

AMENDED IN SENATE AUGUST 1, 2016

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2087**

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**Introduced by Assembly Member Levine**

February 17, 2016

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An act to add Chapter 9 (commencing with Section 1850) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2087, as amended, Levine. Regional conservation frameworks.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity, and entering

into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.

This bill would authorize the department, or any other public agency, to propose a regional conservation framework that would be required to contain specified information, including a regional conservation assessment. The bill would authorize the department to approve a regional conservation framework, or approve the framework with amendments, for an initial period of up to 10 years after certain public meetings and a public comment period regarding the proposed framework have been held and after it finds that the framework meets certain requirements. The bill would authorize a conservation action, as defined, and a habitat enhancement, as defined, that measurably advance the conservation objectives of an approved framework and that meet other specified requirements, to be used to create mitigation credits that may be used, within the framework area, to compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act, to reduce adverse impacts to fish or wildlife resources, or both, from activities authorized pursuant to a lake or streambed alteration agreement to less than substantial, or to mitigate significant effects on the environment pursuant to the California Environmental Quality Act. To create these mitigation credits, the bill would require a person or entity to enter into a mitigation credit agreement with the department that meets specified requirements. The bill would prohibit the release of mitigation credits for use, sale, or transfer under a mitigation credit agreement unless the department approves the release in accordance with certain requirements. The bill would authorize the department to collect fees from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a framework, to pay for all or a portion of the department's costs relating to the mitigation credit agreement or proposed framework. The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of the mitigation credit provisions and would exempt the adoption of these guidelines and criteria from the Administrative Procedure 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. Chapter 9 (commencing with Section 1850) is  
2 added to Division 2 of the Fish and Game Code, to read:

3  
4 CHAPTER 9. REGIONAL CONSERVATION FRAMEWORKS  
5

6 1850. (a) The Legislature finds and declares that it would be  
7 beneficial to identify species and habitat conservation initiatives  
8 at a regional scale, including actions needed to address the impacts  
9 of climate change and other wildlife stressors, in order to guide  
10 voluntary investments in conservation, infrastructure planning,  
11 sustainable communities strategies, and compensatory mitigation  
12 for impacts to ecological resources, including impacts to threatened  
13 and endangered species, other sensitive species, natural  
14 communities, ecological processes, and wildlife corridors.

15 (b) The purpose of this chapter is to promote the voluntary  
16 conservation of natural resources, including biodiversity and  
17 ecological processes, and to enhance resiliency to climate change  
18 and other threats. In order to further this goal, it is the policy of  
19 the state to encourage voluntary mechanisms to conserve biological  
20 and other ecological resources and to identify conservation actions,  
21 including actions needed to promote resiliency to the impacts of  
22 climate change and other stressors to species and habitat.

23 (c) It is further the policy of the state to encourage voluntary  
24 mechanisms to identify and implement advance mitigation actions  
25 that do the following:

26 (1) Can be used to compensate for project impacts, including,  
27 but not limited to, infrastructure and renewable energy projects,  
28 more efficiently.

29 (2) Are effective ecologically.

30 (3) Will help to conserve regionally important biological and  
31 other ecological resources.

32 (d) In enacting this chapter, it is the intent of the Legislature to  
33 promote conservation planning that identifies species and habitat  
34 conservation needs, including actions needed to promote resiliency  
35 to the impacts of climate change and other stressors. It is further  
36 the intent of the Legislature to create nonregulatory mechanisms  
37 to guide investments in conservation, infrastructure and land use  
38 planning, and compensatory mitigation for impacts to natural

1 resources, including impacts to threatened and endangered species,  
2 other sensitive species, natural communities, ecological processes,  
3 and connectivity.

4 (e) In enacting this chapter, it is not the intent of the Legislature  
5 to prescribe or prohibit land uses, establish land use designations,  
6 or to affect the land use authority of any public agency.

7 1851. For purposes of this chapter:

8 (a) “Areas of Conservation Emphasis” means the biodiversity  
9 analysis completed by the department in 2010, or the latest update  
10 of that analysis.

11 (b) “Conservation action” means the permanent protection of  
12 habitat, and restoration and management actions on permanently  
13 protected habitat that help to offset the impacts of threats to focal  
14 species and help to achieve biological goals and objectives for  
15 those focal species.

16 (c) “Conservation easement” means a perpetual conservation  
17 easement that complies with Chapter 4 (commencing with Section  
18 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

19 (d) “Focal species” means native species within a regional  
20 conservation framework area that are analyzed in the framework  
21 and will benefit from conservation actions set forth in the  
22 framework.

