

AMENDED IN SENATE AUGUST 16, 2016

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

Introduced by Assembly Member Levine

February 17, 2016

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~~ *framework, in consultation with applicable local agencies that have land use authority, for the purpose of informing conservation actions and habitat enhancement actions that would advance the conservation of focal species and providing voluntary guidance for various activities. The bill would require the framework to contain specified information, including information and would authorize the framework to include a regional conservation—assessment. assessment proposed by the department or any other public agency and approved by the department.* 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 a public meeting~~ 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, action~~ and a habitat ~~enhancement, as defined, enhancement~~ *action* that measurably advance the conservation objectives of an approved framework and that meet other ~~specified requirements, requirements~~ to be used to create mitigation ~~credits that may credits.~~ *The bill would authorize these mitigation credits to be used, within the framework area, used to fulfill compensatory mitigation requirements established under any state or federal environmental law, as determined by the applicable local, state, or federal regulatory agency, including compensatory mitigation requirements 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 agreement, proposed framework, framework, or proposed regional conservation assessment~~. The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of ~~the mitigation credit~~ *these* provisions and would exempt the adoption of these guidelines and criteria from the Administrative Procedure Act. *The bill would require the department to submit a report regarding the implementation of these provisions to the Legislature on or before January 1, 2020. The bill would prohibit the department from approving a regional conservation framework or regional conservation assessment on or after January 1, 2020, and from entering into a mitigation credit agreement on or after January 1, 2020.*

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
 5

CHAPTER 9. REGIONAL CONSERVATION FRAMEWORKS

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,

1 including actions needed to promote resiliency to the impacts of
 2 climate change and other stressors to species and habitat.

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

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

9 (2) Are effective ecologically.

10 (3) Will help to conserve regionally important biological and
 11 other ecological resources.

12 (d) In enacting this chapter, it is the intent of the Legislature to
 13 promote conservation planning that identifies species and habitat
 14 conservation needs, including actions needed to promote resiliency
 15 to the impacts of climate change and other stressors. It is further
 16 the intent of the Legislature to create nonregulatory mechanisms
 17 to guide investments in conservation, infrastructure and land use
 18 planning, and compensatory mitigation for impacts to natural
 19 resources, including impacts to threatened and endangered species,
 20 other sensitive species, natural communities, ecological processes,
 21 and connectivity.

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

25 1851. For purposes of this chapter:

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

29 (b) “Compensatory mitigation” means actions taken to fulfill,
 30 in whole or in part, mitigation requirements under state or federal
 31 law or a court mandate.

32 ~~(b)~~

33 (c) “Conservation action” means ~~the permanent protection of~~
 34 ~~habitat, and restoration and management actions on permanently~~
 35 ~~protected habitat that help to offset the impacts of threats to focal~~
 36 ~~species and an action to preserve or to restore ecological~~
 37 ~~resources, including habitat, natural communities, ecological~~
 38 ~~processes, and wildlife corridors, to protect those resources~~
 39 ~~permanently, and to provide for their perpetual management, so~~
 40 ~~as to help to achieve one or more biological goals and objectives~~

1 for ~~those~~ *one or more* focal species. *Conservation actions may*
2 *include, but are not limited to, actions to offset impacts to focal*
3 *species.*

4 ~~(e)~~

5 (d) “Conservation easement” means a perpetual conservation
6 easement that complies with Chapter 4 (commencing with Section
7 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

8 ~~(d)~~

9 (e) “Focal species” means ~~native sensitive~~ species within a
10 regional conservation framework area that are analyzed in the
11 framework and will benefit from conservation actions *and habitat*
12 *enhancement actions* set forth in the framework.

13 ~~(e)~~

14 (f) “~~Habitat enhancement~~ *enhancement action*” means an action
15 to improve the quality of wildlife habitat, or to address risks or
16 stressors to wildlife, that has long-term durability but does not
17 involve land acquisition or the permanent protection of habitat,
18 such as improving in-stream flows to benefit fish species,
19 enhancing habitat connectivity, or invasive species control or
20 eradication. ~~If a habitat enhancement is used to create one or more~~
21 ~~mitigation credits pursuant to this chapter, long-term durability~~
22 ~~means that the habitat enhancement will remain in effect for at~~
23 ~~least as long as the impact that is being mitigated.~~

24 ~~(f)~~

25 (g) “Performance-based milestones” means specifically
26 identified steps in the implementation of a conservation action or
27 ~~habitat enhancement~~, *enhancement action*, such as site protection,
28 initiating implementation, completing implementation, or achieving
29 performance standards.

