

**ASSEMBLY BILL**

**No. 1961**

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**Introduced by Assembly Member Huffman  
(Coauthor: Assembly Member Chesbro)**

February 23, 2012

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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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1961, as introduced, 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 would establish the Coho Salmon Habitat Enhancement Leading to Preservation Act (Coho Act) and require the department to approve a coho salmon habitat enhancement project, as defined, if specified conditions are met as determined by the director of the department, as prescribed. This bill would create the Coho Salmon Recovery Account within the Fish and Game Preservation Fund and permit the department to enter into an agreement to accept funds to achieve the purposes of the Coho Act and deposit those funds into that account. This bill would authorize the department to adopt emergency

regulations for the implementation of the Coho Act. This bill would repeal the provisions of the Coho Act on January 1, 2018.

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 6950) is  
2 added to Part 1 of Division 6 of the Fish and Game Code, to read:

3  
4 CHAPTER 9. COHO SALMON HABITAT ENHANCEMENT LEADING  
5 TO PRESERVATION  
6

7 6950. This chapter shall be known and may be cited as the  
8 Coho Salmon Habitat Enhancement Leading to Preservation Act.

9 6951. The Legislature finds and declares all of the following:

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

21 (b) All coho salmon runs in California have declined  
22 dramatically over the past 40 to 50 years. Population numbers,  
23 including hatchery stocks, were estimated at 6 to 15 percent of  
24 1940 levels in 2004. Since 2004, populations in all monitored  
25 streams have continued to decline with an estimated 1 percent  
26 remaining of the original population. While a few coastal rivers  
27 such as the Russian River did show an increase in population for  
28 2011, it is not yet known whether the increase is sustainable, and  
29 the species remains at critical risk of extinction.

30 (c) Both the SONCC and the CCC ESUs are listed pursuant to  
31 the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531  
32 et seq.) and the California Endangered Species Act (Chapter 1.5  
33 (commencing with Section 2050) of Division 3). The populations

1 south of the San Francisco Bay are listed as endangered and  
2 considered to be virtually extinct. The populations between San  
3 Francisco Bay and Punta Gorda to the north are listed as  
4 endangered, and the populations from Punta Gorda to the Oregon  
5 Border are listed as threatened.

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

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

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

26 6952. For the purposes of this chapter:

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

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

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

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

4 (b) “Coho salmon recovery plans” means the department’s  
5 Recovery Strategy for California Coho Salmon, the National  
6 Marine Fisheries Service’s Recovery Plan for the Evolutionary  
7 Significant Unit of Central Coast Coho Salmon, the National  
8 Marine Fisheries Service’s Recovery Plan for the Southern  
9 Oregon/Northern California Coast Evolutionary Significant Unit  
10 of Coho Salmon, or subsequently adopted Coho salmon recovery  
11 plans.

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

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

22 6953. (a) Notwithstanding any other provision of law, the  
23 department shall approve a coho salmon habitat enhancement  
24 project if it will maintain existing levels of human health and safety  
25 protection and is consistent with both of the following:

26 (1) Fish passage guidelines.

27 (2) Coho salmon recovery plans.

28 (b) Within 30 days after the department receives a written  
29 request to approve a coho salmon habitat enhancement project  
30 containing the information required pursuant to subdivision (c),  
31 the director shall determine whether the coho salmon habitat  
32 enhancement project is consistent with subdivision (a). If the  
33 director determines within that 30-day period, based upon  
34 substantial evidence, that the coho salmon enhancement project  
35 is consistent with subdivision (a), no further departmental approval  
36 shall be necessary.

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

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

4 (2) A full description of the coho salmon habitat enhancement  
5 project that includes the design criteria used for the project, best  
6 management practices incorporated in the project design, and a  
7 map clearly identifying the project location.

8 (3) Substantial evidence to support a conclusion that the project  
9 meets the criteria set forth in this section. Substantial evidence  
10 shall cite to relevant design criteria and best management practices  
11 that are set forth in the fish passage guidelines.

12 (d) (1) If the director determines at any time that the project is  
13 no longer consistent with subdivision (a), the director shall notify  
14 the project proponent in writing and project implementation shall  
15 be suspended or approval pursuant to this chapter revoked. Written  
16 notice from the director shall be delivered in person or by certified  
17 mail to the project proponent and shall specify the reasons why  
18 ministerial approval of the project was suspended or revoked. The  
19 approval for a project shall not be revoked pursuant to this  
20 subdivision unless it has first been suspended pursuant to this  
21 subdivision.

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

26 (3) The director shall make a decision whether to revoke  
27 approval or to lift the suspension of project implementation within  
28 30 days after the end of the objection period in paragraph (2).

29 6954. The department may enter into an agreement to accept  
30 funds from any person, business entity, or organization to achieve  
31 the purposes of this chapter. Any funds so received shall be  
32 deposited in the Coho Salmon Recovery Account which is hereby  
33 created in the Fish and Game Preservation Fund. The funds  
34 received shall supplement existing resources for projects and  
35 programs that enhance the recovery of Coho salmon.

36 6955. The department may adopt emergency regulations for  
37 the implementation of this chapter. Emergency regulations adopted  
38 pursuant to this section, any amendment thereto, or subsequent  
39 adjustments to the regulations, shall be adopted by the department  
40 in accordance with Chapter 3.5 (commencing with Section 11340)

1 of Part 1 of Division 3 of Title 2 of the Government Code. The  
2 adoption of any such regulations is an emergency and shall be  
3 considered by the Office of Administrative Law as necessary for  
4 the immediate preservation of the public peace, health, safety, and  
5 general welfare. Notwithstanding Chapter 3.5 (commencing with  
6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
7 Code, any emergency regulations adopted by the department shall  
8 remain in effect until revised by the department.  
9 6956. This chapter shall remain in effect only until January 1,  
10 2018, and as of that date is repealed, unless a later enacted statute,  
11 that is enacted before January 1, 2018, deletes or extends that date.