

SB 3 -8 STAFF MEASURE SUMMARY

Senate Committee On Environment and Natural Resources

Prepared By: Beth Patrino, LPRO Analyst

Meeting Dates: 2/6, 3/27

WHAT THE MEASURE DOES:

Adds habitat essential to recovery and conservation of Pacific lamprey to areas covered by moratorium on motorized placer mining in effect until January 1, 2021. Adds to moratorium all tributaries if confluence of tributary is above lowest extent of river segment containing habitat covered by moratorium. Removes cap on permit issuance in areas not affected by moratorium. Changes violation of moratorium from Class A misdemeanor to Class A violation.

Effective January 2, 2019 removes upland areas from moratorium and establishes permit requirement for upland motorized placer mining. Authorizes Department of Geology and Mineral Industries (DOGAMI) to limit reclamation requirements or financial assurances applicable to such upland permits. Restricts use of motorized equipment to between hours of 9 a.m. and 5 p.m. Establishes as Class A violation upland placer mining without permit or violation of equipment use hours.

Effective January 3, 2021 requires permit under removal/fill laws for motorized instream placer mining and permit under water quality laws for discharge to waters of state from motorized instream placer mining operation or activity. Requires Directors of Department of Environmental Quality (DEQ) and Department of State Lands (DSL) to enter into memorandum of understanding providing for DEQ to issue permits under removal fill laws. Authorizes issuance of consolidated permit under specified circumstances. Lists areas where motorized instream placer mining is not allowed in beds or banks of waters of the state, including areas designated as biological resource habitat and areas listed as water quality impaired. Defines "biological resource habitat" to include essential indigenous anadromous salmonid habitat and habitat essential to recovery and conservation of Pacific lamprey, bull trout and freshwater mollusks. Authorizes DEQ, DSL and Department of Fish and Wildlife to further define biological resource habitat by rule. Allows waiver of mining prohibition in permit issued to holder of federal mining claim to extent applicant demonstrates exercise of prohibition will violate federal law or result in regulatory taking. Requires applicant seeking waiver to submit substantial evidence specific to mining claim. Establishes permit requirements including but not limited to movement of rock or large woody debris, prevention or mitigation of social conflict due to noise, and protection of cultural and high value natural resources. Establishes penalties.

Applies invasive species check station law to person transporting motorized equipment used for motorized instream placer mining. Directs DEQ, DOGAMI and DSL to coordinate with United States Forest Service and Bureau of Land Management to determine if state and federal mining programs can be better coordinated. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Areas where moratorium currently applies
- Proposed regulatory system
- Which resources are intended to be protected under proposal

EFFECT OF AMENDMENT:

-8 Replaces measure. Repeals moratorium on mining using motorized equipment. Defines terms, including "motorized in-stream placer mining." Prohibits motorized instream placer mining up to ordinary high water line in any river containing essential indigenous anadromous salmonid habitat from the lowest to highest extent of that habitat. Establishes that prohibition does not apply to the use of non-motorized equipment, including but not limited

SB 3 -8 STAFF MEASURE SUMMARY

to gravity dredges and syphon dredges. Prohibits person engaged in motorized instream placer mining operation from allowing a discharge to waters of the state without having an individual permit or being covered by a general permit issued under ORS 469B.050 (water quality permit). Sets permit application requirements. In addition to any other permit condition, prohibits the operation of motorized equipment:

- Between the hours of the earlier of 8:00 PM or sunset and 8:00 AM within 1000 feet of a residence or campground;
- With a suction hoes with an inside diameter exceeding 4 inches; or
- In a manner deleterious to freshwater mollusks, essential indigenous anadromous salmonid habitat, or habitat essential to the recovery and conservation of Pacific Lamprey.

Allows waiver of condition on hours of operation to federal mining claim owner to the extent applicant demonstrates that the exercise of the prohibition will violate federal law or result in a regulatory taking requiring compensation.

Requires applicant seeking waiver to provide substantial evidence specific to the mining claim in question. Directs Department of Environmental Quality to review and make determination on application for waiver.

Establishes \$250 fee for general permit application and \$250 annual fee.

Establishes person commits offense of unlawful motorized instream placer mining if person knowingly engages in mining without a permit or in violation of any rule, permit, order, or any applicable requirement. Establishes unlawful motorized instream mining as a Class A violation. Allows enforcement officer to issue citation when conduct alleged to constitute a violation has not taken place in presence of officer, if officer has reasonable grounds to believe conduct constitutes a violation based on information received from a DEQ employee.

Repeals Suction Dredge Study statutes and transfers any funds remaining in study fund to DEQ.

BACKGROUND:

Senate Bill 838 (2013) imposed a moratorium from January 2, 2016 until January 2, 2021 on motorized mining for precious metals instream and upland of rivers and tributaries with essential indigenous salmon habitat or naturally reproducing populations of bull trout. In areas where the moratorium did not apply, the measure capped the issuance of permits for such mining at 850 during this time period. Senate Bill 838 also directed the Governor's Office to work with state agencies and other interested parties to conduct a study and make recommendations for a revised regulatory framework for suction dredge mining.

Senate Bill 3 would extend the application of the moratorium on motorized mining for precious metals to areas instream and upland of rivers and tributaries with habitat essential to the recovery and conservation of Pacific lamprey. As of January 2, 2019, the moratorium applicable to upland mining would end and be replaced by a permit system administered by the Department of Geology and Mineral Industries. The instream moratorium would continue until January 3, 2021 when a new permitting process governed by a memorandum of understanding between the Departments of Environmental Quality and State Lands would begin. In addition to this permit system, the measure would prohibit instream motorized mining in the beds or banks of specified waters of the state, including those areas designated as biological resource habitat. Such habitat is defined to include essential indigenous anadromous salmonid habitat and habitat that is essential to the recovery and conservation of Pacific lamprey, bull trout and freshwater mollusks. Senate Bill 3 would also apply to instream motorized mining equipment to laws governing invasive species check station requirements.