30 ~~(g)~~

31 (h) “Performance standards” means observable or measurable
32 physical or biological attributes that are used to determine if a
33 conservation action or habitat enhancement *action* has met its
34 objectives.

35 ~~(h)~~

36 (i) “Permanently protect” means doing both of the following:

37 (1) Recording a conservation easement, in a form approved in
38 advance in writing by the department, *or establishing perpetual*
39 *protection of land in a manner substantially similar to a*
40 *conservation easement and approved in advance in writing by the*

1 *department*, that prevents development, prohibits inconsistent uses,
2 and ensures that habitat for focal species is maintained.

3 (2) Providing secure, perpetual funding for management of the
4 land, monitoring, and *legal* enforcement.

5 (j) “*Regional conservation assessment*” means information and
6 analyses that document the important species, ecosystems,
7 ecosystem processes, protected areas, and linkages within an
8 ecoregion to provide the appropriate context for prioritized
9 conservation strategies and actions. Those assessments include
10 information critical to the identification of areas with greatest
11 probability for long-term ecosystem conservation success
12 incorporating cobenefits of ecosystem services, such as carbon,
13 water, and agricultural lands. A regional conservation assessment
14 may be used to provide context at an ecoregional or subcoregional
15 scale to assist with the development of a regional conservation
16 framework.

17 (k) “*Regional conservation framework*” means information and
18 analyses prepared pursuant to this chapter to inform conservation
19 actions and habitat enhancement actions that would advance the
20 conservation of focal species, habitat, and other natural resources
21 and to provide voluntary guidance for the identification of wildlife
22 and habitat conservation priorities, investments in ecological
23 resource conservation, infrastructure planning, identification of
24 conservation priorities for land use planning, or identification of
25 priority locations for compensatory mitigation for impacts to
26 species and natural resources. Regional conservation frameworks
27 are voluntary and do not create, modify, or impose regulatory
28 requirements or standards, prescribe or prohibit land uses,
29 establish land use designations, or affect the land use authority of
30 any public agency. The preparation and use of regional
31 conservation frameworks for this guidance is voluntary.

32 (l) “*Regional level*” means the geographic scale of relevant
33 ecologically defined units such as ecoregions.

34 (i)

35 (m) “*Sensitive species*” means any special status species
36 identified by a state or federal agency, ~~and any species for which~~
37 ~~the department has determined that listing as endangered,~~
38 ~~threatened, or a candidate is reasonably foreseeable within the~~
39 ~~term of the framework.~~ agency.

1 1852. (a) The department may approve a regional conservation
2 framework pursuant to this chapter. A regional conservation
3 framework may be proposed by the department or any other public
4 ~~agency.~~ *agency, in consultation with local agencies that have land*
5 *use authority within the geographic scope of the regional*
6 *conservation framework.*

7 (b) The purpose of a regional conservation framework shall be
8 to inform *conservation actions and habitat enhancement* actions
9 that would advance the conservation of focal species, ~~habitat,~~ and
10 ~~other natural resources~~ *including the ecological processes, natural*
11 *communities, and habitat connectivity upon which those focal*
12 *species depend,* and to provide voluntary guidance for one or more
13 of the following:

14 (1) Identification of wildlife and habitat conservation priorities,
15 including actions needed to address the impacts of climate change
16 and other wildlife stressors.

17 (2) Investments in ~~ecological~~ resource conservation.

18 (3) Infrastructure planning.

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

20 (5) Identification of priority ~~locations~~ *areas* for compensatory
21 mitigation for impacts to species and natural resources.

22 (c) A regional conservation framework shall include all of the
23 following:

24 (1) An explanation of the conservation purpose of and need for
25 the framework.

