THE CONSERVATION ANGLER

Opposition to HB 2379 A-Engrossed
Related to Fish Return Goals and the
Operation of the Cole M. Rivers Fish Hatchery on the Rogue River

The Conservation Angler is opposed to HB 2379 A - Engrossed.

HB 2379 – The Original

Our organization testified in opposition to HB 2379 in its original form as introduced in the House Natural Resources Committee. HB 2379 placed the Legislature in the role of the Oregon Fish and Wildlife Commission, and ultimately usurped the executive function of managing the Oregon Department of Fish and Wildlife regarding hatchery production goals on the Rogue River.

If HB 2379-A were about the specific relating clause – "relating to fish return goals" – then the following two pages would be our testimony. Since HB 2379-A is not about fish return goals, the third page captures our testimony on this legislation and the issue it is about.

Regarding Fish Return Goals - Wild Fish Must be the Priority

The 2019 Legislative Session has seen its share of salmon discussions, but to date, the discussion has been focused on hatchery salmon and steelhead. What must not be ignored is the importance and status of wild salmon and wild steelhead. Wild fish should drive our discussions about salmon and steelhead in all of Oregon's rivers – from the Rogue and Chetco to the Willamette, Nehalem and the John Day and Grand Ronde.

While Oregon produces many hatchery salmon and steelhead,

1. Many important fisheries across Oregon are driven by relatively healthy and abundant wild populations of salmon, steelhead and trout.
2. It is the relative health of specific wild salmon and steelhead that controls the ability of anglers to harvest hatchery fish.
3. When wild populations are low, hatchery fish harvest is also very limited.
4. When hatchery stocks also return in low abundance, fisheries are often completely closed to ensure that the hatchery "broodstock" goals are met.
5. Oregon should manage its wild salmon and steelhead populations the same way we manage hatchery salmon and steelhead as noted in No. 4 above – where fisheries and monitoring are aimed at ensuring that wild fish make it back to natal rivers in adequate numbers over the course of their migration, preserving diversity of timing, size, age-class on the spawning beds.

Oregon needs wild fish.

It is essential that Oregon Legislative and Executive branches keep their focus on wild fish.

1. The unit of conservation for wild salmon and steelhead is the population and their connected habitat.
2. Fish managers must prioritize wild fish and ensure that fishery management does not prevent spawner escapement and egg deposition by population and by river for conservation.
3. Wild salmon and steelhead are place-based natural resources, adapting constantly to their home stream environments.
4. Therefore, state management must be organized to protect and provide habitat conditions and processes necessary for the returning wild fish and concurrently manage returning wild fish so that wild escapement and egg deposition criteria are set and met – before harvest is permitted.

5. Access to a connected migratory path must be the goal of habitat protection and management.
6. State land and water management agencies must be organized to protect the spawning and rearing habitats needed by wild salmon to persist throughout their birth, rearing, migration and return to the natal rivers of their birth.

Economic and Ecologic Factors Favor Wild Fish Management Priorities

Investing in protection of Oregon's Wild Salmon and Steelhead is a low-cost, locally-driven, river-by-river opportunity to provide social, economic and ecological benefits to more communities, more people and to 130 other species of wildlife that depend on returning wild salmon.

The effects of climate change have made forecasting salmon and steelhead returns a mere guess. It is also clear that wild populations are more resilient and adaptable to survive changing marine and freshwater conditions.

Focusing on wild fish will be more cost-effective for Oregon, which has real economic and ecologic impact across Oregon.

River Specific Management

Jim Lichatowich and Bill M. Bakke have developed a Summary of Best Practices for Wild Salmon Management and Sustainability based on establishing River Specific Management (RSM). It should be Oregon's long-term goal to apply RSM to all wild Pacific salmon and steelhead populations in the state. This approach is more consistent with the ecology of wild salmon and steelhead than the current management paradigm. This approach to management is already in place for may Atlantic salmon populations and rivers. RSM's basic elements are aimed to:

- Develop escapement targets for each species to achieve egg deposition and parr production goals.
- Develop habitat protection and restoration criteria that support spawning and juvenile rearing.
- Completely describe and maintain the biological diversity of each species/population.
- Prevent interbreeding between hatchery and wild fish, keeping the percent of hatchery fish on the spawning grounds (pHos) to no more than five percent.
- Each ODFW Management Region will be required to submit a biennial report that evaluates RSM implementation against compliance with the criteria. If, for example, the escapement target is not met, the region should explain what can be done to correct the deficit. The regional supervisor is responsible for approving the report and presenting results to the Fish and Wildlife Commission.

