

A-Engrossed House Bill 2206

Ordered by the House April 10
Including House Amendments dated April 10

Sponsored by Representatives SMITH DB, MORGAN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires Department of State Lands to study creation of credits for restoration of salmon habitat. Directs department to submit findings to interim committees of Legislative Assembly related to environment no later than September 15, 2024.]

Directs Department of State Lands, in consultation with State Department of Fish and Wildlife, to develop salmon credit pilot program to encourage voluntary restoration of salmonid habitat in Coquille and Coos watershed basins.

Establishes Salmon Credit Trust Fund.

Directs Department of State Lands and State Department of Fish and Wildlife to consult with United States Army Corp of Engineers to develop, or identify existing, programmatic general permit to authorize restoration activities under pilot program.

Becomes operative on date that programmatic general permit is established.

Provides that Department of State Lands may not approve salmon credit project on or after January 2 of sixth year following establishment of programmatic general permit.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the creation of credits for the restoration of salmon habitat; and prescribing an effective
3 date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 8 of this 2023 Act are added to and made a part of ORS 196.600**
6 **to 196.921.**

7 **SECTION 2. As used in sections 2 to 8 of this 2023 Act:**

8 (1) "Compensatory mitigation" has the meaning given that term in ORS 196.600.

9 (2) "Credit generator" means an agricultural land or forestland owner that develops a
10 salmon credit project on the owner's land.

11 (3) "Credit purchaser" means a person that purchases a salmon credit.

12 (4) "Mitigation bank" has the meaning given that term in ORS 196.600.

13 (5) "Salmon credit" means an instrument, based on the measure of the increase in the
14 functions and values of water resources of this state achieved at a salmon credit project,
15 that can be used to satisfy a compensatory mitigation obligation.

16 (6) "Salmon credit dividend" means a payment a credit generator is entitled to receive
17 based on retired salmon credits generated by the credit generator's salmon credit project.

18 (7) "Salmon credit project" means a project on agricultural land or forestland to restore
19 waters of this state that are or have historically been salmonid habitat.

20 **SECTION 3. (1) The Department of State Lands, in consultation with the State Depart-**
21 **ment of Fish and Wildlife, shall by rule develop a salmon credit pilot program to improve the**

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 health of wild coho and chinook salmon in the Coquille watershed basin, which includes the
2 mainstem Coquille River and its forks and tributaries, and the Coos watershed basin. The
3 pilot program must:

4 (a) Encourage and create financial incentives for landowners to engage in voluntary
5 salmonid habitat restoration projects; and

6 (b) Allow persons to purchase salmon credits, only from salmon credit projects located
7 within the Coquille or Coos watershed basins, in order to comply with a condition imposed
8 on a permit in accordance with ORS 196.825 (5), an authorization issued in accordance with
9 ORS 196.800 to 196.921 or a resolution of a violation of ORS 196.800 to 196.921.

10 (2) In establishing the salmon credit pilot program, the Department of State Lands shall:

11 (a) Identify waters of this state and adjacent agricultural lands and forestlands suitable
12 for salmon credit projects, utilizing existing state and federal maps of salmonid habitat;

13 (b) Establish requirements for salmon credit projects, including:

14 (A) Restoration project types; and

15 (B) Requirements necessary to preserve the integrity of essential indigenous anadromous
16 salmonid habitat, as defined in ORS 196.810, affected by a salmon credit project;

17 (c) Prioritize salmon credit projects that will provide the greatest increase in functions
18 and values of water resources associated with salmon credit projects and the ability to fulfill
19 required mitigation values;

20 (d) Utilize current tools for measuring the functions and values of water resources as-
21 sociated with salmon credit project sites and sites for which a salmon credit will be pur-
22 chased;

23 (e) Establish procedures for the inspection, certification and recertification of salmon
24 credit projects;

25 (f) Establish a salmon credit price; and

26 (g) Establish a method for calculating the amount of salmon credit dividend payments
27 described in section 6 of this 2023 Act.

