

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**

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**Introduced by Assembly Member Gordon**

February 20, 2014

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An act to add Chapter 6.5 (commencing with Section 1650) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

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, if specified conditions are met as determined by the director. The act would create the Habitat Restoration and Enhancement Fund Account within the Fish and Game Preservation Fund and authorize the department to enter into an agreement to accept funds to achieve the purposes of the Habitat Restoration and Enhancement Act and deposit those funds into that account. The act would authorize the department to impose a schedule of fees for projects, based on the cost of a project, sufficient to recover all reasonable administrative and

implementation costs of the department relating to the ~~project~~. *projects, but not to exceed fees adopted by the department for standard lake or streambed alteration agreements for projects of comparable cost.* Moneys in the account would be available to the department, upon ~~appropriation~~, *appropriation by the Legislature*, for the purposes of administering and implementing the Habitat Restoration and Enhancement 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. (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) Tremendous demand exists for small-scale ecosystem~~  
15 ~~restoration projects aimed to benefit these species, yet current~~  
16 ~~regulatory mechanisms do not allow many willing private~~  
17 ~~landowners and local governments to efficiently access the~~  
18 ~~necessary environmental permits.~~

19 ~~(5)~~

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

24 ~~(6)~~

25 (5) Expedited and coordinated agency permitting processes for  
26 small-scale restoration projects have been shown to greatly boost  
27 the number and geographic distribution of environmentally  
28 beneficial projects across California – projects that cumulatively

1 improve water quality and aid in the recovery of salmon and  
2 steelhead populations, migratory birds, and other sensitive species.

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

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

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

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

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

16

17 CHAPTER 6.5. HABITAT RESTORATION AND ENHANCEMENT  
18 ACT

19

20 1650. This chapter shall be known, and may be cited, as the  
21 Habitat Restoration and Enhancement Act.

22 1651. As used in this chapter:

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

28 (b) "Habitat restoration or enhancement project" means a project  
29 with the primary purpose of accomplishing one or more of the  
30 following:

31 (1) Stream or river bank, lake, or other waterway revegetation,  
32 the primary purpose of which is to improve habitat.

33 (2) Stream or river bank stabilization with native vegetation or  
34 other predominantly nonrock bioengineering techniques, or both,  
35 to reduce or eliminate erosion and sedimentation.

36 (3) Modification, replacement, or removal of existing fish  
37 passage barriers to improve water quality and fish passage,  
38 including associated bridge installation. Examples of fish passage  
39 barriers include, but are not limited to, road crossings and fords,  
40 or both; small permanent, flashboard, and seasonal dams; weirs,

1 sills, and aprons; and poorly designed, undersized, or failed  
2 culverts. *For purposes of this paragraph, “seasonal dam” means*  
3 *a dam that is no larger than 25 feet in height and 50-acre feet in*  
4 *designed impoundment capacity.*

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

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

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

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

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

24 (9) ~~Installation of fencing and associated alternative stockwater~~  
25 ~~supply infrastructure for the purpose of excluding~~ *Excluding* or  
26 managing livestock to protect the bed and banks of streams, or  
27 other sensitive ~~habitats~~. *habitats, using wildlife friendly fencing*  
28 *and associated alternative stockwater supply based upon an*  
29 *existing water right. For purposes of this paragraph,*  
30 *wildlife-friendly fencing means fencing that allows for the*  
31 *movement of species indigenous to the area, including those species*  
32 *that normally migrate or move through the project area.*

33 (10) Restoration of freshwater and tidal hydrologic functions  
34 in wetlands and estuaries to improve fish and wildlife habitat.

35 (11) Creation of off-channel habitat to restore historic rearing  
36 and flow refugia for native fisheries and other aquatic species.

37 (12) Restoration of floodplains to restore natural hydrologic  
38 function, including, but not limited to, *revegetation* levee and dike  
39 setback and breaching.