23 (e) “Habitat enhancement” means an action to improve the  
24 quality of wildlife habitat, or to address risks or stressors to  
25 wildlife, that has long-term durability but does not involve land  
26 acquisition or the permanent protection of habitat, such as  
27 improving in-stream flows to benefit fish species, enhancing habitat  
28 connectivity, or invasive species control or eradication. If a habitat  
29 enhancement is used to create one or more mitigation credits  
30 pursuant to this chapter, long-term durability means that the habitat  
31 enhancement will remain in effect for at least as long as the impact  
32 that is being mitigated.

33 (f) “Performance-based milestones” means specifically identified  
34 steps in the implementation of a conservation action or habitat  
35 enhancement, such as site protection, initiating implementation,  
36 completing implementation, or achieving performance standards.

37 (g) “Performance standards” means observable or measurable  
38 physical or biological attributes that are used to determine if a  
39 conservation action or habitat enhancement has met its objectives.

40 (h) “Permanently protect” means doing both of the following:

1 (1) Recording a conservation easement, in a form approved in  
2 advance in writing by the department, that prevents development,  
3 prohibits inconsistent uses, and ensures that habitat for focal species  
4 is maintained.

5 (2) Providing secure, perpetual funding for management of the  
6 land, monitoring, and enforcement.

7 (i) “Sensitive species” means any special status species identified  
8 by a state or federal agency, and any species for which the  
9 department has determined that listing as endangered, threatened,  
10 or a candidate is reasonably foreseeable within the term of the  
11 framework.

12 1852. (a) The department may approve a regional conservation  
13 framework pursuant to this chapter. A regional conservation  
14 framework may be proposed by the department or any other public  
15 agency.

16 (b) The purpose of a regional conservation framework shall be  
17 to inform actions that would advance the conservation of focal  
18 species, habitat, and other natural resources and to provide  
19 voluntary guidance for one or more of the following:

20 (1) Identification of wildlife and habitat conservation priorities,  
21 including actions needed to address the impacts of climate change  
22 and other wildlife stressors.

23 (2) Investments in ecological resource conservation.

24 (3) Infrastructure planning.

25 (4) Identification of conservation priorities for land use planning.

26 (5) Identification of priority locations for compensatory  
27 mitigation for impacts to species and natural resources.

28 (c) A regional conservation framework shall include all of the  
29 following:

30 (1) An explanation of the conservation purpose of and need for  
31 the framework.

32 (2) The geographic area of the framework and rationale for the  
33 selection of the area.

34 (3) The focal species included in, and their current known or  
35 estimated status within, the framework.

36 (4) Important habitat, and other natural and seminatural resource  
37 conservation elements within the framework area, including, but  
38 not limited to, habitat connectivity and existing protected areas,  
39 and an explanation of the criteria, data, and methods used to  
40 identify those important conservation elements.

1 (5) A summary of historic, current, and projected future stressors  
2 and pressures in the framework area on the focal species, habitat,  
3 and other natural resources.

4 (6) Conservation goals and measurable objectives for the focal  
5 species and important conservation elements identified in the  
6 framework that address or respond to the identified stressors and  
7 pressures.

8 (7) Conservation actions, including a description of the general  
9 amounts and types of habitat that, if restored or enhanced and  
10 permanently protected, could achieve the conservation goals and  
11 objectives.

12 (8) A description of how the conservation actions and habitat  
13 enhancements were prioritized and selected in relation to the  
14 conservation goals and objectives.

15 (9) An explanation of how the framework is consistent with or  
16 complements any natural community conservation plan, federal  
17 habitat conservation plan, state or federal recovery plan, or other  
18 approved conservation strategy that overlaps with the framework  
19 area.

20 (10) A description of how the framework's conservation goals  
21 and objectives provide for adaptation opportunities against the  
22 effects of climate change for the framework's focal species.

23 (11) Incorporation and reliance on, and citation of, the best  
24 available scientific information, and a brief analysis of gaps in  
25 relevant scientific information.