26 (2) The geographic area of the framework and rationale for the
27 selection of the ~~area.~~ *area, together with a description of the*
28 *surrounding ecoregions and any adjacent protected habitat areas*
29 *or linkages that provide relevant context for the development of*
30 *the framework.*

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

33 (4) Important ~~habitat, and other natural and seminatural~~ resource
34 conservation elements within the framework area, including, but
35 not limited to, *important ecological resources and processes,*
36 *natural communities, habitat, habitat-connectivity connectivity,*
37 and existing protected areas, and an explanation of the criteria,
38 data, and methods used to identify those important conservation
39 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~~: *resources, as identified in the best*
4 *available scientific information, including, but not limited to, the*
5 *State Wildlife Action Plan.*

6 (6) *Major water, transportation and transmission infrastructure*
7 *facilities, urban development areas, and county and city general*
8 *plan designations in the framework area.*

9 ~~(6)~~
10 (7) Conservation goals and measurable objectives for the focal
11 species and important conservation elements identified in the
12 framework that address or respond to the identified stressors and
13 ~~pressures~~: *pressures on focal species.*

14 ~~(7)~~
15 (8) Conservation actions, including a description of the general
16 amounts and types of habitat that, if *preserved or restored* ~~or~~
17 ~~enhanced~~ and permanently protected, could achieve the
18 conservation goals and ~~objectives~~: *objectives, and a description*
19 *of how the conservation actions and habitat enhancement actions*
20 *were prioritized and selected in relation to the conservation goals*
21 *and objectives.*

22 ~~(8) A description of how the conservation actions and habitat~~
23 ~~enhancements were prioritized and selected in relation to the~~
24 ~~conservation goals and objectives.~~

25 (9) An explanation of how the framework is consistent with or
26 complements any natural community conservation plan, federal
27 habitat conservation plan, state or federal recovery plan, or other
28 approved conservation strategy that overlaps with the framework
29 area.

30 (10) *A summary of mitigation banks and conservation banks*
31 *approved by the department or the United States Fish and Wildlife*
32 *Service that are located within the framework area or whose*
33 *service area overlaps with the framework area.*

34 ~~(10)~~
35 (11) A description of how the framework’s conservation goals
36 and objectives provide for adaptation opportunities against the
37 effects of climate change for the framework’s focal species.

38 ~~(11)~~
39 (12) Incorporation and reliance on, and citation of, the best
40 available scientific ~~information, and a brief analysis~~ *information*

1 regarding the framework area and the surrounding ecoregion,
2 including a brief description of gaps in relevant scientific
3 ~~information.~~ information, and use of standard or prevalent
4 vegetation classifications and standard ecoregional classifications
5 for terrestrial and aquatic data to enable and promote consistency
6 among regional conservation frameworks throughout California.

7 ~~(12) A regional conservation assessment that provides context~~
8 ~~at an ecoregional or subecoregional scale for the development of~~
9 ~~the framework. If~~

10 1853. (a) *The department may approve a regional conservation*
11 *assessment pursuant to this chapter. A regional conservation*
12 *assessment may be proposed by the department or any other public*
13 *agency. However, a regional conservation assessment is not*
14 *required for department approval of a regional conservation*
15 *framework.*

16 ~~(b) If a regional conservation assessment has already been~~
17 ~~prepared, the that encompasses the area of a proposed regional~~
18 ~~conservation framework may incorporate the assessment by~~
19 ~~reference, and shall update or supplement the assessment as~~
20 ~~necessary for the framework. A has already been approved by the~~
21 ~~department, the framework shall explain how it has incorporated~~
22 ~~the assessment information and analysis.~~

23 (c) A regional conservation assessment shall do all of the
24 following:

25 ~~(A)~~

26 (1) Identify and summarize relevant regional ~~pressures,~~
27 *pressures and stressors, including climate change vulnerability,*
28 and conservation priorities, including priority conservation areas
29 and habitat connectivity values, included in all of the following:

30 ~~(i)~~

31 (A) Conservation plans, such as the State Wildlife Action Plan
32 and *approved* natural community conservation plans.

33 ~~(ii)~~

34 (B) Analyses designed to identify areas of high biological
35 diversity, such as the Areas of Conservation Emphasis.

36 ~~(iii)~~

37 (C) Analyses designed to identify areas of high value for habitat
38 connectivity.

