

Date of Hearing: July 1, 2021

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Eduardo Garcia, Chair

SB 716 (McGuire) – As Introduced February 19, 2021

**SENATE VOTE:** 39-0

**SUBJECT:** Habitat Restoration and Enhancement Act

**SUMMARY:** Extends the Department of Fish and Wildlife (DFW) Habitat Restoration and Enhancement Act (Act) sunset date from January 1, 2022 to January 1, 2027, and adds an additional departmental report to the Legislature due no later than December 31, 2025.

**EXISTING LAW:**

- 1) Prohibits any act which could directly or indirectly take threatened or endangered species listed under the California Endangered Species Act (CESA), as provided (Fish and Game Code[(FGC] § 2080).
- 2) Requires DFW authorization if an action could affect an endangered or rare native plant subject to certain exemptions for agricultural activities, timber operations or mining (FGC § 2081.2).
- 3) Requires a Lake and Streambed Alteration Agreement (LSAA) with the DFW in order to protect and conserve fish and wildlife resources if an activity could change the bed, bank, or channel of a stream or lake (FGC § 1602).
- 4) Establishes the Act (FGC §§1650 *et seq.*).
  - a) Specifies that a habitat restoration or enhancement project means a project with the primary purpose of improving fish and wildlife habitat. Requires a habitat restoration or enhancement project to meet the eligibility requirements for the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its equivalent, as specified. These are currently limited to five acres or 500 linear feet.
- 5) Authorizes, under the Act, a project proponent to submit a habitat restoration or enhancement project to the Director of the DFW for approval (FGC § 1650-1657).
  - a) The Director is required to approve a habitat restoration or enhancement project if the director determines that specified conditions are met.
    - i) The Act provides two different sets of requirements – one for projects that do not have Section 401 certification and one for those that do. The Director has 60 days to approve a project without Section 401 certification and 30 days to approve one with it.
    - ii) Approved projects by either pathway are required to submit notices of project completion to the Director and a monitoring report, as provided.

- b) The Director's approval of a habitat restoration or enhancement project under the act is in lieu of any other permit, agreement, license, or other approval issued by the DFW, such as the LSAA cited in (3) above.
- 6) Makes moneys in the Habitat Restoration and Enhancement Account available to DFW, upon appropriation by the Legislature, for the purposes of administering and implementing the Act.
- 7) Requires DFW to assess an application fee for a project submitted under the Act consistent with the fees for LSAA's, as provided.
- 8) Requires the DFW to submit a report on implementation of the Act to the Legislature no later than December 31, 2020, containing information on the approved projects, funding adequacy, and recommendations for changes and improvements in the program.
- 9) Repeals the Act on January 1, 2022.

**FISCAL EFFECT:** Unknown, this bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose for this bill.** According to the author,

The Habitat for Restoration and Enhancement Act (HREA) is one of many tools the state already has in place to create an expedited permitting process for small-scale habitat restoration projects. HREA was created by AB 2193 by then Assemblymember Gordon in 2014. The original program included a sunset of January 1, 2022. SB 716 will extend this important act to January 1, 2027. The HREA has consolidated the permitting process at the Department of Fish and Wildlife for landowners, state and local government agencies, and conservation organizations to expedite the implementation of small-scale, voluntary habitat restoration and enhancement projects. Eligible projects include revitalizing streams, removing barriers to fish passage, restoring wetlands and replenishing natural water supplies.

- 2) **Background.** The mission of DFW is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend for their ecological values and for their use and enjoyment of the public. AB 2193 (Gordon, Chapter 604, Statutes of 2014) established the Act, with the goal of facilitating the approval of small voluntary habitat restoration and enhancement projects by providing an expedited approval pathway for projects that meet certain criteria.

Before the Act was authorized, restoration projects of all sizes needed to first secure California Environmental Quality Act (CEQA), CESA, and Water Board permits, as well as LSAA's. This permitting process led to substantial backlogs and delays, limiting the ability of many small, voluntary restoration projects to be successfully implemented. The Act provides a more efficient process for reviewing and approving small, voluntary restoration projects, by limiting eligible projects to those of five acres or less, and requiring applicants to demonstrate, among other things, that the project is consistent with existing state or federal recovery plans and policies to provide a net benefit to affected habitats and species.

