



HB 4148 – Letter in Opposition

February 07, 2022

Dear Members of the Oregon Legislature:

Our organizations have long been involved in efforts to restore fish habitat in Oregon and advocacy for related environmental policies. However, we do not support HB 4148. The bill presents significant concerns to our organizations, and appreciable risks to Oregon's rivers, streams, wetlands and aquatic species. The proposed amendments to the bill do not address or resolve these concerns, which include, but are not limited to:

HB 4148 significantly alters Oregon's permitting and removal fill laws and expands exemptions:

- Section 3(1) of the bill's -3 proposed amendment provides the Oregon Department of Agriculture (ODA) with rulemaking authority and an obligation to develop and oversee this mitigation credit program. This removes Oregon's Department of State Lands (DSL) from the lead role in overseeing laws and programs it has long-standing experience in administering, and instead vests a sister agency without the expertise and program staff for this work.
- Section (3)(5) of the bill (and (3)(6) of the -3 amendment) exempts all salmon credit projects from permitting for the removal and/or fill of materials in the waters of the state. As such, a credit-generating project of any size, of any type, and in any location would be exempt from the current legal framework that protects Oregon's aquatic habitats and species that rely upon them.

HB 4148 does not provide for tribal consultation or state and federal fisheries agency review: HB 4148 grants DSL (or ODA, as per bill amendments) the sole authority to approve salmon credit projects and administer the overall program, with no direct role for or input from ODFW, DEQ, Tribes and/or federal agencies (NOAA, USFWS). Further, the -3 proposed amendment (Sec. 10) would vest oversight in an Advisory Council that includes one tribal member but lacks agencies with fish and habitat expertise

as well as legal responsibility. Instead, the proposed 11-member Council, would be dominated by agricultural, timber, sport and commercial fishing or tourism representatives.

Granted, habitat restoration projects can provide benefits when done right. They can also negatively impact habitat, ecological functions and cultural resources when not done carefully. Given HB 4148 would govern approval of salmon habitat restoration projects, it is inappropriate to first carve out a new permit exemption and subsequently allow credit project approvals without co-direction from state, tribal and federal expertise. Similarly, fisheries experts are not included in bill direction to identify suitable lands, establish credit program requirements, determine function and value of water resources, etc.

HB 4148 fails to ensure “no net loss” of functional habitat: At its core, the bill proposes a program that would allow commercial or industrial development to harm functioning salmonid habitat in Place A, but offset that by buying credits tied to ostensibly new habitat created elsewhere in a watershed / Place B (i.e., the Coquille watershed, as per the amendments). We do not think this bill would accomplish that goal. Salmonid biology and life histories are tremendously complex, and a guaranteed result of this bill would be further streamlining of development that harms fish and other aquatic resources. Yet, we see no mechanisms that ensure true offsets or “no net loss” to that same resource. We see numerous routes by which this program could cause a cumulative harm to the state’s resources, and fewer ways in which it would be beneficial.

Existing law already allows exemptions for restoration projects from removal fill permits: Current law already allows permit exemptions for certain restorations projects. However, unlike this bill, current exemptions have science-based, protective parameters for Oregon’s aquatic habitats.

Existing law already allows for mitigation/banking credits: Existing law (ORS 196.600-655) already allows for mitigation/banking to offset removal fill impacts, including the state’s stream credit program. DSL has crafted rules for this program. It is operational, provides streamlining efficiencies to developers, and has important checks and balances not found in this bill. It is unclear why the salmon habitat improvement objectives of this bill couldn't be achieved through the current program.

HB 4148’s approval process provides no assurances that projects will help salmon, let alone prevent harm to existing streams, wetlands and other aquatic habitats and species: The approval process for credit-generating projects would not allow DSL (or ODA, under the amendments) to make informed decisions on whether to approve or deny a project. The bill does not allow for input from fisheries experts on applications, does not allow for public review/comment, and does not include requirements that an application include engineering plans or other information typically involved in a restoration project. There is no opportunity for site visits in advance of approval. The approval period is limited to 30 days (or 60 under the -3 amendments). There are no substantive standards required to be met for approval. These shortcomings add to concerns over whether this bill would create credit-generating projects that provide actual environmental benefits.

Proven legal tools already exist for landowners that want to restore habitat, protect those areas in perpetuity, and receive compensation for those efforts: HB 4148 is presented as something that will provide a currently unsatisfied means to fund conservation efforts on private land and compensate landowners for the environmental benefits provided by their land, but numerous grant programs are already available to fund salmon restoration efforts on private land. Likewise, there are already land trusts and government agencies working to purchase conservation easements on private lands across the state and pay landowners for those property interests. Landowners that grant a conservation easement are then free to use the relevant payment as they wish – including investments that would pay annual dividends like the Salmon Credit Trust Fund.

Conclusion: We oppose HB 4148.

The -3 amendment that would limit credit-generating project work to the Coquille River watershed does not resolve the above bill concerns, and raises some additional issues. Coquille salmon populations are currently in steep decline and there is interest in tribal co-management of the fishery. This adds complexity to the proposed imposition of a new mitigation crediting program. A more comprehensive and coordinated conversation is needed related to the basin's future than what this bill or a short session provides.

Contacts:

- Brett Brownscombe, Wild Salmon Center (bbrownscombe@wildsalmoncenter.org)
- Kimberley Priestley, WaterWatch of Oregon, (kjp@waterwatch.org, 503-294-4039 x 3)
- James Fraser, Trout Unlimited (james.fraser@tu.org, 971-278-8085)
- Jennifer Fairbrother, Native Fish Society (jennifer@nativefishsociety.org, 503-344-4218)
- David Moskowitz, The Conservation Angler (david@theconservationangler.org, 971-235-8953)
- Emily Bowes, Rogue Riverkeeper (emily@rogueriverkeeper.org)
- Julia DeGraw, Oregon Conservation Network / OLCV (julia@olcv.org)