

Assembly Bill No. 1961

CHAPTER 541

An act to add and repeal Chapter 9 (commencing with Section 6950) of Part 1 of Division 6 of the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor September 25, 2012. Filed with
Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1961, Huffman. Coho salmon: habitat.

Existing law requires the Department of Fish and Game to develop and implement a recovery strategy pilot program for the coho salmon and repeals that authority on January 1, 2014, but requires any recovery strategy that has been approved or implemented prior to that date to remain in effect.

Existing law also establishes the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act to protect and increase the naturally spawning salmon, steelhead trout, and anadromous, as defined, fishery resources of the state.

This bill, until January 1, 2018, would enact the Coho Salmon Habitat Enhancement Leading to Preservation Act (Coho HELP Act) and require the Director of Fish and Game to approve a coho salmon habitat enhancement project, as defined, if specified conditions are met as determined by the director, as prescribed. The act would create the Coho Salmon Recovery 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 Coho HELP 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, but not to exceed fees adopted by the department for standard lake or streambed alteration agreements for projects of comparable cost. The act would require the department to deposit fee revenues in the account. Moneys in the account would be available to the department, upon appropriation, for the purposes of administering and implementing the Coho HELP Act. The act would authorize the department to adopt emergency regulations for the implementation of the Coho HELP Act. The bill would appropriate \$37,500 from the Hatchery and Inland Fisheries Fund to the department to fund an engineer position employed on a half-time basis for the remainder of the 2012–13 fiscal year to review projects under the act.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The coho salmon (*Oncorhynchus kisutch*) is a fish native to many northern California coastal streams and consists of two distinct Evolutionary Significant Units (ESU), the Southern Oregon/Northern California Coast (SONCC) and the Central California Coast (CCC) ESUs. The historical range of the SONCC ESU includes coastal rivers and tributaries in Del Norte, Siskiyou, Humboldt, Trinity, Mendocino, and Lake Counties. The historical range for the CCC ESU includes coastal rivers and tributaries in parts of Humboldt, Mendocino, Sonoma, Napa, Marin, Solano, Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara, and Santa Cruz Counties.

(b) All coho salmon runs in California have declined dramatically over the past 40 to 50 years. Population numbers, including hatchery stocks, were estimated at 6 to 15 percent of 1940 levels in 2004. Since 2004, populations in all monitored streams have continued to decline with an estimated 1 percent remaining of the original population. While a few coastal rivers such as the Russian River did show an increase in population for 2011, it is not yet known whether the increase is sustainable, and the species remains at critical risk of extinction.

(c) Both the SONCC and the CCC ESUs are listed pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3). The populations south of the San Francisco Bay are listed as endangered and considered to be virtually extinct. The populations between San Francisco Bay and Punta Gorda to the north are listed as endangered, and the populations from Punta Gorda to the Oregon border are listed as threatened.

(d) California's salmon populations need freshwater habitat that includes cold and clean water, appropriate water depth, quantity, and flow velocities, upland and riparian vegetation to stabilize soil and shade, clean gravel for spawning and egg rearing, large woody debris to provide resting and hiding places, adequate food, and varied channel forms.

(e) An urgency exists due to the extraordinarily small numbers of coho salmon remaining in California. In order to prevent their extinction from northern California waters, it is imperative that habitat restoration efforts be expedited and increased as soon as possible.

(f) Therefore, it is the intent of the Legislature in enacting this policy that the department seek agreements and partnerships with state and federal agencies to efficiently and effectively permit habitat enhancement projects necessary to prevent the extinction of coho salmon populations in California coastal watersheds and that the department expedite and streamline the permitting and approval of coho salmon habitat enhancement projects, including, in particular, large woody debris restoration projects, in northern California streams.

(g) By eliminating barriers to fish passage, stabilizing banks, increasing stream channel complexity, and otherwise restoring and enhancing habitat, these projects will result in a net benefit to coho salmon and other species.

SEC. 2. Chapter 9 (commencing with Section 6950) is added to Part 1 of Division 6 of the Fish and Game Code, to read:

CHAPTER 9. COHO SALMON HABITAT ENHANCEMENT LEADING TO PRESERVATION

6950. This chapter shall be known and may be cited as the Coho Salmon Habitat Enhancement Leading to Preservation Act or Coho HELP Act.

6952. As used in this chapter:

(a) “Account” means the Coho Salmon Recovery Account created in subdivision (a) of Section 6954.

(b) “Coho salmon habitat enhancement project” or “project” means a restoration project within a region described in an adopted state or federal coho salmon recovery plan with the primary purpose of accomplishing one or more of the following:

(1) Modification of existing water crossings for the purposes of eliminating a barrier to fish passage. Modification includes the removal of road crossings, replacement of culverts, or both.

(2) Restoration of eroded or denuded streambanks by utilizing predominantly nonrock bioengineering practices and revegetating stream corridors with native riparian species. Restoration shall be focused on promoting tree establishment along the active channel and on streambanks for the purposes of bank stabilization, bank development, and live wood complexity.

(3) Wood placement that benefits naturally reproducing fish stocks by creating or enhancing fish habitat, increasing stream complexity, or both.

