



American Fisheries Society Oregon Chapter

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RE: OREGON CHAPTER OF THE AMERICAN FISHERIES SOCIETY TESTIMONY CONCERNING HOUSE BILL 2298 RELATING TO ENVIRONMENTAL RESTORATION WEIRS

Chair Golden, Vice Chair Heard, and members of the Senate Committee on Natural Resources and Wildfire Recovery:

The Oregon Chapter of the American Fisheries Society (ORAFS) comprises over 500 fisheries and aquatics science professionals from federal, state, and tribal agencies, colleges and universities, diverse private employers, college students, and retirees. ORAFS was established in 1964 as a chapter of the American Fisheries Society. Our mission is to improve the conservation and sustainability of Oregon fishery resources and their aquatic ecosystems for long-term public benefit by advancing science, education and public discourse concerning fisheries and aquatic science and by promoting the development of fisheries professionals.

HB 2298 follows similar “artificial beaver dam” bills from the 2019 (HB 3132), 2016 (SB 1518), and the 2015 (HB 3217A) sessions. Although HB 2298 is in some ways an improvement over previous bills, ORAFS continues to oppose the proposed bill as implementation of the bill has the potential to harm Oregon’s desert basin streams and their associated unique fish communities. ORAFS has identified five primary concerns with HB 2298.

- 1) Oregon Department of State Lands (ODSL) currently has a regulatory framework in-place that regulates fill-removal activities in Oregon streams and wetlands. The existing fill-removal permitting program is sufficient to regulate rock grade control structures and check dams, an appropriate terminology for the proponent’s “environmental restoration weirs” technique. Environmental restoration weirs should be regulated as other stream restoration practices are, and weirs should be subject to the ODSL permit process. The U.S. Army Corps of Engineers (USACE) Section 404 permitting process provided a permitting backstop for previous versions of this bill. With changes to the Waters of the United States, USACE no longer regulates fill and removal activities in Oregon’s closed basins, and therefore, the former USACE regulatory process is no longer in place as a backup regulatory process that can be relied upon to fill the void created by this bill. Passage of HB 2298 would allow unregulated placement of fill in prescribed waters of the State.
- 2) The environmental restoration weirs, as proposed, do not incorporate fish passage considerations. Oregon Department of Fish and Wildlife (ODFW) has a fish passage program that assists landowners with projects to ensure fish passage for instream projects. The proponent’s structures should be required to meet the State’s fish passage statute (OAR 412 – Fish Passage). The fish passage permit application is not burdensome and requires less information and effort to complete relative to the ODSL permit applications. HB 2298 also puts the onus on ODFW to determine that native migratory fish have returned to the qualifying stream. If ODFW determines that a fish passage solution is necessary, the landowner would be required to complete a more rigorous design process than may have been initially followed in building the environmental restoration weir.
- 3) Eastern Oregon streams have variable streamflow regimes that are influenced by climate and seasonal weather, geology, and water use. HB 2298 would allow construction of environmental restoration weirs on streams with less than 1 cfs of streamflow during at least 2 months of the year. While these thresholds improve upon previous versions of this bill, this provision would still allow environmental restoration weirs on many streams that could provide important habitat for native fish species. The bill proponents also do not assign responsibility for streamflow measurement or state how this information would be shared.

- 4) Previous version of HB 2298 focused environmental restoration treatments only on the Silvies Valley Ranch. HB 2298 does not include this limitation, but rather, the bill would extend qualifying streams to the extent of closed basins east of the Cascade Range, and therefore, practices included in HB 2298 will have much broader impacts than under previous versions of the bill. For perspective, the Silvies Valley Ranch covers 225 square miles (Silvies Valley Ranch 2020) whereas Oregon's closed basins encompass 17,523 square miles (USBLM 2021). Within the closed basin's boundary, private land accounts for 12% of land ownership, 20% of perennial streams, and 12% of intermittent streams. Nearly a quarter (24%) of Great Basin Redband Trout (*Oncorhynchus mykiss newberrii*, USFWS Species of Concern and ODFW Sensitive Species) habitat is located in streams through privately owned property (ODFW 2020). Since environmental restoration weirs could be built without meeting fish passage criteria, the weirs have the potential to block access to a considerable amount of fish spawning and juvenile rearing habitat. Similarly, weirs may also exclude fish from accessing cold water refuges that are critical for maintaining fish populations in Eastern Oregon streams that experience summertime warming due to climate change, low streamflow, and high solar exposure caused by degraded riparian vegetation communities.
- 5) The proponents also propose HB 2298 not require compliance with the Oregon Forest Practices Act and bill passage would allow for the removal of brush and trees from streambanks and riparian areas. Removal of native vegetation communities increases the potential for streambank erosion, stream warming, and riparian, aquatic habitat, and water quality degradation.

ORAFS strongly supports restoring incised streams when efforts include the best available science. ORAFS suggests the bill proponents research and apply established techniques that restore incised streams and riparian communities while also ensuring fish passage and fish access to important seasonal habitats that support Great Basin Redband Trout and other desert fish species unique to Oregon. We suggest, at a minimum, the bill be modified to restrict implementation to the Silvies Valley Ranch so that the proponents, ODFW, and ODSL can review program effects before such a program is rolled out to the significantly greater extent of Oregon's ecologically valuable closed basins. Thank you for the opportunity to submit our opposition to HB 2298.

Respectfully,



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