28 (3)(a) In designing a salmon credit project, a credit generator must:

29 (A) Ensure that a salmon credit project will not cause damage to adjacent properties or
30 interfere with existing uses on adjacent properties; and

31 (B) Ensure that restoration activities for a salmon credit project will be carried out in
32 accordance with all applicable laws, including the provisions of ORS 196.800 to 196.921 and
33 ORS chapter 537.

34 (b) The Department of State Lands shall coordinate with the State Department of Agri-
35 culture and the Water Resources Department to ensure that credit generators and salmon
36 credit projects satisfy the requirements of paragraph (a) of this subsection.

37 (4)(a) If a salmon credit project is located on a parcel that otherwise qualifies for special
38 assessment as exclusive farm use zone farmland or nonexclusive farm use zone farmland
39 under ORS 308A.050 to 308A.128, the portion of the property on which the salmon credit
40 project is located shall be deemed to be used exclusively for farm use, as defined in ORS
41 308A.056.

42 (b) If a salmon credit project is located on a parcel of land that meets the definition of
43 forestland under ORS 321.257, the portion of the property on which the salmon credit project
44 is located shall be deemed to be used for the predominant purpose of growing and harvesting
45 trees of a marketable species.

1 (5) Wetlands certified as a mitigation bank may not be approved as a salmon credit
2 project.

3 (6) The purchase of a salmon credit does not change the existing mitigation obligations
4 that the purchaser will use the salmon credit to satisfy.

5 (7) The price for a salmon credit must be set at an amount that is designed to compen-
6 sate the credit generator for the average costs of a salmon credit project and to generate
7 an additional amount for deposit in the Salmon Credit Trust Fund established under section
8 8 of this 2023 Act.

9 (8) The Department of State Lands shall establish procedures for inspecting a salmon
10 credit project at least once every three years to ensure that the salmon credit project sat-
11 isfies the requirements of the pilot program.

12 (9) Rules adopted by the department under this section must limit the use of salmon
13 credits for permits, authorizations or resolution of violations related to development projects
14 within the Coquille and Coos watershed basins.

15 (10) The department shall ensure that the salmon credit pilot program is adequately
16 staffed to ensure that applications to become a credit generator or transactions for the
17 purchase of salmon credits are processed in an expeditious manner.

18 **SECTION 4.** (1) A person may apply to the Department of State Lands, in the form and
19 manner prescribed by the department, to become a credit generator. The application must
20 include a description of the area where the salmon credit project will occur and the proposed
21 restoration activities.

22 (2) Within 30 days after receiving the application, the department shall approve, approve
23 with modifications or deny the application. A denial must be in writing and provide an ex-
24 planation of the reasons for the denial.

25 (3) If the department approves an application under this section, the department shall
26 assign an estimated salmon credits value to the project. The approval must state the period
27 of time for which the approval remains valid, after which time the applicant must submit a
28 renewed application.

29 **SECTION 5.** (1) A credit generator may begin restoration activities after the approval of
30 a salmon credit project by the Department of State Lands under section 4 of this 2023 Act
31 or elect to begin restoration activities after a credit purchaser has agreed to purchase the
32 salmon credits generated by the project.

33 (2) After a salmon credit project has been completed, the credit generator shall notify
34 the department. The department shall inspect the project to confirm the project has been
35 completed and certify an amount of salmon credits for the project. If a salmon credit project
36 is completed before a credit purchaser has agreed to purchase the salmon credits, the de-
37 partment may recertify the salmon credits generated by the project to account for any in-
38 crease or decrease in the functions and values of the water resources associated with the
39 salmon credit project at the time the credits are purchased.

40 (3) Upon completion and certification of a salmon credit project, the credit generator
41 shall convey a permanent easement to the state for the portion of the property on which the
42 salmon credit project is located to preserve the use of the property as salmonid habitat. The
43 easement must be recorded in the deed records of the county in which the salmon credit
44 project is located before the credit generator may receive a salmon credit dividend.

45 (4) The establishment of a salmon credit project does not affect the existing rights of the

1 landowner to hunt or fish on the property.

2 **SECTION 6.** (1) The Department of State Lands shall make available to purchasers of
3 salmon credits a list of currently available salmon credits and potential salmon credit
4 projects that will begin restoration activities once a credit purchaser has agreed to purchase
5 the credits.