39 ~~(B)~~

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

4 ~~(C)~~

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

7 ~~(D)~~

8 (4) 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)~~

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

22 *(d) (1) A draft regional conservation assessment may be*
 23 *submitted to the department with a draft regional conservation*
 24 *framework or separately.*

25 *(2) If submitted with a draft regional conservation framework,*
 26 *the draft regional conservation assessment shall be included in*
 27 *the review process set forth in subdivision (c) of Section 1854.*

28 *(3) If submitted separately, the department shall have 30 days*
 29 *within which to deem the draft regional conservation assessment*
 30 *complete or to explain in writing to the public agency submitting*
 31 *the assessment what is needed to complete the assessment. Within*
 32 *30 days of deeming a draft regional conservation assessment*
 33 *complete, the department shall make the draft assessment available*
 34 *to the public on its Internet Web site for review and comment for*
 35 *a period of at least 30 days, following which the department may*
 36 *approve the assessment, approve it with amendments, or*
 37 *disapprove it.*

38 ~~1853.~~

39 1854. (a) The department may prepare or approve a regional
 40 conservation framework, or approve the framework with

1 amendments, for an initial period of up to 10 years after finding
2 that the framework meets the requirements of Section 1852. The
3 department may extend the duration of an approved regional
4 conservation framework for additional periods of up to 10 years
5 after finding that the framework continues to meet the requirements
6 of Section 1852.

7 (b) It is the intent of this chapter to establish ~~general guidelines~~
8 ~~and requirements that allow~~ *provide* sufficient flexibility to develop
9 each regional conservation framework based on the best available
10 information regarding the framework area.

11 (c) (1) ~~Prior to submitting a draft regional conservation~~
12 ~~framework to the department for approval, a~~ *After a draft regional*
13 *conservation framework is submitted to the department for*
14 *approval, the department shall have 30 days within which to deem*
15 *the draft regional conservation framework complete or to explain*
16 *in writing to the public agency submitting the framework what is*
17 *needed to complete the framework. Within 30 days of deeming a*
18 *draft regional conservation framework complete, the department*
19 *shall make the draft framework available to the public on its*
20 *Internet Web site for review and comment for a period of at least*
21 *30 days.*

22 (2) A public agency proposing a framework shall hold ~~at least~~
23 ~~two a public meetings~~ *meeting* to allow interested persons and
24 entities to receive information about the ~~proposed~~ *draft regional*
25 *conservation framework* early in the process of preparing it and
26 to have an adequate opportunity to provide written and oral
27 comments. ~~At least one of the~~ *The public meetings meeting* shall
28 be held at a location within *or near* the framework area. If
29 preparation of a regional conservation framework was initiated
30 before January 1, 2017, ~~the public meetings~~ *and a public meeting*
31 *regarding the framework that is consistent with the requirements*
32 *of this section was held before January 1, 2017, an additional*
33 *public meeting shall not be required. If preparation of a regional*
34 *conservation framework was initiated before January 1, 2017, and*
35 *a public meeting regarding the framework was not held before*
36 *January 1, 2017, the public meeting* required under this section
37 may be held after January 1, 2017, ~~if they are~~ *it is* held at least 30
38 days before the framework is submitted to the department for
39 approval.

40 (2)

1 (3) At least 30 days before holding ~~a public meetings~~ *meeting*
 2 to distribute information about the development of a draft regional
 3 conservation framework, a public agency proposing a framework
 4 shall provide notice of ~~the a regional conservation framework~~
 5 ~~public meetings~~ *meeting* as follows:

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

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

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

12 ~~(3)~~

13 (4) At least 60 days before submitting a ~~draft final~~ regional
 14 conservation framework to the department for approval, the public
 15 agency proposing the framework shall notify the board of
 16 supervisors ~~and the city councils~~ in each county within the
 17 geographical scope of the framework and provide the board of
 18 supervisors ~~and the city councils~~ with an opportunity to submit
 19 written ~~comments~~: *comments for a period of at least 30 days.*

20 ~~(4)~~

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

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~~: *enhancement actions.*

1 ~~1854.~~

2 1855. (a) Regional conservation frameworks shall not affect
3 the authority or discretion of any public agency, except as
4 specifically provided in this chapter. Nothing in this chapter
5 increases or decreases the authority or jurisdiction of the
6 department regarding any land use, species, habitat, area, resource,
7 plan, process, or corridor.