1 (13) Restoration and ~~maintenanece~~ *maintenanece, including*  
2 *spillway repair and sediment removal, of an existing off-stream*  
3 ~~ponds, including spillway repair and sediment removal, to benefit~~  
4 ~~native amphibian and other species. pond or a livestock stockpond~~  
5 *subject to a water right obtained pursuant to Article 2.7*  
6 *(commencing with Section 1228) of Chapter 1 of Part 2 of Division*  
7 *2 of the Water Code, to benefit native aquatic species and their*  
8 *habitat.*

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

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

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

21 ~~1652. (a) Notwithstanding any other law, the director shall~~  
22 ~~approve a habitat restoration or enhancement project if~~

23 *1652. (a) (1) Before a project proponent submits a written*  
24 *request to the director pursuant to subdivision (b), the project*  
25 *proponent may request a meeting with the department to discuss*  
26 *the project proposal, required information, and the application*  
27 *process.*

28 *(2) If a project proponent requests a meeting pursuant to*  
29 *paragraph (1), the department shall inform the project proponent*  
30 *whether any plan would be required to be submitted for the project*  
31 *pursuant to subdivision (d).*

32 *(b) A project proponent may submit a written request to approve*  
33 *a habitat restoration or enhancement project to the director.*

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

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

39 *(2) A full description of the habitat restoration and enhancement*  
40 *project that includes the designs and techniques to be used for the*

1 *project, restoration or enhancement methods, an estimate of*  
2 *temporary restoration- or enhancement-related disturbance,*  
3 *project schedule, anticipated maintenance activities and how the*  
4 *project is expect to result in a net benefit to any affected habitat*  
5 *and species, consistent with paragraph (4) of subdivision (e).*

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

9 *(4) A description of the environmental protection measures*  
10 *incorporated into the project design, such as appropriate seasonal*  
11 *work 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, so that no potentially significant adverse effects on the*  
16 *environment, as defined in Section 15382 of Title 14 of the*  
17 *California Code of Regulations, are likely to occur with application*  
18 *of the specified environmental protection measures.*

19 *(5) Substantial evidence to support a conclusion that the project*  
20 *meets the requirements set forth in this section. Substantial*  
21 *evidence shall include references to relevant design criteria and*  
22 *environmental protection measures found in the documents*  
23 *specified in paragraph (4) of subdivision (e).*

24 *(6) Engineering plans of the project if the project proponent*  
25 *proposes a project to modify an existing levee or dike or if the*  
26 *project proposes to modify, replace, or remove existing fish*  
27 *passage barriers.*

28 *(7) Engineering or landscape architectural plans, or both,*  
29 *required by the department pursuant to subdivision (d).*

30 *(d) The department may require a project proponent to submit*  
31 *in the written request the following plans depending on the size*  
32 *and scope of the project:*

33 *(1) Landscape architectural plans or engineering plans, or both,*  
34 *for a project whose primary purpose is described in paragraph*  
35 *(2) of subdivision (b) of Section 1651.*

36 *(2) Engineering plans for a project whose primary purpose is*  
37 *described in paragraph (4) of subdivision (b) of Section 1651.*

38 *(e) Notwithstanding any other law, within 60 days after receiving*  
39 *a written request to approve a habitat restoration or enhancement*  
40 *project, the director shall approve a habitat restoration or*

1 *enhancement project if the director determines that the written*  
2 *request includes all of the required information set forth in*  
3 *subdivision (c), the project will maintain existing levels of human*  
4 *health and safety protection, including, but not limited to, flood*  
5 *protection, and the project meets all of the following requirements:*

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

8 (2) *The project is not part of a regulatory permit for a*  
9 *nonhabitat restoration or enhancement construction activity, a*  
10 *regulatory settlement, a regulatory enforcement action, or a court*  
11 *order.*

12 ~~(2)~~

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

20 ~~(3)~~

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

24 (A) Federal- and state-listed species recovery plans or published  
25 protection measures, *programmatic and individual project*  
26 *biological opinions, or previously approved department agreements*  
27 *and ~~permits.~~ permits issued for habitat restoration or enhancement*  
28 *projects.*

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

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

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

37 ~~(4)~~

38 (5) The project will not result in cumulative negative  
39 environmental impacts that are significant when viewed in

1 connection with the effects of past, current, or probable future  
2 projects.

