habitat restoration or*
28 *enhancement project pursuant to Section 1652 or 1653 shall be*
29 *in lieu of any other permit, agreement, license, or other approval*
30 *issued by the department, including, but not limited to, those issued*
31 *pursuant to Chapter 6 (commencing with Section 1600) and*
32 *Chapter 10 (commencing with Section 1900) of this Division and*
33 *Chapter 1.5 (commencing with Section 2050) of Division 3.*

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

37 *(c) (1) If the director determines at any time that the project is*
38 *no longer consistent with subdivision (c) of Section 1652 or*
39 *subdivision (b) of Section 1653, as applicable, due to a material*
40 *change between the project as submitted and the project being*

1 *implemented or a change in the environmental circumstances in*
2 *the area of implementation, the director shall notify the project*
3 *proponent in writing and project implementation shall be*
4 *suspended. Written notice from the director shall be delivered in*
5 *person, by certified mail, or by electronic communication to the*
6 *project proponent and shall specify the reasons why approval of*
7 *the project was suspended. The approval for a project shall not*
8 *be revoked pursuant to this subdivision unless it has first been*
9 *suspended pursuant to this subdivision.*

10 (2) *Within 30 days of receipt of a notice of suspension, the*
11 *project proponent may file an objection with the director. Any*
12 *objection shall be in writing and state the reasons why the project*
13 *proponent objects to the suspension. The project proponent may*
14 *provide additional environmental protection measures, design*
15 *modifications, or other evidence that the project is consistent with*
16 *subdivision (c) of Section 1652 or subdivision (b) of Section 1653,*
17 *as applicable, and request that the notice of suspension be lifted*
18 *and approval granted.*

19 (3) *The director shall revoke approval or lift the suspension of*
20 *project approval within 30 days after receiving the project*
21 *proponent's objection pursuant to paragraph (2).*

22 (d) *Pursuant to Section 818.4 of the Government Code, the*
23 *department and any other state agency exercising authority under*
24 *this section shall not be liable with regard to any determination*
25 *or authorization made pursuant to this section.*

26 ~~1654.~~

27 1655. (a) *The Habitat Restoration and Enhancement Account*
28 *is hereby created in the Fish and Game Preservation Fund.*

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

35 (c) *The department shall assess fees an application fee for*
36 *projects approved a project submitted to the department pursuant*
37 *to Sections Section 1652 and or 1653 according to the fee schedule*
38 *found in paragraph (2) of subdivision (b) of Section 699.5 of Title*
39 *14 of the California Code of Regulations, consistent with the fees*
40 *adopted by the department pursuant to Chapter 6 (commencing*

1 *with Section 1600*), but ~~those fees~~ *the application fee* shall not
2 exceed the reasonable administrative and implementation costs of
3 the department relating to the project.

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

7 ~~1655.~~

8 *1656.* (a) The department shall submit a report on the
9 implementation of this chapter to the Legislature no later than
10 December 31, 2020, which shall include, but not be limited to, the
11 number, type, and geographical distribution of approved projects,
12 funding adequacy, and recommendations for changes and
13 improvements in the program.

14 (b) A report to be submitted pursuant to subdivision (a) shall
15 be submitted in compliance with Section 9795 of the Government
16 Code.

17 ~~1656.~~

18 *1657.* This chapter shall remain in effect only until January 1,
19 2022, and as of that date is repealed, unless a later enacted statute,
20 that is enacted before January 1, 2022, deletes or extends that date.