



## Association of Northwest Steelheaders

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Established 1960

April 4, 2019

HB 2437-3

House Committee on Agriculture and Land Use

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We provide the following testimony on HB 2437-3 to supplement our testimony submitted on January 30, 2019 concerning the original bill.

We appreciate the work the Committee, staff, agencies, and stakeholders have done to revise HB 2437-3. The revisions incorporated in the “Dash 3” version currently before the Committee address a number of the concerns that we and others raised regarding the original bill and significantly improve the bill in terms of lessening potential impacts on salmonid habitat.

Of particular import, (1) the notice-based agricultural drainage channel maintenance program authorized by the bill will not apply to stream areas designated as Essential Indigenous Anadromous Salmonid Habitat (ESH), and (2) the bill now provides for the Oregon Department of Fish and Wildlife (ODFW) to play a more substantive role and, where appropriate, to recommend additional conditions to be incorporated in channel maintenance activities.

While we still have concerns about aspects of the bill as noted in our original testimony (including potential adverse impacts to fish and wildlife habitat and to prospects for delisting of Oregon Coast coho<sup>1</sup>), we are mindful that the current removal/fill regulatory program administered by the Department of State Lands (DSL) is simply not working for farmers or for fish. In this regard, it is acknowledged that DSL has failed to effectively implement and enforce the current removal/fill laws as applied to agricultural channel maintenance and that farmers in large measure are not complying with those laws.

In order for the new notice-based program authorized by HB 2437-3 to be as successful as possible, we urge the legislature to provide adequate funding to ODFW and the Oregon Department of Agriculture to effectively implement, enforce, and monitor the program. In addition, we ask the legislature to provide adequate funding to Oregon State University to study the ecological impacts of this new program and provide recommendations for its improvement.

Thank you for taking our testimony into consideration.

Best regards,

*Brian McLachlan*

Brian McLachlan

On behalf of the Association of Northwest Steelheaders



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<sup>1</sup> NOAA-Fisheries has identified adequate state regulatory measures to protect Oregon Coast coho habitat as a key delisting criteria. *See* NOAA-Fisheries, Final ESA Recovery Plan for Oregon Coast Coho Salmon (2016) at S4-S7. The designation of coho habitat as ESH under state law affords this habitat certain protections (such as, for example, if enacted, the exclusion of ESH from operation of the agricultural channel maintenance program authorized in this bill). By definition, however, ESH includes only habitat of species listed as sensitive, threatened or endangered by a state or federal authority. ORS 196.810 (1)(g)(C). Defining ESH in this manner presents a “Catch 22” because the act of delisting may result in the undoing of the very regulatory protections of coho habitat that are necessary for delisting.