(c) “Coho salmon recovery plans” means the department’s Recovery Strategy for California Coho Salmon, the National Marine Fisheries Service’s Recovery Plan for the Evolutionary Significant Unit of Central Coast Coho Salmon, the National Marine Fisheries Service’s Recovery Plan for the Southern Oregon/Northern California Coast Evolutionary Significant Unit of Coho Salmon, or subsequently adopted coho salmon recovery plans.

(d) “Fish passage guidelines” means the department’s Coho Salmon Stream Restoration Manual, the National Marine Fisheries Service, Southwest Region, Guidelines for Salmonid Passage at Stream Crossings, either of those documents as they may be subsequently amended or updated, or salmonid fish passage project guidelines subsequently adopted by the department, the National Marine Fisheries Service, or both.

(e) “Project proponent” means a person, public agency, or nonprofit organization seeking to implement a coho salmon habitat enhancement project.

6953. (a) Notwithstanding any other provision of law, the director shall approve a coho salmon habitat enhancement project if the project will

maintain existing levels of human health and safety protection, including, but not limited to, flood protection, and meets all of the following requirements:

(1) The project is consistent with fish passage guidelines and coho salmon recovery plans.

(2) The primary project purpose is for voluntary restoration.

(3) The project is no larger than five acres or 500 linear feet in size, measured by calculating the direct area of impact.

(4) Completion of all phases of the coho salmon habitat enhancement project will not exceed five years.

(5) The project will not result in cumulative negative environmental impacts that are significant when viewed in connection with the effects of past, current, or probable future projects.

(b) The director's approval of a coho salmon habitat enhancement project pursuant to subdivision (a) shall be in lieu of any other permit, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3, Chapter 10 (commencing with Section 1900) of Division 2, and Chapter 6 (commencing with Section 1600) of Division 2.

(c) The director's approval of a coho salmon habitat enhancement project pursuant to subdivision (a) shall constitute an action taken by a regulatory agency, as authorized by state law, to ensure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

(d) Within 60 days after the director receives a written request to approve a coho salmon habitat enhancement project containing the information required pursuant to subdivision (e), the director shall determine whether substantial evidence exists that the coho salmon habitat enhancement project is consistent with subdivision (a).

(e) A written request to approve a coho salmon habitat enhancement project shall contain all of the following:

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

(2) A full description of the coho salmon habitat enhancement project that includes the design criteria used for the project, restoration or enhancement methods, an estimate of temporary restoration or enhancement-related disturbance, project schedule, and how the project will result in a net benefit to coho salmon and other affected species.

(3) A map clearly identifying the project location and photographs of the project site.

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

(5) A description of environmental protection measures incorporated into the project design, including, but not limited to, measures to avoid and minimize impacts to water quality and potentially present species protected

by state law, so that no potentially significant negative environmental impacts will result from the project.

(6) Substantial evidence to support a conclusion that the project meets the criteria set forth in this section. Substantial evidence shall cite relevant design criteria and environmental protection measures that are set forth in the fish passage guidelines and coho salmon recovery plans.

(f) (1) If the director determines at any time that the project is no longer consistent with subdivision (a), due to a material change between the project as submitted and the project being implemented or a change in environmental circumstances in the area of implementation, the director shall notify the project proponent in writing and project implementation shall be suspended or approval pursuant to this chapter revoked. Written notice from the director shall be delivered in person or by certified mail to the project proponent and shall specify the reasons why ministerial approval of the project was suspended or revoked. The approval for a project shall not be revoked pursuant to this subdivision unless it has first been suspended pursuant to this subdivision.

(2) Within 30 days of receipt of a notice of suspension, the project proponent may file an objection with the director. Any objection shall be in writing and state the reasons why the project proponent objects to the suspension.

(3) The director shall revoke approval or lift the suspension of project implementation within 30 days after the end of the objection period in paragraph (2).

6954. (a) The Coho Salmon Recovery Account is hereby created in the Fish and Game Preservation Fund.

(b) The department may enter into an agreement to accept funds from any public agency, person, business entity, or organization to achieve the purposes of this chapter. The department shall deposit any funds so received in the account. The funds received shall supplement existing resources for projects and programs that enhance the recovery of coho salmon.

(c) The department may 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, but not to exceed fees adopted by the department pursuant to Chapter 6 (commencing with Section 1600) of Division 2 for standard lake or streambed alteration agreements for projects of comparable cost. The department shall deposit fee revenues in the account.

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

6955. The department may adopt emergency regulations for the implementation of this chapter. Emergency regulations adopted pursuant to this section, any amendment thereto, or subsequent adjustments to the regulations, shall be adopted by the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency

and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department shall remain in effect until revised by the department.

6956. This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 3. The sum of thirty-seven thousand five hundred dollars (\$37,500) is hereby appropriated from the Hatchery and Inland Fisheries Fund established in Section 13007 of the Fish and Game Code to the Department of Fish and Game to fund an engineer position employed on a half-time basis for the remainder of the 2012–13 fiscal year due to the urgent need to enhance the early review of projects under the Coho Salmon Habitat Enhancement Leading to Preservation Act (Chapter 9 (commencing with Section 6950) of Part 1 of Division 6 of the Fish and Game Code).