AB 2193 also required a report to the Legislature to be submitted by December 31, 2020, although the report has not yet been submitted.

According to the DFW, 93 projects have been approved through the act in 20 counties since its inception. Sonoma Water, in its letter of support, states that the process “has been used several times to implement fish passage improvement projects in the Russian River and its tributaries, contributing to implementation of the Russian River Biological Opinion.” (The Russian River Biological Opinion relates to the recovery of steelhead, coho salmon and chinook salmon.) Sanctuary Forest, in its letter of support, states that it has undertaken two streamflow enhancement projects under the act (beaver dam analogues and terrace infiltration ponds) to help improve low summer flows for endangered salmonids and “test innovative restoration strategies” for drought resilience and restoring native salmon populations. Sustainable Conservation, a nonprofit focused on improving the restoration process, reports that California Tribes, state and Federal Agencies, non-profit organizations, cities, private landowners, Resource Conservation Districts, and others have successfully implemented over 70 projects using the act.

*Current status of the Act.* Currently, this program is set to sunset on January 1, 2022. If allowed to sunset, the program would require significant new legislation to begin again, and projects currently hoping to use the act would likely be delayed. The DFW’s report to the Legislature will likely provide important information as to the efficacy of the program, and areas in need of improvement. When this report is received by the Legislature, additional legislation may be necessary to refine the program according to the detailed analysis provided by the department.

- 3) **Arguments in Support.** According to the California Habitat Conservation and Planning Coalition, “Governor Newsom’s Executive Order N-82-20 highlights the critical role California’s biodiversity plays in the state’s communities and economy and that biodiversity is in decline. The Executive Order specifically calls out the need to ‘[i]mplement actions to increase the pace and scale of environmental restoration and land management efforts by streamlining the State’s process to approve and facilitate these projects.’ The Act is a tool that already exists in the state’s toolbox to meet this need, enabling DFW to streamline the approval of voluntary habitat restoration projects and increase the pace and scale of implementing these projects. Extending the sunset by another five years and maintaining this successful policy will help implement EO N-82-20.”
- 4) **Related Legislation.**

AB 2193 (Gordon), Chapter 604, Statutes of 2014, establishes the Act, a permitting process with DFW for landowners, state and local governments, and conservation organizations seeking to implement small-scale, voluntary habitat restoration projects throughout California. Restoration and enhancement projects approved by DFW, pursuant to the Act, do not require additional permits from DFW, such as a LSAA or a CESA permit.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Alameda County Resource Conservation District  
Cachuma Operation and Maintenance Board  
California Association of Resource Conservation Districts  
California Forestry Association  
California Habitat Conservation Planning Coalition  
California Invasive Plant Council  
California Native Plant Society  
California Sportsman's Lobby (CSL)  
California Trout  
California Watershed Network  
Coarsegold Resource Conservation District  
Defenders of Wildlife  
Ducks Unlimited  
Eastern Kern County Resource Conservation District  
Environmental Science Associates  
Feather River Resource Conservation District  
Gold Ridge Resource Conservation District  
Honey Lake Valley Resource Conservation District  
Humboldt and Mendocino Redwood Companies  
Mariposa County Resource Conservation District  
Mojave Desert Resource Conservation District  
Nature Conservancy; the  
Northern California Water Association  
Outdoor Sportsmen's Coalition of California  
Pit Resource Conservation District  
Resource Conservation District of Tehama County  
Safari Club International, CA Coalition  
San Mateo Resource Conservation District  
Sanctuary Forest INC.  
Santa Clara Valley Open Space Authority  
Scott River Watershed Council  
Sonoma County Water Agency  
Sonoma Land Trust  
Sustainable Conservation  
Trout Unlimited  
Tuolumne River Trust  
Upper Salinas - Las Tablas Resource Conservation District

**Opposition**

None on file.

**Analysis Prepared by:** Nichole Holm / W., P., & W. / (916) 319-2096