26 (12) A regional conservation assessment that provides context  
27 at an ecoregional or subcoregional scale for the development of  
28 the framework. If a regional conservation assessment has already  
29 been prepared, the regional conservation framework may  
30 incorporate the assessment by reference, and shall update or  
31 supplement the assessment as necessary for the framework. A  
32 regional conservation assessment shall do all of the following:

33 (A) Identify and summarize relevant regional pressures,  
34 stressors, and conservation priorities, including priority  
35 conservation areas and habitat connectivity values, included in all  
36 of the following:

37 (i) Conservation plans, such as the State Wildlife Action Plan  
38 and natural community conservation plans.

39 (ii) Analyses designed to identify areas of high biological  
40 diversity, such as the Areas of Conservation Emphasis.

1 (iii) Analyses designed to identify areas of high value for habitat  
2 connectivity.

3 (B) Identify the best available scientific information and  
4 analyses, including geospatial information regarding the  
5 distribution of species and natural communities.

6 (C) Use spatial analysis to identify ecological relationships  
7 between existing protected areas and priority conservation areas.

8 (D) Use standard or prevalent vegetation classifications and  
9 standard ecoregional classifications for terrestrial and aquatic data  
10 to enable and promote consistency among regional conservation  
11 assessments throughout California.

12 (E) Be consistent with approved natural community conservation  
13 plans, regional habitat conservation plans, and recovery plans  
14 within the ecoregion or subecoregion included in the assessment.

15 (F) Assess the climate change vulnerability of identified priority  
16 conservation areas.

17 (G) Compile input and summary priority data in a consistent  
18 format that could be uploaded for interactive use in an Internet  
19 Web portal and that would allow stakeholders to generate queries  
20 of conservation values within the region.

21 1853. (a) The department may prepare or approve a regional  
22 conservation framework, or approve the framework with  
23 amendments, for an initial period of up to 10 years after finding  
24 that the framework meets the requirements of Section 1852. The  
25 department may extend the duration of an approved regional  
26 conservation framework for additional periods of up to 10 years  
27 after finding that the framework continues to meet the requirements  
28 of Section 1852.

29 (b) It is the intent of this chapter to establish general guidelines  
30 and requirements that allow sufficient flexibility to develop each  
31 regional conservation framework based on the best available  
32 information regarding the framework area.

33 (c) (1) Prior to submitting a draft regional conservation  
34 framework to the department for approval, a public agency  
35 proposing a framework shall hold at least two public meetings to  
36 allow interested persons and entities to receive information about  
37 the proposed draft framework early in the process of preparing it  
38 and to have an adequate opportunity to provide written and oral  
39 comments. At least one of the public meetings shall be held at a  
40 location within the framework area. If preparation of a regional

1 conservation framework was initiated before January 1, 2017, the  
 2 public meetings required under this section may be held after  
 3 January 1, 2017, if they are held at least 30 days before the  
 4 framework is submitted to the department for approval.

5 (2) At least 30 days before holding public meetings to distribute  
 6 information about the development of a draft regional conservation  
 7 framework, a public agency proposing a framework shall provide  
 8 notice of the regional conservation framework public meetings as  
 9 follows:

10 (A) On the public agency’s Internet Web site and any relevant  
 11 LISTSERV.

12 (B) To each county or city within or adjacent to the regional  
 13 conservation framework area.

14 (C) To each public agency, organization, or individual who has  
 15 filed a written request for the notice.

16 (3) At least 60 days before submitting a draft regional  
 17 conservation framework to the department for approval, the public  
 18 agency proposing the framework shall notify the board of  
 19 supervisors in each county within the geographical scope of the  
 20 framework and provide the board of supervisors with an  
 21 opportunity to submit written comments.

22 (4) After a draft regional conservation framework is submitted  
 23 to the department for approval, the department shall have 30 days  
 24 within which to deem the draft regional conservation framework  
 25 complete or to explain to the public agency submitting the  
 26 framework what is needed to complete the framework. Within 30  
 27 days of deeming a draft regional conservation framework complete,  
 28 the department shall make the draft framework available to the  
 29 public on its Internet Web site for review and comment for a period  
 30 of at least 30 days.

31 (d) The department shall make all approved regional  
 32 conservation frameworks, including all updates to scientific  
 33 information and analyses used in a regional conservation  
 34 framework, available on its Internet Web site.

35 (e) The department shall require the use of consistent metrics  
 36 that incorporate both the area and quality of habitat and other  
 37 natural resources in relation to a regional conservation framework’s  
 38 conservation objectives to measure the net change resulting from  
 39 the implementation of conservation actions and habitat  
 40 enhancements.

