



Oregon

Tina Kotek, Governor

Department of State Lands

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State Land Board

To: Senate Committee on Natural Resources and Wildfire
Senator Golden, Chair
Senator Nash, Vice Chair
Senator Brock Smith
Representative Boice

From: Bill Ryan, Deputy Director of Aquatic Resource Management
Oregon Department of State Lands

Re: Testimony on SB 511

Tina Kotek
Governor

Tobias Read
Secretary of State

Elizabeth Steiner
State Treasurer

Chair Golden, Vice Chair Nash, members of the committee. Thank you for the opportunity to provide feedback on Senate Bill 511. The Department of State Lands has no position on this bill but has identified a few implementation issues.

The Department fully supports restoration of salmon habitat. We believe the state should promote such efforts and generally agree landowners should be encouraged to perform enhancement and change historical practices to improve salmon habitat.

That said, the need for - and outcome of - the proposed salmon credit mitigation program is uncertain. The state's current regulatory framework for removal-fill permitting (in ORS 196 and OAR 141-085) requires mitigation of impacts to ensure the important benefits provided by streams, wetlands and other waters are replaced, including habitat for fish. The U.S. Army Corps of Engineers, which administers federal permitting for projects within Waters of the United States, requires the same. SB 511 would add mitigation requirements in the form of the purchase of salmon credits related to development projects within the Coquille and Coos watershed basins. **This addition would not change or replace mitigation obligations that would be required by the agencies, so would exceed replacement of the impacts and contradict ORS 196.825(5). In addition, the Department cannot control the federal process with regards to adopting a salmon credit mitigation program for federal permitting, and the approval of salmon credits by the U.S. Army Corps of Engineers, National Marine Fisheries Service and other federal agencies in a timely manner may be a challenge. A state-approved mitigation option that does not meet federal requirements is unlikely to be beneficial to removal-fill permit applicants or the owner of the salmon credit project.**

A key aspect of this bill is to provide ongoing payments to landowners with credits sold. These payments are dividends from the Salmon Credit Trust Fund established through Section 8 of the bill. The bill states that the Department will determine a rate of return; however, **the amount will be in alignment with the interest earned by the fund, which may not be high enough to attract landowners to this program.**

Though the outcome of the proposed program is uncertain, we do know **significant resources would be required to implement this bill.** The bill creates a pilot program for wild coho and chinook salmon in the

Coquille watershed basin and the Coos watershed basin that would be approved for six years, once any programmatic general permit described in section 9 is established. **To implement this bill, even for a limited duration, the Department would need to establish an entirely new program and fund for salmon credit mitigation banking.** Key components of this effort would include:

- DSL rulemaking in consultation with the Oregon Department of Fish and Wildlife to establish the program.
- Establishment of salmon credit projects, and an application review and approval process. The bill has a 30-day timeline for application review, requires DSL to assign a credit value to a project, and then requires long-term inspection and monitoring to ensure that the credit-generating project is successful.
- Establishing salmon credit requirements for development projects in the pilot area separate from mitigation requirements required by the Department.
- Establishment of a salmon credit marketplace, tracking system, dividend program and annual payment process.
- Coordination with the Oregon Department of Agriculture (ODA) and Oregon Water Resources Department (OWRD) on any salmon credit projects proposed on exclusive farm use land or forestland.
- Coordination with ODFW and the U.S. Army Corps of Engineers to establish a programmatic general permit to authorize restoration activities under the salmon credit pilot program.
- Establishment of the Salmon Credit Trust Fund at State Treasury.

Completing the above would require significant administrative, policy, information technology, and public engagement work. In particular, the Department will need to engage in significant stakeholder outreach and collaboration to complete the rulemaking process, create a general permit, and establish fees, and ensure program-specific resources and tools are available to staff and the public.

Section 7 of the bill allows DSL to establish fees to cover costs associated with the implementation of the program. However, much of the cost to the Department is going to be up front in the creation of the mitigation program and the development of the administrative process for establishing projects, credits, dividends, tracking of credits, tracking of the fund, and other tasks necessary for implementation. **DSL would need to hire additional staff to stand up the program.**

In closing, I again want to emphasize the Department's support for salmon habitat restoration, and for incentivizing landowners to perform this important work. However, we believe using grant programs under the mitigation program already in place may be a more effective way to encourage habitat restoration on private lands. For example, the Department collects mitigation payments in the Oregon Removal-Fill Mitigation Fund (ORS 196.640 to 196.665) and funds projects that will create, restore, enhance or preserve water resources of this state. There are also many grant programs already in place at other state agencies that could be an effective way to fund and promote the type of salmon habitat restoration efforts envisioned by this bill.

Thank you for your consideration.

Bill Ryan
Deputy Director, Aquatic Resource Management Program