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

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

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

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

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

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

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

35 (c) *Nothing in this chapter shall require a project proponent*
36 *seeking to provide compensatory mitigation pursuant to Section*
37 *1602, 2080.1, 2081, or 2835 or the California Environmental*
38 *Quality Act (Division 13 (commencing with Section 21000) of the*
39 *Public Resources Code) to undertake conservation actions or*
40 *habitat enhancement actions identified in a regional conservation*

1 *framework; implement, contribute to, fund, or otherwise comply*
 2 *with the actions described in a regional conservation framework;*
 3 *require or otherwise compel a project proponent to enter into a*
 4 *mitigation credit agreement; or use or purchase mitigation credits*
 5 *established pursuant to this chapter to satisfy the compensatory*
 6 *mitigation requirements.*

7 1855.

8 1856. (a) A conservation action or habitat enhancement *action*
 9 that measurably advances the conservation objectives of an
 10 approved regional conservation framework may be used to create
 11 mitigation credits that can be used to compensate for impacts to
 12 *focal species and other species, habitat, and other natural resources,*
 13 *as provided in this section. To be used to create these mitigation*
 14 *credits, a conservation action or habitat enhancement shall be*
 15 *implemented successfully in advance of the impacts. The*
 16 *requirements of this section apply only to the generation creation*
 17 *of mitigation credits under mitigation credit agreements pursuant*
 18 *to this section. section and do not establish requirements for other*
 19 *forms of compensatory mitigation.*

20 (b) For a conservation action or habitat enhancement *action*
 21 identified in a regional conservation framework to be used to create
 22 mitigation credits pursuant to this section, the regional conservation
 23 framework shall include, in addition to the requirements of Section
 24 1852, all of the following:

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

27 (2) A process for updating the scientific information used in the
 28 framework, and for tracking the progress of, and evaluating the
 29 effectiveness of, conservation actions and habitat ~~enhancements~~
 30 *enhancement actions* identified in the framework in offsetting
 31 identified threats to focal species and in achieving the framework’s
 32 biological goals and objectives, at least once every five years. *10*
 33 *years, until all mitigation credits are used.*

34 (3) Identification of a public or private entity that will be
 35 responsible for the ~~periodic evaluation and for updating the~~
 36 ~~framework at least once every five years to incorporate the best~~
 37 ~~available scientific information and analyses. updates and~~
 38 *evaluation required pursuant to paragraph (2).*

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

1 *this section may be used to fulfill, in whole or in part, compensatory*
2 *mitigation requirements established under any state or federal*
3 *environmental law, as determined by the applicable local, state,*
4 *or federal regulatory agency, including, but not limited to, the*
5 *following:*

6 (1) To compensate for take or other adverse impacts of activities
7 authorized pursuant to Chapter 1.5 (commencing with Section
8 2050) of Division 3 within the regional conservation framework
9 area.

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

14 (3) To mitigate significant effects on the environment within
15 the regional conservation framework area pursuant to the California
16 Environmental Quality Act (Division 13 (commencing with Section
17 21000) of the Public Resources Code) and Guidelines for
18 Implementation of the California Environmental Quality Act
19 (Chapter 3 (commencing with Section 15000) of Division 6 of
20 Title 14 of the California Code of Regulations).

21 (d) The department shall ensure the long-term durability of a
22 ~~habitat enhancement~~ *enhancement action*. If a habitat enhancement
23 ~~action is used to provide compensatory mitigation,~~ *create one or*
24 *more mitigation credits pursuant to this section,* the habitat
25 ~~enhancement action shall remain in effect for at least as long as~~
26 ~~the impact that is being mitigated.~~ *until the site of the*
27 *environmental impact is returned to preimpact ecological*
28 *conditions.*

29 (e) To create mitigation credits pursuant to this section, a person
30 or entity, including a state or local agency, shall enter into a
31 mitigation credit agreement with the department. The mitigation
32 credit agreement shall establish the type and number of mitigation
33 credits created by the conservation action or habitat enhancement
34 *action* and the terms and conditions under which the mitigation
35 credits may be used. *Mitigation credits shall not be created on a*
36 *site that has already been permanently protected and has been*
37 *used, or is currently in use, to fulfill compensatory mitigation*
38 *requirements for one or more projects.* The person or entity may
39 create and use, sell, or otherwise transfer the mitigation credits
40 upon department approval that the credits have been created in

1 accordance with the agreement. To enter into a mitigation credit
2 agreement with the department, a person or entity shall submit a
3 draft mitigation credit agreement to the department for its review,
4 revision, and approval. The department may enter into a mitigation
5 credit agreement if it determines that the mitigation credit
6 agreement does all of the following:

7 (1) Provides contact information for, and establishes the
8 qualifications of, the person or entity entering into the agreement,
9 the entity that will manage the site of the conservation action or
10 habitat ~~enhancement~~, *enhancement action*, and any contractors or
11 consultants.