1 1854. (a) Regional conservation frameworks shall not affect  
2 the authority or discretion of any public agency, except as  
3 specifically provided in this chapter. Nothing in this chapter  
4 increases or decreases the authority or jurisdiction of the  
5 department regarding any land use, species, habitat, area, resource,  
6 plan, process, or corridor.

7 (b) The approval or existence of a regional conservation  
8 framework or mitigation credit agreement pursuant to this chapter  
9 does not do any of the following:

10 (1) Modify in any way the standards for issuance of incidental  
11 permits or concurrence determinations pursuant to Section 2081  
12 or 2080.1, issuance of take authorizations pursuant to Section 2835,  
13 or the issuance of lake or streambed alteration agreements pursuant  
14 to Section 1602.

15 (2) Establish a presumption under the California Environmental  
16 Quality Act (Division 13 (commencing with Section 21000) of  
17 the Public Resources Code) that the regional conservation  
18 framework provides substantial evidence in connection with any  
19 determination of whether a proposed project may or may not result  
20 in significant environmental effects and does not in any way limit  
21 a lead agency's or responsible agency's discretion to determine,  
22 based on project-specific information, whether a proposed project  
23 may or may not result in significant environmental effects.

24 (3) Prohibit or authorize any project or project impacts.

25 (4) Create a presumption or guarantee that any proposed project  
26 will be approved or permitted, or that any proposed impact will  
27 be authorized, by any state or local agency.

28 (5) Create a presumption that any proposed project will be  
29 disapproved or prohibited, or that any proposed impact will be  
30 prohibited, by any state or local agency.

31 (6) Alter or affect, or create additional requirements for, the  
32 general plan of the city, county, or city and county, in which it is  
33 located.

34 ~~(7) Have a binding or mandatory regulatory effect on private~~  
35 ~~landowners or project proponents.~~

36 1855. (a) A conservation action or habitat enhancement that  
37 measurably advances the conservation objectives of an approved  
38 regional conservation framework may be used to create mitigation  
39 credits that can be used to compensate for impacts to species,  
40 habitat, and other natural resources, as provided in this section.

1 To be used to create these mitigation credits, a conservation action  
2 or habitat enhancement shall be implemented successfully in  
3 advance of the impacts. The requirements of this section apply  
4 only to the generation of mitigation credits under mitigation credit  
5 agreements pursuant to this section.

6 (b) For a conservation action or habitat enhancement identified  
7 in a regional conservation framework to be used to create  
8 mitigation credits pursuant to this section, the regional conservation  
9 framework shall include, in addition to the requirements of Section  
10 1852, all of the following:

11 (1) An adaptive management and monitoring strategy for  
12 conserved habitat and other conserved natural resources.

13 (2) A process for updating the scientific information used in the  
14 framework, and for tracking the progress of, and evaluating the  
15 effectiveness of, conservation actions and habitat enhancements  
16 identified in the framework in offsetting identified threats to focal  
17 species and in achieving the framework's biological goals and  
18 objectives, at least once every five years.

19 (3) Identification of a public or private entity that will be  
20 responsible for the periodic evaluation and for updating the  
21 framework at least once every five years to incorporate the best  
22 available scientific information and analyses.

23 (c) A mitigation credit created in accordance with an approved  
24 regional conservation framework may be used for the following:

25 (1) To compensate for take or other adverse impacts of activities  
26 authorized pursuant to Chapter 1.5 (commencing with Section  
27 2050) of Division 3 within the regional conservation framework  
28 area.

29 (2) To reduce adverse impacts to fish or wildlife resources, or  
30 both, from activities authorized pursuant to Chapter 6 (commencing  
31 with Section 1600) within the regional conservation framework  
32 area to less than substantial.

33 (3) To mitigate significant effects on the environment within  
34 the regional conservation framework area pursuant to the California  
35 Environmental Quality Act (Division 13 (commencing with Section  
36 21000) of the Public Resources Code) and Guidelines for  
37 Implementation of the California Environmental Quality Act  
38 (Chapter 3 (commencing with Section 15000) of Division 6 of  
39 Title 14 of the California Code of Regulations).

1 (d) The department shall ensure the long-term durability of a  
2 habitat enhancement. If a habitat enhancement is used to provide  
3 compensatory mitigation, the habitat enhancement shall remain in  
4 effect for at least as long as the impact that is being mitigated.

