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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	SB 716	<b>Hearing Date:</b>	April 15, 2021
<b>Author:</b>	McGuire		
<b>Version:</b>	February 19, 2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Katharine Moore		

**Subject:** Habitat Restoration and Enhancement Act

## BACKGROUND AND EXISTING LAW

Existing law establishes the California Department of Fish and Wildlife (department), led by its director (director). The department's mission 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. (Fish and Game Code (FGC) §712.1)

AB 2193 (Gordon, Chapter 604, Statutes of 2014) established the Habitat Restoration and Enhancement Act (act). The goal of the act was to help facilitate the approval of small voluntary habitat restoration and enhancement projects by providing an expedited approval pathway for projects that met certain criteria. As enacted, AB 2193 sunsets on January 1, 2022.

Existing law:

- 1) Prohibits any act which could directly or indirectly take threatened or endangered species listed under the California Endangered Species Act, as provided.
- 2) Requires department authorization if an action could affect an endangered or rare native plant subject to certain exemptions for agricultural activities, timber operations or mining.
- 3) Requires a Lake or Streambed Alteration Agreement with the department 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.
- 4) Establishes the Habitat Restoration and Enhancement Act (act) (FGC §§1650 *et seq.*).
  - a) A habitat restoration or enhancement project means a project with the primary purpose of improving fish and wildlife habitat. A habitat restoration or enhancement project shall 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 5 acres or 500 linear feet.
- 5) Authorizes, under the act, a project proponent to submit a habitat restoration or enhancement project to the director for approval.

- 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 on 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 department, such as the Lake and Streambed Alteration Agreement cited in (3) above.
- 6) Makes moneys in the Habitat Restoration and Enhancement Account available to the department, upon appropriation by the Legislature, for the purposes of administering and implementing the act.
  - 7) Requires the department to assess an application fee for a project submitted under the act consistent with the fees for Lake and Streambed Alteration Agreements, as provided.
  - 8) Requires the department 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) Existing law repeals the act on January 1, 2022.

## **PROPOSED LAW**

This bill would extend the sunset of the act until January 1, 2027, and require an additional legislative report providing information on the act on December 31, 2025.

## **ARGUMENTS IN SUPPORT**

Writing in support, Sustainable Conservation states “[t]he Habitat Restoration and Enhancement Act was enacted to create a simplified permitting process at the [department] for landowners, state and local government agencies, and conservation organizations to implement small-scale, voluntary habitat restoration and enhancement projects. The underlying basis for [this law] was that gaining the necessary agency approvals to implement habitat improvement and clean-water restoration projects can be time-consuming, complicated, and expensive, and, as a result, many project proponents forego opportunities to restore the natural resources under their care.”

“The expedited permit approval process for [the department] created by [this law] is a proven success with more than 70 projects implemented to date and the number of projects implemented annually continues to grow. Just under four projects were approved in 2015 under the [act’s] permitting process but that number has grown to more than 25 projects implemented in 2018 and 2019. Projects have been

implemented all over California, from San Diego to Modesto, Santa Barbara all the way up the coast to Crescent City and over to Truckee, [the act] has helped implement projects to restore habitat that protects and improves California's fish and wildlife."

## ARGUMENTS IN OPPOSITION

None received

## COMMENTS

Where's the report? New or pilot programs approved by the Legislature often have a legislative reporting requirement prior to the sunset of the program to help facilitate legislative oversight. One of the goals of a sunset provision is to provide for informed legislative review after a program has been implemented for a few years to help identify whether or not the program needs revision and/or warrants extension in law. The legislative report is required by law to be provided in advance of when legislative action is needed. The department has not complied with the legislative reporting requirement which significantly constrains the ability of the Legislature to evaluate the merits of this act.

Completed projects. Committee staff were unable to obtain a complete listing of all projects completed pursuant to the act. Apparently as of January 1, 2021, 93 projects had been approved in 20 counties. Sonoma Water, in its letter of support, stated 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. Sanctuary Forest states that without the act the projects would have been difficult to permit.

## SUPPORT

Alameda County Resource Conservation District  
California Association of Resource Conservation Districts  
California Forestry Association  
California Habitat Conservation Planning Coalition  
California Invasive Plant Council  
California Native Plant Society  
California Trout  
California Watershed Network  
Coarsegold Resource Conservation District  
Defenders of Wildlife  
Ducks Unlimited  
Eastern Kern County Resource Conservation District  
Environmental Science Associates  
Fall River Resource Conservation District  
Feather River Resource Conservation District  
Gold Ridge RCD  
Honey Lake Valley Resource Conservation District  
Humboldt and Mendocino Redwood Companies

Mariposa County Resource Conservation District  
Mattole Salmon Group  
Mojave Desert RCD  
San Mateo Resource Conservation District  
Northern California Water Association  
Outdoor Sportsmen's Coalition of California  
Pit Resource Conservation District  
Resource Conservation District of Tehama County  
Safari Club International  
Safari Club International Foundation  
Sanctuary Forest  
Santa Clara Valley Open Space Authority  
Scott River Watershed Council  
Sonoma Land Trust  
Sonoma Water  
Sustainable Conservation  
The California Sportsman's Lobby  
The Nature Conservancy  
Trout Unlimited  
Tuolumne River Trust  
Upper Salinas – Las Tablas RCD

**OPPOSITION**

None received

**-- END --**