Adapted From: Wild Pacific Salmon: A Threatened Legacy (Lichatowich et al. (2018))

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HB 2379-A Is not only bad, but Worse than the Original

The Legislature should be focused on HB 2379-A's relating clause - "Relating to fish return goals"

HB 2379 – A – Engrossed is not about fish return goals.

HB 2379 – A – Engrossed is about changing a legal statute of limitations so that three Oregon Counties can re-establish their standing in a possible court case – long after their legal rights to challenge the operations have expired.

This is a significant public policy issue that requires that HB 2379 – A Engrossed be passed back to the Senate President's Desk for consideration by the Senate Judiciary Committee where these important public policy matters of law are rightly to be debated.

Reasons to Oppose HB 2379 A-Engrossed

1. The bill as currently drafted inappropriately re-creates a significant legal right in three counties by changing the statute of limitations. While there are times and circumstances where a time limit deserves to be changed, this is not one of them. HB 2379 would set a dangerous legal precedent in re-setting the legal timeclock in the way this has occurred in the House NR Committee.

2. HB 2379 A-Engrossed should be transferred to the House or Senate Judiciary Committees for a more complete review and analysis by a relevant committee more experienced in weighing the changing in legal rights afforded by any bill that changes the rights of multiple parties.

3. The May 1972 Final Environmental Impact Statement (FEIS) does not say what HB 2379 A-Engrossed says it says. Here is the exact FEIS language:

> "It is estimated that the stretch of river from the dam upstream provides spawning area for 13,020 spring chinook and 500 summer steelhead. Production at Cole M. Rivers Hatchery will be sufficient to cover those losses. Annual production will be about 425,000 pounds which is equivalent to about 3,500,000 fingerlings. The 11-mile length of stream to be inundated also will be lost as natural habitat for resident rainbow and cutthroat trout. Stream fishing for the resident and anadromous species along the inundated stream will be lost and replaced by a reservoir fishery. While the total harvest of resources may not change or may increase, the type of fishing experience will change to a lake type fishery.
>
> Lost Creek lake will be stocked with rainbow trout and kokanee salmon produced at the Cole M. Rivers hatchery. The resident fishery supported by that program is expected to provide 120,000 angler-days of use during the first year, increasing in a straight line to 300,000 angler-days in 50 years where it is expected to remain for the final 50 years of the project economic life."

   Nothing in that language "requires" that 13,020 spring chinook adults be returned to Cole M. Rivers Hatchery. It is believed that the habitat blocked by Lost Creek Dam could produce that number of spring chinook and summer steelhead. Understanding of the variable nature of

salmon and steelhead abundance and survival has changed significantly since the 1970s, and the reality is that adult hatchery spring chinook survival would have been variable.

4. The counties who seek the special legal right to sue the US Army Corps of Engineers are also on a fool's errand if they are basing their legal challenge on the unenforceable plain language of the May 1972 Final Environmental Impact Statement (FEIS) for Lost Creek Dam.

   The FEIS does not create an enforceable right. Environmental Impact Statements under the National Environmental Policy Act (NEPA) of 1970 created a requirement for any federal action that would have a significant impact on the environment had to analyze and evaluate and describe the impacts of the action. It was to be a tool of examination to help federal agencies make informed decisions. The process that NEPA created has give rise to many legal challenges focused on whether the required process was followed.

   If the promises made within environmental impact statements across this great nation were kept, the environment would be in wonderful shape. If the promises made in EIS's were enforceable, there would be full employment for lawyers across the nation.

   Sadly, neither is the case.

Please send HB 2379A-Engrossed to the Senate Judiciary Committee for detailed consideration. Alternatively, take no action and allow the bill, like the Counties' former legal rights, to expire.

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