5 (e) To create mitigation credits pursuant to this section, a person  
6 or entity, including a state or local agency, shall enter into a  
7 mitigation credit agreement with the department. The mitigation  
8 credit agreement shall establish the type and number of mitigation  
9 credits created by the conservation action or habitat enhancement  
10 and the terms and conditions under which the mitigation credits  
11 may be used. The person or entity may create and use, sell, or  
12 otherwise transfer the mitigation credits upon department approval  
13 that the credits have been created in accordance with the agreement.  
14 To enter into a mitigation credit agreement with the department,  
15 a person or entity shall submit a draft mitigation credit agreement  
16 to the department for its review, revision, and approval. The  
17 department may enter into a mitigation credit agreement if it  
18 determines that the mitigation credit agreement does all of the  
19 following:

20 (1) Provides contact information for, and establishes the  
21 qualifications of, the person or entity entering into the agreement,  
22 the entity that will manage the site of the conservation action or  
23 habitat enhancement, and any contractors or consultants.

24 (2) Fully describes the proposed conservation actions or habitat  
25 enhancements.

26 (3) Identifies the location of the conservation actions or habitat  
27 enhancements, including a location map, address, and size of the  
28 site where the proposed conservation action or habitat enhancement  
29 will be implemented.

30 (4) Provides color aerial and ground-level photographs that  
31 reflect current conditions on the site and surrounding properties.

32 (5) Explains how the mitigation credits will be created,  
33 including, but not limited to, information regarding proposed  
34 ownership arrangements, long-term management strategy, and any  
35 phases of implementation.

36 (6) Includes a natural resources evaluation that documents biotic  
37 and abiotic baseline conditions, including past, current, and  
38 adjacent land uses, vegetation types, species information,  
39 topography, hydrology, and soil types.

- 1 (7) Identifies public lands and permanently protected lands in  
2 the vicinity of the conservation actions or habitat enhancements.
- 3 (8) Fully describes the proposed type and quantity of mitigation  
4 credits and the supporting rationale.
- 5 (9) Explains how the proposed conservation actions or habitat  
6 enhancements will measurably advance conservation objectives  
7 of the regional conservation framework that have not yet been  
8 achieved.
- 9 (10) Identifies metrics or indicators by which the proposed  
10 conservation action or habitat enhancement’s contribution to  
11 achieving the framework’s conservation goals and objectives can  
12 feasibly be measured with existing technology. The net ecological  
13 gain from the implementation of conservation actions and habitat  
14 enhancements shall be reported using consistent metrics that  
15 measure the increment of gain in the area and quality of habitat or  
16 other natural resource values compared to baseline conditions, and  
17 measures the increment of gain in relation to the regional  
18 conservation framework’s conservation objectives.
- 19 (11) Describes the proposed landownership of the site or sites  
20 of the conservation actions or habitat enhancements.
- 21 (12) Includes a template conservation easement for the sites of  
22 any conservation action and an explanation of how the long-term  
23 durability of the sites of any habitat enhancements will be ensured.
- 24 (13) Ensures that the implementation of the conservation action  
25 or habitat enhancement, including long-term protection and  
26 management of the site, will be funded in accordance with Chapter  
27 4.6 (commencing with Section 65965) of Division 1 of Title 7 of  
28 the Government Code.
- 29 (14) Includes a template monitoring and long-term adaptative  
30 management plan.
- 31 (15) Explains the terms and conditions under which the proposed  
32 mitigation credits may be sold or otherwise transferred and how  
33 the proposed mitigation credits will be accounted for, including  
34 the specific methods proposed for reporting and maintaining a  
35 record of credit creation, release, and use, sale, or transfer.
- 36 (16) Includes enforcement provisions.
- 37 (17) Ensures that, for each site on which the conservation actions  
38 or habitat enhancements will be implemented, the following shall  
39 be prepared and submitted to the department for review for  
40 adequacy and approval prior to implementation:

1 (A) Site-specific conservation objectives of the conservation  
2 actions or habitat enhancements and how they reflect a measurable  
3 advancement of the conservation objectives of the regional  
4 conservation framework.

5 (B) Preliminary natural resources surveys that document biotic  
6 and abiotic baseline conditions, including past, current, and  
7 adjacent land uses, vegetation types, species information,  
8 topography, hydrology, and soil types.

9 (C) For conservation actions, the conservation easement that  
10 will be used to permanently protect the site, and for habitat  
11 enhancements, the instrument that will be used to ensure their  
12 long-term durability.

13 (D) A management plan that includes the short-term and  
14 long-term management actions necessary to ensure that the  
15 conservation actions or habitat enhancements achieve their  
16 site-specific conservation objectives.

