

## Fish Screening Devices

ORS 315.138	Year Enacted:	1989	Transferable:	No
	Length:	1-year	Means Tested:	No
	Refundable:	No	Carryforward:	5-years
TER 1.439	Kind of cap:	Device	Inflation Adjusted:	No

### *Policy Purpose*

Statute addresses fish passage ways and water diversions in two places:

ORS 498.301 states the following:

*It is the policy of the State of Oregon to prevent appreciable damage to game fish populations or populations of nongame fish that are classified as sensitive species, threatened species or endangered species by the State Fish and Wildlife Commission as the result of the diversion of water for nonhydroelectric purposes from any body of water in this state.*

ORS 509.585 states the following:

*It is the policy of the State of Oregon to provide for upstream and downstream passage for native migratory fish and the Legislative Assembly finds that cooperation and collaboration between public and private entities is necessary to accomplish the policy goal of providing passage for native migratory fish and to achieve the enhancement and restoration of Oregon's native salmonid populations, as envisioned by the Oregon Plan.*

Testimony provided in 2011 by the Oregon Department of Fish and Wildlife (ODFW) to the Joint Committee on Tax Credits summarized these policies by stating “[f]ish protection, production, and population connectivity are the primary goals.” This tax credit represents a method of enacting these policies, particularly with respect to a collaboration between private and public sectors.

### *Description*

Taxpayers are allowed a tax credit for installing a fish screening device, bypass device, or fishway. Eligible devices are used on any diversion of water from rivers, lakes and streams that is not required to be licensed by the Federal Energy Regulatory Commission. These projects are primarily on agricultural land to keep fish from entering irrigation canals. The tax credit is 50 percent of the certified cost of installing the device, up to \$5,000 per device.

---

*Credit = 50% × certified cost of installing device (up to \$5,000 per device)*

---

A tax credit is not allowed if a device is part of a federally regulated hydroelectric project or if an installation is financed by the Water Development Fund. The ODFW must certify the device through a process that includes a preliminary certification prior to installation and a final certification upon completion. The credit is claimed in the year of final certification. The credit is nonrefundable but unused portions of the credit may be carried forward for up to five years.

## *Policy Analysis*

ODFW's incentive program encouraging water users to voluntarily screen their diversions consists of two parts: (1) a Cost-Share program that provides financial and technical assistance to water users who want to install eligible devices; and (2) this tax credit. There are more than 55,000 water diversions in Oregon (ODFW, 2015). Since 2000, the two incentives have supported in the installation of over 1,400 fish friendly screens throughout the state (ODFW, 2021). The four primary funding sources for the Cost Share program are the Pacific Coast Salmon Recovery Fund, Bonneville Power Administration, sport fishing license fish screens surcharge and the state General Fund. Outside of ODFW, third party funds and grants can also be available and instrumental in financing water diversions. Applicants for the tax credit can also receive financial support through the ODFW Cost-Share program and/or third part grants, though such amounts cannot be used as qualifying costs for the tax credit.

Financial assistance may take a variety of forms. For example, ODFW may do part or all of the work and then bill the applicant for some portion of the expenses.<sup>1</sup> Similarly, an applicant may submit invoices to the department for reimbursement. In some cases, grants may be awarded that formalize all the relevant terms prior to the work beginning. In other cases, when ODFW provides technical assistance to an applicant, the water user is able to reduce their costs.

New water diversions may be required to include fish screening and/or bypass devices. For existing diversions, however, installation is generally voluntary. The incentives program is the primary method of providing financial assistance to water users who wish to install such devices. ODFW maintains a list prioritizing diversions for potential fish screening and passage sites.

An additional aspect to this program is the responsibility for incurring maintenance costs. ODFW is required to provide major maintenance for program participants on diversions with volumes less than 30 cubic feet per second. The water users, or program participants, are responsible for minor maintenance. Consequently, as program participation grows, so does the department's potential financial obligation for maintenance costs.

ODFW cost share direct funding support of the fish screening and passage program far surpasses the amount of certified tax credits. As displayed in the following table, in the past five calendar years, ODFW cost share has totaled about \$7.1 million whereas total certified tax credits were just under \$51,000. This disparity in part reflects the variance in cost of screening projects which can range from a relatively modest amount to a great deal more for larger gravity diversion projects. As displayed, the average ODFW project funding was about \$37,000 as compared to about \$1,300 for the tax credit. For larger cost projects, the credit is less effective in that the credit offsets 50% of the taxpayer's contribution to project costs and is limited to no more than \$5,000 per device installed. For these reasons, the credit is more conducive to lower-cost projects or as an additional cost offset for larger projects where direct funding cost share grants are more influential. In addition to ODFW grants, many water users installing such devices receive third-party grants further offsetting costs to the individual and reducing potential qualification for the tax credit.