6 (2) A credit purchaser that intends to purchase salmon credits from a potential salmon
7 credit project may agree to assume the actual costs of the salmon credit project. If a credit
8 purchaser agrees to assume the cost of the salmon credit project, the actual cost of the
9 project shall be deducted from the total price of the salmon credits purchased.

10 (3) After the department receives payment from a credit purchaser for a salmon credit,
11 the department shall retire the salmon credit. The department shall remit to the credit
12 generator an amount calculated to reimburse the credit generator for the actual costs of the
13 project, unless the credit purchaser assumed the costs of the project. The department shall
14 deposit the remaining amount of the salmon credit purchase price on behalf of the credit
15 generator in the Salmon Credit Trust Fund established under section 8 of this 2023 Act.

16 (4) A credit generator is entitled to a salmon credit dividend based on the amount of
17 salmon credits retired from the credit generator's project for as long as the salmon credit
18 project meets the requirements of the salmon credit pilot program. The department shall
19 annually determine a dividend amount for salmon credits generated by each salmon credit
20 project based on the amount deposited in the fund under subsection (3) of this section and
21 a rate of return established by the department.

22 (5) A salmon credit dividend payment is first due one year after the department retires
23 a salmon credit.

24 (6) The right to receive a salmon credit dividend is not transferable, except in connection
25 with the sale or transfer of the real property on which the salmon credit project is located.

26 (7) The department may revoke the right to receive a salmon credit dividend if the de-
27 partment determines that the salmon credit project on which the dividend was based no
28 longer meets the requirements for a salmon credit project under sections 2 to 8 of this 2023
29 Act.

30 **SECTION 7.** (1) The Department of State Lands may establish fees calculated to cover
31 the costs to the department of implementing sections 2 to 8 of this 2023 Act. Fees established
32 under this section may be charged to:

33 (a) A person that submits an application for a salmon credit project under section 4 of
34 this 2023 Act; or

35 (b) A person that purchases a salmon credit under section 6 of this 2023 Act.

36 (2) Fees received under this section shall be credited to the Common School Fund.

37 **SECTION 8.** (1) The Salmon Credit Trust Fund is established in the State Treasury, sep-
38 arate and distinct from the General Fund. The Salmon Credit Trust Fund is declared to be
39 a trust fund. Interest earned by the Salmon Credit Trust Fund shall be credited to the fund.
40 Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to 293.857.

41 (2) Moneys in the fund consist of moneys deposited in the fund under section 6 of this
42 2023 Act. All moneys in the fund are continuously appropriated to the Department of State
43 Lands for the purposes of paying salmon credit dividends calculated under section 6 of this
44 2023 Act.

45 **SECTION 9.** The Department of State Lands and the State Department of Fish and

1 **Wildlife shall consult with the United States Army Corps of Engineers, and any other rele-**
2 **vant federal agencies, to develop a programmatic general permit, or identify an existing**
3 **programmatic general permit that may be modified, to authorize restoration activities under**
4 **the salmon credit pilot program established under sections 2 to 8 of this 2023 Act that occur**
5 **in navigable waters of the United States.**

6 **SECTION 10. (1) Sections 2 to 8 of this 2023 Act become operative on the date that a**
7 **federal programmatic general permit described in section 9 of this 2023 Act is established.**

8 **(2) The Department of State Lands shall notify the Legislative Counsel upon the estab-**
9 **lishment of a programmatic general permit described in section 9 of this 2023 Act.**

10 **(3) The Department of State Lands may take any action before the operative date speci-**
11 **fied in subsection (1) of this section that is necessary to enable the department to exercise,**
12 **on and after the operative date specified in subsection (1) of this section, all the duties,**
13 **functions and powers conferred on the department by sections 2 to 8 of this 2023 Act.**

14 **SECTION 11. The Department of State Lands may not approve a salmon credit project**
15 **under section 4 of this 2023 Act on or after January 2 of the sixth calendar year following**
16 **the establishment of a programmatic general permit described in section 9 of this 2023 Act.**

17 **SECTION 12. This 2023 Act takes effect on the 91st day after the date on which the 2023**
18 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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