17 (E) If mitigation credits are proposed to be created from habitat  
18 enhancements or conservation actions that include restoration of  
19 ecological resources, detailed plans, including as-built designs and  
20 ecological performance standards.

21 (F) A property analysis record or other comparable economic  
22 analysis of the funding necessary to support site-specific  
23 maintenance activities, such as monitoring and reporting, in  
24 perpetuity.

25 (G) The sources for, and the terms under which, the endowment  
26 for long-term protection, management, and enforcement will be  
27 funded.

28 (H) A current preliminary report covering the site of the  
29 conservation actions or habitat enhancements that identifies the  
30 owner of the fee simple title and shows all liens, easements, and  
31 other encumbrances and depicts all relevant property lines,  
32 easements, dedications, and other features.

33 (I) A declaration of whether or not the proposed site has been  
34 or is being used as mitigation, is designated or dedicated for park  
35 or open space use, or designated for purposes that may be  
36 inconsistent with habitat preservation.

37 (J) Details of any public funding received for acquisition or  
38 restoration of, or other purposes related to, the proposed site.

39 (K) A phase I environmental site assessment of the site dated  
40 not more than six months prior to the date of submission to the

1 department. This assessment shall be performed in accordance  
2 with the ASTM International Standard E1527-05 “Standard  
3 Practice for Environmental Site Assessments: Phase I  
4 Environmental Site Assessment Process” or any successive ASTM  
5 International standard active at the time of the assessment.

6 (18) Includes a proposed credit ledger and credit release  
7 schedule that meets the requirements of subdivision (f).

8 (19) Includes any other information, analysis, and legal or  
9 financial assurances of implementation as the department deems  
10 necessary or appropriate.

11 (f) (1) The release of mitigation credits for use, sale, or transfer  
12 under a mitigation credit agreement shall require the department’s  
13 approval in accordance with this subdivision.

14 (2) The release of mitigation credits shall be tied to  
15 performance-based milestones and achievement of ecological  
16 performance standards. The credit release schedule for each  
17 mitigation credit agreement shall reserve a substantial share of the  
18 total credits for release after those ecological performance standards  
19 are fully achieved.

20 (3) The terms of the credit release schedule shall be specified  
21 in the mitigation credit agreement. When conservation actions and  
22 habitat enhancements are implemented and meet the  
23 performance-based milestones specified in the credit release  
24 schedule, credits shall be created in accordance with the credit  
25 release schedule. If a conservation action or habitat enhancement  
26 does not meet those performance-based milestones, the department  
27 may suspend the release of credits, reduce the number of credits,  
28 or otherwise modify the credit release schedule accordingly.

29 (4) In order for mitigation credits to be released, the person or  
30 entity that has entered into a mitigation credit agreement shall  
31 demonstrate to the department that the appropriate  
32 performance-based milestones for credit release have been met.  
33 The department shall determine whether the milestones have been  
34 met and the credits may be released.

35 (g) Nothing in this chapter is intended to limit or impose  
36 additional conditions on the creation or sale of mitigation credits  
37 by a conservation bank or mitigation bank approved by the  
38 department pursuant to Chapter 7.9 (commencing with Section  
39 1797).

1 (h) The creation of mitigation credits pursuant to this section  
2 from a conservation action or habitat enhancement implemented  
3 within the plan area of an approved natural community  
4 conservation plan shall not duplicate or replace mitigation  
5 requirements set forth in the natural community conservation plan  
6 and shall require the advance written approval of the plan's  
7 implementing entity. Mitigation credits created pursuant to this  
8 section may be used for covered activities under an approved  
9 natural community conservation plan only in accordance with the  
10 requirements of the plan.

11 (i) *The department shall make project mitigation credit and*  
12 *release information publicly available on the department's Internet*  
13 *Web site.*

14 1856. The department may collect fees from a person or entity  
15 that proposes to enter into a mitigation credit agreement, and from  
16 a public agency that proposes a regional conservation framework,  
17 to pay for all or a portion of the department's costs relating to the  
18 mitigation credit agreement or proposed framework.

19 1857. The department may adopt guidelines and criteria to aid  
20 in the implementation of Section 1855. Chapter 3.5 (commencing  
21 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
22 Government Code does not apply to the development, adoption,  
23 or amendment of guidelines or criteria pursuant to this section.  
24 These guidelines and criteria shall be posted on the department's  
25 Internet Web site.