---

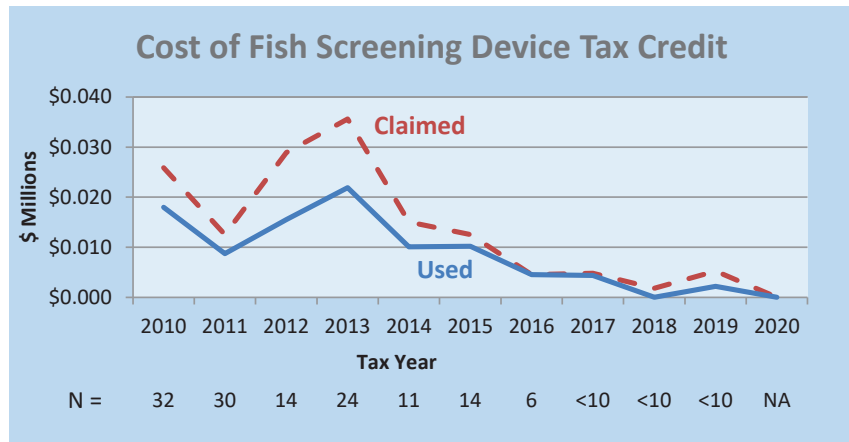
<sup>1</sup> Generally, when ODFW constructs/installs device, individual is responsible for 40% of the costs. In instance where individual constructs/installs device, ODFW reimburses up to 60% of the costs. ORS 498.306(4) sets limits on cost/sharing and reimbursement amounts.

Funding and Tax Credit Certification of Fish Screening and Passage Program, Calendar Years 2017-2021							
Calendar Year	Projects with ODFW Funding			Projects with Tax Credit Certification			
	# of Projects	ODFW Project Share Amount	Avg. Per Project	# of Projects	User Total Share	Certified Credit Amount	Avg. Per Project
2017	64	\$1,721,018	\$26,891	15	\$39,640	\$19,820	\$1,321
2018	40	\$1,272,525	\$31,813	4	\$13,519	\$6,759	\$1,690
2019	34	\$2,786,420	\$81,954	6	\$16,924	\$8,462	\$1,410
2020	27	\$458,127	\$16,968	6	\$22,372	\$11,186	\$1,864
2021	27	\$878,982	\$32,555	7	\$9,236	\$4,618	\$660
<b>Total</b>	<b>192</b>	<b>\$7,117,073</b>	<b>\$37,068</b>	<b>38</b>	<b>\$101,691</b>	<b>\$50,845</b>	<b>\$1,338</b>

The table below contains appropriations for the 2021-23 biennium relating to the larger program of Fish Screens and Passages.<sup>2</sup> It is difficult to isolate the amount strictly for screens because the program staff are used to address both screens and passage issues.

Direct Spending Program	2021-23 Legislatively Adopted Budget (\$M)		
	General Fund	Other Funds	Federal Funds
Fish Screens and Passages Program	\$9.2	\$20.7	\$5.7

The line chart below displays use of the tax credit for the past eleven years. “Claimed” reflects the amount of credit claimed on taxpayer returns whereas “Used” reflects the amount of credit used to reduce tax liability. Since 2017, published credit data has been limited due to disclosure constraints resulting from the limited number of credit claimants. Credit certification data can reflect higher credit participation than tax return data because some credits may be awarded to taxpayers with income below the tax return filing threshold or having insufficient tax liability.



### Other States

A search for active tax incentives offered in other states and related to similarly sized fish passage projects (similar to projects qualifying to Oregon’s tax credit) yielded few results. Some tax incentives did exist in other states but have expired. For example, prior to 2003, as part of the Idaho’s natural resource conservation income tax credit, corporate taxpayers that installed devices that prevent fish from entering diversions could have benefitted from a tax credit equal to 50% of the preapproved qualified expenditures of such installed device (up to \$2,000). Maine exempts from sales tax, qualified expenses or use of materials used in the construction of fish passage facilities in new, reconstructed, or redeveloped dams.

<sup>2</sup> Numbers provided by Legislative Fiscal Office.

Similar to Oregon, other states provide incentives and financial support for fish passage and fish screening devices via direct expenditures.

*Administrative Costs*

Any administrative costs for the tax credit are born by ODFW and represent a minor cost in relation to the entirety of the fish passage program. As is usually the case, Department of Revenue may incur marginal tax administrative and enforcement costs.

Statute	Tax Expenditure (TE) Name and TE Number (Number aligns with Governor's Tax Expenditure Report)			
---------	--	--	--	--

315.138		1.439 Fish Screening Devices			
Year	Bill	Chapter	Section(s)	Policy	
1989	HB 3494	924	2,4	Enacting legislation	
1991	HB 3457	858	10,11	Clarify credit is 50% of "net" costs and the \$5K cap is per device installed   Requirements expanded	
1991	HB 2162	877	14,33	Delete language pertaining to S-corporation apportioning	
1993	HB 2413	730	11,12	Repeal ORS 316.139 & 317.145 and move to Chapter 315	
2001	HB 3002	923	5	ORS reference change to Oregon Plan   Delete ORS 498.350(1) & 509.605(1)	
2007	HB 2294	625	2	ORS reference change   Rework of "water diversion" language   Repeal 315.138	
2009	HB 2067	913	11	Sunset extended to 1/1/2012	
2011	HB 3672	730	18a	Sunset extended to 1/1/2018	
2017	HB 2066	610	34	Sunset extended to 1/1/2024	
2019	HB 2141	483	19	Establishes uniformity of tax credit transfers. Modifies administration and responsibilities related to tax credit certification.	