3 (f) *If the director determines that the written request does not*  
4 *contain all of the information required by subdivision (c), or fails*  
5 *to meet the requirements set forth in subdivision (e), or both, the*  
6 *director shall deny the written request and inform the project*  
7 *proponent of the reason or reasons for the denial.*

8 (b)

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

17 (e)

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

21 (d)

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

28 ~~(e) Within 60 days after the director receives a written request~~  
29 ~~to approve a habitat restoration or enhancement project, the director~~  
30 ~~shall determine whether the written request includes all of the~~  
31 ~~required information set forth in subdivision (f).~~

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

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

37 ~~(2) A full description of the habitat restoration and enhancement~~  
38 ~~project that includes the designs and techniques to be used for the~~  
39 ~~project, restoration or enhancement methods, an estimate of~~  
40 ~~temporary restoration or enhancement-related disturbance, project~~

1 ~~schedule, anticipated maintenance activities, and how the project~~  
2 ~~will result in a net benefit to any affected habitat and species;~~  
3 ~~consistent with paragraph (3) of subdivision (a).~~

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

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

15 ~~(5) Substantial evidence to support a conclusion that the project~~  
16 ~~meets the requirements set forth in this section. Substantial~~  
17 ~~evidence shall include references to relevant design criteria and~~  
18 ~~environmental protection measures found in the documents~~  
19 ~~specified in paragraph (3) of subdivision (a).~~

20 ~~(g)~~

21 ~~(j) (1) During project implementation, the project proponent~~  
22 ~~shall notify the department within seven days 48 hours of any~~  
23 ~~minor amendments to the project necessary for improving the~~  
24 ~~project's habitat restoration and enhancement outcome or further~~  
25 ~~avoidance of impacts. *project.*~~

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

29 ~~(3) For purposes of this subdivision, "minor amendment" means~~  
30 ~~an action necessary for improving the project's habitat restoration~~  
31 ~~or enhancement outcome or for further avoidance of impacts.~~

32 ~~(h)~~

33 ~~(k) (1) If the director determines at any time that the project is~~  
34 ~~no longer consistent with subdivision (a), (e), due to a material~~  
35 ~~change between the project as submitted and the project being~~  
36 ~~implemented or a change in the environmental circumstances in~~  
37 ~~the area of implementation, the director shall notify the project~~  
38 ~~proponent in writing and project implementation shall be~~  
39 ~~suspended. Written notice from the director shall be delivered in~~  
40 ~~person, by certified mail, or by electronic communication to the~~

1 project proponent and shall specify the reasons why approval of  
 2 the project was suspended. The approval for a project shall not be  
 3 revoked pursuant to this subdivision unless it has first been  
 4 suspended pursuant to this subdivision.

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

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

16 1653. (a) The Habitat Restoration and Enhancement Account  
 17 is hereby created in the Fish and Game Preservation Fund.

18 (b) The department may enter into an agreement to accept funds  
 19 from any public agency, person, business entity, or organization  
 20 to achieve the purposes of this chapter. The department shall  
 21 deposit any funds so received in the account. The funds received  
 22 shall supplement existing resources for *department administration*  
 23 *and permitting of projects and ~~programs~~; programs included in*  
 24 *this chapter.*

25 (c) The department may impose a schedule of fees for projects,  
 26 based on the cost of a project, sufficient to recover all reasonable  
 27 administrative and implementation costs of the department relating  
 28 to the ~~project~~; *projects, but not to exceed fees adopted by the*  
 29 *department pursuant to Chapter 6 (commencing with Section 1600)*  
 30 *of Division 2 for standard lake or streambed alteration agreements*  
 31 *for projects of comparable cost.*

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