12 (2) Fully describes the proposed conservation actions or habitat
13 ~~enhancements~~, *enhancement actions and explains how, and to*
14 *what extent, they will measurably advance conservation objectives*
15 *of the regional conservation framework that have not yet been*
16 *achieved.*

17 (3) Identifies the location of the conservation actions or habitat
18 ~~enhancements~~, *enhancement actions*, including a location map,
19 address, and size of the site where the proposed conservation action
20 or habitat enhancement *action* will be implemented.

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

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

27 (6) *Identifies mitigation banks and conservation banks approved*
28 *by the department as a mitigation alternative and explains how*
29 *available mitigation credits at those banks will be purchased or*
30 *used in combination with the mitigation credits created under the*
31 *mitigation credit agreement or, if those available mitigation credits*
32 *will not be purchased or used, why they will not be purchased or*
33 *used.*

34 (6)

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

39 (7)

1 (8) Identifies public lands and permanently protected lands in
2 the vicinity of the conservation actions or ~~habitat-enhancements.~~
3 *enhancement actions.*

4 ~~(8)~~

5 (9) Fully describes the proposed type and quantity of mitigation
6 credits and the supporting rationale.

7 ~~(9) Explains how the proposed conservation actions or habitat~~
8 ~~enhancements will measurably advance conservation objectives~~
9 ~~of the regional conservation framework that have not yet been~~
10 ~~achieved.~~

11 (10) Identifies metrics or indicators by which the proposed
12 conservation action or ~~habitat-enhancement's~~ *enhancement action's*
13 contribution to achieving the framework's conservation goals and
14 objectives can feasibly be measured with existing technology. The
15 net ecological gain from the implementation of conservation actions
16 and ~~habitat-enhancements~~ *enhancement actions that include habitat*
17 *restoration* shall be reported using consistent metrics that measure
18 the increment of gain in the area and quality of habitat or other
19 natural resource values compared to ~~baseline-conditions,~~ *conditions*
20 *described in the regional conservation framework,* and measures
21 the increment of gain in relation to the regional conservation
22 framework's conservation objectives.

23 (11) Describes the proposed landownership of the site or sites
24 of the conservation actions or ~~habitat-enhancements.~~ *enhancement*
25 *actions.*

26 (12) Includes a template ~~conservation-easement~~ *easement, or*
27 *other instrument providing for perpetual protection of land in a*
28 *manner substantially similar to a conservation easement approved*
29 *in advance in writing by the department,* for the sites of any
30 conservation action and an explanation of how the long-term
31 durability of the sites of any ~~habitat-enhancements~~ *enhancement*
32 *actions* will be ensured.

33 (13) Ensures that the implementation of the conservation action
34 or ~~habitat-enhancement,~~ *including enhancement action will be*
35 *adequately funded and that* long-term protection and management
36 of the ~~site,~~ *site* will be funded in accordance with Chapter 4.6
37 (commencing with Section 65965) of Division 1 of Title 7 of the
38 ~~Government-Code.~~ *Code or, if a state agency proposed to enter*
39 *into a mitigation credit agreement, other comparable funding*
40 *mechanism approved by the department.*

