

Agenda Item Summary

BACKGROUND

Oregon law mandates fish passage at dams, diversion structures, culverts, or other human made artificial obstructions placed in waters of the state that precludes or prevents the migration of native migratory fish. These laws predate statehood. The premise of Oregon's fish passage legislation (ORS 509.580 - .901) signed into law in 2001 by the 71st Oregon Legislative Assembly was to craft legislation that combined the existing statutes into one meaningful piece of legislation that was reasonable for owners/operators of artificial obstructions (allow time to plan for the financial burden of future passage trigger events), provide benefits to fish that migrate for their lifecycle needs, and had ample flexibility for the Commission to waive passage requirements under appropriate circumstances. The legislation was crafted in a way to encourage cooperation and minimize the burden to owners and operators of artificial obstructions, while maintaining the authority of the Commission to enforce its laws. This legislation was intended to complement, not repeal, any related authority under other state and federal laws.

Consistent with this statute, the intent and primary method for implementing fish passage policy is through active collaboration and cooperation between the Department and owners and operators of fish passage impediments, not an increase in enforcement orders from the Department or Commission. This law requires the installation of fish passage or alternatives at the owner/operator's expense at all artificial obstructions in bodies of water where native migratory fish are currently or were historically present. Activities that invoke state fish passage authority includes:

- construction (major replacement or structural modifications) of an artificial obstruction
- abandonment of an artificial obstruction
- fundamental change in permit status at an artificial obstruction

These trigger events were chosen as the appropriate time to address fish passage because it was assumed an owner or operator of the obstruction could anticipate the costs of fish passage into the costs of major structural upgrades, original or replacement construction, or a request for a significant change at the obstruction (such as seeking a license, re-license, reauthorization or new water rights). In conjunction with these trigger events this legislation delegated administrative authority to the Commission and the Department. These responsibilities range from developing and maintaining a statewide inventory of priority artificial obstructions, reviewing and approving fish passage plans or alternatives to fish passage (waivers and exemptions), performing benefit analyses of passage alternatives, reporting to the legislature, developing fish passage criteria, administering cost sharing for voluntary projects, and enforcement.

Projects seeking fish passage waivers were recently presented to the

Commission. These waiver requests generated many questions during the Commission approval process. We anticipate there may be an increase in projects requesting passage waivers in the future and we believe it prudent to provide a briefing to inform the Commission and offer more background and history on fish passage authority, rules, and regulations. Additionally, the Department is working on new fish passage initiatives. These include: fish passage banking alternatives, net benefit analysis tools, a culvert repair programmatic pilot project with the Department of Transportation, programmatic approval with the USFWS and NOAA to provide incentives to voluntarily restore fish passage, Tillamook-Nestucca Basin Fish Passage Partnership, and new tide gate design criteria in estuarine ecosystems. These fish passage initiatives may require future Commission approval.

The intent of this informational briefing is to provide the context and background in advance of future fish passage agenda items and subsequent Commission decisions; and provide a more thorough understanding of Oregon's fish passage rules, regulations, and related Commission and Department authorities.

PUBLIC INVOLVEMENT

Not applicable, informational only.

ISSUE 1

PROVIDE INFORMATIONAL BRIEFING ON OREGON'S FISH PASSAGE POLICY AND RULES AND CONTEXT AND BACKGROUND IN ADVANCE OF FUTURE AGENDA ITEMS AND SUBSEQUENT COMMISSION DECISIONS.

ANALYSIS

Not applicable, informational only.

OPTIONS

Not applicable.

**STAFF
RECOMMENDATION**

Not applicable.

DRAFT MOTION

Not applicable.

EFFECTIVE DATE

Not applicable.