



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development
Department of Fish and Wildlife
Department of State Lands

March 13, 2023

TO: The Honorable Chris Gorsek, Chair
The Honorable Susan McLain, Chair
The Honorable Brian Boquist, Vice-Chair
The Honorable Shelly Boshart Davis, Vice-Chair
House Committee on Transportation

FROM: Alexis Biddle, Department of Land Conservation and Development
Debbie Colbert, Department of Fish and Wildlife
Chris Castelli, Department of State Lands

RE: House Bill 3382

Dear Chairs Gorsek and McLain, Vice Chairs Boquist and Boshart Davis, and members of the Committee:

Thank you for the opportunity provide background testimony on House Bill 3382 authorizing certain ports to construct, maintain and improve deep draft navigation channel improvements without demonstrating compliance with state or local land use law. The departments of Land Conservation and Development (DLCDC), Fish and Wildlife (ODFW), and State Lands (DSL) provide the following joint technical review of the bill and have no formal position.

Department of Land Conservation and Development

HB 3382 would exempt the ports in Astoria, Coos Bay, Newport, Portland, and St. Helens from demonstrating compliance with state and local land use law when constructing, maintaining, or improving deep draft navigation channel improvements, including docks and similar berthing facilities. This exemption applies to improvements located either 1) within or adjacent to a Federal Navigation Channel maintained by the US Army Corps of Engineers; or 2) on land controlled by a port in which the port has a real property interest and that is served by such navigation channel improvements. While not specifically defined in the bill, it appears that "improvements" would include dredging to expand or deepen a federal navigation channel or to create additional deep draft navigation channels adjacent to the federal channel or between a federal navigation channel and shoreside docks/berths. The geographic extent of adjacency is similarly undefined.

HB 3382 may affect the authority of the state to implement its National Oceanic and Atmospheric Administration (NOAA) approved Coastal Management Program and undermine the state's Coastal Zone Management Act (CZMA) federal consistency authority. This bill would bypass local land use planning and/or enforcement by exempting the listed activities from the requirement to demonstrate land use compatibility. Oregon's Statewide Planning Goals and the local land use regulations establish allowable uses for different estuarine and shoreland areas, including dredging and shoreside construction. These Goals and associated regulations reflect the state's policies regarding the balance between natural resource conservation and human development. The estuaries that host the ports listed in the bill contain a combination of Natural, Conservation, and Development-classed management units, which have differing allowances

and restrictions for dredging, shoreside construction, and associated activities based on the natural resource values, existing human uses, cultural and historical values, and essential wildlife habitats within those areas.

Department of Fish and Wildlife

ODFW leads and participates in conservation and recovery efforts for salmon, steelhead, and other native fish throughout the state. As a result of extensive investments and management actions implemented under the Oregon Plan, state conservation plans, and federal recovery plans, ODFW believes that there is high potential for Oregon Coast Coho to be removed (“delisted”) from the federal Endangered Species Act’s (ESA) list of threatened and endangered species at the next five-year status review scheduled in 2027. This would be the first time NOAA Fisheries has delisted any salmon/steelhead from the ESA because of recovery, which would represent a significant achievement and keep Oregon at the forefront of conservation in the nation. A delisting decision would be a credit to the many communities, individuals, watershed councils, and other partners across the coast who have embraced and pursued voluntary actions to benefit this iconic species.

One of the key factors NOAA Fisheries considers for delisting decisions is the adequacy of existing regulatory mechanisms to prevent future destruction of habitat. Concern about regulatory sufficiency has been one of the key reasons NOAA Fisheries has not previously delisted Oregon Coast Coho, even though they are biologically viable. This bill would reduce the regulatory adequacy of the statewide planning program, local land use plans and implementation of the Oregon Coastal Management Program to provide reasonable protections for salmonid habitat. This includes the federal consistency determination that relies on the enforceable policies of the Oregon Coastal Management Program. Oregon Coast Coho utilize estuarine habitat which would likely be affected by passage of this bill, risking the potential for delisting and possibly undermining decades of restoration work funded by state, federal, and private interests.

There are also ESA-listed salmon and steelhead in the Columbia River basin, including port locations identified in the bill. These species are not as close to recovery or delisting, and additional habitat impacts will only make progress toward recovery of these species more difficult.

Department of State Lands

The Department of State Lands (DSL) administers proprietary authorizations for the use of state-owned waterways under ORS 274 and regulates removal and fill activities in waters of this state under ORS 196. In the administration of these programs, current state law requires review and approval of projects by the local planning department of jurisdiction. This review is important to ensure that a project complies with the applicable statewide planning goals. In addition, local government oversight of projects for compliance with statewide planning goals and compatibility with acknowledged comprehensive plans and land use regulations is a crucial piece of DSL’s analysis when we review a proposal to ensure that it does not unreasonably interfere with the public trust values of commerce, fishing, navigation, and recreation. The loss of that local analysis and input will make it extremely challenging for DSL to make appropriate findings regarding our proprietary and regulatory decisions. Both ports and local planning

departments are important DSL partners. DSL is happy to meet with both to discuss any issues related to our programs, and brainstorm on solutions for barriers to projects.

Thank you for your consideration and attention to our comments. Our agencies would welcome to meet with the bill proponents to better understand the needs intended to be addressed by this bill and opportunities to address those needs.

Sincerely,

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