- 1 (14) Includes a template monitoring and long-term ~~adaptive~~
 2 *adaptive* management plan.
- 3 (15) Explains the terms and conditions under which the proposed
 4 mitigation credits may be sold or otherwise transferred and how
 5 the proposed mitigation credits will be accounted for, including
 6 the specific methods proposed for reporting and maintaining a
 7 record of credit creation, release, and use, sale, or transfer.
- 8 (16) Includes enforcement provisions.
- 9 (17) Ensures that, for each site on which the conservation actions
 10 or habitat ~~enhancements~~ *enhancement actions* will be implemented,
 11 the following shall be prepared and submitted to the department
 12 for review for adequacy and approval prior to implementation:
- 13 (A) Site-specific conservation objectives of the conservation
 14 actions or habitat ~~enhancements~~ *enhancement actions* and how
 15 they reflect a measurable advancement of the conservation
 16 objectives of the regional conservation framework.
- 17 (B) Preliminary natural resources surveys *by a qualified biologist*
 18 that document biotic and abiotic baseline conditions, including
 19 past, current, and adjacent land uses, vegetation types, species
 20 information, topography, hydrology, and soil types.
- 21 (C) For conservation actions, the conservation ~~easement~~
 22 *easement, or other instrument providing for perpetual protection*
 23 *of land in a manner substantially similar to a conservation*
 24 *easement approved in advance in writing by the department, that*
 25 *will be used to permanently protect the site, and for habitat*
 26 ~~enhancements~~, *enhancement actions*, the instrument that will be
 27 used to ensure their long-term durability.
- 28 (D) A management plan that includes the short-term and
 29 long-term management actions necessary to ensure that the
 30 conservation actions or habitat ~~enhancements~~ *enhancement actions*
 31 achieve their site-specific conservation objectives.
- 32 (E) If mitigation credits are proposed to be created from habitat
 33 ~~enhancements~~ *enhancement actions* or conservation actions that
 34 include restoration of ecological resources, detailed plans, including
 35 as-built designs and ecological performance standards.
- 36 (F) A property analysis record or other comparable economic
 37 analysis of the funding necessary to support site-specific
 38 maintenance activities, such as monitoring and reporting, in
 39 perpetuity.

1 (G) The sources for, and the terms under which, the ~~endowment~~
2 *endowment, or for state agencies other comparable funding*
3 *mechanism approved by the department*, for long-term protection,
4 management, and enforcement will be funded.

5 (H) A current preliminary report covering the site of the
6 conservation actions or habitat ~~enhancements~~ *enhancement actions*
7 that identifies the owner of the fee simple title and shows all liens,
8 easements, and other encumbrances and depicts all relevant
9 property lines, easements, dedications, and other features. *Copies*
10 *of documentation of any encumbrances that may conflict with the*
11 *conservation objectives of the proposed conservation actions or*
12 *habitat enhancement actions shall be included with the preliminary*
13 *title report.*

14 (I) A declaration of whether or not the proposed site has been
15 or is being used as mitigation, is designated or dedicated for park
16 or ~~open space~~ *open-space* use, or designated for purposes that may
17 be inconsistent with habitat preservation.

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

20 (K) A phase I environmental site assessment of the site dated
21 not more than six months prior to the date of submission to the
22 department. This assessment shall be performed in accordance
23 with the ASTM International Standard E1527-05 “Standard
24 Practice for Environmental Site Assessments: Phase I
25 Environmental Site Assessment Process” or any successive ASTM
26 International standard active at the time of the assessment.

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

29 ~~-(19) Includes any other information, analysis, and legal or~~
30 ~~financial assurances of implementation as the department deems~~
31 ~~necessary or appropriate.~~

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

35 (2) The release of mitigation credits shall be tied to
36 performance-based milestones and achievement of ecological
37 performance standards. The credit release schedule for each
38 mitigation credit agreement shall reserve a substantial share of the
39 total credits for release after those ecological performance standards

1 are fully achieved. *Performance-based milestones may include,*
2 *but are not be limited to, the following:*

3 (A) *Recording a conservation easement or establishing perpetual*
4 *protection in a manner substantially similar to a conservation*
5 *easement and approved in advance in writing by the department*
6 *on the site of a conservation action, or putting into place measures*
7 *that ensure the long-term durability of a habitat enhancement*
8 *action in accordance with subdivision (d).*

9 (B) *Completing construction of a habitat restoration action.*

10 (C) *Achieving temporal ecological performance standards for*
11 *habitat restoration, such as standards established for one year;*
12 *three years, or five years following the initiation of habitat*
13 *restoration.*

14 (D) *Fully achieving ecological performance standards.*

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

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

31 (g) (1) *Mitigation credit agreements may be used to establish*
32 *the terms and conditions under which mitigation credits can be*
33 *created by projects that improve wildlife habitat, or that address*
34 *stressors to wildlife, to an extent that quantifiably exceeds*
35 *compensatory mitigation requirements established by the*
36 *department for those projects pursuant to Chapter 6 (commencing*
37 *with Section 1600) or Chapter 1.5 (commencing with Section 2050)*
38 *of Division 3. Those projects may include, but are not limited to,*
39 *the construction of setback levees that result in the creation of*
40 *more floodplain or riparian habitat than is required to compensate*

