

Date: February 09, 2015

**To: The Honorable Shemia Fagan, Chair
House Committee On Consumer Protection and
Government Effectiveness**

House Bill 4106

**Shannon Hurn, Deputy Director for Fish and Wildlife Programs
Oregon Department of Fish and Wildlife**

Good afternoon Chair Fagan and members of the Committee. Thank you for the opportunity to discuss House Bill 4106 with you today. HB 4106 as Introduced would prohibit state agencies from relying on expediency, convenience, best interest of the public, or general public need or speculation as a basis for finding of prejudice that authorizes temporary adoption, amendment, or suspension of rule. The Oregon Department of Fish and Wildlife (Department) understands that, at present, this would apply to many of the temporary rules adopted by the Oregon Fish and Wildlife Commission.

Oregon Administrative Rules (OARs) for fish and wildlife are adopted by the state Fish and Wildlife Commission pursuant to ORS 496.138. Temporary rules may be adopted, amended, repealed, suspended temporarily, for up to 180 days using the procedures outlined in the Oregon Attorney General's Administrative Law Manual.

Secretary of State's office acts as an initial gatekeeper on the legitimacy of temporary rules. By drafting the Statement of Need and Justification as part of the Certificate and Order for Filing of Temporary Administrative Rules the Department documents the purpose and need for the rule, and relies on the best interest of the public in a significant portions of those justifications.

Upon review of the last two years of temporary rules the Department found it adopts temporary rules for one of four reasons; 1) correction of inadvertent errors, 2) implementation of settlement/negotiated agreements, 3) rule changes to correct unintended/negative outcomes and 4) closures or modifications to opportunity in response to emergency situations.

Hunting opportunity is often reduced or expanded by temporary rule to increase use or protect the resource following a fire, disease outbreak, change in access, etc. This can include reinstating preference points for successful applicants in the controlled hunt draw following a significant forfeiture of opportunity in that hunt.

Negotiated settlement agreements and government-to-government consultations often warrant immediate action; ex. Annual tribal fisheries and hunting seasons and the 2013 Gray Wolf Settlement Agreement.

Temporary rules often provide the ability to maximize fishing opportunities within our conservation mandates, including Federal Endangered Species Act limitations. As an example, permanent rules for salmon and steelhead fishing on the Columbia River are more conservative than what are typically implemented annually. Modifications to liberalize these fisheries are made using temporary rules based on best available science, in particular in-season assessment of stock status. These temporary rules allow for substantially increased opportunity for both commercial fishers and sport anglers.

If temporary rules adopted “in the best interest of the public” were restricted, and given the uncertainties across years, the agency would be forced in many circumstances to rely upon standard, and more conservative, permanent rules to implement hunting and angling opportunity. At a minimum, this would result in reduced fishing opportunities in all Columbia River fisheries (sport/commercial/tribal, salmon/steelhead/sturgeon), ocean salmon (commercial and sport), ocean nearshore fish species (commercial and sport), NE Oregon salmon/steelhead sport fisheries, and coastal river coho salmon sport fisheries.

The Department appreciates the opportunity to provide testimony on use of temporary rules in relation to fish and wildlife management.

CONTACTS:

Shannon Hurn, Deputy Director, 503 947-6072