1 *for construction impacts or the construction of transportation*
2 *facility improvements that remove barriers to fish or wildlife*
3 *movement and thereby improve the quality of habitat or address*
4 *stressors to wildlife to a greater extent than is required to*
5 *compensate for construction impacts. For those projects, the*
6 *project proponent may submit a draft mitigation credit agreement*
7 *that proposes the terms and conditions under which mitigation*
8 *credits may be created and used by or in conjunction with those*
9 *projects to the department for its review, revision, and approval.*
10 *The submission may occur concurrently with, or after, an*
11 *application submitted pursuant to Chapter 1.5 (commencing with*
12 *Section 2050) of Division 3 or a notice submitted pursuant to*
13 *Chapter 6 (commencing with Section 1600) or may occur after the*
14 *application or notice is submitted. Where a draft mitigation*
15 *agreement is submitted concurrently with the application or notice,*
16 *the department shall review the draft mitigation credit agreement*
17 *concurrently with its review of the application or notice and shall,*
18 *to the maximum extent practicable, complete its review of both the*
19 *notice or application and the draft agreement concurrently.*

20 (2) *Mitigation credit agreements submitted to the department*
21 *pursuant to this subdivision may comply with the requirements of*
22 *subdivision (f) with a credit release schedule related to*
23 *construction of the project that will improve wildlife habitat, or*
24 *will address stressors to wildlife, to an extent that exceeds*
25 *compensatory mitigation requirements quantifiably. For those*
26 *projects, construction of the project may be a performance-based*
27 *milestone required by paragraph (2) of subdivision (f).*

28 ~~(g)~~

29 (h) *Nothing in this chapter is intended to limit or impose*
30 *additional conditions on the creation or sale of mitigation credits*
31 *by a conservation bank or mitigation bank approved by the*
32 *department pursuant to Chapter 7.9 (commencing with Section*
33 *1797).*

34 ~~(h)~~

35 (i) *The creation of mitigation credits pursuant to this section*
36 *from a conservation action or habitat enhancement action*
37 *implemented within the plan area of an approved natural*
38 *community conservation plan shall not duplicate or replace*
39 *mitigation requirements set forth in the natural community*
40 *conservation plan and shall require the advance written approval*

1 of the plan’s implementing entity. Mitigation credits created
 2 pursuant to this section may be used for covered activities under
 3 an approved natural community conservation plan only in
 4 accordance with the requirements of the plan.

5 (i)

6 (j) The department shall make project mitigation credit and
 7 release information publicly available on the department’s Internet
 8 Web site.

9 ~~1856.~~

10 *1857.* The department may collect fees from a person or entity
 11 that proposes to enter into a mitigation credit agreement, and from
 12 a public agency that proposes a regional conservation ~~framework,~~
 13 *framework or a regional conservation assessment*, to pay for all
 14 or a portion of the department’s costs relating to the mitigation
 15 credit ~~agreement or agreement, proposed framework, framework,~~
 16 *or proposed assessment.*

17 ~~1857.~~

18 *1858.* The department may adopt guidelines and criteria to aid
 19 in the implementation of ~~Section 1855:~~ *this chapter.* Chapter 3.5
 20 (commencing with Section 11340) of Part 1 of Division 3 of Title
 21 2 of the Government Code does not apply to the development,
 22 adoption, or amendment of guidelines or criteria pursuant to this
 23 section. These guidelines and criteria shall be posted on the
 24 department’s Internet Web site.

25 *1859. (a) The department shall submit a report to the*
 26 *Legislature on or before January 1, 2020, regarding the*
 27 *implementation of this chapter.*

28 *(b) The report required to be submitted pursuant to subdivision*
 29 *(a) shall be submitted in compliance with Section 9795 of the*
 30 *Government Code.*

31 *1860. The department shall not approve a regional*
 32 *conservation framework or regional conservation assessment*
 33 *pursuant to this chapter on or after January 1, 2020, and shall not*
 34 *enter into a mitigation credit agreement pursuant to this chapter*
 35 *on or after January 1, 2020.*

- 1 _____
- 2 **CORRECTIONS:**
- 3 **Heading—Last amended date.**
- 4 _____

O